



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: York Systems Corporation

File: B-237364

Date: February 9, 1990

H. Andre Carron, for the protester.
Herman A. Peguese, Office of the General Counsel,
Department of the Air Force, for the agency.
Christine Sklarew, Esq., Andrew T. Pogany, Esq., and
Michael Golden, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

1. Under solicitations that call for award on the basis of the best overall value to the government, with primary consideration given to technical merit, agency source selection officials have broad discretion to make cost/technical tradeoffs; such tradeoffs need only have a rational basis.
2. In evaluating the corporate experience of a new business, an agency may, but is not obligated to, consider the prior related experience of a principal officer.
3. Certificate of competency (COC) procedures do not apply where a small business firm's offer in a negotiated procurement is considered weak under technical evaluation factors relating to experience and past performance, since the COC program is for reviewing nonresponsibility, not the comparative evaluation of technical proposals.

DECISION

York Systems Corporation protests the Department of the Air Force's award of a contract to American Development Corporation ("Adcor") under request for proposals (RFP) No. F19628-88-R-0102, issued by the Air Force Electronic Systems Division, Hanscom Air Force Base, Massachusetts, for avionics facilities. York contends that the agency

misvaluated proposals and that it was entitled to the award, based on its lower-priced proposal. We deny the protest.

The Air Force's requirement is for a highly mobile avionics repair capability that can be deployed worldwide in support of various aircraft tactical deployments. This capability is housed in avionics intermediate shop mobile facilities (AISMFs), which are comprised of various types of standard shelters modified to allow field installation of certain automatic test equipment. The successful contractor will have total system responsibility for producing and retrofitting the AISMFs and developing the technical manuals, drawings, and provisioning data for the units.

The procurement was set aside for small, disadvantaged businesses and contemplated the award of a firm, fixed-price contract. Evaluation criteria included technical and price factors. The technical factor, included the adequacy of each offeror's facilities, equipment and personnel, and the offeror's experience and program management organization. The RFP specified that award would be made to the firm that submitted the best overall proposal and that technical merit would weigh more heavily under the evaluation than price. Further, the RFP stated that the government would assess two types of risk as part of the source selection process: proposal risk, which was described as the risk associated with the offeror's proposed efforts as related to accomplishing the Statement of Work, and performance risk, which was defined as the risk related to the offeror's probability of successfully accomplishing the proposed effort based on the offeror's past and/or present performance.

The Air Force received initial proposals from a number of firms, including York and Adcor. The proposals were evaluated and all offerors were judged to be within the competitive range. Discussions were held with all offerors, including written clarification requests and deficiency reports, and best and final offers (BAFOs) were requested. Both Adcor and York submitted BAFOs that were judged to be technically acceptable. Adcor's proposal was found to be technically superior, while York's proposal was approximately 2 percent lower in price. The Source Selection Authority determined to award the contract to Adcor because its proposal presented the most advantageous offer, price and other factors considered. York protested the award decision to the Air Force; the agency denied the protest. This protest, based on the same grounds, followed.

York contends that the Air Force's technical evaluations and award decision were unreasonable and that York was entitled to the award. The protester points out that it responded to all of the deficiencies that were identified during discussions and, since the agency did not request any further clarifications, the protester concludes that its proposal must have been fully acceptable, technically.

In response, the Air Force points out that there were no deficiencies in York's proposal that were sufficient to exclude the firm from the competitive range or otherwise to disqualify it from the competition. Rather, there were areas of the proposal that were judged to be weaknesses or deemed to present risks to successful performance, as part of the integrated assessment, provided for under the RFP. In particular, the agency found weaknesses in York's proposal regarding corporate experience, facilities and personnel. The agency explains, in essence, that Adcor was not selected over York because York's proposal was technically unacceptable, but because Adcor's proposal was found to be technically superior and worth the extra price. The agency states that it made a reasonable cost/technical tradeoff.

Our Office has consistently held that under solicitations that call for award on the basis of the best overall value to the government, with primary consideration given to technical merit, agency source selection officials have broad discretion to make cost/technical tradeoffs; such tradeoffs need only have a rational basis. See, e.g., Southeastern Computer Consultants, Inc., B-229064, Jan. 19, 1988, 88-1 CPD ¶ 48. Where the record supports the agency's selection of a higher-priced, technically superior offer, we will not substitute our judgment for the agency's source-selection determination. Id.

We have reviewed the protester's proposal and the agency's technical evaluation and, we find that the evaluation was proper and consistent with the stated evaluation scheme. Regarding corporate experience, the record shows that York is a newly-formed company that currently has one employee, its president, and that at the time of award the firm would have very little manufacturing space, equipment or personnel actually available. We therefore find no error in the Air Force's determination that York had no actual corporate experience. Contrary to the protester's assertions, we have held that while an agency may, in appropriate circumstances, evaluate the corporate experience of a new business by reference to the experience of its principal officers or a parent company, we have not held that an agency is obligated

to do so in every case. See Allied Management of Texas, Inc., B-232736.2, May 22, 1989, 89-1 CPD ¶ 485. We do not find it unreasonable to conclude that there is more risk involved in accepting a proposal from a newly-formed firm than accepting one from an established firm that has performed on similar projects and has a record of performance that can be examined.

Concerning facilities, while York proposed to have a new facility built for shelter modification, with construction to begin when the contract was awarded, the Air Force considered the potential for construction delays as a risk to successful, timely performance. While the protester insists that the new building would be available within 5 months of award and would not be required for performance of the contract until 7 months after award, the fact that the facility would not actually exist and be ready for use at the time of award reasonably was determined by the agency to represent a risk.

Regarding the question of personnel, the record indicates that York's labor estimates to accomplish the shelter modification tasks were less than half of the government estimate. The proposal also did not include any provision for training new personnel if it became necessary. We have held that in evaluating proposals for fixed-price contracts, it is reasonable for an agency to consider the risk of poor performance which may be occasioned by a contractor's miscalculation of the personnel resources needed to perform in accordance with the RFP requirements. Allied Management of Texas, Inc., B-232736.2, supra. Here, York proposed to use significantly fewer employees than the Air Force had estimated would be necessary; while York apparently believes that its estimate was accurate, it was reasonable for the agency to conclude that the success of this approach was less than assured. In short, we think that it was reasonable for the contracting officer to determine that a number of contingencies in York's proposal presented risks that had to be considered when assessing the proposal's relative merit.

In contrast to these weaknesses, we note that Adcor was evaluated as having superior manufacturing facilities and shelter modification experience. The firm's existing resources and experience were considered to be strengths. In this connection, we note that the protester does not appear to understand that the weaknesses that the agency found in York's proposal were weighed in relation to the strengths and weaknesses of other proposals. York argues, for example, that under the Walsh-Healey Act, a newly established firm need only be able to show the ability to

obtain the necessary requirements. However, this does not mean that the agency may not consider an entering firm's lack of experience as a factor in its evaluation. Here, the Air Force did not bar York from full consideration for the award; it merely judged its proposal to present certain risks and to be less advantageous, overall, than Adcor's. In these circumstances, we have no basis to object to the agency's award decision.

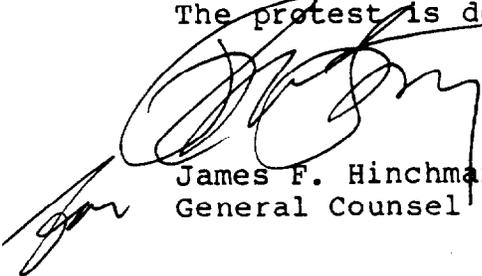
York also argues that the Air Force should have referred York's proposal to the Small Business Administration (SBA) for consideration under its certificate of competency (COC) procedures. York essentially argues that the agency's evaluation of York's proposal as technically acceptable, but inferior, was designed to circumvent the requirement for referral of the question of the firm's responsibility to the SBA.

First, we find no evidence in the record of an intent by the agency to circumvent COC procedures, and we think that York's allegations constitute unsupported speculation. We will not attribute unfair or prejudicial motives to procurement officials on the basis of inference or supposition. B&W Serv. Indus., Inc., B-224392.2, Oct. 2, 1986, 86-2 CPD ¶ 384. Second, the agency did not find the protester to be nonresponsible, but as stated above, considered the proposal to be weak under the technical evaluation factors listed in the solicitation during a comparative evaluation of proposals. With regard to these factors, it is not improper in a negotiated procurement to include traditional responsibility factors among the technical evaluation criteria. B&W Serv. Indus., Inc., B-224392.2, supra. Such factors may include experience and personnel qualifications. As long as the factors are limited to areas which, when evaluated comparatively, can provide an appropriate basis for selection that will be in the government's best interest, COC procedures do not apply to a technical proposal deficient in those areas. Id.

York also argues that Adcor, in fact, is not a responsible contractor, and that the award was improper on this basis. The protester contends that the agency initially made award to Adcor contingent upon Adcor's receipt of a COC from the SBA, but that it later withdrew the referral to the SBA and found Adcor responsible. York infers from this sequence of events that the SBA was about to deny Adcor's COC application, and that the agency withdrew the application to award the contract to Adcor notwithstanding the firm's alleged nonresponsibility.

As relevant here, our Office will not review an affirmative determination of responsibility absent a showing of possible fraud or bad faith on the part of procurement officials. 4 C.F.R. § 21.3(m)(5) (1989). The record shows that Adcor sent a copy of its COC application to the contracting officer at the same time that it was submitted to the SBA, and that it included new information bearing on Adcor's responsibility that had not previously been revealed to the Air Force. The agency reconsidered Adcor's responsibility on that basis, and found that the firm was, in fact, responsible to perform the contract. We believe this refutes York's allegations.

The protest is denied.



James F. Hinchman
General Counsel