



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

REDACTED VERSION

Decision

Matter of: T. Head & Company, Inc.
File: B-250897
Date: February 24, 1993

Michael A. Hordell, Esq., and Eric L. Lipman, Esq., Petrillo & Hordell, for the protester.
Alan M. Grayson, Esq., for the Digicon Corporation, an interested party.
Eileen G. Ginsburg, Esq., Department of the Army, for the agency.
Aldo A. Benejam, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency properly accepted offer to provide technical support services which proposed a reduction in labor hours from the government's estimates, where the solicitation advised offerors that they could independently propose the amount of professional and support staff they believed necessary to perform the work.

DECISION

T. Head & Company, Inc. (THC) protests the award of a contract to the incumbent, the Digicon Corporation, under request for proposals (RFP) No. MDA903-92-R-0074, issued by the Defense Supply Service-Washington (DSS-W) for technical support services. THC contends that the agency improperly accepted Digicon's offer for an alternate approach that represents a reduced level of effort, significantly below the total number of labor hours contemplated by the RFP, without affording other offerors the same opportunity.

We deny the protest.

The decision issued on February 24, 1993, contained proprietary information and was subject to a General Accounting Office protective order. This version of the decision has been redacted.

BACKGROUND

DSS-W issued the RFP on August 11, 1992, to 258 firms identified by the Small Business Administration as certified under section 8(a) of the Small Business Act, 15 U.S.C. § 637(a) (1988 and Supp. III 1991). The RFP sought proposals for Broadband Cable Network Operational, Managerial, and Planning support for DSS-W's Information Systems Command-Pentagon. The RFP contemplated the award of a combination firm, fixed-price and indefinite quantity/indefinite delivery contract for a 12-month base period, with up to two 1-year option periods.¹

Section B of the RFP identified the fixed-price requirements of the contract as Network Management Center Operation and Management (task 1) and Broadband Cable Network Operations (task 2), contract line item numbers (CLIN) 0001 and 0002, respectively. As a guide for offerors in estimating the type and number of staff required, attachment No. 10 of the RFP, as amended, listed estimated hours and skill levels for each of six labor categories under CLIN 0001 and for each of 24 labor categories under CLIN 0002 (referred to as mandatory tasks), for a combined total of 74,880 estimated labor hours.

Offerors were required to submit separate technical and business proposals. For the base contract term and for each option period, offerors were required to submit firm, fixed-prices for CLINs 0001 and 0002, and a total price for those two CLINs. For each contract term, the RFP also required offerors to submit hourly wage rates for each of 19 different labor categories identified as "OPTIONAL CLINs," the indefinite quantity work.² Section J, attachment No. 10 also listed estimated hours corresponding to each of the labor categories under the optional CLINs.

Section M of the RFP listed the following areas for evaluation: overall methodology and underlying philosophy; tasks/subtasks that are consistent with the overall methodology and reflect a full understanding of the scope and complexity of the requirement; the use of appropriate analytical techniques and tools, and their application to respective tasks/subtasks; corporate experience; and personnel

¹Digicon has been providing these services since October 1, 1991.

²These CLINs essentially represent additional hours for each of 19 skilled technicians out of the 24 labor categories listed in attachment No. 10 under CLIN 0002, which the agency would have the option of ordering at the offeror's hourly rate.

skills, resumes, and staffing plan. The RFP stated that for each offeror, the agency would derive a total price that would include all mandatory and optional CLINs for the base and option periods.³ Award was to be made to the responsible offeror that submitted the overall lowest priced, technically acceptable offer.

Three firms, including the protester and the awardee, submitted proposals by the September 11, 1992, closing date; all were included within the competitive range. Following discussions, DSS-W requested best and final offers (BAFO) from all three offerors. Based upon the results of the evaluation of BAFOs, the contracting officer awarded the contract to Digicon as the overall lowest priced, technically acceptable offeror.

PROTESTER'S CONTENTIONS

THC contends that DSS-W improperly accepted Digicon's offer at a level of effort significantly below that contemplated by the RFP, without affording other offerors the same opportunity. The protester maintains that by allowing Digicon to significantly depart from the labor categories and total estimated hours described in the RFP, DSS-W improperly permitted Digicon to achieve an unfair price advantage over other offerors.⁴ THC argues that if DSS-W considered Digicon's approach acceptable, then the agency was required to either revise the RFP to reflect its actual minimum needs, or otherwise notify all offerors that the agency's needs could be met with an alternative approach.

AGENCY'S POSITION

The agency concedes that Digicon eliminated several labor categories listed in the RFP, thereby significantly reducing the total number of labor hours estimated in attachment No. 10. The agency maintains, however, that contrary to the protester's arguments, offerors were not required to propose the same level of effort as that described in attachment No. 10. The agency argues that attachment No. 10 contains "estimates" only, and that the RFP specifically informed offerors that they could propose the amount of professional

³That is, to evaluate prices for optional CLINs, the Army would multiply the proposed hourly wage rates for each optional CLIN by the estimated hours listed in attachment No. 10 for the base and option terms.

⁴THC notes that based on its total evaluated price, the only other offeror must have also interpreted the solicitation as requiring offerors to submit an approach based upon the estimates in attachment No. 10.

and support labor they believed necessary to comply with all of the mandatory tasks. DSS-W also asserts that it reminded offerors during discussions that deviations from the agency's estimates would be permitted. DSS-W concludes that, in any event, since a firm, fixed-price contract was awarded, Digicon is required to perform all mandatory requirements, and that the firm bears the risks of any additional costs if its proposed approach is overly optimistic.

DISCUSSION

In negotiated procurements, unless specifically prohibited by the solicitation, offerors are generally not precluded from proposing to meet an agency's minimum needs with staffing levels different from the government's estimates, so long as the proposal reasonably explains how the work will be accomplished in view of the differences. See, e.g., Tate-Griffin Joint Venture, B-241377.2, Jan. 7, 1992, 92-1 CPD ¶ 29; Pan Am World Servs., Inc. et al., B-231840 et al., Nov. 7, 1988, 88-2 CPD ¶ 446; Economic Consulting Servs., Inc., B-229895, Apr. 8, 1988, 88-1 CPD ¶ 351. Here, we think the RFP, together with the agency's BAFO request letter, reasonably conveyed to offerors that they were not required to propose an approach that included all of the types and number of staff listed in attachment No. 10.

Section L-4 of the RFP instructed offerors as follows:

"It is the [g]overnment's estimate that to perform the work described herein (reference mandatory line items) . . . the following amount of professional labor should be expended. See Section J, Attachment No. 10.

"This should not limit the offeror from independently proposing the amount of professional and support labor believed necessary to complete all necessary work. . . ."

This provision clearly placed offerors on notice that the RFP contained labor hour estimates for informational purposes only, and specifically authorized offerors to "independently" propose alternative approaches, as long as they reasonably explained how all necessary work (i.e., the mandatory tasks) would be accomplished. In addition, the RFP's statement of work was written in functional, performance-oriented terms.

To reconfirm that the agency would consider approaches that deviated from the estimates, the agency included the following statement in its letter requesting a BAFO from the protester:

"3. Reference is made to the mandatory CLINs, offeror shall acknowledge that all requirements identified by the government in this RFP shall be required deliverables even if offeror proposes different numbers and types of personnel than that estimated by the government in [s]ection J, [a]ttachment 10." [Emphasis added.]

THC was thus on notice that the agency would consider other approaches to meeting its needs that did not include the exact number and types of personnel listed in the RFP, and that offerors could deviate from the agency's estimates as they deemed appropriate.

THC primarily relies on our decision in Labat-Anderson, Inc., 71 Comp. Gen. 252 (1992), 92-1 CPD ¶ 193, to argue that since Digicon's offer represents a significantly different approach from that contemplated by the RFP, the agency was required to either amend the RFP or engage in further discussions. THC also contends that if Digicon's approach was acceptable, the agency's estimates of labor hours as depicted in attachment No. 10 must be flawed.

THC's reliance on our decision in Labat-Anderson is misplaced. In that case, unlike here, the RFP contemplated the award of a cost-plus-fixed-fee contract and specified that the requirement would be performed with "a staff of six professionals." The RFP specifically instructed that offerors were to "keep the staff lean." In view of that express language in the RFP, we found that the agency's acceptance of the awardee's proposal with an additional professional position, resulting in an approximate \$400,000 increase in cost, without affording all other competitive range firms a similar opportunity, was improper.

The facts in this case are clearly distinguishable from the situation in Labat-Anderson. The RFP here did not specify that the work had to be performed with the type of staff depicted in attachment No. 10, nor did it require a specific number of personnel. In fact, THC itself proposed fewer total hours than the agency's estimates, making it clear that the protester understood that the RFP allowed offerors to propose fewer hours than estimated in attachment No. 10. The fact that Digicon proposed an innovative approach that resulted in fewer total hours than depicted in the government's estimates, and less than THC proposed, does not make the award improper nor render the agency's estimates, based upon its experience, defective.

The agency was not required to mitigate any advantages Digicon may have gained as a result of its incumbency. It is not unusual for an offeror to enjoy an advantage in competing for a government contract by reason of incumbency, and there is no requirement for agencies to equalize or discount such advantage, so long as the advantage is not the result of preferential treatment or other unfair action by the government. See Liberty Assocs., Inc., B-232650, Jan. 11, 1989, 89-1 CPD ¶ 29. As already discussed, offerors here clearly were on notice that the agency would consider alternative solutions. THC was not in any way precluded from applying its business judgment to design an approach that used fewer hours than listed in the RFP. Given the flexibility afforded offerors, and since award was to be made on the basis of the overall lowest priced, technically acceptable proposal, the RFP essentially challenged offerors to propose approaches that would be both technically acceptable and competitively priced. The fact that Digicon may have used the knowledge it gained through its incumbency to do just that, and submitted the successful proposal, does not warrant disturbing the award.

The protest is denied.

James F. Hinchman
General Counsel