



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Technology Applications, Inc.

File: B-238259

Date: May 4, 1990

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Jennifer Westfall-McGrail, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Where a fixed-price contract is to be awarded, adjustment of proposals for price realism during evaluation for purposes other than to assess the risk in an offeror's approach is inappropriate since a fixed-price contract is not subject to adjustment based on the contractor's cost experience during performance.
2. Agency may properly select for award a more highly rated, higher-priced proposal despite the fact that solicitation provides for price to be the most important evaluation factor, where it determines that technical superiority of higher-priced proposal is worth the additional cost.
3. Where solicitation asks offerors to respond to several sample tasks for the purpose of testing their understanding of the technical requirements of the contemplated contract, agency is not required to spell out for the protester during discussions all weaknesses in its responses to the tasks since the purpose of the sample tasks is to see if the offeror can identify and resolve technical issues itself.

DECISION

Technology Applications, Inc. (TAI), protests the Naval Air Systems Command's award of a contract to Vitro Corporation

048-432/141299

for systems engineering and integration services for the Unmanned Aerial Vehicle program under request for proposals (RFP) No. N00019-89-R-0077. TAI contends that the Navy deviated from the evaluation scheme set forth in the solicitation by failing to assign it the highest rating for price reasonableness and by giving greater weight to technical merit than price. The protester also argues that the Navy failed to conduct meaningful discussions with it.

We deny the protest.

The RFP contemplated the award of a combination firm, fixed-price/indefinite quantity contract with an award fee provision. The engineering and support services to be provided were divided into two categories: Core and Cadre. The Core services consisted of a specified number of hours for each of five categories of labor (four engineering and one clerical support); offerors were asked for a fixed price per hour and a total price for each labor category. The Cadre services consisted of four categories of labor (the same categories as for the Core services, with the exception of program manager) for which offerors were to furnish hourly rates; these hours, up to a stated maximum, were to be ordered in 500-hour increments. The solicitation covered a base period of 9 months and four option periods of 1 year each.

The RFP required each offeror to submit a technical/management proposal and a cost proposal. The solicitation advised offerors that in the evaluation of proposals, cost would be the most important area, but that a proposal meeting solicitation requirements with the lowest price would not necessarily be chosen if award based on a higher-priced proposal afforded the government greater overall benefit. As part of their technical proposals, offerors were asked to address four sample tasks outlined in the solicitation. Through their responses to sample tasks Nos. 1 and 2, offerors were to demonstrate their understanding of how Unmanned Aerial Vehicle category and system interoperability could be achieved through integration interface identification, verification, validation, application, and control, while through their responses to task Nos. 3 and 4, offerors were to demonstrate their understanding of and ability to implement a phased system engineering and integration management plan. Offerors were advised that for each task, they should provide specific experiential examples of similar problems that they had previously encountered and resolved.

Six proposals were received prior to the September 22, 1989, closing date. The technical and cost evaluation teams

conducted independent evaluations and reported their findings to the Procurement Review Board (PRB), which determined that all offerors should be included in the competitive range. TAI's technical/management and price proposals both received ratings of marginal quality/moderate risk. The technical evaluators found, among other things, that the protester's response lacked the detail and depth necessary to demonstrate an understanding of the technical fundamentals associated with the sample tasks and did not provide examples of related work experiences. The Navy asked TAI to elaborate on several specific aspects of its responses to the sample tasks and, with regard to each of the first three tasks, to "provide additional detail on all aspects of the proposed solution to this task and cite any previous experience."

Upon receipt of TAI's written responses, the agency evaluators changed the protester's technical/management rating from marginal quality/moderate risk to marginal quality/high risk, but determined that it, along with the other five offerors, should be retained in the competitive range. The contracting officer then requested best and final offers (BAFOs).

TAI submitted the lowest BAFO price of \$11,497,599, a reduction of \$1.7 million from its initial price. The cost evaluators determined that TAI's BAFO price was unrealistic and assigned it a rating of unsatisfactory with high risk for cost realism. The technical evaluation of the protester's proposal remained unchanged.

The PRB reconvened on December 11, and determined that an award to Vitro would best serve the government's interests. The PRB found that despite TAI's lower price, the overall superiority of Vitro's proposal in the technical and management areas--Vitro had received a rating of outstanding/low risk on its technical/management proposal--would afford the government the greatest overall benefit. On December 29, the contracting officer notified TAI that Vitro had been selected for award.

PRICE EVALUATION

TAI contends that the Navy deviated from the evaluation criteria set forth in the solicitation by failing to evaluate and assign it a high score for price reasonableness. The protester maintains that the RFP provided for the adjustment of prices for realism and the evaluation of prices, as adjusted, for reasonableness.

The RFP provided that prices would be evaluated for both reasonableness and realism, with the former being of greater importance than the latter. The RFP further provided, with regard to price reasonableness, that:

"The Government will assess the reasonableness of the offeror's proposed cost, adjusted if necessary [for realism], by comparing it to the Government's budgeted or should cost estimate where the lowest realistic cost is scored highest."

We do not think that the agency could properly have applied this provision in evaluating proposals given that it contemplates the adjustment of prices for realism and the evaluation of those adjusted prices for reasonableness. Where a fixed-priced contract is to be awarded, prices may be adjusted for realism only as part of an assessment of the risk involved in an offeror's proposal--i.e., to judge the degree of risk by calculating the extent to which the proposed price falls short of the amount the agency believes is required to perform as proposed; this is in essence what the Navy did here. See Systems & Processes Eng'g Corp., B-234142, May 10, 1989, 89-1 CPD ¶ 441. Adjustment of a proposed fixed price, followed by evaluation of the adjusted price for reasonableness, is inappropriate since a fixed-price contract is not subject to adjustment based on the contractor's cost experience during performance, and thus places full responsibility for costs above the fixed price directly upon the successful offeror. See Litton Sys., Inc., Electron Tube Div., B-215106, Sept. 18, 1984, 84-2 CPD ¶ 317.

While the Navy thus could not properly evaluate TAI's adjusted price for reasonableness, as the RFP appears to contemplate, we do not think that TAI was prejudiced as a result. First of all, had the Navy literally adjusted TAI's price before evaluating it for reasonableness, the differential between TAI's BAFO price and Vitro's price would have been reduced since TAI's price, as adjusted for what the evaluators viewed as realistic, would have been substantially higher. Second, it is clear from the record that the Navy did take into consideration the fact that the protester's price was low. The PRB recognized in its source selection memorandum that TAI had submitted the lowest BAFO price, but concluded that its proposal posed an unacceptable performance risk since TAI had proposed unrealistically low rates of compensation for its employees, which raised doubts

as to its ability to retain qualified personnel.^{1/} Furthermore, in his statement, the contracting officer acknowledged that TAI's price was lower than Vitro's, but concluded that the superiority of Vitro's proposal in the technical and management areas justified the added expenditure. We therefore find that although the agency did not formally assign TAI a high rating for price reasonableness, it adequately considered the reasonableness of the protester's price, and nevertheless determined that award to TAI was not warranted in light of the overall performance risk associated with its proposal and Vitro's technical superiority.

AWARD TO OTHER THAN THE LOW-PRICED OFFEROR

The protester further argues that the Navy deviated from the evaluation scheme set forth in the RFP, which provided that price would be the most important evaluation factor, by selecting for award a more highly rated, higher-priced offer.

In a negotiated procurement the government is not required to make award to the firm offering the lowest price unless the RFP specifies that price will be the determinative factor. F.A.S. Sys. Corp., B-236344, Dec. 4, 1989, 89-2 CPD ¶ 512. In the absence of such an express provision, the procuring agency retains the discretion to select a higher-priced, more highly rated proposal if doing so is in the government's best interest and is consistent with the solicitation's stated evaluation and source selection scheme. Id.

Here, the RFP made no representation that price alone would be the basis for award; instead, it merely advised that price would be the most important area in the evaluation of proposals. Furthermore, it specifically stated that a proposal meeting solicitation requirements with the lowest price might not be chosen if award to a higher-priced

^{1/} The cost evaluators determined that the rates of compensation proposed for TAI employees were unrealistically low when compared with the rates paid for similar work on other Naval Air Systems Command contracts and to civil service employees in comparable positions, and that the potential difficulty of retaining employees at the proposed rates posed a risk to contract performance. The cost evaluators also found that the hourly rates for the Cadre services were burdened with unrealistically low overhead rates and that the possibility of unanticipated Cadre overhead costs posed a risk to contract performance.

which case the superiority of the successful offeror in areas other than price would justify the added expenditure. Thus, despite the fact that price was to be the most important factor considered in the evaluation of proposals, there was nothing improper in the agency's making a price/technical tradeoff and determining that the technical superiority of Vitro's proposal was worth its higher price. Id.

ADEQUACY OF DISCUSSIONS

TAI also argues that the Navy failed to conduct meaningful discussions with it by failing to identify the specific weaknesses that the evaluators had perceived in its responses to the sample tasks in its initial proposal. The protester objects in particular to the agency's request, with regard to sample tasks Nos. 1-3, that it "provide additional detail on all aspects of the proposed solution to this task and cite any previous experience." TAI contends that this sort of generalized request for further information did not give it adequate notice of the areas of its responses that required improvement.

First, we note that the agency did ask specific questions with regard to each of the tasks designed to lead the protester into areas of its responses requiring amplification. With regard to task No. 1, for example, which asked offerors to identify possible causes for the hypothetical failure of a short range planning and control station to establish communication with an organic endurance aerial vehicle, the agency asked TAI to "define the specific JIIs [joint integration interfaces] that would be [the] most probable candidates for source of the problem described." Similarly, with regard to task No. 2, involving the use of aerial vehicles to support a hypothetical military operation, TAI was asked to expand on its discussion of tactical battlefield systems with which the aerial vehicles might be expected to interface and to describe aspects of the payloads that might be impacted by aerial vehicle system constraints.

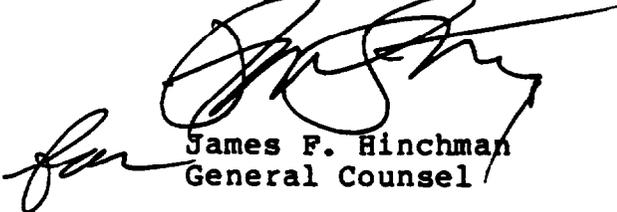
Second, and more significantly, as explained more fully below, we think that where, as here, offerors are asked to respond to sample tasks for the purpose of demonstrating an understanding of the technical fundamentals required for contract performance, the agency is not obligated to spell out for the offeror each deficiency in its technical approach to the tasks.

For discussions in a negotiated procurement to be meaningful, contracting agencies must furnish information to all

offerors in the competitive range as to the areas in their proposals which are believed to be deficient so that offerors may have an opportunity to revise their proposals to satisfy fully the government's requirements. Syscon Servs., Inc., 68 Comp. Gen. 698 (1989), 89-2 CPD ¶ 258. The content and extent of discussions, however, is a matter of the contracting officer's judgment based on the particular facts of the procurement. In evaluating whether there has been sufficient disclosure of deficiencies, the focus is not on whether the agency describes deficiencies in such detail that there could be no doubt as to their identity and nature, but whether the agency imparted sufficient information to the offeror to afford it a fair and reasonable opportunity in the context of the procurement to identify and correct deficiencies in its proposal. Eagan, McAllister Assocs., Inc., B-231983, Oct. 28, 1988, 88-2 CPD ¶ 405.

Here, as noted, the purpose of the sample tasks was to permit offerors to demonstrate their understanding of the technical fundamentals required for successful contract performance. If the Navy had identified each aspect of the protester's response to the sample tasks that it perceived as deficient, it would have defeated the purpose of having offerors address the tasks to begin with--which was to determine whether they had the background and understanding to identify and resolve the sort of technical issues that would arise during contract performance. Where an offeror's responses to sample tasks are used to test its understanding of the technical requirements of a contemplated contract, as opposed to being used to evaluate the adequacy of its technical approach to the contract work, an agency need not specify during discussions all identified deficiencies in the offeror's approach to the tasks. Syscon Servs., Inc., 68 Comp. Gen. 698, supra. Therefore, we find that the Navy conducted meaningful discussions here by identifying specific areas of TAI's responses to the sample tasks requiring amplification and requesting that the protester provide additional detail on all aspects of its proposed solution to the tasks.

The protest is denied.



James F. Hinchman
General Counsel