



Comptroller General
of the United States

Washington, D.O. 20548

Decision

Matter of: Gardiner, Kamy & Associates, P.C.

File: B-258915.2

Date: April 12, 1995

Chris G. Gardiner and Alexis M. Stowe, Gardiner, Kamy & Associates, P.C., for the protester.

Octavia R. Johnson, Esq., Department of Justice, for the agency.

Charles W. Morrow, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency unreasonably downgraded the protester's proposal with regard to staffing where the assertedly deficient staffing breakdown resembled the government estimate and the protester's organization, as indicated in its proposal, showed resources sufficient to perform 10 field audits simultaneously if required.

2. Civilian agency may not properly make award on the basis of initial proposals without discussions to other than low-priced offer deemed to be in the competitive range.

DECISION

Gardiner, Kamy & Associates, P.C. protests the award of a contract to Urbach Kahn & Werlin (UKW) under request for proposals (RFP) No. IPI-R-0210-94, issued by the Department of Justice, Federal Prison Industries (FPI), for auditing services.

We sustain the protest.¹

FPI is a wholly owned government corporation within the Justice Department that operates under the trade name "UNICOR" at various federal correctional institutions in the federal prison system. FPI operates approximately

¹Since we sustain the protest, and recommend discussions and best and final offers (BAFO), our discussion of the proposals and the agency's evaluation is necessarily general.

100 factories at 53 different locations that manufacture a variety of products for the government.²

The RFP is for a 4-year, fixed-price contract to be awarded to an accounting firm to perform 10 field audits on an annual basis of various FPI locations, to conduct a year-end audit of the consolidated financial statements of UNICOR, and to issue an opinion letter indicating the general condition of UNICOR. The RFP statement of work required that (1) all documents and audit programs for consolidated statements and operations meet the requirements of the Chief Financial Officers Act of 1990 (CFO), 31 U.S.C. § 902 (Supp. V 1993); (2) the partners of the audit firm be certified public accountants; and (3) the contractor have the capability to audit 10 sites simultaneously. The RFP also advised that all services must comply with the Standards for Audit of Governmental Organizations, Programs, Activities and Functions, and that evaluations of internal control systems comply with the Standards for Internal Controls in the Federal Government.³

The RFP's technical evaluation criteria, listed in descending order of importance, were technical excellence, qualifications and experience, and past performance. The RFP also contained a formula for evaluating price in which maximum points were to be assigned to the lowest-priced proposal and lesser points assigned to the higher-priced proposals based on their ratio to the low price. The technical criteria were weighted at 60 percent of the evaluation and price 40 percent. The RFP advised that award could be made without discussions and cautioned offerors to submit their most favorable initial proposal.

FPI received seven proposals in response to the RFP. Four proposals, including Gardiner's and UKW's, were determined to be within the competitive range. Gardiner's proposal was the lowest-priced proposal in the competitive range. UKW's higher-priced proposal received the highest technical score. No discussions were conducted. On September 30, FPI made award to UKW since its proposal received the highest combined technical/price point score. This protest

²The products include: chairs, office furniture, sofas, metal shelving, lockers, textile items, electronic connectors, harnesses, eye glasses, and signs.

³Other than the foregoing, the RFP did not specify any specialized auditing or accounting experience, but listed the following areas to be covered by the audits: accounting practices, cost accumulation and control, inventory and property management, procurement activities, and manufacturing operations management.

followed. FPI has withheld performance under the contract pending our decision.

Gardiner argues that its lower technical score resulted from a miscalculation of its proposal. Gardiner asserts, among other things, that FPI unreasonably evaluated its staffing.

The evaluation of proposals is primarily within the discretion of the procuring agency. Consequently, we will not make an independent determination of the merits of the offers; rather, we will examine the agency evaluation to ensure that it was reasonable and consistent with the stated evaluation factors. Andrew M. Slovak, B-253275.2, Nov. 2, 1993, 93-2 CPD ¶ 263.

FPI significantly downgraded Gardiner's proposal, finding that (1) the distribution of labor hours between field and year-end work in Gardiner's proposal was inconsistent with the government's projections and (2) Gardiner's proposal was insufficient to demonstrate its organization's capability to audit 10 sites simultaneously, if required. However, the record shows that Gardiner's distribution of labor hours closely resembles the government estimate/distribution of labor hours.⁴ Further, although the FPI found that Gardiner's organization, as indicated in its proposal, was insufficient for auditing 10 sites simultaneously, Gardiner's proposal, like UKW's, indicated an overall organization significantly larger than what would be required in the event that 10 field sites had to be audited simultaneously, which it specifically represented would be done as needed.⁵ Thus, the record does not support the reasonableness of this aspect of the evaluation. See J.M. Cashman, Inc., B-233773, Apr. 14, 1989, 89-1 CPD ¶ 380.⁶

⁴The government estimate was 1,860 hours for the field audits and 1,692 hours for the year-end audit.

⁵We note that while the RFP requires the offerors to have the capability to perform 10 field audits simultaneously, the RFP otherwise suggests that the 10 field audits per year may be performed at different times. Both Gardiner's and UKW's proposals indicated the sizes of their organizations--UKW's is larger, but Gardiner's is significantly larger than the number of staff which FPI states is necessary to staff 10 field audits simultaneously where necessary.

⁶FPI also significantly downgraded Gardiner's proposal because it did not demonstrate any previous experience in auditing manufacturing operations. The solicitation did not specify that experience in auditing manufacturing operations was required or desired. While we acknowledge the relevance
(continued...)

FPI also improperly made award without conducting discussions to other than the lowest-priced acceptable offeror. Under Federal Acquisition Regulation (FAR) § 15.610(a)(3), which implements 41 U.S.C. § 253b(d) (1988), a civilian agency may make award on the basis of initial proposals only where the solicitation advises offerors of that possibility and the competition demonstrates that acceptance of an initial proposal will result in the lowest overall cost to the government. This precludes an agency from making an award without discussions on the basis of initial proposals to any offeror other than the one offering the lowest price, if, as here, the low-priced offeror is technically acceptable or capable of being made acceptable. Mid-Atlantic Indus., Inc., B-245551, Jan. 16, 1992, 92-1 CPD ¶ 80. Since Gardiner's low-priced, lower technically scored proposal was deemed to be within the competitive range, FPI could not properly make award to UKW without conducting discussions.⁷

We sustain the protest.⁸

⁶(...continued)

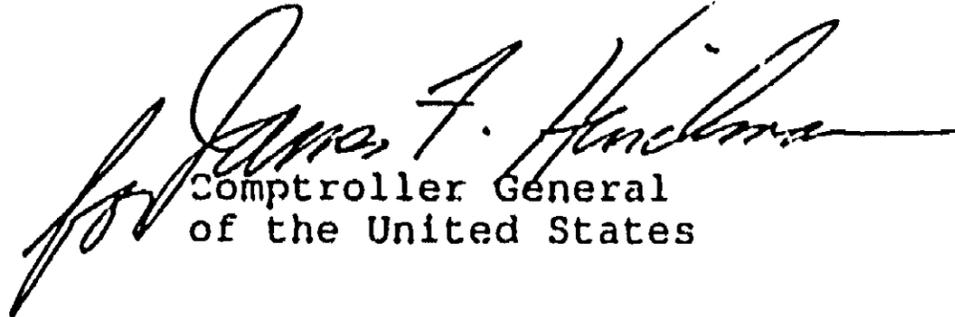
of experience in auditing manufacturing operations to this RFP, the record does not support FPI's drastic downgrading of Gardiner's proposal under the qualifications and experience factor here, given that the RFP did not require or request evidence of such experience. See J.M. Cashman, Inc., supra.

⁷Section 1061 of the Federal Acquisition Streamlining Act of 1994, Pub. L. No. 103-355, 108 Stat. 3243, 3266-3267 (to be codified at 41 U.S.C. §§ 253a(b)(2)(B), 252b(d)(1)), will eliminate this requirement when it becomes effective 30 days after implementation in the FAR, and will allow initial proposal awards where the solicitation includes a statement that award is intended to be made on the proposals received without discussions unless discussions are determined to be necessary, without regard to price considerations.

⁸We note that FPI awarded the maximum number of cost points to the lowest-priced proposal, even though that proposal received 0 technical points and was not included in the competitive range, and gave proportionally lower scores to the other offerors' proposed prices on this unacceptable proposal. Although an agency may use a price formula to point score proposals for price, the price formula cannot reasonably be applied to proposals that clearly are technically unacceptable and thus not for consideration for award because this may have the effect of distorting the evaluation of price with respect to the acceptable proposals. See First Ann Arbor Corp., B-194519, Mar. 4, 1980, 80-1 CPD ¶ 170.

We recommend that FPI conduct meaningful discussions with the competitive range offerors and obtain BAFOs. If UKW is then determined to be not entitled to the award, UKW's contract should be terminated and award made to the offeror found most advantageous under the RFP evaluation criteria. In any case, Gardiner is entitled to the costs of pursuing its protest, including reasonable attorneys' fees. 4 C.F.R. § 21.6(d)(1) (1995). The protester should submit its certified claim for costs directly to the agency within 60 working days after the receipt of this decision. 4 C.F.R. § 21.6(f).

The protest is sustained.


Comptroller General
of the United States