



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Q. Earl Yancey, CPA
File: B-223931
Date: November 18, 1986

DIGEST

1. Agency's decision to award contract to higher-priced offeror is proper where awardee's proposal received higher technical score and technical evaluation was consistent with solicitation's established evaluation criteria which advised that technical capability would be given more weight than price.
2. Issues first raised in response to agency report on initial protest, more than 10 working days after protester knew of additional protest grounds, are untimely.

DECISION

Q. Earl Yancey, CPA (Yancey) protests the Department of the Air Force's award of a contract to Bert W. Smith & Co. (Smith) under request for proposals (RFP) No. F49642-86-R-0177, for financial counseling services. Yancey contends that the evaluation of proposals must have been either incomplete or incorrect, since its own proposal allegedly offers superior technical abilities at a lower price.

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

The solicitation is a total small business set-aside. The RFP contemplates the award of a firm, fixed-price contract for 1 year plus 3 option years and requires the contractor to "provide personal financial counseling services to Air Force military and civilian personnel who have personal financial management difficulties and are assigned within the Military District of Washington, Andrews Air Force Base, Bolling Air Force Base and Fort Meade."

The Air Force received proposals from 10 offerors. Technical proposals were reviewed by a three-person evaluation team, which identified strengths and weaknesses in the proposals

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and scored each proposal numerically. Price proposals were then evaluated and assigned scores to reflect their relative cost.

Seven proposals were determined to be within the competitive range. Smith's technical proposal received the highest point score while Yancey's technical proposal received the third highest score. Although Yancey offered a lower price than Smith and therefore received a higher score on its price proposal, when technical and price scores were added together, Smith's total point score was highest, while Yancey's proposal received the next highest total score.

Initially, Yancey argues that the agency abused its discretion in selecting Smith for the award. The protester contends that its own technical capabilities must have been incorrectly evaluated and that since its price was lower than Smith's, it should have received the award.

It is not the function of our Office to evaluate the proposals anew and make independent determinations as to their acceptability or relative merits. Proposal evaluation, particularly concerning technical considerations, is primarily a matter for judgment of the contracting officials. Our review is limited to considering whether the evaluation was fair and reasonable and in accordance with the stated evaluation criteria. Kelsey-Seybold Clinic, P. A., B-217246, July 26, 1985, 85-2 CPD ¶ 90. We find that the evaluation of proposals was reasonable and consistent with the evaluation scheme set forth in the RFP.

The RFP advised offerors that the award decision would be based on an integrated assessment of criteria designed to determine which proposal offers the best prospect of accomplishing the government's requirement. In this determination, prime consideration would be given to experience (defined as experience and availability of personnel, and past performance) and qualifications (defined as familiarity with applicable Air Force regulations, and a Bachelor's Degree in Financial Management or Accounting, or 4 years of personal financial counseling experience). The RFP specifically provided that technical criteria would be given a weight of approximately 60 percent of the total evaluation score for each offeror, and price would receive the remaining 40 percent. It further explained that "[a]lthough overall cost to the government will be considered seriously, technical approach and capability are of paramount importance. The government may award a contract to other than the lowest offer, i.e., best value to the government."

The Air Force evaluators found that, although Yancey's proposal was technically acceptable, the offer included some weaknesses. For example, one evaluator noted that Yancey's proposal was geared more toward tax consultant work, rather than personal financial counseling, and another noted that Yancey would have to hire more personnel in order to perform the contract. While the evaluation report also recognizes strengths in Yancey's proposal, such as experience under another Air Force contract, and tax experience, Smith's proposal was considered, on balance, to be superior. Smith was found to have considerable experience working with military personnel in the area of financial planning; its personnel were considered particularly well qualified and its knowledge of current procedures very good.

The statement of work in the RFP described the Air Force's requirement as personal financial counseling services for personnel with financial management difficulties. In describing the required contractor qualifications, the RFP listed a degree in financial management or accounting, or experience in personal financial counseling. In our view, it should have been clear from the RFP that the solicitation's emphasis is on personal financial management, rather than tax consulting. Yancey's proposal describes the firm as having "a strong tax base with primarily farm and small business - accounts." The proposal also describes the firm's work under another Air Force contract as covering "all phases of financial management from elementary budgeting and creditor problems to helping individuals finalize their goals into a plan . . . of investment strategies to meet their goals." However, the more detailed description of Yancey's "personal financial counseling program" that follows includes much more emphasis in areas such as capital accumulation, reducing one's tax burden, investment and property management, etc., than on financial management difficulties such as creditor problems.

Accordingly, we find the Air Force's determination that Yancey's proposal, did not merit as high a score as Smith's proposal, to have been fair and reasonable and consistent with the criteria stated in the RFP.

Yancey also contends that it should have been awarded the contract, because its proposal price was \$4,000 lower than Smith's for the base year of the contract. However, where a solicitation for a negotiated procurement advises offerors that technical considerations are more important than price, the contracting agency properly may conclude that it is more advantageous to the government to award the contract to an

offeror with a superior technical proposal, even though its price is higher than that of other technically acceptable proposals, if the lower prices are offset by the advantages of the technically superior proposal. Barber-Nichols Engineering Co., B-216846, Mar. 25, 1985, 85-1 CPD ¶ 343. Consequently, an offeror is not automatically entitled to award merely because it offered the lowest price. Henderson Aerial Surveys, Inc., B-215175, Feb. 6, 1985, 85-1 CPD ¶ 145.

Here, the RFP specifically advised offerors that technical factors would be weighted more heavily than price. Furthermore, the Air Force applied a formula in scoring proposals to reflect the 60 percent weight for technical points and 40 percent weight for price established in the RFP. Smith's higher overall score indicated a price/technical trade-off consistent with the evaluation scheme set forth in the RFP. We therefore deny this portion of the protest.

In its comments responding to the Air Force's report on the initial protest, Yancey contends that the RFP does not clearly state the actual needs of the agency and that Smith, as the incumbent contractor, had an unfair competitive advantage because that firm alone had knowledge of the agency's actual needs. Yancey stated that it first discovered the basis of this contention during a debriefing that was held on August 27, 1986.

Although Yancey presents these arguments as an elaboration of its initial protest, they in fact represent a new basis of protest. New grounds of protest such as these must independently satisfy the timeliness requirements of our Bid Protest Regulations and thus must be filed not later than 10 working days after the basis for them was known or should have been known, whichever is earlier. See 4 C.F.R. § 21.2(a)(2) (1986), Kisco Company, Inc., B-216953, Mar. 22, 1985, 85-1 CPD ¶ 334; 4 C.F.R. § 21.2(a)(2) (1986). Here, the new basis of protest was filed on September 19, 16 working days after the protester learned of it, and is therefore dismissed as untimely.

The protest is denied in part and dismissed in part.

for
Seymour Efra
Harry R. Van Cleve
General Counsel