



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

Decision

REDACTED VERSION

Matter of: TECOM, Inc.
File: B-251366
Date: April 1, 1993

Ronald H. Uscher, Esq., Bastianelli, Brown & Touhey, for the protester.
Peter M. Kilcullen, Esq., Kilcullen, Wilson and Kilcullen, for CACI Field Services, Inc., an interested party.
Joseph M. Goldstein, Esq., Department of the Air Force, for the agency.
Mary G. Curcio, Esq., and John G. Brosnan, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that agency failed to evaluate proposals in accordance with the evaluation criteria stated in the solicitation is denied where review of the record shows that the agency did in fact follow the stated evaluation criteria.
2. Where proposal was considered technically acceptable, agency was not required to discuss with protester each area of the proposal that received less than the maximum possible rating.
3. Selection of awardee on the basis of its overall technical superiority, notwithstanding its 13 percent higher price, is unobjectionable where solicitation provided that technical considerations were more important than price and the agency reasonably concluded that technical superiority of awardee's proposal was worth the price premium.

DECISION

TECOM, Inc. protests the award of a contract to CACI Field Services, Inc. under request for proposals (RFP) No. F41612-92-R0001, issued by the Department of the Air Force for management, personnel and services to operate the standard

The decision issued on April 1, 1993, contained proprietary information and was subject to a General Accounting Office protective order. This version of the decision has been redacted. Deletions in text are indicated by "[deleted]."

base supply system, ground fuel operations, and military service station at Sheppard Air Force Base. TECOM asserts that the Air Force did not evaluate proposals in accordance with the criteria stated in the solicitation, did not hold meaningful discussions with it, and failed to perform an adequate price/technical tradeoff.

We deny the protest.

The RFP, issued on March 19, 1992, contemplated the award of a fixed-price incentive contract. The RFP provided that the proposals would be evaluated in two areas, technical and price, and listed four items, in descending order of importance, that would be evaluated in the technical area: manpower and organization, understanding the mission, mobilization plan, and past experience. All of the listed items were followed by a number of evaluation factors, and each item and factor was to be used to evaluate the proposals in each of two functional areas, supply and fuel. The proposals were to be evaluated by a Source Selection Evaluation Team (SSET) consisting of a technical team to review the technical proposals by assigning each factor and item a color rating and a risk rating,¹ and a contract team to evaluate the price proposals for completeness, realism, reasonableness, and risk. The RFP provided that in the final selection technical factors would be more important than price.

The Air Force received proposals from nine offerors, including CACI and TECOM, by the June 15 closing date. After the initial evaluation, all nine offerors were included in the competitive range and were sent clarification requests and deficiency reports with responses due by August 31. After receiving the responses, a second round of evaluations was conducted and best and final offers (BAFO) requested. After reviewing the BAFOs, the SSET prepared a proposal analysis report which detailed the strengths, weaknesses, and risks of each proposal and the resulting color ratings as well as the prices. The report and a briefing were provided to the Source Selection Authority (SSA). After his review, the SSA noted that while seven of the proposals in the competitive range, including

¹The ratings used were blue/exceptional-exceeds the requirements, high probability of success, no significant weaknesses; green/acceptable-meets standards, good probability of success, weaknesses can be readily corrected; yellow/marginal-fails to meet standards, low probability of success; significant but correctable deficiencies; red/unacceptable-fails to meet minimum requirements, needs a major revision.

that of TECOM, were acceptable when measured against the RFP criteria, the proposal from CACI was exceptional and clearly technically superior. Despite CACI's price of \$12,974,438, which was higher than TECOM's price of [deleted]; the SSA concluded that CACI's higher rated proposal represented the best value to the government. Accordingly, the contract was awarded to CACI on November 10. This protest followed.

FAILURE TO FOLLOW THE EVALUATION CRITERIA

TECOM argues that the Air Force evaluated proposals on the basis of anticipated future requirements which would result from the transfer of operations to Sheppard from other Air Force bases that would soon be closed, rather than on the basis of the estimated work load stated in the RFP. To support this position, TECOM explains that the evaluators concluded, among other things, that TECOM's supply area staffing was very limited in the option years, and that TECOM failed to provide a plan for dealing with exceptions to the adequacy of government furnished equipment and facilities. According to TECOM, this concern with staffing in the option years, and with the government furnished equipment and facilities, was the result of the agency's belief that TECOM's proposed effort would not be adequate to meet the agency's unstated future needs.

TECOM states that its position is bolstered by the comments in the evaluation record that CACI "provided a realistic assessment of the most significant potential contract performance challenges which may occur after the start of the contract," and that CACI "acknowledges the impact of base closures" on Sheppard and that the firm "listed viable solutions" to the "challenges" that would impact on contract performance. TECOM asserts that since CACI was the incumbent, it alone was privy to the anticipated changes and their impact on the scope of work and was thus most able to prepare a proposal that took them into account. According to the protester, the Air Force's decision to consider CACI's proposed approach in the context of these anticipated changes, which were not made a part of the RFP, harmed TECOM and was improper.

Our review of the record does not show that the Air Force based its evaluation on anticipated future needs. While CACI in its proposal did acknowledge that the base closings would have some impact on the future performance of the contract and proposed possible solutions for the changes, we can find nothing in the firm's proposal that in any way evidences that CACI had some knowledge, not available to the other offerors, concerning the details of the anticipated changes and despite the fact that the protester was provided CACI's proposal under a protective order issued by our Office, the protester has pointed out no such evidence.

More important, the evaluators' comments, which the protester argues support its position, are set forth in connection with the mission understanding factor for supply under which the protester received a higher rating than did CACI.

It is common knowledge that the Air Force will be closing certain bases and that these closings will affect performance of the Sheppard contract since certain functions from the closed bases may be transferred there. Indeed, TECOM itself acknowledged in its proposal that the base closings could affect performance of the contract. Consequently, the evaluators' comments (that CACI provided a realistic assessment of the most significant potential challenges which may occur after the start of the contract, acknowledged the impact of the base closings on Sheppard, and listed viable solutions to the challenges raised) do not establish that the firm had information not available to other offerors or that the agency based its evaluation on some unspecified estimate of its future needs.

Nor does TECOM's argument that the evaluators' concern regarding staffing for the option years or treatment of government furnished equipment and facilities show that the Air Force evaluated TECOM's proposal based on its unstated future needs. Rather, the record shows that the evaluators' concerns were unrelated to anticipated future needs. The concern with TECOM's proposed staffing involved the base period as well as the option years, while the problem with TECOM's approach to the government furnished equipment and facilities was its failure to propose a plan for dealing with potential problems in this area.

DISCUSSIONS

TECOM complains that the Air Force failed to conduct meaningful discussions with it. In this regard, the protester points out that during discussions, the Air Force raised only two "minor" concerns with the firm's proposal: (1) whether TECOM understood that the RFP required the base service station to be staffed during holidays; and (2) whether the firm had adequate personnel to staff the storage and distribution operations and to also cover all fuels areas. TECOM argues that in addition to these points, the Air Force found a number of "deficiencies" in the firm's proposal which should have been, but were not, brought to its attention during discussions. Specifically, TECOM states that the evaluators' concerns regarding (1) its overall staffing for the supply area, including under and over-staffing in certain areas; [deleted]. In addition, TECOM asserts that the record shows that the Air Force evaluators did not understand certain employee titles proposed by TECOM and failed to request clarification.

The Air Force responds that it did not discuss these areas with TECOM because they completely met the requirements of the solicitation and did not affect the acceptability of the firm's proposal. That is, while these areas in TECOM's proposal were unexceptional, they did not lead the Air Force to conclude that TECOM would be an unacceptable contractor. Specifically, the Air Force states that: (1) TECOM's staffing in the supply area was within the acceptable range but not optimal; (2) TECOM's organizational structure while acceptable could potentially cause some efficiency problems; (3) TECOM's equipment and facility transfer plan was adequate but would have been improved [deleted]; and (4) TECOM's failure to provide a plan to handle problems with government furnished equipment and facilities made the proposal less than exceptional.

The requirement for meaningful discussions involves advising offerors of weaknesses, excesses, or deficiencies in their proposals unless doing so would result either in disclosure of one offeror's technical approach to another or in technical leveling, and by offering them the opportunity to satisfy the government's requirements through the submission of revised proposals. Agencies are not, however, obligated to afford offerors all-encompassing discussions or to discuss every aspect of a technically acceptable, competitive range proposal that receives less than the maximum possible rating. General Servs. Eng'g, Inc., B-245458, Jan. 9, 1992, 92-1 CPD ¶ 44.

Here, we conclude that the discussions with TECOM were meaningful. The record shows that after the initial evaluation, TECOM's proposal was given an overall rating of acceptable but the evaluators found, in order for the proposal to ultimately qualify for award, deficiencies concerning TECOM's failure to show that it intended to staff the base service station during holidays and its proposed staffing for the storage and distribution operations as well as fuels areas needed to be addressed. During discussions, the Air Force asked TECOM questions designed to provide TECOM with the opportunity to correct these problems. On the other hand, the matters which TECOM argues should have been the subject of discussions [were considered] acceptable but not sufficiently advantageous to result in an exceptional rating. While these represented areas in which the evaluators found that TECOM's proposal did not reach a level that warranted a rating of exceptional, separately and together they were not considered sufficient to eliminate TECOM from having a reasonable chance of receiving the award. For example, during the SSET's debriefing of the SSA, the SSA seriously considered TECOM's proposal for award, specifically questioning the SSET concerning the difference in price between CACI and TECOM and mentioning TECOM's technical rating.

Our review of the record further established that CACI and TECOM were treated equally--there were no discussions with CACI in all the areas in which its proposal was marginally weak either. The agency requested both offerors to clarify unclear areas of their proposals and respond to areas in their proposals that did not meet the requirements of the solicitation. It did not in either case point out deficiencies or weaknesses in areas that were considered acceptable but were not exceptional. Under these circumstances, while we believe it would have been reasonable for the Air Force to have pointed out to TECOM the weaknesses identified in its proposal, the agency was under no legal obligation to do so.

TECOM argues in the alternative that even if, under the general rules, the Air Force was not obligated to point out these matters, under the particular terms of this solicitation, the agency was required to provide offerors the opportunity to improve their proposals. In support of this position, TECOM relies on clause M.3.c of the RFP which provides, "[i]f several responsible offerors submit proposals which are grouped so that a moderate change in the price or the technical proposals or both would make any one of the groups the most advantageous offeror to the government, further negotiation shall be conducted with all prospective contractors in the group. . . ." It is the protester's view that this clause obligated the agency to point out to an offeror any aspect of its proposal which could be improved by "moderate" changes so that the overall proposal could be made exceptional.

In our view, the only reasonable interpretation of this clause, which followed a paragraph stating that award may be made on the basis of initial proposals, without discussions, is that it was the result of a somewhat confused effort to explain the conditions under which the agency would hold discussions as opposed to making award on the basis of the initial proposals. The cited clause, when read in conjunction with the preceding paragraph reserving to the agency the option to make award on the basis of initial proposals, is no more than an attempt to inform offerors that the agency will establish a competitive range of those proposals which have the potential to be selected for award, without major revisions, but that, if the agency found that one proposal was clearly superior from a price and technical viewpoint based on its initial evaluation, the agency would not hold discussions. We do not think that the clause can be reasonably considered as an attempt by the agency to change the general rules concerning the extent and content of discussions.

AWARD SELECTION

TECOM argues that the Air Force did not properly consider the fact that CACI's price was 13 percent higher than TECOM's in deciding to make award to CACI. Thus, according to TECOM, even though CACI's proposal received an overall rating of exceptional in comparison to TECOM's rating of acceptable, the Air Force did not give appropriate weight to TECOM's acceptable proposal, which represented a low risk of performance problems and had a lower price.

In a negotiated procurement, the contract need not be awarded to the low priced acceptable offeror unless the solicitation so provides. Agency officials have broad discretion in determining the manner and extent to which they will make use of technical and price evaluation results. Price/technical tradeoffs may be made subject only to the test of rationality and consistency with the established evaluation factors. Award may be made to a higher rated, higher priced offeror where the decision is consistent with the evaluation factors and the agency reasonably concludes that the technical superiority of the higher priced offer outweighs the price difference. Sabreliner Corp., B-242023; B-242023.2, Mar. 25, 1991, 91-1 CPD ¶ 326.

Here, we find that the Air Force performed an adequate price/technical tradeoff and reasonably chose CACI's higher priced proposal for award. The SSA specifically recognized that CACI did not offer the lowest price, but concluded that the higher price was offset by CACI's "clearly technically superior" proposal. More specifically, the SSA stated that CACI's proposal exceeded or met the evaluation criteria for all items; proposed staffing that was "exceptionally" supported under each specific skill, shift, and organizational element; covered the accomplishment of the performance work statement requirements "with thorough detail"; proposed a training and certification plan that was thorough, realistic, and which had under the prior contract for these services proven to be extremely successful; and provided an outstanding staffing plan for contract start, and a recruitment plan with "superb backup support" and alternative, qualified applicants identified for most positions which virtually eliminated all mobilization risk. In addition, he noted CACI's past experience was exceptional. Further, in this respect, the record shows that of the eight evaluation items, CACI received exceptional ratings in six and acceptable ratings in two. TECOM, on the other hand, received exceptional ratings in only two, acceptable ratings in five, and a marginal rating in one item, supply area manpower and organization, which was the most important technical evaluation item. Under these circumstances, and considering that under the RFP

technical factors were to be weighted more heavily than price, we have no basis to conclude that price was not given sufficient consideration in the final selection or that the SSA's award decision was inconsistent with either the evaluation of the proposals or the RFP criteria.

The protest denied.

James F. Hinchman
General Counsel