

Ms. Coles



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: TS Infosystems, Inc.

File: B-240986

Date: December 4, 1990

Jeffrey A. Lovitky, Esq., for the protester.
Paul B. Brown, Jr., for Urner Barry Publications, Inc., an interested party.
Steven Carrara, Esq., and James K. White, Esq., Department of Commerce, for the agency.
Barbara C. Coles, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging the agency's selection of awardee, based on allegation that agency's evaluation departed from solicitation criteria to include consideration of undisclosed criteria, is denied where record shows that the agency's evaluation was reasonable and in accordance with the evaluation criteria and that the resulting award to the technically superior offeror was the most advantageous to the government.

DECISION

TS Infosystems, Inc. (TSI) protests the award of a contract to Urner Barry Publications, Inc. under request for proposals (RFP) No. 52-DGNF-0-00033, issued by the National Oceanic and Atmospheric Administration, Department of Commerce, for the redaction and publication of the Fishery Market News Report. TSI contends that the agency improperly evaluated its proposal.

The RFP, issued on December 1, 1989, contemplated the award of a no-cost contract and sought rates and technical proposals for all labor, materials, and facilities necessary for performance. The purpose of the solicitation is to transfer the publication of the Fishery Market News hard copy to the private sector and to establish a computerized data base of

05270/142701

Market News information as a means to provide such data to the public. With regard to the Fishery Market News Report, the RFP described the work required as follows:

"Task 4.

a. Produce Fishery Market News Reports of equal or better quality than now published, and distribute them in at least an equally timely manner to all subscribers. The reports shall be prepared three times each week with the third issue being a summary or aggregation of information provided in the first two issues, and include the equivalent coverage of data series, detail and timeliness of reporting found in the existing Fishery Market News Reports.

b. The Contractor may alternatively produce the Fishery Market News Reports in a format that is different than that now used. This includes the distribution of the Fishery Market News by facsimile. The Contractor may also, for example, consolidate the production and distribution of two or more of the reports from the different regional Fishery Market News Reports offices. Any consolidation of reports must provide for the publication of all information contained in the separate reports."

The RFP advised that award was to be made to the responsible offeror whose proposal offered the most advantageous technical/rate relationship to the government. In regard to relative weight, the RFP stated that technical factors were significantly more important than the rate factor. Technical factors were to be evaluated for (1) previous experience and current involvement in providing public access to information by computer; (2) previous experience and current involvement in preparing and distributing reports similar to the Fishery Market News Reports; (3) adequacy of facilities/equipment needed to do the tasks required by the statement of work; (4) ease with which the public will be able to access fisheries market data by computer; (5) quality of report timeliness of proposed distribution and appearance of proposed format for the Fishery Market News Report; and (6) qualifications of personnel who will carry out the tasks required by the statement of work. With regard to the rate evaluation factor, the RFP stated that the agency would evaluate the subscription charges to determine the reasonableness of the rates for attracting subscribers to the computer data base and to subscribe to Fishery Market News Reports.

A technical evaluation team evaluated the five proposals received and found each proposal to be within the competitive range. Discussion letters were sent to all offerors, and the team completed its review of their responses on June 1. The agency then requested best and final offers (BAFO) on June 26. The evaluation team determined that Urner Barry's technical proposal was superior to the ones submitted by the other offerors, including the proposal submitted by TSI. The contracting officer decided that it would be most advantageous to the government to award the contract to Urner Barry based on its technical superiority and reasonable rates; the agency subsequently awarded Urner Barry the contract on August 22. TSI's protest to our Office followed.

TSI contends the agency's evaluation of Urner Barry's proposal was flawed because the agency used an undisclosed evaluation criterion which resulted in the rejection of TSI's proposal and the ultimate selection of Urner Barry's proposal as the most advantageous to the government. TSI asserts that the agency rejected its proposal because the firm only offered to publish individual regional reports, as required by the solicitation under Task 4(a), rather than alternatively offering to publish a single consolidated report encompassing all the regions, which the solicitation permitted but did not require under Task 4(b). To support this assertion, TSI relies on the following language in the rejection letter it received from the contracting officer: "[y]our proposal was determined to be acceptable, but award was made to an offeror which offered a combined Fishery Market News Report under Task 4(b) at a competitive market subscription rate and database charge."

The agency disagrees with TSI's assessment of the evaluation as improper and argues that TSI's reliance on this language as a basis of protest is misplaced. The agency states that the fact that it noted that the awardee proposed a consolidated report in addition to individual reports had no bearing on the evaluation and that, contrary to the protester's suggestion, the proposals were evaluated only under the criteria set forth in the evaluation scheme, which focus on the offeror's technical capabilities to publish rather than the proposed format of the report.

In reviewing protests against allegedly improper technical evaluations, our Office will not substitute its judgment for that of the contracting activity, but rather will examine the record to determine whether the agency's judgment was reasonable and in accord with listed criteria and whether there were any violations of procurement statutes or regulations. Ross Aviation, Inc., B-236952, Jan. 22, 1990, 90-1 CPD ¶ 83. We find that the agency's evaluation was proper in this case.

Our examination of the record, including our in camera review of confidential source selection materials which were not disclosed to the protester, reveals that the agency did not depart from the evaluation scheme in the RFP. Rather, the record reveals that, regardless of the report format offered by Urner Barry, Urner Barry was considered significantly superior to the other offerors, including TSI. The noted strengths in Urner Barry's technical proposal included its (1) greater experience and current involvement in providing public access to information by computer; (2) greater experience providing the fisheries-related services cited in the solicitation; (3) more than adequate facilities; (4) excellent format and timeliness of the report; and (5) highly qualified personnel. The technical evaluation team also noted that award to Urner Barry would provide a smooth and timely transition from government production to the private production of reports and data base, since the awardee's publication system was established and operating. Accordingly, the agency properly based its technical evaluation on the factors set out in the RFP, not on the consolidated report format offered by Urner Barry.

As a corollary to its contention that the award was improperly based on consideration of Urner Barry's proposal for a consolidated regional report, TSI argues that in evaluating cost the agency improperly compared Urner Barry's rates for the consolidated report to TSI's rates for single regional reports.^{1/} We see no basis to object to the agency's evaluation of cost.

The agency evaluated the offerors' proposed rates for reasonableness only, as provided in the RFP; both TSI's and Urner Barry's rates were found to be reasonable. Consistent with the evaluation scheme in the RFP, the award decision was based principally on Urner Barry's technical superiority, not on its proposed rates or the specific report format it offered. The record does show that the agency concluded that the Urner Barry proposal under Task 4(b) was the most advantageous to the government since it offered access to more data at a reasonable price. TSI argues that it was improper for the agency to compare Urner Barry's proposal for

^{1/} Urner Barry offered the weekly reports by individual region for \$179 annually, and summary reports for each region for \$239 annually; it offered consolidated reports for the same rates. TSI offered weekly reports by region for \$100 annually and summary reports by region for \$170. The current charges for the reports published by the government are \$50 for the weekly version by region and \$35 for the summary version by region.

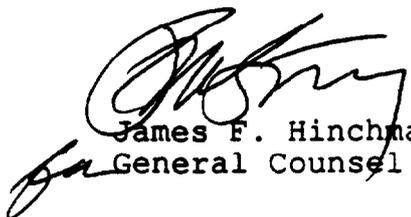
Task 4(b) with its offer for Task 4(a) and that the agency should have required all offerors to propose a consolidated report if that is what it desired.

Contrary to TSI's contention, we see nothing unreasonable or inconsistent with the evaluation criteria in the agency's consideration of Urner Barry's proposal under Task 4(b). On the contrary, the RFP specifically advised offerors that they could propose a consolidated report as an alternative to the single regional reports called for under Task 4(a), thus clearly putting TSI on notice that such an alternative would be evaluated. The fact that TSI chose not to submit an offer on that basis does not mean that the agency was precluded from considering alternate proposals for consolidated reports.

TSI also challenges the agency's evaluation of its data base access charges, arguing that the agency used an undisclosed formula to calculate its annual rate. We need not consider this argument since, as with the report charges, the agency found that both Urner Barry's and TSI's proposed data base charges were reasonable, and it is clear from the record that the offerors' data base rates were in no way dispositive of the award decision. Thus, while under the formula the agency used TSI's charges were higher than Urner Barry's, TSI's competitive position was not affected as a result of the agency's calculation.

Since technical merit was considered significantly more important than the rate structure, and the agency reasonably determined that Urner Barry's proposal was superior to those of the other offerors and that its proposed rates were reasonable, we see no basis to object to the selection of Urner Barry as offering the most advantageous technical/rate relationship.

The protest is denied.


James F. Hinchman
General Counsel