



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

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Matter of: International Consultants, Inc.; International Trade Bridge, Inc.

File: B-278165; B-278165.2

Date: January 5, 1998

Douglas N. Harty, Esq., for International Consultants, Inc., and Carlos M. Caldas for International Trade Bridge, Inc., the protesters.

Marian E. Sullivan, Esq., Department of the Air Force, for the agency.

Susan K. McAuliffe, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Award of a contract on the basis of awardee's higher-priced, technically superior proposal is unobjectionable where the evaluation is supported by the record and is consistent with the solicitation evaluation criteria and the agency reasonably determined that the difference in technical merit among the proposals justified the cost difference.

DECISION

International Consultants, Inc. (ICI) and International Trade Bridge, Inc. (ITB) protest the award of a time-and-materials contract to Integrated Information Technology Corporation (IITC) under request for proposals (RFP) No. F33601-96-R-9007, issued by the Department of the Air Force as a competitive 8(a) set-aside for hazardous material, hazardous waste, and pollution prevention program management services, as well as technical support, at the Materials Laboratory at Wright-Patterson Air Force Base, Ohio. ICI and ITB contend that the award was improper because the agency's technical and past performance evaluations were flawed; the agency was biased in favor of IITC, since that firm's proposed subcontractor was the incumbent contractor of the required services; and the agency did not make a proper best value determination.¹

We deny the protests.

¹To the extent the protesters contend that the agency improperly extended the incumbent's prior contract after the incumbent had graduated from the 8(a) program, the contention is untimely raised, since the protest, which involves a separate procurement, was filed more than 10 days after the basis of protest was known. 4 C.F.R. § 21.2(a)(2) (1997).

The RFP provided for award of a contract for a base year plus 4 option years to the responsible offeror whose offer was found most advantageous to the government considering, in descending order of importance, the following specific evaluation criteria: technical (consisting of sample test plans in the areas of hazardous waste management, hazardous material management, and pollution prevention program management); management/support (including management, security, personnel, and database maintenance/support); and cost/price. RFP § M-551. A color/adjectival rating (relating to how well the proposal meets the solicitation requirements and evaluation standards) and a proposal risk rating (relating to the risk associated with the offeror's proposed approach) were to be assigned to each proposal under each evaluation subfactor. RFP § M-551(F). Additionally, a performance risk assessment was to be made under each of the three evaluation factors based on the offeror's past performance. Id. The RFP stated that, within each evaluation factor, performance risk would be considered equal to proposal risk and the color/adjectival rating in making an integrated source selection decision. Id.

Seven proposals were received in response to the RFP and discussions were held with the four offerors whose proposals were included in the competitive range. Best and final offers (BAFO) were submitted and evaluated. IITC's BAFO (at \$11,206,603) was rated highest technically, with four blue (exceptional) ratings and three green (acceptable) ratings in the subfactor areas, and it was assigned low performance and proposal risk ratings. ICI's BAFO (at \$[DELETED]) received one blue rating and six green ratings, and it was assigned low performance and proposal risk ratings. ITB's BAFO (at \$[DELETED]) received one blue rating and six green ratings; it was assigned low performance risk ratings in all three categories, low proposal risk ratings in five of the seven subfactor areas, and moderate proposal risk ratings in the remaining two subfactor areas. The source selection authority determined that the technical superiority of IITC's proposal warranted the cost premium involved, and thus that that proposal offered the best value to the government. The agency awarded a contract to IITC on September 3. Following detailed debriefings held with the firms, ICI and ITB filed the current protests with our Office challenging certain aspects of the agency's evaluation of the IITC proposal, and the award to that firm at a higher price than their own.

The protesters initially contend that the agency was biased toward the awardee because that firm had proposed as a subcontractor Modern Technologies Corporation (MTC), the incumbent contractor for these services. According to the protesters, the agency preferred that MTC continue performing these services. Since MTC had graduated from the 8(a) program and thus was ineligible for award under the RFP, award to IITC would allow MTC to continue performing some of the contract requirements. Our review of the record, however, does not support the bias allegation.

First, the protesters contend that MTC prepared the solicitation's specifications, and thus should have been excluded from participation in the competition; however, the record shows that this allegation is factually incorrect.² Second, ICI points to an alleged statement by MTC early in the procurement that any firm acting as its prime contractor teaming partner would win the competition. In our view, such a statement is insufficient to demonstrate agency bias; the statement is, at best, self-serving and provides no basis to question the agency's actions in conducting the procurement. Third, the protesters contend that the agency purposefully reduced the transition period to favor the awardee due to its teaming with the incumbent contractor; no credible evidence has been provided to support the allegation. Moreover, as discussed further below, the record supports the reasonableness of the agency's evaluation of the IITC proposal, and thus provides no basis to question the motives of the evaluators or the source selection authority. In sum, the protesters have not demonstrated that there was any agency bias or that any such alleged bias translated into action that unfairly affected the protesters' positions. See Triton Marine Constr. Corp., B-250856, Feb. 23, 1993, 93-1 CPD ¶ 171 at 6.

The protesters next contend that the IITC proposal was unreasonably assigned low performance risk ratings despite the firm's lack of experience as a prime contractor for the type of environmental services required under the RFP. The evaluation of proposals is primarily a matter within the agency's discretion, since it is responsible for defining its needs and for deciding on the best method for accommodating them. Seair Transport Servs., Inc., B-252266, June 14, 1993, 93-1 CPD ¶ 458 at 4. Thus, we question the evaluation only if the record demonstrates that it was unreasonable or inconsistent with the RFP's evaluation criteria. Id. As discussed below, we conclude that the record here supports the evaluation of IITC's proposal.

²We note that the record shows that in the preliminary stages of this procurement, ICI submitted a capability statement which included the possible participation of MTC, the same firm ICI now contends should be excluded from participation in the competition as a subcontractor because of an incumbency advantage. The record also indicates that the reason MTC was not ultimately proposed as a subcontractor by ICI was because the firms could not agree to certain business terms, not because of any concern regarding MTC's incumbency or eligibility to be a subcontractor. We also point out that, just as an incumbent contractor may fairly compete for the award of a contract, there is nothing unlawful in an offeror's proposal to subcontract work to an incumbent contractor in an attempt to benefit from that incumbent's experience where, as here, the challenged incumbency advantage was reasonably evaluated and not the result of any unfair agency action. See Patricia A. Geringer, B-247562, June 11, 1992, 92-1 CPD ¶ 511 at 7. Further, to the extent the protesters contend that MTC will perform the contract in violation of solicitation subcontracting limitations, the allegation raises a matter of contract administration not for our review. Bid Protest Regulations, 4 C.F.R. § 21.5(a).

The RFP required each offeror to provide relevant past performance references; the agency would then solicit reference survey responses from these contacts in order to assess the offeror's performance risk. RFP § L-556(C)(2). The RFP also required past performance information about proposed subcontractors to be considered in assessing the offeror's performance risk. RFP § L-556(C)(2)(a). IITC provided numerous past performance references for it and its proposed subcontractor, MTC. The agency received only favorable past performance surveys for IITC--each relevant to certain of the management and support services to be performed--and numerous positive survey responses for MTC related to substantially similar, more directly relevant hazardous material management services.

In sum, although IITC does not have substantially similar prime contract, hazardous material management experience, the past performance survey responses show IITC's strong performance on various other support services contracts and contain numerous recommendations to hire the firm, reasonably supporting the rating of low performance risk in general. Further, the record shows that MTC has substantial, directly relevant experience with the current work requirements. Under these circumstances, we see no basis to question the evaluators' determination that the proposed teaming arrangement of IITC and MTC offers low performance risk overall.³

The protesters next contend that the blue/exceptional rating assigned to the IITC proposal under the personnel subfactor of the management/support factor is unreasonable, since IITC does not currently employ all of its proposed personnel and [DELETED]. The protesters contend that, since contingent hiring agreements, as were provided in the IITC proposal for these proposed individuals, do not offer any guarantee to the agency that the individuals proposed will perform under the contract, the blue/ exceptional rating was not warranted. In this regard, however,

³ICI also contends that the past performance evaluations were improper because competing offerors provided each other as past performance references, raising the possibility that such references might be biased in light of the references' own interest in receiving the award under the RFP. For instance, ICI contends that, since both ICI and IITC listed MTC as a reference, MTC's surveys may be tainted as purposefully more favorable for IITC, its teaming partner here. The agency reports, however, that once the competitors and their subcontractors were identified, the agency eliminated from consideration any past performance reference received from a competing offeror; the agency specifically reports, in response to the protester's concerns, that no MTC survey responses were received or considered. Moreover, our review of the record confirms the reasonableness of the agency's position that the IITC proposal, and the unchallenged, "untainted" reference surveys received for IITC and MTC, sufficiently support the reasonableness of the low performance risk assigned to the IITC proposal.

the RFP provided only that proposals would be evaluated under the personnel subfactor in relation to identified qualifications and labor categories included in the performance work statement to meet stated work requirements. RFP § M-551(F). The RFP did not preclude proposing prospective hires or provide that an offer proposing current employees would be weighted more heavily for evaluation purposes. Moreover, as the protester points out, the agency, in question 58 of the pre-proposal questions and answers, specifically recognized that contingent hires, although not guaranteed, would be fully acceptable.⁴

Since the RFP did not require currently hired personnel or personnel commitments, we see no basis to conclude that the agency was required to downgrade IITC's proposal based on IITC's reliance on contingent hires. In our view, the agency reasonably concluded, based on the signed agreements, that IITC had demonstrated a realistic intention to hire the individuals and the reasonable likelihood that the individuals proposed would be available to perform under the contract. More importantly, our review of the record shows that, in accordance with the stated evaluation criterion, the agency assigned the exceptional rating to the IITC personnel proposal only after reasonably confirming that many of the awardee's proposed personnel's qualifications exceeded the RFP's requirements, and that they showed valuable "hands-on" experience with the work requirements. Accordingly, we see no basis to question the evaluation rating in this area.

The protesters next challenge the best value determination as insufficiently supported and the award at a higher price as unreasonable. In a negotiated procurement, there is no requirement that award be made on the basis of lowest price/cost; a cost/technical tradeoff may be made, and the extent to which one may be sacrificed for the other is governed by the tests of rationality and consistency with the established evaluation factors. Hellenic Technodomiki S.A., B-265930, Jan. 3, 1996, 96-1 CPD ¶ 2 at 3. We will uphold awards to offerors with higher technical ratings and higher costs so long as the results are consistent with the evaluation criteria and the contracting agency reasonably determines that the cost

⁴Question 58, "Are contingent hire letters acceptable?", was answered by the agency as follows:

Yes. The offeror must show how they will fulfill the contract requirements. The contractor to whom award is made must actually fulfill these requirements. Although contingent hire letters provide no absolute assurance that the individuals will actually perform on the contract, someone of equal or better experience will have to be provided after contract award.

premium involved is justified given the technical superiority of the selected offeror's proposal. Id.

Here, the source selection authority recognized the price differential between the proposals [DELETED]. In documenting his integrated assessment supporting his best value determination, the source selection authority also compared the technical and management scores assigned to each proposal and, in substantial detail, summarized those evaluation areas where the IITC proposal was found to be exceptional and technically superior to any other offeror's proposal, along with some of the reasons cited by the evaluators for the perceived superiority.

For instance, under the most important technical evaluation subfactor, hazardous waste management, IITC's proposal was commended for [DELETED].⁵ The source selection authority also pointed out that IITC's was the only proposal to receive blue/exceptional ratings for the management proposal. IITC was found to have demonstrated a superior understanding of the work requirements by [DELETED]. In comparison, ICI's and ITB's proposals were found to be acceptable, but neither was found to offer substantial strengths; ICI and ITB do not protest their own technical evaluations. Our review of the proposals and evaluation record confirms the reasonableness of the source selection authority's findings of the comparative differences between the proposals, namely, the documented strengths of the IITC proposal listed above. Given the knowledge, detail, and expertise demonstrated by the IITC proposal, and the importance of that technical superiority to the performance of the specialized hazardous material management tasks required in the solicitation, we have no basis to question the reasonableness of the source selection authority's conclusion that award on the basis of IITC's superior technical proposal was worth the cost premium involved. Our review of the record thus shows that the best value award determination was reasonably based and adequately documented.

The protests are denied.

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⁵Although ICI in its report comments contends that many aspects of this technical evaluation factor should have been scored on a pass/fail basis, nothing in the RFP provided for such scoring; instead, the evaluation plan contemplated that legitimate differences in proposal approaches might warrant additional technical credit.