



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** TES, Inc.

**File:** B-251761.3

**Date:** May 28, 1993

Matthew S. Simchak, Esq., and Donald P. Arnavas, Esq., Wiley, Rein & Fielding, for the protester. Joel R. Feidelman, Esq., and Anne E. Higdon, Esq., Fried, Frank, Harris, Shriver & Jacobson, for Theta Services, Inc., an interested party.

Bobby G. Henry, Jr., Esq., and James C. Wagner, Esq., Department of the Army, for the agency. Andrew T. Pogany, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Allegation that agency improperly relied on internal minimum staffing estimate as a benchmark in evaluating adequacy of staffing proposed by each offeror for support maintenance services is denied where agency's estimate was accurate and where protester's own assertions support the reasonableness of the agency's estimate.

### DECISION

TES, Inc. protests the award of a cost-plus-award-fee contract to Theta Services, Inc. under request for proposals (RFP) No. DAKF-27-92-R-0011, issued by the Department of the Army for direct support and general support maintenance at Neville Island, Pennsylvania, and Fort Indiantown Gap, Pennsylvania. TES alleges that the Army improperly used an internal staffing estimate of 50 employees as a benchmark in evaluating its proposal, an estimate it considers excessively high; that the Army improperly downgraded the protester's proposal for not meeting this staffing benchmark; and that the Army failed to consider the relevant experience of TES' principal officer and its proposed subcontractor.

We deny the protest.

The RFP, issued on May 1, 1992, stated that award would be made to the responsible offeror whose proposal was determined to be the most advantageous to the government, cost and other factors considered. The RFP contained the

following evaluation factors; (1) quality (with the two subfactors of technical quality, including technical experience and management quality) and (2) cost. The RFP stated that the quality factor was "somewhat more important" than the cost factor. Concerning cost, the RFP stated that cost would be evaluated for cost realism using cost and price analyses and that the importance of the cost factor in the selection process would increase as the quality difference between proposals decreased.

Four proposals were received by the June 4, 1992, closing date. After initial evaluation, the agency concluded that all four firms were within the competitive range. Discussions were initiated with all offerors, and best and final offers (BAFO) were requested and received. During evaluation of proposals, the agency relied on its own internal staffing estimate of 50 employees in determining whether proposals offered adequate staffing. Evaluation of BAFOs resulted in the following quality scores:<sup>1</sup>

Theta	95.85
Offeror A	91.48
TES	87.64
Offeror B	77.60

The agency's most probable cost analysis resulted in the following evaluated costs for each offeror:

Theta	\$6,874,641
Offeror A	6,717,971
TES	6,331,760
Offeror B	5,445,995

On December 18, 1992, the agency made award to Theta on the basis that its proposal was most advantageous to the government. TES' protest followed.<sup>2</sup>

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<sup>1</sup>For purposes of evaluating the quality factor, the following "grade scale" was employed: (1) 90-100 points (outstanding); (2) 80-89 points (excellent); (3) 70-79 points (satisfactory); (4) 60-69 points (marginal); and (5) 0-59 points (unacceptable).

<sup>2</sup>TES filed an initial protest on December 23, 1992. After receipt of the report, TES filed comments which raised new issues and which we treated as a subsequently-filed protest. Both protests were then consolidated. We received a second report from the Army, and TES also filed comments on that report. The issues discussed in this decision are those that remain after the final set of filings from the parties on the second protest.

TES argues that the agency's evaluation of its proposal was based on the erroneous assumption that the work solicited required the services of 50 employees. TES states that, during the last 4 years, the historical experience of the incumbent, E.C. Corporation (proposed as a subcontractor by TES in its proposal), shows that E.C. performed "these same services . . . with 47 employees . . . supplemented at random times by temporary personnel." TES states that E.C.'s use of 47 persons did not diminish the quality of performance for the work since "E.C. [had] been rated consistently by the Army [as achieving results] above the standard set . . . for the performance of this work." TES concludes that, by using an internal benchmark of 50 employees for evaluation purposes, the agency improperly downgraded its proposal which offered to employ 46 employees; TES also argues that award to Theta, which offered to employ slightly more than 50 employees, was similarly flawed because it represented a staffing effort exceeding the minimum needs of the agency.

We will examine an evaluation to insure that it was reasonable and consistent with the stated evaluation criteria. See Space Applications Corp., B-233143.3, Sept. 21, 1989, 89-2 CPD ¶ 255. The determination of the merits of proposals is primarily a matter of administrative discretion which we will not disturb unless the evaluation was arbitrary. See Realty Executives, B-237537, Feb. 16, 1990, 90-1 CPD ¶ 283.

We think the agency's use of its internal benchmark estimate of 50 employees during the evaluation was reasonable. While the protester argues that 47 employees would have been sufficient to adequately perform the work, the protester itself qualifies this assertion by admitting that the incumbent contractor, E.C., in addition to its 47 full-time staff, has had to use part-time employees and overtime hours to perform the work. The protester fails to specify the combined full-time equivalents of this additional part-time and overtime labor force, but states only that it did not amount to 52 full-time equivalents. Moreover, by relying solely on E.C.'s historical data, TES has failed to acknowledge that the agency here solicited services for an additional site that was not included under E.C.'s contract. Specifically, in addition to providing services at the two Pennsylvania installations--the two sites E.C. presently services with 47 full-time personnel--the solicitation requires the successful contractor to provide resources and management to operate a "third Direct Support (DS) shop . . . in Clarksburg, West Virginia." The agency estimated

and informed offerors in the RFP that the Clarksburg, West Virginia site would require at least 2 man-years.<sup>3</sup>

Assuming the validity of the protester's own assertion--that 47 full-time employees (plus some part-time help) were required at the Pennsylvania sites alone--the agency's estimate that 50 man-years were required is clearly reasonable given the additional two positions at Clarksburg, West Virginia.<sup>4</sup> The agency reduced the protester's total technical score by a minor amount for what it considered inadequate staffing--between 2 and 3 points. In our view, this evaluation was reasonable.

TES also alleges that the Army improperly failed to consider the experience of its principal officer and its proposed subcontractor, E.C., during the evaluation of its proposal which allegedly resulted in a lower technical score than was justified. We find that this protest ground is factually erroneous and that the firm's experience was not, in any case, a material factor in the award decision. The agency's technical evaluation worksheets show that the Army's technical evaluators did consider E.C.'s experience in the technical experience area and awarded TES 8.5 points out of a possible 10 technical points. The evaluation worksheets show that the evaluators recognized that TES' "[s]ubcontractor has experience [with] this type of work [and that proposed] employees are incumbent staffing." The agency did consider TES to present some risk because TES has had no previous contracts and has been in business only since October 1991. In any event, the record shows that even if the firm had received perfect scores in its experience, the agency would still have selected Theta for the award. Indeed, even the protester admits that had the agency given allegedly "proper" credit both for its staffing and its experience, the difference between Theta's and TES'

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<sup>3</sup>The protester disputes that "much" additional work will be required at the Clarksburg, West Virginia facility. The protester argues that this new work is "more in the nature of shifting work between locations." The RFP, however, specifically contained this additional requirement at the new location, and the record supports the agency's position that at least some significant additional work not previously acquired will have to be performed by the successful contractor.

<sup>4</sup>We also note that there is some question concerning E.C.'s historical manning levels. While TES states that E.C. historically employed 47 persons, supplemented at random times by temporary personnel, government records show that E.C. employed between 46 and 52 persons on a full-time basis at the two Pennsylvania sites alone.

quality scores would have narrowed only a fraction. Regardless of the experience of TES, or, for that matter, the firm's staffing level, the record shows that Theta would have remained the most advantageous offeror and entitled to award. See Naho Constr., Inc., B-244226, Sept. 12, 1991, 91-2 CPD ¶ 241.

The protest is denied.

  
for James F. Hinchman  
General Counsel