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

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Decision

Matter of: Koba Associates, Inc.

File: B-251356

Date: March 25, 1993

Keith R. Malley, Esq., for the protester.
Eileen Ginsburg, Esq., Department of the Army, for the agency.
Barbara C. Coles, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Notwithstanding greater importance of technical factors in overall evaluation scheme, agency may award contract to a lower priced offeror where the record establishes that the contracting officer reasonably determined that proposals were essentially equal technically.
2. Protest that agency failed to adequately analyze low-priced offeror's proposed price under solicitation for time and materials contract is denied where the agency's evaluation was reasonably based on comparison of the offeror's proposed price and the predecessor contractor's actual costs.

DECISION

Koba Associates, Inc. protests the award of a contract to Diversified Reporting Services under request for proposals (RFP) No. MDA903-92-R-0004, issued by the Department of the Army for stenographic services for the White House Press Office. Koba principally contends that the agency improperly selected Diversified on the basis of its lower price after a determination that the two proposals were essentially equal from a technical standpoint, despite the fact that the stated evaluation factors emphasized technical superiority, and Koba's proposal was technically superior.

We deny the protest.

The solicitation contemplated the award of a firm, fixed-price time and materials type contract to provide the White House Communications Agency with stenographic services. The

RFP advised offerors that the government would provide 12 computers and 6 printers and the contractor was required to furnish necessary equipment and supplies including, but not limited to, typewriters and audio tapes. The solicitation stated that award would be made to the offeror whose proposal is the "best overall response," considering price and other factors.

The RFP listed the following evaluation factors: (1) understanding the requirement; (2) experience and qualifications; (3) technical approach and daily schedule; and (4) work and management plan. With regard to price, the solicitation stated that the agency would evaluate price to determine whether it reflects the prospective contractor's understanding of the project and ability to successfully organize and perform the contract; is based on adequate estimating procedures and is supported and realistic in terms of the offeror's proposed technical approach; and is reasonable when compared to any similar complex efforts. The solicitation also advised that price would not be assigned numerical weight and would be subordinate to the technical considerations.

By the January 8, 1992, closing date, three firms submitted proposals. After an initial evaluation, the technical evaluation panel determined that two of the proposals, Koba's and Diversified's, were within the competitive range; Koba received 93 points and Diversified received 87.2 points. The panel then evaluated the offerors' proposed prices. Based on its consideration of the technical and evaluation proposals, the panel recommended award to Diversified. On September 8, the agency requested best and final offers (BAFO).

The agency received BAFOs from Koba and Diversified. Koba submitted the high offer of \$2,673,681 and Diversified submitted the low offer of \$2,501,930. Based on the panel's determination that both of their proposals were excellent and its recommendation to award to either offeror, the contracting officer selected Diversified. Koba filed a protest with our Office on November 18, primarily challenging the agency's technical evaluation. Koba contends that the agency failed to award the contract in accordance with the evaluation criteria in the RFP. To support its claim, Koba argues that because the RFP stated that technical merit was more important than price, the Army was required to award the contract to the technically superior offeror. Koba argues that its proposal was in fact technically superior to the proposal of Diversified and that the technical evaluation panel improperly determined otherwise. In this

regard, Koba asserts that the 6-point difference in the technical scores of the two firms demonstrates that its proposal was superior to Diversified's. Koba notes that the evaluators made many superlative comments concerning its technical proposal and concludes that these comments show that its proposal was technically superior. Finally, the protester argues that the record does not support the agency's determination that the competing proposals were essentially technically equal because the term "technically equal" was not used by the evaluation panel members or the contracting officer, but rather was used only after the protest was filed.

As for Koba's suggestion that the Army improperly considered price in its award decision, the Army was not required to award the contract to the offeror receiving the highest technical score without regard to price. Koba's belief that price would not be considered here is inconsistent with the text of the solicitation--which stated that award would be based on the "best overall response," considering price and other factors--and the Competition in Contracting Act of 1984, which requires that price be considered in each procurement. See 10 U.S.C. § 2305(b) (1992); Federal Acquisition Regulation (FAR) § 15.605(b); Wyle Laboratories, Inc.; Latecoere Int'l Inc., 69 Comp. Gen. 648 (1990), 90-2 CPD ¶ 107.

The Army reports that it considered the proposals of Koba and Diversified to be essentially equal technically, and concluded that the award should be made to Diversified on the basis of price for that reason. Where selection officials reasonably regard proposals as being essentially equal technically, price may become the determining factor in making an award decision notwithstanding the fact that the evaluation criteria assigned price less importance than technical considerations. See Warren Elec. Constr. Corp., B-236173.4; B-236173.5, July 16, 1990, 90-2 CPD ¶ 34. Whether a given point spread between competing offerors indicates significant superiority of one proposal over another depends on the facts and circumstances of each procurement. While technical point scores and descriptive ratings must be considered by source selection officials in making this determination, they are not bound thereby; rather, source selection officials must determine if they agree that the point scores are indicative of technical superiority and what the difference may mean in contract performance. Merdan Group, Inc., B-231880.3, Feb. 28, 1989, 89-1 CPD ¶ 210.

In reviewing evaluations, our Office will examine the record to determine whether the agency's judgment was reasonable and consistent with the evaluation scheme. Id. Here, our review of the record indicates no basis on which to object to the Army's determination that the technical proposals of Koba and Diversified were essentially equal technically. First, the relative total point scores, Koba with 93 and Diversified with 87, out of 100 points (a 5 percent difference), clearly support this conclusion. See Lockheed Corp., B-199741.2, July 31, 1981, 81-2 CPD ¶ 71 (contracting agency properly found proposals technically equal despite 15 percent difference in technical scores). With respect to the scores under the individual evaluation factors, the record shows that Koba received higher ratings under some evaluation factors and Diversified received higher ratings under others. The largest point spread between the offerors --four points under the "understanding the requirement" factor--was directly attributable to the fact that "incumbency was the only thing Diversified lacked." The agency reasonably determined that under this evaluation factor, the technical differences between the offerors were not necessarily indicative of any actual superiority. Accordingly, an analysis of the scores does not demonstrate that Koba's proposal was technically superior to Diversified's.

Similarly, the record does not support the protester's argument that the narrative comments demonstrate that its proposal was technically superior to Diversified's. In this regard, Koba references several comments the evaluators made concerning the firm's technical proposal. However, these comments, taken out of context, do not demonstrate that the Koba's proposal is superior, because the evaluators also made numerous superlative comments about Diversified's proposal.

Finally, we are not persuaded by the protester's argument that the award decision was unreasonable because the contracting officer did not specifically state that the proposals were "essentially equal technically." The fact that the term is absent from the evaluation documents and award decision does not make the resulting decision improper where, as here, the record is replete with evidence that the evaluation panel and the contracting officer effectively concluded that the proposals were technically equal. In this regard, the evaluation panel stated that Koba provided an excellent proposal and that Diversified submitted a proposal demonstrating excellent input and an excellent staff; there were no weaknesses cited for either proposal. After reviewing the evaluation comments and the panel's recommendation to make award to either offeror after considering

their proposed prices, the contracting officer reasonably concluded that the "negligible technical advantage of Koba" was not worth the its higher price. Accordingly, we have no basis to object to the contracting officer's decision to make award to the lower rated, lower priced offeror where the technical point scores and the contemporaneous evaluation documentation and explanations support the conclusion that the lower priced proposal is essentially equal technically to the higher priced proposal and, thus, is the "best overall response," considering price and other factors. The protester's unsubstantiated disagreement with the selection decision does not render that decision objectionable. Ogilvy, Adams & Rinehart, B-246172.2, Apr. 1, 1992, 92-1 CPD ¶ 332.

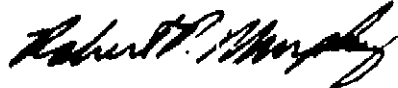
The protester also argues that the agency failed to conduct a proper price analysis to determine if Diversified understood the requirements under the contract. The agency responds that it conducted a thorough review of Diversified's price proposal. Specifically, the agency conducted both a price analysis and a cost analysis and requested and received a Defense Contract Audit Agency (DCAA) review of each offeror's rates. As a result of this review, the contracting officer concluded that Diversified's proposed price was fair, reasonable, and commensurate with the contract effort.

The purpose of a cost realism analysis evaluation by an agency under a time and materials contract is to determine the extent to which the offeror's proposed labor rates and other costs are realistic and reasonable. Since an evaluation of this nature involves the exercise of informed judgment, the agency clearly is in the best position to make this cost realism determination; consequently, we will not disturb such a determination absent a showing that it was unreasonable. JWK Int'l Corp., B-237527, Feb. 21, 1990, 90-1 CPD ¶ 198. The protester has failed to make such a showing here.

The agency found, and the record indicates, that the labor rates proposed by Diversified were in line with both Koba's prior contract labor rates and those recommended by DCAA. In addition, the agency concluded that Diversified's proposed material costs were in line with Koba's actual material costs based under the current contract over the past year. The protester has neither challenged the agency's method of comparison nor its results; given the adequate steps that the agency took to ensure that Diversified's low offer was reasonable and realistic, we

have no basis to question the agency's analysis of Diversified's price.¹

The protest is denied.



for James F. Hinchman
General Counsel

¹To the extent that the protester speculates that the protester will be reimbursed more than its actual costs for materials under the contract, the issue of cost allowability is a matter of contract administration which our Office does not review. 4 C.F.R. § 21.3(m)(1) (1992). In any event, the material costs under the contract are less than 1 percent of the total contract price, which is not to exceed \$2,501,930.