



Comptroller General
of the United States
Washington, D.C. 20548

50448

Decision

Matter of: TeKontrol, Inc.
File: B-252912
Date: August 4, 1993

Thomas D. Kornegay for the protester.
William P. McGinnies, Esq., and Marc J. Weinberger, Esq.,
United States Customs Service, Department of the Treasury,
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

1. Protest generally challenging the evaluation of protester's proposed personnel is denied where the solicitation unambiguously required offerors to submit resumes for their proposed personnel; advised offerors that their proposed personnel must meet the solicitation's minimum education and experience requirements; stated that personnel was the most important evaluation factor; and a large percentage of the protester's proposed personnel did not meet the minimum experience and education requirements.
2. Contract award to other than the low-priced offeror is not objectionable where the award is consistent with the solicitation evaluation criteria and the agency reasonably determined that the awardee's technically superior proposals were worth the additional cost.

DECISION

TeKontrol, Inc. protests the award of a contract to I.T.S. Corporation under request for proposals (RFP) No. CS-91-043, issued by the Department of the Treasury, United States Customs Service, for data entry services. TeKontrol challenges the agency's evaluation of its proposal and the contracting officer's award decision.¹

¹Initially, the protester also raised objections concerning such procedural matters as the scope of the agency's debriefing and the brevity of the letter in which the agency
(continued...)

We deny the protest.

The RFP, issued on February 7, 1992, contemplated the award of fixed-price, indefinite delivery, indefinite quantity type contracts for data entry and other micro and mini-computer support services in the following geographic areas: zone 2, consisting of on-site services for 24 states and zone 3, consisting of on-site services for 7 states. The RFP also contemplated the award of a contract for off-site services performed at the contractor's facilities.² Offerors could submit proposals for any or all of these areas.

The RFP advised that award would be made to the offeror whose proposal was determined to be most advantageous to the government, considering technical merit and price; technical factors were worth 70 percent of the offeror's total score and price was worth 30 percent. The technical evaluation was to be based on the following factors in descending order of importance: (1) personnel; (2) understanding the problem and approach; (3) experience; (4) personnel management; (5) contract management; (6) benchmark tasks; (7) task order management; (8) quality control plan; and (9) staffing guidelines.

Four firms submitted proposals by the April 7 closing date. After its initial review of the proposals, the technical evaluation team determined that only two of the offerors, TeKontrol and I.T.S., had submitted proposals that were within the competitive range; TeKontrol submitted essentially identical proposals for zones 2 and 3 and I.T.S. submitted proposals for both zones and for the off-site work. Discussions were held and best and final offers (BAFO) were requested by July 23.

After the evaluation of the offerors' BAFOs, I.T.S. received the maximum available points (70) for its technical proposals for both zones. TeKontrol received 59.5 points for

¹(...continued)
notified the protester about its award decision. The agency rebutted these arguments in its agency report. The protester, in its comments on the agency report, did not address these issues; therefore, we deem them abandoned. See Heimann Sys. Co., B-238882, June 1, 1990, 90-1 CPD ¶ 520.

²The award for these services is not at issue in the protest.

zone 2 and 61.6 points for zone 3.³ With regard to their price standing, TeKontrol's BAFO prices for both zones were slightly lower than I.T.S.'s; therefore, TeKontrol received the maximum 30 points for each zone and I.T.S. received 28.8 points for zone 2 and 28.2 points for zone 3. Since I.T.S.'s technical and price proposal received a total of 98.8 points for zone 2 and 98.2 points for zone 3, while TeKontrol received 89.5 points for zone 2 and 91.6 points for zone 3, the agency determined that it was in the best interest of the government to make award to I.T.S. for both zones. I.T.S.'s proposals were technically superior in the most important evaluation area, personnel, while both offerors received high scores under the evaluation factors which were of secondary importance. A large percentage of TeKontrol's proposed personnel, unlike I.T.S.'s proposed personnel, did not meet the RFP's minimum experience and education requirements.

The protester does not challenge specifically the agency's determination that a large percentage of its proposed personnel did not meet the RFP's minimum experience and education requirements. Rather, the protester argues that it was improper for the agency to downgrade its proposals under this factor because the solicitation, in section C, paragraph 1.4.4, entitled "Continuity of Services," advised offerors that the "contractor shall allow as many personnel as practicable to remain on the job to help the successor maintain the continuity and consistency of the services required by their contract." The protester seems to argue that its proposed personnel's lack of specialized education and experience relative to data entry services should not have resulted in its low evaluation score because the protester--in light of the quoted RFP language--had the option after award of hiring the predecessor contractor's staff members to perform the work called for under the RFP.

To be reasonable, an interpretation of a solicitation provision must be consistent with the solicitation when read as a whole and in a reasonable manner. Air Prep Tech., Inc., B-252833, June 14, 1993, 93-1 CPD ¶ _____. The protester's interpretation here is unreasonable.

The language in the "Continuity of Services" paragraph does not support the protester's claim. To the contrary, the paragraph relates to events occurring after the expiration

³The offerors' weighted point scores were calculated based on raw scores of 2,056 and 2,053 for I.T.S. and 1,761 and 1,805 points for TeKontrol, out of a total of 2,100 maximum raw points for each zone.

of the contract awarded under this solicitation, not the agency's evaluation of technical proposals prior to the award of the contract. The preceding portion of the cited paragraph generally discusses the importance of continuity of services to the agency; it specifically states:

"The [c]ontractor recognizes that the services under this contract are vital to the [g]overnment and must be continued without interruption and that, upon contract expiration a successor, either the [g]overnment or another [c]ontractor may continue them. The [c]ontractor agrees to: (1) furnish phase-in training and (2) exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor." [Emphasis added.]

A reasonable reading of the entire section of the RFP concerning continuity of services establishes that the language quoted by TeKontrol relates to the responsibility of the awardee under this contract--not the predecessor contractor --to ensure that its successor's transition is smooth and does not adversely affect the agency's operations.

The protester's interpretation in effect discounts the evaluation of offerors' proposed personnel called for by the RFP. To arrive at TeKontrol's conclusion, one must virtually ignore the unambiguous language set forth in the RFP indicating that personnel is the most important evaluation factor; the language detailing the minimum education and experience requirements for key employees; and the fact that the RFP advised offerors that the agency would "unilaterally determine whether the proposed candidate is qualified." By listing personnel as the most important evaluation factor and requiring offerors to submit personnel resumes, the RFP clearly contemplated the evaluation of offerors' proposed personnel. It is not reasonable to conclude that one unrelated paragraph concerning continuity of services renders the RFP's stated evaluation factor meaningless.

The protester maintains that the award was improper because its prices were lower than the awardee's and the difference in their technical scores is, in the protester's opinion, insignificant.

In a negotiated procurement, there is no requirement that award be made on the basis of lowest price unless the RFP so specifies. Booz-Allen & Hamilton Inc., B-246919, Apr. 14, 1992, 92-1 CPD ¶ 368. Here, the solicitation did not state that the award would be made to the lowest priced, techni-

cally acceptable offeror; rather, it established quite clearly that technical merit would be given greater weight than price and that the agency would make award to the offeror whose proposal was the most advantageous overall.

Awards to offerors with higher technical scores and higher prices are proper so long as the result is consistent with the established evaluation criteria, and the procuring agency has reasonably determined that the technical differences are sufficiently significant to outweigh the price difference. Id. In fact, where price is secondary to technical considerations under an RFP evaluation scheme, as here, selection of a lower-priced proposal over a proposal with a higher technical score requires an adequate justification, i.e., a showing that the agency reasonably concluded that, notwithstanding the point differential between the two proposals, they were essentially equal. Dyncorp, B-232999, Feb. 14, 1989, 89-1 CPD ¶ 152.

Although both TeKontrol and I.T.S. received high scores in most of the evaluation areas, TeKontrol's scores in the personnel area for both zones were almost 50 percent lower than I.T.S.'s scores. Unlike I.T.S., TeKontrol proposed the same personnel for both zones and, thus, created doubt as to its ability to perform the work called for in both zones. More importantly, as discussed above, a large percentage of TeKontrol's proposed personnel did not possess the minimum education and experience requirements set forth in the RFP. For example, while the RFP specifically required the proposed Senior Technical Support Specialist to have a Bachelor's degree with a major in mathematics, physics or computer science, TeKontrol's proposed employee--who is currently attending community college--does not possess a degree from a post-secondary school.

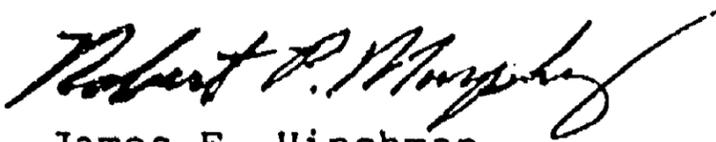
As for the lack of experience evidenced in TeKontrol's proposed employees' resumes, even the resume submitted for its proposed contract manager failed to establish that she possessed three of the RFP's four experience requirements. For example, the resume did not establish that the proposed contract manager had 2 years--within the last 5 calendar years--of intensive and progressive experience managing complex projects, including the management of at least 50 automatic data processing personnel, in subordinate groups and in diverse locations. Further, half of TeKontrol's proposed lead data entry supervisors for zone 2 and over half of those proposed for zone 3 did not meet the RFP requirement calling for at least 1 year of supervisory experience operating data entry equipment. Finally, despite the fact that the solicitation called for three supervisors for the Southwest Region in zone 2, the

protester did not propose any personnel to fill these positions.

In contrast, I.T.S.'s proposals received high scores under the personnel factor. The agency found, and the record establishes, that I.T.S.'s proposals contained a high percentage of personnel that satisfactorily met the minimum education and experience requirements set forth in the RFP. As a result, the contracting officer concluded, in making the award decision, that the combined 5 percent price premium associated with I.T.S.'s proposals was warranted. Given the importance of the personnel evaluation factor, we think that the contracting officer's price/technical tradeoff was reasonable and consistent with the RFP's evaluation factors. See DynCorp, supra.

The protester cites other subfactors in which it feels that its score should have been higher, namely, the standards of performance area and the staffing guidelines area. In light of the fact that the personnel factor accounted for approximately 80 percent of the agency's downgrading of the firm's proposals, and given our conclusion that the agency properly determined that I.T.S.'s proposals were sufficiently superior to warrant its price premium, we need not consider these other challenges.

The protest is denied.


James F. Hinchman
General Counsel