



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Specialized Technical Services, Inc.

File: B-247489.2

Date: June 11, 1992

William Bishoff and Robert B. Shearer, Esq., for the protester.

Carl L. Vacketta, Esq., and Kevin P. Mullen, Esq., Pettit & Martin, for Synergy, Inc., an interested party.

Lt. Col. William Spindle and Sandra G. Zimmerle, Esq., Department of the Air Force, for the agency.

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

DIGEST

1. Allegation that agency improperly based award solely on technical point scores, without regard for price, is without merit where price was least important of seven evaluation factors and record shows agency specifically determined that magnitude of protester's price advantage was insufficient to offset awardee's technical superiority.

2. Agency's decision not to conduct discussions with protester (or other offerors) concerning areas of proposal (principally personnel and company experience) that were downgraded in the evaluation was proper where protester's proposal was deemed acceptable in all respects and was weak relative to awardee's proposal.

DECISION

Specialized Technical Services, Inc. (STS) protests the award of a contract to Synergy, Inc. under request for proposals (RFP) No. F33601-91-R-9002, issued by the Department of the Air Force for experimental testing services for the Aircraft Survivability Research Facility at Wright-Patterson Air Force Base, Ohio. STS challenges the results of the evaluation and concludes that it should have received the award based on its low offered price.

We deny the protest.

The solicitation defined the requested services to include engineering and technical services in support of the operation, maintenance, and improvement of equipment and facilities necessary for aircraft survivability testing. The RFP contemplated award of a 1-year (plus 4 option years) fixed-price, time and materials contract to the responsible offeror whose offer conforming to the solicitation was found to be most advantageous to the government, cost and other specified factors considered. The solicitation provided for the evaluation to be based on the following seven evaluation factors, in descending order of importance: (1) personnel experience and qualifications; (2) management plan; (3) previous experience in similar services; (4) compliance with statement of work requirements; (5) ability to provide additional effort; (6) ability to provide replacement parts and supplies; and (7) price. Under the price factor, the RFP stated that the government reserved the right to make award to other than the low offeror when non-price factors are identified. The RFP also included Department of Defense Federal Acquisition Regulation Supplement (DFARS) § 252.219-7006, providing that offers by small disadvantaged business (SDB) concerns would receive a 10 percent price evaluation preference (i.e., offered prices of non-SDBs would be increased by 10 percent). Following evaluation, proposals were to be rated acceptable, marginal, or not acceptable.

Four proposals were received by the closing date; STS' and Synergy's were found acceptable and included in the competitive range (the other two proposals were rejected as not acceptable). Discussions were held to permit both offerors to make certain clarifications. STS was requested to clarify apparent double-slotting of personnel in different positions, and both firms were requested to complete certain standard provisions and correct minor mathematical errors. No detailed technical discussions were conducted with either firm, since the agency determined that both satisfied the RFP requirements. Based on the clarifications furnished by STS and Synergy, the Air Force requested best and final offers (BAFO). Although STS' BAFO price (\$15,115,257.12) was lower than Synergy's evaluated price (\$14,577,012.26, increased to \$16,034,716.79 after addition of the 10 percent SDB factor), the Air Force determined that Synergy's 11-point (14 percent) higher score under the more important technical factors offset STS' evaluated price advantage.

In its protest of the award to Synergy, STS raises numerous arguments challenging various aspects of the evaluation. We address STS' principal arguments below.

SYNERGY'S PERCEIVED TECHNICAL SUPERIORITY

STS disputes the Air Force's claim that it determined Synergy's proposal to be superior to STS' proposal. STS

first argues that the fact that its proposal was evaluated as acceptable, the same general category in which Synergy's proposal was included, shows that the proposals actually were considered technically equal. STS concludes that it thus should have received the award based on its low evaluated price.

This argument is without merit. Although STS is correct that its and Synergy's proposals received the same adjectival rating of acceptable, the adjectival ratings were not the basis for selecting the awardee. The adjectival ratings were used only to determine which proposals would be retained in the competitive range for purposes of requesting BAFOs; STS' and Synergy's acceptable proposals were kept in the range while the other two proposals were rated not acceptable and therefore eliminated. The agency determined that Synergy's proposal was superior to STS' based on the RFP's detailed evaluation scheme consisting of seven factors, the application of which resulted in scores that enabled the Air Force to compare the relative merits of the two acceptable proposals. This is precisely the evaluation approach the RFP indicated would be used by stating that award would be made to the offeror whose proposal was determined to be "most advantageous to the government" based on "cost or price and other factors."

STS further argues that the comparative evaluation results in fact do not support the conclusion that Synergy's proposal was deemed superior to STS'. In this regard, STS cites statements from the evaluation summaries that its proposal was "very sound"; that its proposed key personnel were "highly qualified"; and that "both companies have demonstrated a solid understanding of the scope of the effort involved." STS concludes that there was no reasonable basis for finding that Synergy's proposal was superior to STS'.

While the statements quoted by STS correctly reflect the Air Force's general view that STS' proposal was fully acceptable, and indeed good in some respects, the evaluation summaries clearly indicate the reasons for the lowering of STS' score. Specifically, as stated in a January 20, 1992, evaluation summary, the agency determined that:

"Previous experience is STS' weakest link for the proposal. While the key incumbents [i.e., incumbent key personnel supported by letters of intent] proposed provide a base from which to work, the experience level as a whole of the proposed crew is limited and poses a potential for delay in ongoing programs during transition if selected. The compliance [with statement of work requirements] aspect of STS' proposal is weak due to the lack of stated finite element analysis experience.

. . . The ability to provide additional effort is also limited due to the lack of a parent company; the proposed plan is acceptable however the response time may be affected since a contracting action would be required. . . . STS is an acceptable offeror for the operation and maintenance [of the facility] but lack of experience and the variation of qualifications of the various personnel from a technical aspect hurt them in their proposal."

As indicated in a January 22 summary, the agency concluded that "[t]he overall rating was hurt in two areas however, overall survivability experience and no stated Finite Element Analysis capability."

In contrast, the Air Force evaluation emphasized the significant strengths in Synergy's proposal; the agency stated, in the January 20 summary, that:

"The personnel proposed demonstrate a solid capability to perform all tasks involved . . . in addition to showing a very high level of experience in dealing with survivability testing. The technical qualifications of the personnel proposed is the most important factor, and the Synergy proposal provides this. . . . The previous experience section is by far the most impressive part of Synergy's capabilities. The fact that they have held the contract for several years speaks for itself that they have the experience necessary to run the contract. Compliance with [statement of work] requirements for Synergy is solid, again showing the understanding necessary to run the contract. The ability to provide additional effort is also solid; Synergy is a subsidiary of SRL so they have resources from there and also has other existing contracts which employees could be pulled from to support the [facility]. . . . Overall, Synergy is the strongest company . . . primarily based on experience and technical ability. . . ."

Although the agency, in the January 22 summary, cited Synergy's "lack of management experience in the lead position," as a "primary weakness," it noted that "management is not as important as the technical capabilities."

Based on the evaluation summaries, it is clear that the Air Force did not consider STS' and Synergy's proposals to be equal. Rather, it determined that Synergy's proposal was strongest in two areas where STS' was the weakest: the technical qualifications and experience of the staff as a

whole (most important factor) and company experience (third most important).

EVALUATION RESULTS

STS challenges certain of the negative evaluation findings regarding its proposal. In reviewing such protests, we will not make an independent determination of the merits of the proposals; rather, we will examine the agency's evaluation to ensure that it was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations. Damon Corp., B-232721, Feb. 3, 1989, 89-1 CPD ¶ 113.

First, STS questions the Air Force determination that its ability to provide additional support "is limited due to the lack of a parent company." STS notes that there was no specified requirement for a parent company.

Contracting agencies are required by statute to set forth in the solicitation, at a minimum, all significant evaluation factors and significant subfactors, and their relative importance. 10 U.S.C. § 2305(a)(2)(A) (Supp. II 1990); see H.J. Group Ventures, Inc., B-246139, Feb. 19, 1992, 92-1 CPD ¶ 203. All matters taken into account under these factors need not be specifically identified in the RFP, either in the specifications or in the proposal evaluation section, provided that they are reasonably encompassed within the stated evaluation criteria. See generally Management Sys. Designers, Inc.; et al., B-244383.4 et al., Dec. 6, 1991, 91-2 CPD ¶ 518. Here, one of the evaluation factors was entitled "Offeror's Ability to Provide Additional Effort." Subfactors under this factor included "Off-site Capabilities and Availability" and "proposed Subcontracting Methods and Extent." An offeror's status as an independent small company (STS), rather than as a subsidiary of a larger entity (Synergy) with readily available additional resources and without the need for subcontracting and its attendant potential delays, has an obvious nexus to an offeror's access to the resources necessary to provide additional effort under the contract and therefore logically can be considered under such evaluation criteria. Thus, it was proper for the Air Force to consider STS' status in this regard.

STS also questions the scoring of its proposal lower than Synergy's based on the agency's conclusion that the limited experience of its proposed crew as a whole would potentially lead to program delays during the transition if STS were selected. STS maintains that, considering its "sound" overall proposal and its "highly qualified" staff, the agency should have found that these delays could be worked out during the transition. We find nothing improper in the

agency's conclusion. STS' suggestion that delay problems could be worked out during the transition ignores the very concern the agency's conclusion addresses, namely, the greater potential for delays during the transition to performance by STS than if award were made to Synergy as the more experienced offeror. The agency was not precluded from considering this potential negative program impact in the evaluation.¹

STS asserts that its proposal should not have been rated lower than Synergy's under the compliance with statement of work requirements factor. STS cites certain of the evaluation comments--e.g., "both companies have demonstrated a solid understanding of the scope of the effort involved" as evidence that the proposals were actually considered equal under this factor. Again, however, STS ignores the agency's conclusion that the compliance aspect of its proposal was weak due to "the lack of stated finite element analysis experience." As STS does not address this finding and Synergy's proposal was not found weak in this area, we have no basis for questioning STS' lower score under the compliance factor.

We therefore conclude that the Air Force's determination of the technical superiority of Synergy's proposal was reasonable and consistent with the RFP.²

FAILURE TO HOLD DISCUSSIONS

STS argues that the Air Force improperly failed to conduct discussions regarding technical deficiencies that led to the scoring of its proposal lower than Synergy's.

¹An advantage a firm may have in an evaluation by virtue of its incumbency is not an unfair advantage that the agency must eliminate where it is not shown to have resulted from preferential treatment or other unfair agency action. Harbor Branch Oceanographic Inst., Inc., B-243417, July 17, 1991, 91-2 CPD ¶ 67.

²STS suggests that the evaluation process was flawed because one of the evaluators reportedly did not prepare his evaluation in accordance with the contracting officer's instructions and therefore declined to submit his evaluation worksheets. This had no effect on the validity of the evaluation results. Three other evaluators came to a consensus on the merits of the proposal, providing us with a sufficient record to determine the reasonableness of the Air Force's conclusions. See KMS Fusion, Inc., B-242529, May 8, 1991, 91-1 CPD ¶ 447. STS has not shown that the conclusions based on these evaluators' findings were unreasonable.

Under the Competition in Contracting Act of 1984 (CICA), 10 U.S.C. § 2305(b)(4)(B) (1988), discussions generally must be held with all responsible sources whose proposals are within the competitive range. Price Waterhouse, 65 Comp. Gen. 205 (1986), 86-1 CPD ¶ 54, aff'd, B-220049.2, Apr. 7, 1986, 86-1 CPD ¶ 333. While this requires agencies to advise offerors of proposal deficiencies and to afford them an opportunity to submit a revised proposal, it does not mean that offerors are entitled to all-encompassing discussions. Fairchild Weston Sys., Inc., B-229568.2, Apr. 22, 1988, 88-1 CPD ¶ 394. Where a proposal is considered to be acceptable and in the competitive range, an agency is not obligated to discuss every aspect of the proposal that receives less than the maximum score. Caldwell Consulting Assocs., B-242767; B-242767.2, June 5, 1991, 91-1 CPD ¶ 530. Likewise, there is no requirement on the part of the agency to identify relative weaknesses in a proposal which is technically acceptable but presents a relatively less desirable approach than others received. Fairchild Space and Defense Corp., B-243716; B-243716.2, Aug. 23, 1991, 91-2 CPD ¶ 190; Aydin Vector Div., B-243430, July 22, 1991, 91-2 CPD ¶ 79.

Here, while the Air Force did not discuss the areas where STS' proposal was downscored, we find it was not required to do so. It is clear from the record that STS' proposal was considered acceptable overall; it contained no deficiencies that would preclude it from performing the work satisfactorily. It is equally clear that the areas in which the proposal lost significant points were areas where the agency found, as a relative matter, that STS simply was not as good as Synergy. The principal areas of comparison concerned both the firms' experience and proposed personnel experience. As STS notes repeatedly in its protest, the agency rated its proposed key personnel "highly qualified from a technical training aspect." The personnel concerns the agency had--that the experience level of the proposed staff as a whole was limited, and (under the compliance factor) that finite element analysis experience (required under the statement of work) was not presented--related not to STS' ability to perform, but only to its ability to perform as well as Synergy. In this regard, the RFP set forth minimum personnel experience standards, and the agency determined that STS' personnel met these standards. Likewise, it is apparent from the evaluation that STS' firm experience was not deemed inadequate, but was downgraded (this was the single greatest point deduction) because it was weak compared to Synergy's. The RFP set forth no required minimum amount of firm experience, and the agency did not find that STS' comparatively limited experience in the area would make it an unacceptable contractor. As STS' proposal was acceptable for award in all respects and was weak only relative to Synergy's proposal, the Air Force was not

required to discuss the areas in which STS' proposal was downgraded. Caldwell Consulting Assocs., supra; Aydin Vector Div., supra.

In any case, the agency was not required to discuss the matter of STS' limited firm experience, since such experience cannot be improved as a result of discussions. Veco/Western Alaska Constr., B-243978, Sept. 9, 1991, 91-2 CPD ¶ 238. Further, as for personnel experience, STS does not state that it would have replaced certain proposed employees had it been advised that their experience was considered not as strong as that of the Synergy personnel, and does not otherwise indicate how it would have eliminated the agency's concern. It thus appears that STS was not prejudiced by the lack of discussion of the personnel weaknesses. Damon Corp., supra.

CONSIDERATION OF PRICE

STS maintains that the Air Force did not take price into account in the scoring and instead improperly based the award decision solely on the technical scores. This argument is without merit, as the record shows that the agency did in fact consider price in selecting the awardee. Specifically, the contracting officer reports that she took into consideration the price difference between STS (\$15,115,257.12, with the 10 percent preference factor added) and Synergy, Inc. (\$16,034,716.79), which amounted to 6 percent (\$919,459.67); she determined, however, that the higher technical score of Synergy, Inc. was "substantially significant," and made award to Synergy based on a specific determination that STS' advantage under the least important price factor was offset by Synergy's superiority under the

more important technical factors. This was a sufficient rationale for selecting Synergy. See Virginia Technology Assocs., B-241167, Jan. 29, 1991, 91-1 CPD ¶ 80.³

The protest is denied.


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General Counsel

³In its initial protest submission, STS argued that the use of a comparative evaluation approach, with price being the least important factor, improperly diminished the impact of the SDB preference. The agency fully responded to this argument in its report and STS did not pursue it further in its comments, thereby abandoning it as a protest basis. Moran Constr. Co., B-241474, Jan. 7, 1991, 91-1 CPD ¶ 16. In any case, since it was clear from the RFP that price was the least important comparative evaluation factor, this was an argument that STS was required to raise prior to the closing time for receipt of initial proposals. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1992); Transp. Operations Research Inst., B-242175, Jan. 3, 1991, 91-1 CPD ¶ 9. As STS did not raise the argument until it learned it had not received the award, the argument was untimely.