

S. Riback



Comptroller General
of the United States

Washington, D.C. 20545

Decision

Matter of: OPSYS, Inc.

File: B-248260

Date: August 6, 1992

Richard L. Moorhouse, Esq., Dannels, Duvall & Porter, for the protester.

Kathleen F. Keenan for SRA Corporation, an interested party.
Mark K. Hingston, Esq., Department of the Treasury, for the agency.

Scott H. Riback, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

5)

DIGEST

Protest that agency improperly eliminated proposal from competitive range as technically unacceptable is denied where record shows that agency evaluators reasonably concluded that protester failed to exhibit an adequate technical understanding of the task environment and that proposal failed to explain how offered technical approaches would adequately address that environment, as required by the RFP.

DECISION

OPSYS, Inc. protests the elimination of its offer from the competitive range under request for proposals (RFP) No. A-91-15, issued by the Department of the Treasury to acquire telecommunications analytical support services. OPSYS argues that the agency improperly evaluated its proposal based on considerations not specified in the RFP and erroneously rejected its offer as technically unacceptable.

We deny the protest.

The RFP was issued to obtain a wide range of technical support services to be used on an as-needed basis in connection with the Treasury's acquisition of a major telecommunications system to replace and update its current system. The solicitation advised offerors that multiple indefinite quantity, indefinite delivery contract awards would result from the RFP and that work under the contracts would be performed in response to task orders issued by the agency. The RFP further advised that the acquisition was

being conducted as a partial small business set-aside; award was to be made to the lowest-priced, technically acceptable offerors in ascending order of price, with at least one small business offeror receiving a contract.

Offerors were required to submit with their technical proposals a management plan, a staffing plan, information regarding the firm's corporate experience, and a detailed description of the offeror's technical approach. Firms were also required to present a response to a sample task outlined in the RFP.

The solicitation contained four technical evaluation criteria, and their relative weights, as follows; understanding the requirement (40 out of a possible 100 points); personnel qualifications (20 points); prior experience (20 points); and management plan (20 points). The most heavily weighted criterion, understanding the requirement, is the most important for purposes of this protest. Under that criterion, the RFP contained the following narrative:

"The demonstrated assessment of the telecommunications support services requirements to include the telecommunications program environment within the Department, the nature of analytical support, the range of applicable technical approaches, and the quality of the offeror's response to the Sample Task Proposal Request."

In response to the solicitation, Treasury received 14 initial offers. OPSYS submitted the same proposal as alternate offers under both the small business set-aside and unrestricted portions of the acquisition. After evaluating and point-scoring the offers, the agency found that eight firms, including OPSYS, were within the competitive range. The scores of the competitive range offerors were as follows:

<u>Offeror</u>	<u>Point Score</u>
Offeror A	95
Offeror B	81
Offeror C	79
Offeror D	77
Offeror E	71
Offeror F	69
OPSYS	58
Offeror G	56

In establishing the competitive range, the agency's technical evaluators determined that proposals receiving a

score of 65 or more points were technically acceptable and proposals receiving between 50 and 64 points were technically unacceptable but susceptible of being made acceptable.

Treasury found that OPSYS' proposal (which, as noted above, received a score of 58 points) was technically unacceptable but susceptible of being made acceptable. In essence it found that, while OPSYS had demonstrated that it possessed the necessary resources and technical capabilities to perform the contract and had proposed an adequate technical approach in a general sense, the firm had failed to demonstrate either that it understood the Treasury or government telecommunications environment, or that it understood how to apply its capabilities and technical approach to the agency's specific requirements. The agency's judgment in this regard was based on its assessment of both OPSYS' technical description as well as the firm's response to the sample task.

The agency then engaged in discussions with the competitive range firms and solicited best and final offers (BAFO). In its discussion letter to OPSYS, Treasury posed two technical questions, both relating to the deficiency described above. Specifically, the letter stated that OPSYS' proposal failed to address the federal government telecommunications environment and entirely omitted any discussion of the Treasury environment. The letter further stated that OPSYS' response to the sample task failed to convey a convincing understanding of the task environment.

In response to the discussion questions, OPSYS submitted supplemental technical materials along with its BAFO. After evaluating the supplemental materials, Treasury concluded that OPSYS' proposal was still technically unacceptable and thus eliminated it from the competitive range. Treasury based this action on its finding that OPSYS had not addressed the deficiency initially identified, that is, that its proposal failed to demonstrate how the firm would apply its technical capabilities and approach to the government telecommunications environment, specifically, to Treasury's environment. The agency found in this regard that OPSYS' revised proposal reflected an inaccurate understanding of the organizational roles, responsibilities and controls typical of a government agency telecommunications program; this conclusion was based on OPSYS' inaccurate description of the structure of Treasury's information systems management organization. Finally, the agency found that the revised OPSYS response to the sample task still failed to convey a convincing understanding of the task environment. Based on these conclusions, the agency assigned the OPSYS proposal a final technical score of 48.

OPSYS argues that it improperly was excluded from the competitive range because the agency unreasonably downgraded its proposal for failing to provide information which was not called for under the RFP. Specifically, OPSYS alleges that the detailed treatment of the government and Treasury telecommunications environments that Treasury was looking for in fact was not required; that its proposal contained a general discussion of the government telecommunications environment adequate under the terms of the RFP; and that the RFP did not require a demonstration of how a firm's technical capabilities and approach would be applied to that environment.¹ OPSYS cites amendment No. 2 to the RFP in support of its position that an in-depth treatment was not required. That amendment contained responses to offerors' questions regarding the terms of the RFP, and one of those questions dealt with the level of specificity expected of offerors in addressing the Treasury telecommunications environment. Treasury's response to that question provided that the RFP:

" . . . does not require an offeror to present a comprehensive discussion of telecommunications systems currently in use by the Department. It is expected that offerors will be able to demonstrate an understanding of the present and future telecommunications environment in which the agencies of the federal government plan, provide, operate and manage telecommunications systems and services."

According to OPSYS, this language led it to believe that only a general discussion of the telecommunications environments was necessary.¹ OPSYS cites several areas of its proposal which it believes demonstrate an adequate general understanding of the government telecommunications environment. OPSYS maintains that only an incumbent could have provided the level of detail which Treasury suggests was called for under the RFP.

Treasury maintains that the requirement for firms to demonstrate an understanding of the Treasury and government telecommunications environments as well as an ability to apply their expertise to the Treasury environment were adequately conveyed to OPSYS by the terms of the solicitation and by the agency's discussion questions. Treasury concludes that it reasonably found the OPSYS

¹OPSYS also argues that the agency should have performed separate technical evaluations on the proposals received from small businesses and large businesses. However, there is no requirement that agencies evaluate proposals in this manner.

proposal technically unacceptable for failing to adequately demonstrate these two factors, and therefore reasonably determined that OPSYS was outside of the competitive range.

The evaluation of proposals and the resulting determination of whether a firm is within the competitive range is a matter within the discretion of the contracting agency, since the agency is responsible for defining its needs and the best method of accommodating them. Drytech, Inc., B-246152.2, Feb. 24, 1992, 92-1 CPD ¶ 217. In cases where an agency's technical evaluation is challenged, we will not reevaluate the proposal; our review is limited to ensuring that the agency's evaluation is not clearly unreasonable or in violation of procurement statutes and regulations. Id. Where a protester alleges that an agency failed to evaluate its proposal in accordance with the terms of the RFP, we read the solicitation as a whole in order to determine whether the agency's evaluation comported with the RFP's terms. See Frequency Eng'g Laboratories, B-212516, Feb. 7, 1984, 84-1 CPD ¶151.

We find that Treasury's evaluation of OPSYS' proposal was reasonable and in accordance with the terms of the solicitation.

First, the agency's consideration of whether OPSYS demonstrated an understanding of the government's and Treasury's telecommunications environments, and whether it showed how it would apply its technical approach and capabilities, was proper. The RFP's understanding the requirement criterion called for offerors to demonstrate their ability to assess the agency's telecommunications support requirements within the "program environment" and to provide a "range of applicable technical approaches." Section M of the solicitation further required offerors to provide "a description of the approaches/techniques/solutions/processes proposed to satisfy the technical requirements," and warned that "generic" information would score lower than information "well tailored" to the Treasury environment. Finally, the instructions to offerors required firms to describe the "technical approaches to be taken to fulfill the (potential) work requirements."

These solicitation provisions, read together, required offerors to address how their proposed approaches would satisfy the work requirements within the Treasury environment. While amendment No. 2 did not require offerors to provide a "comprehensive discussion" of all of Treasury's present telecommunications systems, offerors clearly were on notice that Treasury was looking for specific, rather than generic, treatment of this subject, and that the agency would give consideration not only to offerors' capabilities and expertise in the abstract, but also to offerors'

demonstrated ability to apply their capabilities and expertise to the Treasury environment. The language of amendment No. 2 similarly made it clear that consideration would be given to the demonstrated understanding of the telecommunications environments of "agencies of the federal government" generally. We conclude that Treasury's evaluation of OPSYS' proposal with a view to these considerations was proper.

Further, we find that Treasury's evaluation of OPSYS' proposal as not satisfying the above requirements was reasonable. The agency's primary concern was that OPSYS failed to demonstrate how it would address the work requirements peculiar to the task environment, that is, how OPSYS would apply its technical capabilities and approach to performance of the Treasury contract. We have thoroughly reviewed OPSYS' proposal and find that this concern was justified. Much of the firm's proposal is devoted to an identification of prospective problems. For example, in discussing the agency's requirements for the Internal Revenue Service (IRS), OPSYS describes in relative detail the systems currently being used by IRS as well as that bureau's prospective system needs given its new and ongoing programs. However, the proposal does not go on to describe OPSYS' proposed technical approach or solution for these problems. This pattern--the identification of a potential telecommunications requirement without the proposal of a technical approach to address it--is consistent throughout the firm's proposal, and OPSYS has not demonstrated in its protest that the evaluators' identification of this deficiency was unreasonable.

In addition to OPSYS' failure to identify proposed solutions to identified problems, as indicated above, OPSYS' revised proposal was found to reflect an inaccurate understanding of the organizational roles, responsibilities and controls associated with telecommunications program management typical of a large government agency. In this regard, the evaluators found that OPSYS' revised proposal contained "erroneous statements about the level of control, departmental management and the qualifications of departmental managers," and a "blatant misconception" of the agency, and also reflected "a total lack of understanding." OPSYS does not argue that this aspect of the evaluation of its revised proposal is inaccurate, but again argues only that it was not required to exhibit such an understanding and that only an incumbent could have shown this level of detail.² However, this understanding clearly was

²While it may have been easier for an incumbent to comply with this aspect of the RFP, Treasury was not required to
(continued...)

encompassed by the understanding the requirement criterion, as discussed above. Since we find no other basis for questioning either the agency's conclusion that OPSYS' response revealed an inaccurate understanding or the rest of the evaluation, we conclude that the agency reasonably determined that OPSYS' proposal was technically unacceptable.¹

OPSYS raises the additional argument that, since the RFP provided for award to the offerors submitting the lowest-priced, technically acceptable proposals (rather than to the offerors submitting proposals representing the best overall value to the government), the evaluation scheme here was essentially a pass/fail scheme under which it was merely required to demonstrate its technical acceptability and not its technical superiority. OPSYS alleges that it did in fact demonstrate its technical acceptability (as evidenced by the evaluators' findings that the firm had proposed an "adequate" technical approach and had the necessary technical capabilities) and that the agency erred in establishing an arbitrary point-score cutoff for purposes of determining the competitive range.

We find nothing improper in evaluation approach used here. Agencies may properly use point-scoring in their evaluation of proposals, even in acquisitions providing for award to the lowest priced, technically acceptable proposal, if doing so provides a useful tool for discerning between technically acceptable and unacceptable proposals. See HospitalKlean, Inc., B-245158, et al., Dec. 17, 1991, 91-2 CPD ¶550. When point scores are employed, our Office views them merely as

²(...continued)

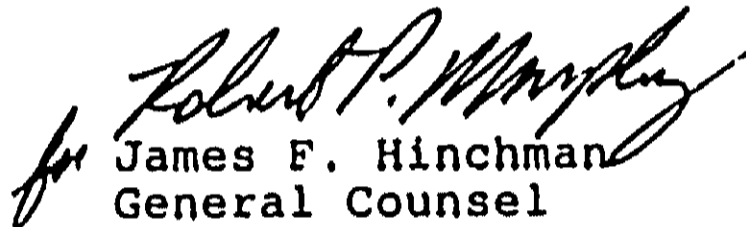
relax its minimum needs in order to equalize competition between firms, since there is nothing legally objectionable about an incumbent's competitive advantage, so long as it does not result from unfair action by the government. See generally, National Credit Union Admin.; Schreiner, Legge & Co.--Recon., B-244680.2; B-244680.3, Apr. 1, 1992, 92-1 CPD ¶ 329.

³OPSYS also contends that its removal from the competitive range left only one small business offeror and that, consequently, we should apply a "close scrutiny" standard to our review of the agency's evaluation. See e.g., Information Ventures, Inc., B-243929, Sept. 9, 1991, 91-2 CPD ¶ 227. Even under this standard, however, protesters must show that an agency's evaluation was either unreasonable or in violation of statute or regulation, id.; OPSYS has not done so in this case.

guides to intelligent decision making. See generally, Califone International, Inc., B-246233; B-246233.2, Feb. 25, 1992, 92-1 CPD ¶226.

In this case, the record shows that the evaluators found proposals receiving a point score of 65 or more to be technically acceptable; this determination was made after all proposals had been evaluated, and was established in light of both the point scores and the narrative evaluation results. In this regard, the record contains the evaluators' competitive range recommendation to the contracting officer which states "the results of the technical evaluation support the panel's determination that proposals which scored 65 points and above are technically acceptable. . . ." Thus, contrary to OPSYS' assertion, the 65 point cutoff was not arbitrary, but instead represented the evaluators' reasoned judgment regarding what point score reflected the threshold of technical acceptability.

The protest is denied.


for James F. Hinchman
General Counsel