

Ashen
1452-10



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Racal Guardata, Inc.

File: B-245139.2

Date: February 7, 1992

Thomas J. Touhey, Esq., Fastianelli, Brown & Touhey, for the protester.

Bruce R. Thaw, Esq., Abrams Thaw & Mullaney, for IRE, Inc., and David P. Metzger, Esq., and Gena E. Cadieux, Esq., Davis, Graham & Stubbs, for Jones Futurex, Inc., interested parties.

Daniel J. Mazella, Esq., and Ingrid Falanga, Esq., Department of the Treasury, for the agency.

David Ashen, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in preparation of the decision.

DIGEST

1. A qualified products list requirement relates to the qualification of the specific product, and not the qualification of individual offerors; therefore, the firm that offers the qualified product need not be the same firm that passes the tests qualifying the product.
2. Contracting agency did not engage in a prohibited auction by requesting 1 offeror to reduce its price by 10 percent and another offeror to reduce its price by 30 percent, where the price objectives were based upon a comparison of the proposed price for each piece of equipment with catalog and prior contract prices and on an allowance for desirable quantity discounts; a contracting agency may develop different negotiation price objectives based upon separate appraisals of each offeror's proposal, and these objectives may be disclosed to the offeror in question as a negotiation tool for reaching an agreement as to a fair and reasonable price.

DECISION

Racal Guardata, Inc. protests the Department of the Treasury's award of a contract to Information Resource Engineering Systems, Inc. (IRE), under request for proposals (RFP) No. FMS-91-0001, for an electronic certification system (ECS). Racal protests that IRE's proposed system fails to meet mandatory certification requirements, that IRE

lacks the requisite experience and security clearance, and that Treasury engaged in a prohibited auction.

We deny the protest.

The RFP sought offers for a fixed-price, indefinite delivery, indefinite quantity contract, for a basic period of 1 year and four 1-year options, to furnish an ECS. An ECS is a microcomputer-based system that permits the secure and accurate certification of payment data via electronic transmission; it uses the Data Encryption Standard (DES) and message authentication to provide a unique identification of the individuals making a request for payment and to ensure that the payment request has not been modified subsequent to the authentication of the message. The solicitation required the contractor to furnish secure DES encryption modules for insertion into personal computers (PC), and specified that:

"the PC encryption module . . . shall have been certified by the Systems Security Office of the Treasury Department under its certification program and appear on its Certified Products List prior to award of the contract. This certification is not expected to have included the enhancements required for the ECS system as described in . . . this specification."

In addition, the solicitation specified that:

"except as approved by the Contracting Officer, all equipment proposed to meet the Government's requirements shall have been successfully operated in a commercial or Government site. The equipment referred to is the offeror's standard product and need not have included the modifications described in . . . this work statement."

The solicitation also specifically required that the offeror be "experienced in the installation of message authentication or encryption equipment systems."

As issued, the solicitation provided for proposals to be evaluated on the basis of the following four technical evaluation criteria, listed in descending order of importance: (1) offeror's experience and reliability; (2) delivery schedule ("the vendor must be able to deliver" the initial quantity within 6 months of date of award); (3) offeror's understanding of requirements; and (4) training plans. The four criteria together were assigned a weight of 60 percent, while cost was assigned a weight of 40 percent.

Four offerors submitted proposals in response to the solicitation; based upon the evaluation of the initial proposals by the agency's technical evaluation panel (TEP), all offerors were included in the competitive range. Subsequent to the TEP's evaluation of initial proposals, Treasury amended the solicitation to delete the 6-month delivery schedule as an evaluation criterion and instead included it among the mandatory specifications. However, the relative weight assigned to the technical evaluation criteria in total, as well as the relative ranking of the remaining criteria, remained unchanged. The contracting officer then replaced the prior TEP with a new TEP to "prevent any prejudice in the evaluation of the revised proposals by the previous panel," and preclude any complaint that the evaluators were influenced by the evaluation under the old criterion. Offerors were afforded the opportunity to submit revised proposals in response to the revision in the evaluation criterion and other changes in the solicitation.

Although the second TEP, in its evaluation of the revised proposals, substantially raised Racal's relative score under the factor for proposed training plan, the elimination of the factor for delivery schedule, under which IRE had received no points, resulted in a substantial overall improvement in IRE's relative technical score. Following negotiations, in which the agency sought to resolve technical issues and obtain price reductions, Treasury requested the submission of best and final offers (BAFO). As set forth below, Racal's and IRE's BAFOs were rated equal technically. IRE's BAFO, however, received the highest overall evaluation score as a result of a substantial reduction in price.

	Initial Proposals (First TEP) ¹ <u>IRE/RACAL</u>	Revised Proposals (Second TEP) <u>IRE/RACAL</u>	BAFOs <u>IRE/RACAL</u>
Technical Criterion:			
Experience	27/27	36/36	36/36
Delivery ²	0/10	-----	-----
Understanding	10/10	12/12	12/12
<u>Training</u>	<u>9.3/4.7</u>	<u>11/10</u>	<u>11/11</u>
Technical Subtotal	46.3/51.7	59/58	59/59

¹The scores for the initial proposals (first TEP) are average scores since, unlike for the subsequent evaluations, the evaluators did not calculate composite scores.

²As indicated above, delivery was deleted as an evaluation factor prior to the evaluation of revised proposals by the second TEP.

Price:			
Price	\$2,041,300/ \$1,434,500	\$2,041,300/ \$1,434,500	\$1,225,560/ \$1,307,100
<u>Cost Score</u>	<u>16/23</u>	<u>16/23</u>	<u>28/26</u>
<u>Total Score</u>	62.3/74.7	75/81	87/85

Upon learning of the resulting award to IRE, Racal filed this protest with our Office.

Racal primarily argues that the Certified Products List requirement could only be met by an offeror proposing its own product and that IRE's proposed PC encryption module was unacceptable because IRE proposed a module manufactured by Atalla Corporation. The Atalla PC encryption model is listed on Treasury's Certified Products List.

Treasury reports that the Certified Products List is a qualified products list (QPL). See Federal Acquisition Regulation Subpart 9.2. A QPL requirement relates to the qualification of specific products and not the qualification of individual offerors; thus, the firm that offers a qualified product need not be the same firm that passed the tests qualifying the product. See American Athletic Equip. Div., AMF Inc., 58 Comp. Gen. 381 (1979), 79-1 CPD ¶ 216; D. Moody & Co., Inc.; Astronautics Corp. of Am., 55 Comp. Gen. 1 (1975), 75-2 CPD ¶ 1. Moreover, neither the solicitation nor the Treasury List itself supports Racal's more restrictive interpretation. The solicitation did not preclude the agency from accepting a PC encryption module listed on Treasury's QPL which was offered by other than the manufacturer receiving the certification. Also, Treasury's implementing QPL procedures provide that "the recipient of an equipment certification may license or otherwise authorize a second party to manufacture or market the equipment covered by the certification," provided that "notice of such a licensing agreement" is provided to Treasury within 30 days of the execution of the agreement. Although it is not clear whether this language is intended to apply to the circumstances here, involving a single sale to a single customer, IRE in fact obtained Atalla's authorization; IRE included in its proposal Atalla's authorization to propose a module modified by Atalla to comply with the solicitation requirements. Accordingly, we conclude that Treasury properly determined that IRE's proposal of an Atalla PC encryption module met the certification requirement.

Racal further argues that by proposing a PC encryption module manufactured by a different firm, IRE failed to comply with the solicitation requirement that the module be "the offeror's standard product." In addition, Racal contends that when read together with this requirement for

the "offeror's standard product," the solicitation requirement that the offeror be "experienced in the installation of message authentication or encryption equipment systems" required an offeror to be experienced in the installation of the proposed product.

We think Racal's interpretation of the solicitation is unnecessarily restrictive. Although we would agree that, standing alone, the words "offeror's standard product" lend some plausibility to Racal's interpretation, reading the language in context makes it clear that its purpose was not to restrict the products that could be offered, but to allow offerors to satisfy the "prior operation" requirement with a standard product rather than one modified to meet the specific requirements of this RFP. Nothing else in the RFP or in Treasury's QPL procedures suggests that the agency intended to require offerors to propose only their own equipment. Since, according to IRE's proposal, Atalla's module had been successfully operated at commercial sites, we do not believe that Treasury acted unreasonably in finding it to be an acceptable standard product.

Similarly, regarding the experience requirement, since the language in the RFP does not specify that only experience installing the equipment being proposed will be acceptable for meeting this requirement, there is no basis for adopting Racal's restrictive interpretation. IRE's proposal described experience in the installation of message authentication encryption equipment, and Treasury therefore reasonably determined the proposal acceptable under the experience requirement.

Racal alleges that IRE lacks a facility security clearance and that, as a result, its employees will be unable to obtain personnel security clearances necessary for performance of this contract. Racal notes that Treasury's QPL procedures address the question of security clearances, providing that Treasury will consider for certification manufacturers that can meet the requirements of the Department of Defense Industrial Security Program; Racal contends that IRE will require a facility security clearance before it can modify Atalla's proposed PC encryption module to comply with the specifications.

This argument is without merit. IRE's proposal included Atalla's agreement to make the requisite modifications to its standard PC encryption module. Further, with respect to the IRE personnel needed to perform the contract, the agency reports that no facility security clearance will be necessary since the contractor's duties do not require access to classified information, and points out that the solicitation expressly reserved to Treasury the right to grant interim access to contractor personnel.

Racal argues that Treasury engaged in prohibited technical leveling by replacing the TEP "with hand-picked substitutes and rescoring."

The Federal Acquisition Regulation (FAR) defines technical leveling as "helping an offeror to bring its proposal up to the level of other proposals through successive rounds of discussion, such as by pointing out weaknesses resulting from the offeror's own lack of diligence, competence or inventiveness." FAR § 15.610(d). There is no evidence of technical leveling here. The composition of a source evaluation board is within the discretion of the contracting agency, and we will not object to the constitution of any evaluation panel absent a showing of fraud, bad faith, conflict of interest, or actual bias. See Visucom Prod. Inc., B-240847, Dec. 17, 1990, 90-2 CPD ¶ 494. The fact that a second TEP was established does not constitute evidence of fraud, bad faith, conflict of interest, or actual bias against Racal, and in no way suggests that technical leveling took place. Indeed, the evaluation of the revised technical proposals by the second TEP suggests the contrary, since only Racal improved its relative score under any of the technical criteria. Similarly, Treasury's requesting revised proposals for the purpose of allowing offerors to respond to the amended RFP similarly was unobjectionable on its face.

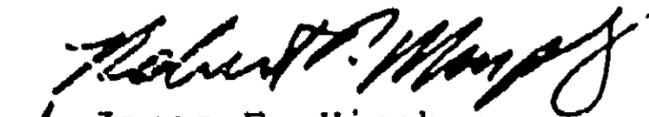
Finally, Racal contends that Treasury's conduct of negotiations amounted to a prohibited auction. During negotiations, Treasury requested Racal and IRE to reduce their proposed prices. Based upon a detailed analysis of the proposals, comparing the proposed price for each piece of equipment to catalog and prior contract prices, and taking into consideration desirable quantity discounts, Treasury requested Racal to reduce its price by 10 percent, from \$1,434,500 to \$1,291,050, and IRE to reduce its price by 30 percent, from \$2,041,300 to \$1,428,910. Had the offerors complied with Treasury's request, Racal's price would have been \$137,860 lower than IRE's, which would have increased Racal's evaluation score sufficiently to move the firm in line for award. However, Racal reduced its price by only 8.9 percent, to \$1,307,100, while IRE reduced its price by 40 percent, to \$1,225,560, that is, \$81,540 lower than Racal's. As a result of its greater-than-requested price reduction, IRE received the highest evaluation score. Racal argues that requesting specific, differing price reductions from offerors was improper and that the award therefore should be overturned.

We disagree. Although FAR § 15.610(e)(2) prohibits auction techniques such as indicating to an offeror a price that it must meet to obtain further consideration or advising an offeror of its price standing relative to another offeror,

Treasury did neither here. Instead, the agency revealed its price goal for each proposal. As we have previously held, it is not improper for a contracting agency to disclose a price objective as a negotiation tool for reaching an agreement as to a fair and reasonable price, Printz Reinigung GmbH, B-241510, Feb. 8, 1991, 91-1 CPD ¶ 143; America Seating Co., B-230171.36, Aug. 31, 1989, 89-2 CPD ¶ 195, so long as the agency is not conducting direct price bidding among competing offerors, Ikard Mfg. Co., 63 Comp. Gen. 239 (1984), 84-1 CPD ¶ 266. Further, an agency may develop different negotiation objectives based upon separate appraisals of each offeror's proposal, and these objectives may be disclosed to the offeror in question as a basis for negotiation. See Professional Peer Review of Florida, Inc.; Florida Peer Review Org., Inc., B-215303.3; B-215303.4, Apr. 5, 1985, 85-1 CPD ¶ 394; Griggs and Assocs., Inc., B-205266, May 12, 1982, 82-1 CPD ¶ 458. Accordingly, we conclude that Treasury acted properly in establishing and disclosing to the offerors separate negotiation objectives based upon its analysis of each offeror's proposal.

In any case, prejudice is an essential element of a viable protest, and where no prejudice is shown or is otherwise evident, our Office will not disturb an award, even if some technical deficiency in the award arguably may have occurred. Merrick Eng'g Inc., B-238706.3, Aug. 16, 1990, 90-2 CPD ¶ 130. As indicated above, had offerors complied with the requested reductions, Racal's price would have been low and Racal would have been in line for award. We therefore do not believe Racal was prejudiced by Treasury's requested price reductions.

The protest is denied.


for James F. Hinchman
General Counsel