



Comptroller General
of the United States

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Washington, D.C. 20548

Decision

Matter of: Trittech Field Engineering, Inc.

File: B-255336.2

Date: April 13, 1994

Richard L. Moorhouse, Esq., and Michael H. Ditton, Esq., Holland and Knight, for the protester.
C. Stanley Dees, Esq., Alison L. Doyle, Esq., and Kurt J. Hamrock, Esq., McKenna and Cuneo, for Beckman Instruments, Inc., an interested party.
April L. Nordeen and Lyndia V. Countee, Department of Agriculture, for the agency.
Katherine I. Riback, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest alleging that an agency failed to conduct meaningful discussions or evaluate the protester's proposal properly is denied where the discussion questions led the protester into all areas where the proposal was found deficient and where the protester has not demonstrated that the agency's evaluation was unreasonable or not in accord with the listed evaluation criteria.
2. Protest that the agency failed to adequately analyze the awardee's high price in making the award selection is denied where the agency's price analysis was reasonably based on comparing the awardee's proposed price with published price lists and prior procurement prices.

DECISION

Trittech Field Engineering, Inc. protests the award of a contract to Beckman Instruments, Inc. under request for proposals (RFP) No. 11-3K06-93, issued by the Department of Agriculture.

We deny the protest.

BACKGROUND

The agency issued the RFP on June 24, 1993, seeking proposals for a firm, fixed-price contract for a base year with 4 option years, to provide on-site preventive maintenance, inspection and emergency repair of

government-owned Beckman instruments at the Beltsville Agricultural Research Center, Beltsville, Maryland.

The RFP provided that the technical factors would be paramount to price, but that price and price related factors would play a significant role in the award selection. The technical factors were (1) "Plan of Operation"; (2) "Similar or Related Corporate Experience and Past Performance"; and (3) "Key Personnel."

According to the RFP, the technical proposals were to be divided into three sections, each representing a designated technical factor. In the "Plan of Operation" section, offerors were to provide, among other things, evidence that they maintain a sufficient supply of new parts for repairs or evidence that they were capable of obtaining parts in a timely manner, and were to discuss how they plan to keep abreast of technological enhancements of the equipment to be maintained under this contract. In the "Similar or Related Corporate Experience and Past Performance" section, offerors were instructed to discuss any similar or related experience with the maintenance of equipment similar to the equipment to be maintained under this contract. In the "Key Personnel" section, offerors were to provide the years, level of experience, and specialized training for the key personnel.

The TEP was required to assess the risk of each proposal as either high, moderate, or low; assign an adjectival rating to each proposal, such as outstanding, acceptable, marginal or unacceptable; and score the proposal on a 1,000-point scale. This rating plan was not disclosed to the offerors.

Only Tritech and Beckman submitted proposals by the July 26 closing date. The following chart shows the results of the initial evaluation for those two offerors:

<u>Offeror</u>	<u>Technical Score</u>	<u>Adjective Rating</u>	<u>Risk Factor</u>	<u>Proposed Price</u>
Tritech	473	Marginal	High	\$415,465
Beckman	825	Outstanding	Low	\$563,266

The agency determined to include both proposals in the competitive range and conducted written discussions with the offerors listing the evaluated proposal deficiencies and areas of concern. The following chart shows the results of the evaluation of the revised technical proposals:

<u>Offeror</u>	<u>Technical Score</u>	<u>Adjective Rating</u>	<u>Risk Factor</u>	<u>Proposed Price</u>
Tritech	550	Acceptable	Moderate	\$427,873
Beckman	842	Outstanding	Low	\$598,462

Best and final offers (BAFO) were solicited by September 22. The BAFO letter to each offeror listed remaining proposal deficiencies and areas of concern. The BAFOs were evaluated as follows:

<u>Offeror</u>	<u>Technical Score</u>	<u>Adjective Rating</u>	<u>Risk Factor</u>	<u>BAFO Price</u>
Tritech	588	Acceptable	Moderate	\$427,873
Beckman	838	Outstanding	Low	\$569,568

The agency determined that Beckman's proposal offered the greatest value to the government due to its low risk and technical superiority, and that these advantages were worth the price premium. Award was made to Beckman on October 1. Tritech protests that (1) the agency miscalculated Tritech's and Beckman's proposals; (2) the agency failed to conduct meaningful discussions with Tritech; and (3) the agency performed a faulty price analysis of Beckman's price.

EVALUATION OF PROPOSALS/MEANINGFUL DISCUSSIONS

With regard to Tritech's protest of the evaluation of the technical proposals, the determination of the relative merits of proposals is primarily a matter of agency discretion, which we will not disturb unless it is shown to be without a reasonable basis or inconsistent with the evaluation criteria listed in the RFP. Crawford Technical Servs., Inc., B-240383, Sept. 20, 1990, 90-2 CPD ¶ 244. The mere fact that the protester disagrees with the agency does not render an evaluation unreasonable. ESCO, Inc., 66 Comp. Gen. 404 (1987), 87-1 CPD ¶ 450. As for discussions, agencies are required to conduct discussions that are meaningful; that is, an agency is required to impart sufficient information to the offeror to afford it a reasonable opportunity to identify and correct deficiencies. Landis & Gyr Powers, Inc., B-250354, Jan. 26, 1993, 93-1 CPD ¶ 66. On the other hand, agencies are not obligated to afford all-encompassing discussions or discuss every element of a technically acceptable, competitive range proposal that

¹Although Beckman did not revise its technical proposal for its BAFO, its technical score slightly decreased because one evaluator was not available to evaluate BAFOs.

has received less than the maximum possible score. Donald Clark Assocs., B-253387, Sept. 15, 1993, 93-2 CPD ¶ 168.

As discussed below, we find that the agency's evaluation of Trittech's and Beckman's proposals was reasonable and consistent with the evaluation criteria, and that the discussions with Trittech were meaningful. While we have considered all of the protester's allegations concerning the reasonableness and adequacy of the evaluation and discussions, we discuss here only the most significant aspects of the protest.

Similar or Related Corporate Experience and Past Performance

Under the "Similar or Related Corporate Experience and Past Performance" factor, Trittech's proposal received an acceptable rating, while Beckman's proposal received an outstanding rating. The TEP contacted some of Trittech's current customers who stated that that firm's service was acceptable. Two references raised concerns about Trittech's technical capability to service newer models that are to be serviced under the RFP and identified some of the models with which there had been problems. Based on our review, we find the agency's concerns reasonable and documented-- Trittech has not shown that the concerns expressed by these references were inaccurate. While Trittech contends that the agency should have allowed it to respond to comments provided by references, this was not required; where, as part of the technical evaluation of offers, offerors have been required to furnish references on prior experience and are aware that these references may be contacted, the contracting agency may consider the replies of the references without seeking an offeror's comments concerning the information. Bendix Field Eng'g Corp., B-241156, Jan. 16, 1991, 91-1 CPD ¶ 44.

In contrast, the past performance evaluations from Beckman's current contracts evidence that Beckman had been providing outstanding service. The agency noted that Beckman is the original equipment manufacturer (OEM) and also the incumbent on this contract. Based on our review, we find the agency evaluation of Beckman's proposal as outstanding was proper and in accordance with the evaluation criteria. Where a solicitation lists experience as an evaluation factor, the procuring agency may reasonably consider an incumbent's specific experience since such specific experience is intrinsically related to and encompassed by a general experience evaluation factor. Benchmark Sec., Inc., B-247655.2, Feb. 4, 1993, 93-1 CPD ¶ 133.

The protester claims that the discussions in this area were unequal because Trittech was asked during discussions to provide a list of specific instruments that it had serviced

in the past, while Beckman was not asked to provide such information. The agency responds that it did not request Beckman to supply this information because Beckman was currently successfully servicing all of the instruments listed in the solicitation. In contrast, it was not evident from Tritech's proposal whether it was currently servicing all of the models listed in the solicitation. While discussions must provide offerors with an equal opportunity to revise their proposals, the content and extent of discussions are within the discretion of the contracting officer and discussions with each offeror need not be identical; rather, a procuring agency should tailor its discussions to each offeror since the number and type of proposal deficiencies will vary between proposals. Logicon RDA, B-252031.4, Sept. 20, 1993, 93-2 CPD ¶ 179. Here, the agency properly asked that Tritech provide a list of all of the models that it was currently servicing so as to attempt to assuage its specific concerns about Tritech. (As noted above, while Tritech provided such a list, two references questioned Tritech's technical capability to work on the newer models, apparently because its personnel lacked current experience or training in such service.)

Key Personnel

Tritech received an acceptable rating for the "Key Personnel" evaluation factor, while here too Beckman received an outstanding rating. Beckman's outstanding rating for this factor was based on the many years of experience of Beckman's staff in successfully servicing the instruments listed in the solicitation, as supplemented by specific training on the instruments listed in the RFP at the OEM factory.

In response to the agency's concern about Tritech's ability to service newer Beckman instruments and the Tritech employees' lack of current "factory" training, Tritech's revised proposal showed that Tritech would hire a current Beckman employee.² The evaluators noted that this individual was the only Tritech technician with the expertise to repair high pressure liquid chromatography (HPLC) systems with photo diode array technology, and that Tritech's proposal offered no back-up for this individual.³

²This individual's duties in relation to this contract were not outlined until Tritech's BAFO.

³Although a consultant was also listed in Tritech's proposal for HPLC support, the agency states that the consultant, when contacted, stated that to date he had no contact with Tritech with regard to this contract. Tritech has not

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Tritech argues that it should have received a higher score for this evaluation factor because the use of the Beckman employee would "enhance the abilities of Tritech's staff." While Tritech's revised proposal score for this evaluation factor did increase, the hiring of this one individual did not significantly increase the evaluated abilities of Tritech's overall staff as far as the TEP was concerned. For example, the TEP noted that Tritech's BAFO contained no evidence that this individual was to provide training or instruction to Tritech's staff.

We find that the agency reasonably evaluated Tritech's proposal as only acceptable under this evaluation factor. The agency gave appropriate credit for the offer of the Beckman employee in Tritech's revised proposal since this individual apparently has the capability of servicing Beckman's newer models that was found lacking in Tritech's other personnel. If Tritech desired greater credit for its employment of the Beckman employee, it should have specifically stated how this would enhance the abilities of its staff to service newer models of Beckman equipment, e.g., by indicating that this individual would provide some sort of training to Tritech's staff. Offerors should only be credited with the information furnished in their proposals. Computerized Project Mgmt. Plus, B-247063, Apr. 28, 1992, 92-1 CPD ¶ 401.

Plan of Operation

Tritech was awarded a marginal rating for the "Plan of Operation" evaluation factor while Beckman again received an outstanding rating. A principal concern under this evaluation factor was Tritech's approach of using an unspecified, but apparently significant, number of fabricated parts to service Beckman instruments. The TEP noted that the use of fabricated parts was not an established method of fulfilling the solicitation requirement, which stated that "unless otherwise specifically approved . . . only new standard parts shall be used in effecting repairs." While the agency states that it was familiar with the use of lower-priced rebuilt parts to service these instruments, it determined that Tritech had not given the agency enough information to evaluate Tritech's plan of operation in this regard. One of the TEP's primary concerns in this area was safety, particularly since Tritech stated that it intended to use fabricated spindles in high speed ultracentrifuges, which, due to the

¹(...continued)
rebutted the agency's statement in this regard.

extreme forces undergone by these components during operation, caused the agency to be concerned about the personal safety of the instrument operators. The TEP was also uncertain about the continued liability of the manufacturer, Beckman, if these instruments were serviced with fabricated parts that Trittech manufactured. Finally, the TEP was uncertain about the percentage of fabricated and rebuilt parts that would be used in performing the contract, versus new parts. This particular concern was highlighted because the TEP determined that Trittech's inventory of new parts was generally limited to non-rebuildable parts such as compressors, lamps, and fans, and the TEP was unsure whether Trittech's inventory would adequately serve the agency's needs or whether there may be delays before parts could be obtained from other sources.

Trittech claims that the evaluation under this evaluation factor was also unreasonable. According to Trittech, the agency has never advanced "cogent evidence to contradict" its BAFO statement that:

"Parts which are fabricated are inspected, assembled and fully tested prior to installing in customers equipment. Our fabricated parts are made with the exact or superior materials used by the manufacturer to manufacture parts. We fully warranty our parts after installation."

We find the agency's concerns about Trittech's proposed use of fabricated parts to be reasonable, and the marginal rating justified, because Trittech did not provide adequate documentation justifying its plan of operation as it concerned fabricated parts, despite being repeatedly requested to do so. As stated by the agency, Trittech's proposal was filled with "unproven claims," such as the BAFO statement quoted above. Trittech did submit two engineering drawings to support its claim that "fabricated parts are made with the exact or superior materials," but it did not include any documentation or further explanation regarding material, safety, and manufacturing standards. In any case, contrary to Trittech's argument, it is not the agency's role to produce evidence to "contradict" general statements in an offeror's proposal; rather, it is the offeror which must bear the burden for failing to submit an adequately written proposal and proposal revisions in response to discussions. See Lucas Aerospace Communications and Elecs., Inc., B-255186, Feb. 10, 1994, 94-1 CPD ¶ 106.

Beckman received an outstanding score for this evaluation factor. The TEP noted, among other things, that Beckman's inventory of parts is computerized for fast part retrieval, and that quick access to repair parts would decrease the time that it would take to service and repair these

instruments, and therefore decrease instrument downtime. The TEP noted the "excellent service" that Beckman has previously delivered under this contract, particularly concerning parts accessibility and instrument downtime. We find no error in the agency's scoring of Beckman's proposal as outstanding with regard to this evaluation factor. Incumbent contractors with good performance records can offer real advantages to the government, and proposal strengths flowing from a firm's prior experience properly may be considered by an agency in proposal evaluation. See Aumann, Inc., B-251585.2; B-251585.3, May 28, 1993, 93-1 CPD ¶ 423.

Tritech argues that the agency's concern (expressed throughout discussions) regarding the percentage of fabricated parts was overblown and missed the point because, as explained in Tritech's BAFO, this figure was not susceptible to quantification. The agency responds that its concerns and questions were appropriate as it is a common practice within the industry to base the level and price of service on whether new or rebuilt parts are used. Based on our review, the agency's concerns were reasonably related to a successful plan of operation, and therefore were a proper basis for downgrading Tritech's proposal in this regard. (Furthermore, Tritech declined to respond directly to the agency's questions in this area; an agency properly can draw adverse inferences from an offeror's failure to specifically respond to a discussion question. See Benthos, Inc., B-248597, Sept. 10, 1992, 92-2 CPD ¶ 163.)

Tritech next argues that the agency did not adequately express its concerns about the safety of using fabricated parts to service these instruments. We disagree. According to the record, the TEP asked Tritech, "(h)ow do you assure safety and the liability of the manufacturer, for equipment that is altered with fabricated parts." We think this question adequately conveyed the agency's safety concerns. Tritech failed to address this question and we find that the agency reasonably found that Tritech did not supply adequate documentation to support its safety claims regarding the manufacture of fabricated parts. See P.E. Sys., Inc., B-249033.2, Dec. 14, 1992, 92-2 CPD ¶ 409.

Tritech also contends that the agency held inadequate discussions with it concerning whether it could obtain parts that it did not have in its inventory in a timely manner from other sources. In response to an express request during discussions from the agency that Tritech discuss the time frame for obtaining parts inventory from the OEM or other sources, Tritech, among other things, submitted copies of two invoices as evidence of receipt of parts from the OEM on the same day, noting that the invoices were marked "ordered" and "shipped" on the same day. The TEP determined

that this did not satisfy its concern, since the "shipment" date on an invoice may not equate with timely receipt by the technicians. Trittech argues that the TEP should presume receipt based on the shipping information included on the invoice and that the agency should have specifically asked for better evidence of timely parts delivery if it determined that the two invoices that it submitted were inadequate.

Again, we disagree. First, the agency reasonably concluded that two invoices showing prompt "shipment" did not constitute conclusive evidence that Trittech had the capability to timely obtain parts; we agree with the agency that there was nothing in the invoices or elsewhere in the proposal that supported an assumption of timely receipt. Further, the agency was not required to reopen discussions to afford the protester another opportunity to furnish more substantial information in support of its claimed capability. See Purvis Sys., Inc., 71 Comp. Gen. 203 (1992), 92-1 CPD ¶ 132.

PRICE ANALYSIS

Finally, Trittech argues that the agency performed a faulty analysis of Beckman's price and, as a result, improperly determined that the awardee's price was reasonable. Trittech points out that the contracting officer, in its BAFO request to Beckman, stated that Beckman's prices were "considered to be high." Trittech argues that Beckman's BAFO price, which reduced its proposed price by 5 percent, was improperly determined by the agency to be reasonable.

A determination concerning price reasonableness is a matter of administrative discretion involving the exercise of business judgment, which our Office will not question unless the determination is unreasonable or there is a showing of bad faith or fraud. Crown Laundry & Dry Cleaners, Inc., B-224374.2, Jan. 20, 1987, 87-1 CPD ¶ 71. An agency properly may base a determination of price reasonableness upon comparisons with government estimates, past procurement history, current market conditions, and any other relevant factors, including any which have been revealed in the bidding. See Federal Acquisition Regulation (FAR) §§ 14.407-2 and 15.805-2.

The protester does not allege that agency officials acted fraudulently or in bad faith, and our review of the record provides no basis to question the contracting officer's determination that Beckman's price was reasonable. According to the agency, a comparison of Beckman's proposed prices with its published price lists reveals that Beckman's proposed price was 13 to 29 percent lower than its standard catalog prices, with an appropriate escalation factor.

This alone provided a sufficient basis for the contracting officer's determination that Beckman's price was reasonable. FAR § 15.805.2(d). The history of this procurement also supports the contracting officer's determination; Beckman's BAFO price for fiscal year (FY) 1994 reflects no increase from the price for FY 1993. See FAR § 15.805-2(b). We conclude that the agency properly determined that Beckman's proposed price was reasonable.

The protest is denied.



R Robert P. Murphy
Acting General Counsel