

S. Riback



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: TechDyn Systems Corporation and Titan Corporation/Federal Services, Inc.

File: B-237618; B-237618.2

Date: March 12, 1990

William C. Hise, for the protester, TechDyn Systems Corporation.
Ruth P. Carroll, for the protester, Titan Corporation/Federal Services, Inc.
E. Benjamin Mitchell, Esq., for R&D Associates, an interested party.
Captain Steven A. Rosso, Esq., Office of the Judge Advocate General, Department of the Army, for the agency.
Scott Riback, Esq., Andrew T. Pogany, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Allegation that solicitation's evaluation criteria and statement of work conflict is dismissed as untimely where firm did not raise matter until after award and alleged conflict was apparent on face of solicitation.
2. Protest is denied where there is no basis to conclude that alleged miscalculation of protester's proposal by agency deprived the protester of an award to which it was otherwise entitled.
3. Protest that agency conducted an improper cost realism analysis of firm's proposal is denied where record shows that protester's allegation is based upon erroneous assumptions regarding which contract requirements were considered in cost realism analysis and where record shows that agency's cost realism analysis was reasonable.

DECISION

TechDyn Systems Corporation and Titan Corporation/Federal Services, Inc., protest the award of a contract to R&D Associates (RDA) under request for proposals (RFP) No. DAJA37-89-R-0227, issued by the Department of the Army

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for technical and administrative support services for the Army's battle simulation centers in Germany and Italy. TechDyn argues that the RFP contained an inconsistency between the statement of work and the listed evaluation criteria and that the Army applied unstated evaluation criteria in its evaluation of proposals. Titan argues that the agency improperly evaluated its cost proposal and consequently made an improper cost/technical tradeoff in selecting RDA for award.

The protests are dismissed in part and denied in part.

The RFP contemplated the award of a cost-plus-award-fee-type contract and provided that the agency would make award to the firm offering the best value to the government. The RFP also provided that proposals would be evaluated on the basis of technical, management and cost criteria, that technical merit was more important than cost and that the technical criteria were significantly more important than the management criteria.

With respect to the cost area, the solicitation provided that cost would be evaluated on the basis of both cost proposed as well as cost realism, with the latter consideration being significantly more important than the former. Concerning cost realism, the solicitation provided that the government's determination of cost realism would be based upon a determination of the probable cost of a particular proposal given the technical approach proposed and the potential risks or uncertainties arising from that approach.

In response to the solicitation, the Army received four proposals and, after initial evaluation, determined that three of the four were within the competitive range. Thereafter, the Army conducted discussions with the competitive range offerors and solicited best and final offers (BAFO). After evaluation of the BAFOs, the Army made award to RDA as the firm submitting the proposal which represented the best value to the government. These protests followed.

TECHDYN PROTEST

TechDyn first argues that the RFP's evaluation criteria and statement of work (SOW) conflict in that the technical evaluation criteria require consideration of each offeror's proposed battle simulation "developmental" effort, a requirement not included in the SOW. Specifically, TechDyn argues that the SOW outlines requirements which are primarily "operational" in nature, that is, require

operation of the battle simulation centers, rather than development of software, while the technical evaluation criteria require consideration of "developmental constraints" and "incremental developmental requirements" for each offeror's proposed approach.

We decline to consider this issue on the merits. In our opinion, TechDyn's argument amounts to an allegation of a solicitation impropriety which was apparent on the face of the RFP. Consequently, TechDyn was required by our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1989), to file its protest regarding this allegation prior to the time set for the submission of initial offers. Since TechDyn did not raise this allegation until after award, we consider it untimely and therefore dismiss it. See EG&G Pressure Science--Request for Recon., B-236049.2, Aug. 25, 1989, 89-2 CPD ¶ 179.

TechDyn also alleges that the Army improperly considered an "unstated" factor in its evaluation which improperly favored the incumbent, RDA. Specifically, TechDyn alleges that the agency improperly considered RDA's ability to provide highly technical developmental skills not called for by the SOW and that this consideration substantially enhanced RDA's overall technical rating. As noted above, TechDyn argues that the SOW called only for battle simulation operational skills rather than developmental skills.

We have reviewed the evaluation materials prepared by the source selection evaluation board (SSEB) and conclude that TechDyn's allegation is not supported by the record. The record shows that RDA received a technical score of 355 out of a possible 375 points while Titan received 302.5 points and TechDyn received only 225.5 points. Our examination of the SSEB's scoring and evaluation of RDA shows that, contrary to the protester's allegation, RDA was not scored higher as a result of any developmental effort offered in its proposal except under two "developmental" evaluation subfactors contained in the RFP. Consequently, we find that, to the extent that RDA's technical score was enhanced as a result of its proposed "developmental" effort, that enhancement was limited to the firm's receipt of a higher score only under the RFP's "developmental" evaluation subfactors. Two of eight technical subfactors, "environmental, developmental and timing constraints" and "incremental development requirements," gave consideration to the "developmental" aspects of the requirement and these two subfactors were collectively worth 59 technical points.

Of those 59 points, TechDyn received a total of 31 points for its BAFO, or 28 points less than the maximum possible score in these areas. Were we to conclude that the firm was in fact entitled to the maximum possible score in this area, its overall technical score would only increase to 253.5 points, a score far lower than the 355 points received by RDA, the successful offeror.^{1/} Thus, there is no basis to conclude that any alleged miscalculation under these criteria deprived TechDyn of an award to which it was otherwise entitled. See Employment Perspective, B-218338, June 24, 1985, 85-1 CPD ¶ 715; Lingtec, Inc., B-208777, Aug. 30, 1983, 83-2 CPD ¶ 279.

TechDyn also argues that the RFP contained a short phase-in period for commencement of operational exercises which improperly favored RDA, an incumbent for a portion of the work called for under the RFP. While this argument appears to be untimely since it involves an apparent solicitation impropriety, 4 C.F.R. § 21.2(a)(1), we note that there is nothing improper in the fact that a firm may enjoy a competitive advantage by virtue of incumbency where, as here, it was not the result of unfair action or preference on the government's part. Emerald Maintenance, Inc., B-225735 et al., May 6, 1987, 87-1 CPD ¶ 482. Accordingly, we deny the protest.

TITAN PROTEST

Titan alleges that the Army improperly selected RDA as the firm offering the best overall value to the government because the agency conducted an improper cost realism analysis of the Titan proposal. Titan states that the agency overestimated the probable cost of its proposal by applying an erroneous man-year estimate (221 man-years)

^{1/} In this regard, we note that TechDyn was found to have an initial evaluated cost of \$16,216,512, while Titan was found to have an initial evaluated cost of \$16,789,300 and RDA was found to have an evaluated cost of \$18,929,105. Since TechDyn does not allege any impropriety in the Army's cost evaluation, and since the record shows that the Army preferred the technically superior proposal of RDA more than the technical proposal of Titan even given RDA's higher cost, we have no basis to conclude that the Army would have selected TechDyn in a cost-technical tradeoff given the fact that, under the best possible circumstances, the firm would still have been rated third technically.

during its cost realism analysis.^{2/} According to Titan, this improper man-year estimate was used by the Army to upwardly adjust its direct labor costs for evaluation purposes.^{3/}

The Army responds that it properly evaluated Titan's proposal for cost realism. In this regard, the Army argues first that, contrary to Titan's allegation, it correctly employed a man-year estimate of 221 man-years and that this estimate in fact appeared in the RFP. The Army notes that the 221 man-year estimate included not only the base quantities but also certain optional quantities included in the RFP and priced by Titan. The Army also argues that it properly calculated the man-years offered in Titan's cost and technical proposals as 154 and 194, respectively. Finally, the Army argues that it properly increased the probable cost figure of Titan's cost proposal to account for the cost of an additional 40 man-years because its technical evaluators felt that Titan could reasonably perform the contract effort with the 194 man-years stated in its technical proposal. The Army, therefore, only increased its probable cost figure for Titan to account for the discrepancy between the firm's cost and technical proposals (i.e., 154 cost proposal man-years plus 40 man-years equal 194 technical proposal man-years).

When an agency evaluates proposals for the award of a cost reimbursement contract, the offerors' proposed estimated costs of contract performance are not considered as controlling, since they may not provide valid indications of the actual costs which the government is, within certain limits, required to pay. Federal Acquisition Regulation § 15.605(d) (FAC 84-16); Bendix Field Eng'g Corp., B-230076, May 4, 1988, 88-1 CPD ¶ 437. Consequently, an agency's evaluation of estimated costs properly should consider the extent to which the offerors' proposed costs represent what the contract should cost, assuming reasonable economy and efficiency. Arthur D. Little, Inc., B-229698, Mar. 3, 1988, 88-1 CPD ¶ 225. We limit our review of these matters to determining whether an agency's cost

^{2/} For ease of discussion, we have rounded all man-year estimates to the nearest whole number.

^{3/} The upward adjustment was from 154 man-years the agency found reflected in Titan's cost proposal to 194 man-years as reflected in Titan's technical proposal. Titan claims that its cost and technical proposals reflect 166 and 170 man-years, respectively.

evaluation was reasonably based and not arbitrary. Pan Am World Servs., Inc., et al., B-231840 et al., Nov. 7, 1988, 88-2 CPD ¶ 446.

Here, we have reviewed the record regarding the Army's evaluation of Titan's cost proposal and conclude that it was reasonable. As an initial matter, Titan's concern regarding the man-year estimate of 221 used by the Army appears to be founded upon an erroneous assumption regarding what contract line items comprised this figure. While the base quantity man-year estimate stated in the RFP was 194, the Army's cost realism analysis took into account not only these quantities but also certain "additional quantities" line items, as well as the addition of approximately 1 man-year for each contract year to account for the cost of a program manager. When the government's stated man-year estimates for all of these line items are aggregated, they total 221 man-years.^{4/}

Second, the man-years proposed by Titan in its technical proposal for all of these quantities are, in fact, 194 man-years. Titan's assertion that its technical proposal reflected 170 man-years does not take into consideration the additional quantities beyond the base quantity. Third, despite Titan's allegation that its cost proposal offered 166 man-years for the base quantity line items, our review of the firm's cost proposal and supporting data indicates that its cost proposal for the base quantities was for 133 man-years and for the base and option quantities was 154 man-years. Titan has provided our Office with no information regarding how it arrived at the figure of 166 man-years alleged to be offered in its cost proposal. Consequently, we find that the Army properly calculated Titan's cost proposal as offering 154 man-years (base and option) and its technical proposal as offering 194 man-years. Under these circumstances, we conclude that the Army acted reasonably in adjusting Titan's proposed costs upward to account for the cost of an additional 40 man-years.

As a final matter, we note that Titan's argument concerning the alleged impropriety of the Army's cost-technical tradeoff is based entirely upon the firm's erroneous conclusions regarding the Army's cost realism analysis of its proposal. Since we conclude above that the agency's cost realism analysis was both reasonable and mathematically

^{4/} The additional quantities called for under several other contract line items (other than base quantity) were considered in connection with the Army's cost realism analysis.

correct, we see no basis upon which to further question the Army's source selection determination. We, therefore, deny Titan's protest.

The protests are dismissed in part and denied in part.


James F. Hinchman
General Counsel