

146.46 Gary



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Columbia Research Corporation
File: B-247073; B-247073.2
Date: April 23, 1992

Paul Shnitzer, Esq., Crowell & Moring, for the protester, Benjamin Tirabassi, for Technical Evaluation Research, Inc., an interested party, Vera Meza, Esq., and John J. Reynolds, Esq., Department of the Army, for the agency, Stephen J. Gary, Esq., John M. Melody, Esq., and David Ashen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that proposed awardee's past performance should have been evaluated as less than acceptable, and that protester's should have been rated outstanding, is denied where, on basis of generally favorable reports of prior performance, agency had reasonable basis for finding both offerors acceptable in this area.
2. Protester's argument that proposed awardee should not have been found acceptable in the category "personnel experience" is untimely, and will not be considered, where protester knew that agency had found the offeror acceptable in that category 2 months earlier and therefore had a basis for protesting the alleged miscalculation at that time.

DECISION

Columbia Research Corporation (CRC) protests the proposed award of a contract to Technical Evaluation Research, Inc. (TERI), under request for proposals (RFP) No. DAAB07-90-R-8804, issued by the U.S. Army Materiel Command (AMC) for engineering and technical services. CRC, the incumbent, contends that AMC improperly evaluated past performance and personnel experience, resulting in an improper source selection decision.

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

The solicitation was issued as a total small business set-aside in September 1990. It sought proposals for engineering and technical services in the areas of product assurance and test hardware support, in connection with various

U.S. Army Communications-Electronics Command (CECOM) systems. The RFP stated that award would be made on the basis of the overall proposal that was most advantageous to the government, and that to be eligible for award a proposal had to be rated "acceptable" or "outstanding" under all evaluation factors and subfactors. (The only other available rating for final proposals was "unacceptable.")

There were three major evaluation categories. The first two, technical and management, were of equal weight, and each was more important than the third, price. Personnel experience was a subfactor under the technical category. Under the management factor there were three subfactors, of which past performance was the most important. In evaluating past performance, the RFP stated:

"Strong emphasis will be placed on the [offeror's] record of past performance for jobs of comparable complexity and similar technical requirements. Consideration will be given to the degree to which [the offeror] has met cost, technical, and delivery objectives."

AMC determined that all four proposals submitted were susceptible of being made acceptable, and issued "items for negotiations" (IFN) to all four offerors. Under past performance, the agency determined that three proposals were acceptable as submitted. For the fourth offeror, TERI, whose proposal was considered susceptible of being made acceptable in the area of past performance, AMC requested a response to an IFN specifically related to that area. Based on responses to this and other IFNs, the agency determined that all four offerors were technically acceptable, and called for best and final offers (BAFO) limited to price. CRC, the incumbent, proposed a price of \$8,542,597, compared to TERI's low price of \$6,079,310. AMC concluded that TERI offered the most advantageous proposal overall, and sent notice of the proposed award to the unsuccessful offerors. When CRC received the preaward notice,¹ the firm requested a debriefing which was held on December 10, 1991. This protest followed.

¹Based on the preaward notice, CRC filed a size status protest with the Small Business Administration (SBA), which the SBA denied.

TERI'S PAST PERFORMANCE

CRC maintains there is no support in the record for AMC's conclusion that TERI's past performance was acceptable. According to CRC, the agency failed to comply with the source selection plan, which requires the source evaluation team to prepare a "comprehensive narrative to develop a listing of proposal strengths, weaknesses, and risk areas under each evaluation factor and subfactor," and requires that the final evaluation document provide "complete narrative support to define the level of acceptability or non-acceptability of the offeror's proposals." Despite these requirements, CRC asserts there is virtually no narrative detail regarding TERI's strengths and weaknesses, and what little narrative there is fails to mention a contract with CECOM (the "Regency Net" contract) under which TERI allegedly performed so poorly that the agency declined to exercise its option. In view of these defects, CRC argues, AMC had no basis for finding TERI acceptable. As support for its position, CRC cites our decision, S&M Prop. Mgmt., B-243051, June 28, 1991, 91-1 CPD ¶ 615, where the protester alleges we found inadequate an agency evaluation due to lack of sufficient narrative detail to justify the assigned scores.

In reviewing protests against the propriety of an agency evaluation of proposals, we will not independently evaluate the proposals. ACM Envtl. Servs., Inc., B-242064, Mar. 7, 1991, 91-1 CPD ¶ 255. Rather, as the determination of the relative desirability and technical adequacy of the proposals is primarily a matter of agency discretion, we will review an evaluation only to determine whether it was reasonable and consistent with the evaluation criteria in the RFP. Pemco Aeroplex Inc., B-239672.5, Apr. 12, 1991, 91-1 CPD ¶ 367. The mere fact that a protester disagrees with the agency does not render an evaluation unreasonable. Id.

We find that AMC's evaluation of TERI's past performance was adequately documented and reasonable. First, the initial evaluation record includes five pages of handwritten notes indicating the results of inquiries about TERI's performance under five prior contracts with CECOM. Each page indicates a particular contract and the name of the person contacted; the reported quality of TERI's performance, personnel, and utilization of personnel; and whether TERI adhered to the contract schedule and to procurement policy. The evaluators' handwritten entries indicate that TERI's performance under these criteria was generally acceptable. They include entries such as "average," "fully successful," "good," "above average," "met all schedule dates," and "timely," with no reports of defaults or terminations.

Further, the record clearly shows that AMC did not ignore performance problems under TERI's Regency Net contract with CECOM. In evaluating TERI's initial proposal, AMC observed that TERI's technical engineering performance appeared to be inadequate. Concerning this perceived deficiency in TERI's initial proposal, the evaluators recommended that AMC ask the firm the following question (IFN):

"The government has identified under Contract DAMCB07-89-D-M047 [Regency Net] that TERI's technical (engineering) performance was considered inadequate. This was due to the lack/turn-over of engineering personnel. Request TERI address how they would perform at an acceptable level, if a similar situation develops under the proposed contract."

The firm responded with a detailed explanation of the apparent problem, indicating that the referenced turn-over was due to an unusual situation, where an employee of TERI was required to work in a position under the supervision of a government employee. TERI stated that it provided resumes of qualified people for this position, from whom the agency chose three different individuals. Each of those individuals, however, successively sought to be reassigned, or resigned, rather than continue to work for that particular government supervisor. The firm characterized this situation as "an isolated incident which was beyond contractor unilateral resolution."

In support of that claim, TERI submitted a letter of appreciation of its performance under the contract, signed by the contract project manager, which referred to the "outstanding manner in which [TERI] managed the acquisition and delivery of the computer systems associated with the local area network [Regency Net]. . . ." The letter also stated that, "as a result of your actions, the shipment of the system was realized on an expedited basis ensuring that the overall timeline for acquiring the system, the conduct of training, and the final operational capability was realized in the shortest period of time possible." Finally, the letter supported TERI's explanation of difficulties with CECOM management, stating that "[o]n many occasions, you were faced with obstacles created by the established bureaucracy; however . . . time and again you provided alternative ways of solving problems and in the end even assisted the manufacturer and government office responsible in the accomplishment of its mission." In addition, TERI submitted similar commendatory letters regarding other contracts, to substantiate its claim that the reported problem was an isolated incident. Based on TERI's response, AMC revised its rating of TERI's past performance from "susceptible of being made acceptable" to "acceptable." In doing so, the

evaluators noted in their summary that a "negative response was received on TERI's engineering performance but was overridden by the contractor's response to an IFN and evidence of letters of commendation." They also noted that, except for this one contract, positive responses were received on TERI's other contracts.

The record here is quite different from the one in the case relied on by CRC, S&M Mgmt., supra. There, we sustained the protest largely on the ground that the agency had simply assigned raw technical scores, and had furnished "no contemporaneous evaluation documentation, including narratives listing the strengths, weaknesses, and risks of S&M's proposal, from either the TEP [technical evaluation panel] or the contracting officer which would support the technical scores received. . . ." Id. As discussed above, this is not the case with AMC's evaluation record.

We conclude that the record, including the evaluators' contemporaneous notes, was sufficient for purposes of rating the firm's past performance, and provided a reasonable basis for the conclusion that TERI was acceptable under this evaluation category.

REEVALUATION

AMC reports that, as a result of the protest, it contacted additional references for each offeror to insure that it had based the initial evaluation on a complete picture of the firm's past performance. The agency explains that "while the original narratives supplied to the SSA [Source Selection Authority] contained the essence of each offeror's proposal, a more detailed narrative may have assisted the SSA (given the use of only two final adjectival ratings in addition to unacceptable) in discerning any differences within each rating." This statement by the agency, according to CRC, amounts to a concession that the first evaluation was inadequate.

CRC's argument is academic, since we have already found that the first evaluation was proper. In any event, we find that the reevaluation record, based on more information, simply confirms the results of the prior evaluation. For example, notwithstanding the assurances it had received from TERI during the initial evaluation, AMC obtained further information regarding the Regency Net contract. Specifically, AMC was told that the option was not exercised only because CECOM had determined the work could be done in-house. There was no indication of any major contractual problems. Similarly, AMC reexamined TERI's prior contracts in light of CRC's allegation that the evaluators had not determined whether they were of comparable complexity, with similar technical requirements, as the work described in the

solicitation. Based on the second evaluation, the evaluators confirmed that TERI had performed under contracts of comparable complexity, type, and size, and had provided comparable engineering support for an array of CECOM systems. While CRC may disagree with these conclusions, there is nothing in the record to suggest that they are unreasonable.

CRC'S PAST PERFORMANCE

CRC further objects to AMC's evaluation (and reevaluation) of its own past performance, which it believes should have been rated outstanding instead of merely acceptable. In the evaluation record, CRC cites several reports of outstanding performance which, according to the protester, should have resulted in a rating of outstanding.

We find nothing objectionable in AMC's rating of CRC's proposal. As the protester asserts, the record shows that CRC did receive several excellent reports. However, the record also includes reports of merely average performance, based on criteria such as utilization of personnel (one contract) and technical performance. In a report of dissatisfaction with CRC's technical performance, a contracting agency stated that CRC's technical products were considered inadequate, requiring extra time on the part of the government to make them acceptable. Despite these average and negative reports, however, the agency concluded that, "overall, CRC's work was considered acceptable, since there was only one documented adverse contractual action where a tasking was terminated for poor performance." The net effect of the reevaluation was that AMC slightly raised its assessment of CRC's past performance from merely acceptable to the "mid to higher range of acceptable," but still not outstanding. Based on the mixed nature of the reports that AMC received, we find that this assessment was reasonable.

PERSONNEL EXPERIENCE SUBFACTOR

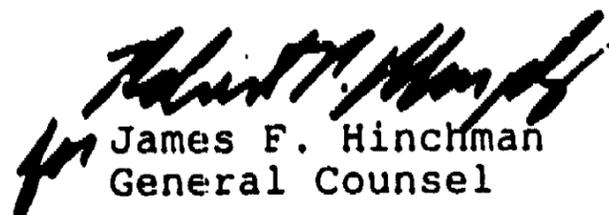
The solicitation included specific experience requirements for each required labor category. On February 10, 1992, CRC alleged for the first time that AMC improperly evaluated TERI in the area of personnel experience, a subfactor under the Technical category. CRC stated that when it was told at the December 10, 1991, debriefing that it and TERI had received the same acceptable rating under this subfactor, it assumed, based on its knowledge of TERI's personnel, that TERI could have attained that rating only by proposing to rely substantially on the personnel of its major large business subcontractor. On January 27, 1992, however, it learned from the SBA (in a decision denying its size status protest) that 95 percent or more of the direct labor would be provided directly by TERI. According to CRC, since TERI

could not legitimately have been rated equal to CRC without substantial reliance on the large-business personnel, AMC must have misevaluated TERI in this category.

This allegation is untimely. Under our Bid Protest Regulations, a protest must be filed not later than 10 working days after the basis of protest is known or should have been known, whichever is earlier. 4 C.F.R. § 21.2(2) (1992). CRC was informed of TERI's acceptable rating at the debriefing on December 10, 1991. CRC's SBA size protest was based on its assumption that the agency had misevaluated TERI's personnel experience using large business personnel. However, there was no basis for assuming such a specific type of misevaluation, since CRC did not have access to TERI's proposal or the evaluation materials. It was equally possible--based on the information disclosed on December 10--that any misevaluation (that resulted in an improper acceptable rating as CRC concluded) was simply an improper evaluation of TERI's small business personnel. CRC ignored this argument, opting instead to pursue its size protest through SBA. Because CRC could have, but did not, raise this argument within 10 working days after December 10, it now is untimely and will not be considered.

In any event, we find nothing in the record that would support CRC's allegations. AMC initially determined that 38 of the 67 resumes submitted with TERI's initial proposal did not demonstrate that the proposed employee met the requirements of the labor categories for which they were proposed; as a consequence, the agency found TERI's proposal in this area only to be "susceptible of being made acceptable." In response to detailed IFNs regarding the perceived resume deficiencies, TERI provided with its BAFO 20 pages of supplemental information, consisting of additional details on the education and experience of each individual named in the IFNs. Although CRC has been furnished copies of the resumes and other personnel information that TERI submitted with its proposal, CRC has not identified nor does our review reveal any proposed employees who lack the educational background and experience to meet the specification experience requirements and perform the contract. We find no basis to question AMC's determination that TERI's proposal was acceptable under the personnel experience subfactor.

The protest is denied in part and dismissed in part.


James F. Hinchman
General Counsel