

Mr. Burnett

1915055

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-202591

DATE: August 18, 1981

MATTER OF: Technical Data Systems of the Nation's
Capital, Inc.

DIGEST:

1. Failure of agency during negotiations to apprise protester of deficiency in pricing structure in its proposal prevented protester from competing on an equal basis with other offerors.
2. Where RFP indicated that both cost and technical factors would be considered, but failed to specify the exact weight of each, agency should have given both factors substantially equal weight.

Technical Data Systems of the Nation's Capital, Inc. (TDS), protests the award of a contract to Tymshare, Inc. (Tymshare), under request for proposals (RFP) No. 0308-AA-NS-0-1-BD issued by the District of Columbia Department of General Services (DC). The RFP solicited offers from computer firms to collect data from participants in the District's Low Income Energy Assistance Program (LIEAP). The RFP stated that services were to be performed over a 9-month period under a firm fixed-price contract.

TDS's main allegations are that the price of its proposal was misconstrued, that price was not considered in the evaluation of proposals, that Tymshare was permitted to begin work on the contract before it was properly reviewed and executed by the Bureau of Materiel Management, and that there was a pattern of bias in favor of Tymshare throughout the selection process.

Based on the following, we sustain the protest.

[Protest of Fixed-Price Contract Award]
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On October 1, 1980, the DC Energy Office issued the RFP to TDS and Tymshare, and both firms submitted their proposals by the October 10, 1980, deadline. The Selection Committee reviewed Tymshare's proposal and found that it was deficient in that it failed to provide much of the requested information. On October 20, 1980, the Selection Committee sent a letter to Tymshare specifically pointing out 11 deficiencies and requesting that the revisions be submitted by October 24, 1980. Tymshare complied with this request.

The Selection Committee also found TDS's proposal to be deficient. The RFP stated that services were to be performed under a firm fixed-price contract, "price not subject to any adjustment by reason of the cost experience of the contractor in the performance of the contract." In the section of its proposal labeled "itemized cost breakdown," TDS entered the amount of \$90,568.50 under the caption "total cost." However, at the end of the next page, entitled "Schedule of Consulting and Professional Service Rates, January 1, 1980," the following words were included:

"Rates do not include computer charges used during system development. Travel, living, and other out of pocket expenses incurred on behalf of a client will be billed at cost."

Based upon this language, the Selection Committee determined that \$90,568.50 was not TDS's total price. TDS contends that this figure is its fixed price, and that it had contacted a member of the selection team in November 1980 to make this clear.

The Selection Committee sent TDS a letter on October 20, 1980, indicating that its proposal was deficient. Instead of specifying the problem with TDS's proposed price, which apparently was the committee's major concern, the letter merely pointed out technical deficiencies. As a result, TDS failed to clarify its total price for the project. However, it did submit responses to the stated deficiencies.

Section 264.11(B)(1) of DC's Materiel Management Manual (MMM) states that after receipt of initial proposals, written or oral discussions shall be conducted with all responsible offerors who submitted proposals within a competitive range, price and other factors considered.

Section 264.11 (A), "Evaluation of Offerors' or Contractors' Proposals," states:

"Complete agreement of the parties on all basic issues shall be the objective of the contract negotiations. Oral discussions or written communication(s) shall be conducted with offerors to the extent necessary to resolve uncertainties relating to the purchase or the price to be paid." Id. § 264.11(A)

To the degree that the price in TDS's proposal was ambiguous, the Selection Committee failed to follow the requirements of this provision.

Our Office has held that while the content and extent of discussions is normally a judgment for the procuring agency, we will review such decisions where the discussions operated to the bias or prejudice of any competitor. See Food Science Associates, Inc., B-183054, April 30, 1975, 75-1 CPD 269. A fundamental principle of competitive procurement is that offerors must be treated equally and be provided a common basis to revise their proposals. PRC Information Sciences Company, 56 Comp. Gen. 768 (1977), 77-2 CPD 11.

In the instant case, the discussions did not afford TDS an equal opportunity to compete. Tymshare was advised in very specific terms as to the deficiencies in its proposal and was provided an opportunity to revise its proposals to remedy those deficiencies. In contrast, TDS's letter was not sufficiently specific or informative to apprise TDS of its price deficiency. TDS therefore was not given a fair and reasonable opportunity to clarify its proposal as was Tymshare.

TDS's second allegation is that cost was not considered in the evaluation process. While it cannot be stated with certainty that cost was not considered, the record suggests that cost was given relatively little weight in the award consideration.

The RFP contained no explicit statement concerning the relative weight of cost and technical factors. It stated:

"The entire proposal, including cost, will be determined according to evaluation criteria as set forth in this RFP in the attached Consultant Rating Sheet. Each aspect of the proposal in relation to proposals of other offerors will be evaluated by this weighted value rating scale."

The Consultant Rating Sheet contained 14 subcategories under six general categories for a maximum score of 100 points. Cost was not included as one of the criteria in the rating sheet.

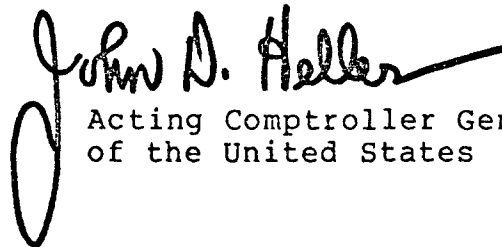
We have held that where a solicitation does not expressly state the relative weight of cost and technical factors, but clearly indicates that both factors will be considered, as here, cost and technical considerations should be given substantially equal weight. University Research Corporation, B-196246, January 28, 1981, 81-1 CPD 50.

DC's failure to give equal consideration to price and technical factors may have prejudiced TDS. The four members of the Selection Committee gave Tymshare a combined technical score of 353 points, while TDS received a score of 304 points. Thus, Tymshare's technical score was only 16 percent greater than TDS's. In contrast, Tymshare's proposed price of \$138,280 was 52 percent higher than TDS's alleged fixed cost of \$90,568.50. In addition, the record suggests that DC recognized that TDS's proposal would still have been less expensive even with the addition of development and out-of-pocket expenses. Thus, if equal weight had been assigned to both factors, the contract might have been awarded to TDS.

TDS's third contention is that Tymshare was permitted to begin work on the contract prior to review and approval by the Bureau of Materiel Management as required by MMM § 264.13 (1974 ed.). The record supports this allegation. On November 2, 1980, the Selection Committee chose Tymshare for the contract. This recommendation was communicated in a memorandum dated November 17, 1980, to the Bureau of Materiel Management. On January 14, 1981, the Program Manager of LIEAP signed the contract with Tymshare and asked the firm to begin work immediately. On March 3, 1981, the proposal was formally approved by the Contract Review Committee. It was not until March 9, 1981, that the contract was finally reviewed and executed by the Bureau. DC does not contest that proper contract award procedures were not followed. The record indicates, however, that DC requested the contractor to begin work immediately because it had already missed two deadlines for computerizing LIEAP.

We have held that such procedural irregularities do not generally affect the validity of an award. Rowe Contracting Service, Inc., B-200594, January 22, 1981, 81-1 CPD 40.

The protest is sustained. In view of the fact that the contract has been substantially completed, remedial action is not possible. However, we are bringing the matter to the attention of the Mayor of the District of Columbia to avoid a recurrence of these shortcomings.



Acting Comptroller General
of the United States



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON D.C. 20548

B-202591

August 18, 1981

The Honorable Marion S. Barry, Jr.
Mayor of the District of Columbia
Washington, D. C. 20001

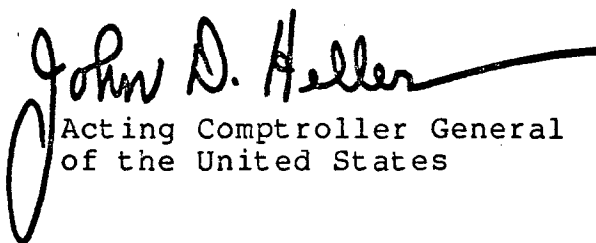
Dear Mayor Barry:

Enclosed is a copy of our decision sustaining the protest of Technical Data Systems of the Nation's Capital, Inc., under request for proposals No. 0308-AA-NS-0-1-BD.

While we were unable to recommend any meaningful relief, we suggest that a review of the manner in which this procurement was conducted would be appropriate.

Please advise us of the actions the District of Columbia Government is taking to preclude a repetition of similar improprieties in the future.

Sincerely yours,


Acting Comptroller General
of the United States

Enclosure