



The Comptroller General  
of the United States

Washington, D.C. 20548

# Decision

Matter of: Yourdon, Inc.

File: B-222416

Date: July 3, 1986

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## DIGEST

Protest against award of contract on the basis of initial proposals is denied where the solicitation advised offerors of that possibility and where a price analysis based on the other offers received and the actual cost of the same services under the previous contract demonstrate that acceptance of an initial proposal will result in the lowest overall cost to the government at a fair and reasonable price.

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## DECISION

Yourdon, Inc. protests the Department of the Army's contract award to BTG, Inc. under request for proposals (RFP) No. DABT60-86-R-0005, for the instruction of certain courses at the Computer Science School, Fort Benjamin Harrison, Indiana. Yourdon contends that the agency improperly awarded the contract on the basis of initial proposals, without holding any discussions.

We deny the protest in part and dismiss it in part.

Four proposals were received in response to the RFP. The technical evaluation board reviewed these proposals and determined that only the proposals submitted by Yourdon and by BTG were acceptable. BTG's offer was low.

Under Section M-5 of the RFP, "Basis of Award," the solicitation advised prospective offerors that award would be made to that offeror who submitted an acceptable technical/managerial proposal, and had the lowest evaluated price for satisfactory completion of the requirement. This section of the solicitation also included a notice that a contract could be awarded without any discussions, on the basis of initial offers, in accordance with Federal Acquisition Regulation (FAR) § 52.215-16 "Contract Award."

A contract specialist conducted a price analysis, comparing the proposed prices with each other, with the actual cost of the same items under a different contract, and with the independent government estimate. The agency determined on this basis that the prices received in response to

the RFP were fair and reasonable, and that award to BTG on the basis of its initial proposal would result in the lowest cost to the government. The contract specialist recommended that award be made on a firm fixed-price basis to BTG, without establishing a competitive range or conducting negotiations.

The protester contends that the agency cannot clearly demonstrate that acceptance of the most favorable initial proposal would result in the lowest cost to the government. In support of this contention, Yourdon notes that its initial proposal included an "8-volume technical and managerial reference library," and that the decision to omit this one expense would have reduced Yourdon's cost and made its proposal lower in price than BTG's.

The agency argues that it had specifically reserved the right to make an award based on initial proposals, and that it was proper to do so in this case because the price of the low proposal was reasonable. Regarding the protester's argument that it could have reduced its price if discussions had been held, the agency notes that the solicitation required the contractor to provide training aids and instructional materials, and that the protester could not simply reduce its price by omitting the texts it had proposed. Alternatively, the agency asserts that to the extent inexpensive texts could be substituted for the proposed reference books, the protester had exercised its business judgment in offering the more expensive materials and had been placed on notice that the contract might be awarded without negotiations.

Under the Competition in Contracting Act of 1984, award may be made on the basis of initial proposals where the solicitation advises offerors of that possibility and the existence of full and open competition or accurate prior cost experience clearly demonstrates that acceptance of an initial proposal will result in the lowest overall cost to the government. 10 U.S.C.A. § 2305(a)(2)(B)(ii), (b)(4)(A)(ii) (West Supp. 1985). As previously noted, the RFP incorporated the FAR "Contract Awards" clause, 48 C.F.R. § 52.215-16 (1984). This provision expressly advised offerors that the government might award a contract "on the basis of initial offers received, without discussions," and that offerors thus should include their best terms in their initial proposals. In these circumstances, we believe the RFP gave prospective offerors sufficient notice that discussions might not be held. In our view, the protester should have known that it had to present its most advantageous offer in its initial proposal, or risk having no opportunity to amend its proposal after negotiations. See GM Industries, Inc., B-218331, Apr. 15, 1985, 85-1 CPD ¶ 431. We therefore find no merit to the contention that the agency should have conducted negotiations in an attempt to reduce the costs associated with certain aspects of the protester's proposal, such as the texts Yourdon proposed.

With respect to Yourdon's allegation that the agency has not clearly demonstrated that award to BTG would "result in the lowest overall cost to the Government at a fair and reasonable price," as required by FAR § 15.610(a)(3), we note that BTG's price (for the initial contract period as well as each of the 3 option years) was the lowest of the four offers

received. It also was significantly lower than the previous contractor's offer under this RFP, as well as the price paid for the same services under the previous contract. Under these circumstances, we find no basis to question the agency's determination that based on the actual competition and prior cost experience, the FAR requirements for award on an initial proposal basis were satisfied.<sup>1/</sup>

The protester also alleges that the RFP statement of work contained obvious errors, such as having courses scheduled to take place during holidays, and that the RFP was therefore so flawed that it is unlikely that an award decision could be made without holding discussions. To the extent this portion of the protest is based on alleged improprieties apparent on the face of the solicitation, it is untimely and will not be considered. Our Bid Protest Regulations provide that such protests must be filed with our Office prior to the initial closing date for receipt of proposals, but Yourdon did not protest this issue until after the award had been made. See 4 C.F.R. § 21.2(a)(1) (1985). To the extent this portion of the protest may support Yourdon's basic premise that negotiations were required, we find it to be without merit. The agency points out that the class schedule in the RFP notified offerors that the dates established for courses were subject to being changed by plus or minus 3 working days. Any adjustments in this area could therefore be made after award, and would not require negotiations. Accordingly, we find no merit to Yourdon's contentions in this regard.

Yourdon contends that discussions were not held because the award was rushed improperly. The protester notes in this regard that "it took over 4 months to get the solicitation issued, but only 19 days to award," and concludes that the agency was more concerned with starting performance on schedule than it was in obtaining the best value. The agency responds that only four proposals were received, and that the 3 person evaluation board did not require more than 2 days to complete their evaluation. The agency states that this left ample time for the contract specialist to perform the price analysis.

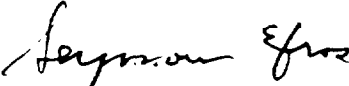
Our review of the record in this case simply gives no indication that the protester was prejudiced by the pace and duration of the Army's evaluation and award decision process. The Army, and not our Office, was in the best position to determine the amount of time necessary to conduct a satisfactory evaluation of proposals in this procurement, and the Army believes it devoted sufficient time and effort to the evaluation here. Our Office is concerned only with whether the evaluation was fair, reasonable, and consistent with the stated evaluation criteria. See Hoboken Shipyards, Inc. et al., B-219428 et al., Oct. 17, 1985, 85-2 CPD ¶ 416 at 14. There is no evidence that the evaluation did not meet this standard and we have already found that the contract award without discussions was proper here. We therefore deny this basis of protest.

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<sup>1/</sup> We note that Yourdon challenges the relevance of the prior contract price because the contract allegedly was awarded on a sole source basis. The agency states, however, that the prior solicitation was issued on a competitive basis, although only one offer was received. Thus, the prior contract in fact was not a sole source contract. See FAR § 6.003.

The protester also has questioned the awardee's qualifications as a "known training firm." This basis of the protest essentially is a challenge to the contracting agency's affirmative determination that BTG is a responsible offeror. Our Office will not consider a protest of an affirmative responsibility determination unless there is a showing either that the determination may have been made fraudulently or in bad faith, or that definitive responsibility criteria have not been met. Trail Blazer Services, B-220724, Feb. 12, 1986, 86-1 CPD ¶ 275. Neither circumstance is present here; accordingly, we dismiss this ground of Yourdon's protest.

The protest is denied in part and dismissed in part.

*for*   
Harry R. Van Cleve  
General Counsel