

McAuliffe



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Innovative Technologies Corporation

File: B-270087.4

Date: January 11, 1996

DECISION

Innovative Technologies Corporation (ITC) protests the award of a contract to CEEXEC under request for proposals (RFP) No. F33657-94-R-0024, issued by the Department of the Air Force. The protester contends that the agency failed to follow the RFP's stated evaluation scheme in awarding the contract and that the agency's cost/technical tradeoff determination was unreasonable; ITC states that it should have received the award instead of CEEXEC.

We dismiss the protest.

In response to CEEXEC's protests against three contracts initially awarded under the RFP, the Air Force awarded a fourth contract to CEEXEC. The agency had determined that CEEXEC, based upon its proposal's acceptable technical rating and lower cost, would have been next in line for award among the remaining offerors and that there was a reasonable possibility that CEEXEC had been prejudiced by the agency's award of the initial three contracts to firms that submitted slightly technically superior proposals at substantially higher prices. Taking into consideration factors of "litigation risk" and reasonable prejudice to CEEXEC, the agency made the fourth award under the RFP after seeking agreement among the initial three awardees who would be competing with CEEXEC for future delivery orders.¹

¹To the extent ITC contends that a fourth contract was improper under the RFP, and invalidates the agency's reason (i.e., the RFP's stated cost ceiling) not to pursue a contract with ITC under a Small Business Administration § 8(a) set-aside procurement, the protester fails to set forth a valid basis of protest and does not show how it has been prejudiced by the fourth award. The record shows that the agency's requirements (including the agency's expected maximum order amounts) have remained unchanged; the agency reports that it does not expect to order above the maximum \$48 million ceiling provided in the RFP. The fact that the award of the additional contract increased the potential total amount of orders that could be

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ITC contends that since its proposal was rated technically superior to CEEXEC's proposal, the protester should have received the fourth award instead of CEEXEC even though ITC's cost proposal is higher than CEEXEC's since the RFP provided that technical factors were more important than cost. ITC also challenges the award to CEEXEC on the ground that the agency's consideration of the litigation risk associated with CEEXEC's protests as a basis for award was improper and not in accordance with the RFP's stated evaluation criteria.

ITC protests that the agency acted improperly in considering the potential litigation risk involved in CEEXEC's earlier protests in deciding to take corrective action and award the contract to CEEXEC. An agency has broad discretion to take appropriate corrective action to resolve a bid protest. See Sun Microsystems Federal, Inc., B-254497.2 et al., May 20, 1994, 94-1 CPD ¶ 318. Here, the protester, other than to generally object to the award in response to a protest, has not supported its contention that the award was made inconsistent with the RFP's stated evaluation criteria or selection methodology. See Science Applications Int'l Corp., B-265607, Sept. 1, 1995, 95-2 CPD ¶ 99.²

In any event, in a negotiated procurement, an agency may make award to a lower-cost, lower technically rated offeror—even if cost is the least important factor—if it determines that the cost premium involved in awarding to a higher technically rated, higher-cost offeror is not justified given the acceptable level of technical competence obtainable at the lower cost. See Securiguard, Inc. et al., B-254392.8 et al., Feb. 9, 1994, 94-1 CPD ¶ 92. Source selection officials have the discretion to make cost/technical tradeoffs and the extent of such tradeoffs is governed only by the test of rationality and consistency with the evaluation criteria. See Hardman Joint Venture, B-224551, Feb. 13, 1987, 87-1 CPD ¶ 162. A protester's disagreement with the agency's evaluation determination does not demonstrate that the evaluation was unreasonable. See Brunswick Defense, B-255764, Mar. 30, 1994, 94-1 CPD ¶ 225.

¹(...continued)

placed by the agency to exceed the \$48 million ceiling is unobjectionable here—the agency remains committed to the previously stated ceiling; ITC does not show that its proposal would have changed had it known of the potential fourth award. Moreover, ITC's challenge of the terms of the fourth contract is undercut by ITC's suggestion that the terms of the contract would in fact be agreeable to ITC if it was to receive the fourth award instead of CEEXEC or, alternatively, if ITC is given a fifth award under the RFP.

²To the extent ITC protests the agency's consideration of evaluated cost proposals in making its award determination for an indefinite delivery/indefinite quantity contract, it constitutes an untimely challenge to the RFP's terms. 4 C.F.R. § 21.2(a)(1) (1995).

In making its selection decision to award the contract to CEEXEC, the record shows that the agency appropriately considered the differences in technical merit and cost of the firms' proposals. Both CEEXEC's and ITC's proposals were rated as having no significant weaknesses and no significant proposal risks, and performance risk was rated as low for both proposals. CEEXEC's proposal was rated as acceptable under all of the RFP's evaluation factors; ITC's proposal was rated as exceptional under one factor and acceptable under all other factors. Both proposals were considered to have noted strengths. However, the proposed composite rates of the two proposals differed by a substantial amount; ITC's cost proposal was significantly higher than CEEXEC's cost proposal and was also higher than the costs proposed by the initial three awardees.³ The agency determined that the additional quality of ITC's proposal did not merit the substantial additional cost associated with the protester's proposal. Given the large price differential and slight technical rating differential between the proposals, and the many strengths associated with CEEXEC's low risk proposal, the record supports the agency's technical/cost tradeoff determination which was permitted by the terms of the RFP and which was conducted in accordance with the RFP's stated evaluation criteria.

Accordingly, the protest is dismissed.

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³ITC incorrectly states that its proposal was rated higher technically than the three initial awardees' proposals.