

Arsenoff

149009



Comptroller General
of the United States

Washington, D.C. 20548

Decision

REDACTED VERSION

Matter of: Computer One, Inc.

File: E-249352.2

Date: February 23, 1993

Anthony J.D. Contri, Esq., Civerolo, Hansen & Wolf, P.A., for the protester.
Nicholas R. Gentry, Esq., Oman, Gentry, Yntema & Stotts, P.A., for the Holman's, Inc., an interested party.
George Gehrman, Esq., Department of Energy, for the agency.
Robert C. Arsenoff, Esq., and John Brosnan, Esq., Office of the General Counsel, GAO, participated in preparation of the decision.

DIGEST

1. Protest that proposal evaluation was irrational and inconsistent with solicitation criteria requiring experience and expertise with one brand of computer equipment to be supplied and serviced by the successful offeror is denied where a reasonable reading of the solicitation as a whole indicates that such specific experience and expertise was not a requirement and the record shows that the evaluation was otherwise reasonably based.
2. Agency was not required to conduct discussions regarding the relationship of the protester's past contracts to the current solicitation because discussions would not provide an opportunity to change that relationship.
3. Protest that price analysis was inaccurate and might not reflect actual difference between higher-priced protester and lower-priced awardee is denied where the consequence of any alleged defects in the analysis are immaterial in comparison to the large disparity in the prices submitted by the competing offerors.

The decision was issued on February 23, 1993, and contained proprietary and source-selection sensitive information subject to a General Accounting Office protective order. Since all parties have waived any objection to its release, this decision is now removed from the coverage of the protective order.

DECISION

Computer One, Inc. protests the award of a subcontract to Holman's, Inc. under request for proposals (RFP) No. 4-241-0893X, issued by the University of California in its capacity as prime management and operating contractor to the Department of Energy at the agency's Los Alamos National Laboratory. The RFP contemplated an "off-site systems (Just-in-Time) [J-I-T] Subcontract," which is an integrated effort to supply Los Alamos with Apple Computer, Inc. computer equipment upon the issuance of requisitions, to provide repair and warranty services and technical assistance related to the equipment and to perform other property management and support functions such as warehousing, maintaining stocks of equipment and ensuring proper property identification.

Computer One maintains principally that the technical evaluation of the proposals lacked a reasonable basis and was inconsistent with the terms of the RFP. The protester states that the RFP informed offerors that familiarity with computers made by Apple was important to successful performance and argues that its proposal should have received much higher scores than Holman's as a result of the protester's extensive Apple-specific experience and resources and Holman's relative lack of such experience and resources.

We deny the protest.

BACKGROUND

The RFP was issued on May 28, 1991, contemplating the award of a fixed-price subcontract for 3 years (with an option to extend the term for an additional 2 years) to the offeror whose proposal represented the most advantageous combination of technical excellence and price, with technical excellence being substantially more important than price. Technical excellence was to be measured against five criteria which were scored on a 400-point scale as follows:

<u>Criterion</u>	<u>Maximum Possible Points</u>
------------------	--------------------------------

¹We review subcontract awards by prime management and operating contractors under a "federal norm" standard; i.e., to determine whether they are consistent with the policy objectives set forth in statutes and regulations which apply directly to federal agency procurements. See BECO Corp., B-219651, Nov. 26, 1985, 85-2 CPD ¶ 601.

Organizational Approach to System Contracting	140
Warehousing and Distribution Capabilities	140
Organizational and Resource Commitments	40
Experience and Past Performance	40
<u>Additional Services</u>	<u>40</u>
Total	400

Offerors were to submit fixed item prices for a "market basket" of representative computer items to be supplied and an "adjustment factor" to cover the cost of contractor-provided services, overhead and profit. Extended-item prices for the 3-year contract were to be multiplied by the offeror's "adjustment factor" and totaled to arrive at a final price for evaluation purposes.

While the statement of work (SOW) in section A of the RFP principally called for the subcontractor to supply Apple equipment and parts and to otherwise support such equipment, it only contained two requirements regarding the subcontractor's relationship with Apple: paragraph 7(a)(1), relating to the performance of warranty services stated that the "[s]ubcontractor employee(s) performing these services shall be an Apple-certified technician;" and paragraph 13 of the SOW stated that the "[s]ubcontractor must be commissioned by Apple as an authorized Apple dealer who may sell, support and service Apple computers and equipment."

Section F of the RFP contained instructions for proposal preparation and the technical evaluation criteria. In general, the section required offerors to demonstrate their understanding of the requirements set forth in the SOW and to provide an effective approach to satisfying them. Except for requiring evidence that an offeror was a certified-Apple dealer, section F did not mention Apple.

Six initial proposals were received; one was immediately eliminated from the competitive range. The five remaining proposals were evaluated and scored as followed:

<u>Offeror</u>	<u>Technical Score</u>
Holman's	363
Offeror A	350
Computer One	338
Offeror B	317
Offeror C	312

Written discussions were conducted and two best and final offers (BAFO) were requested. The final evaluation results were as follows:

<u>Offeror</u>	<u>Technical Score</u>	<u>Price</u>
Holman's	363	\$20,952,565
Computer One	345	\$22,217,215
Offeror C	314	\$20,514,035
Offeror B	279	\$21,890,368
Offeror A	265	\$21,842,898

The source selection committee considered the three highest ranked technical offers and concluded that, although the others were considered "good," Holman's significantly higher score demonstrated technical and management superiority within the group. Noting that Offeror C's price was only 2 percent lower than Holman's, the committee selected Holman's as the awardee in light of the RFP preference for technical excellence and the fact that Holman's technical score was 12 percent higher than Offeror C--a circumstance which the committee found would result in better overall contract performance. Award was made to Holman's on June 29, 1992, and this protest was filed July 9.

PROTEST

Computer One primarily objects to the technical evaluation of its proposal and of Holman's as reflected in Holman's overall higher technical score and cites four examples of what the protester considers to be unjustified scoring under all but one of the evaluation factors. In each, the protester argues that the evaluation was not consistent with the terms of the RFP and not otherwise supported by the original evaluation record.² More specifically, Computer One contends that the language of the RFP called for a substantial amount of Apple-specific experience and points out that its proposal reflects that type of experience under each of the disputed evaluation factors while Holman's does not.

The protester also raises issues with regard to the lack of meaningful discussions and the accuracy of the market basket price analysis.

²Throughout its protest, Computer One bases many of its arguments on the proposition that Los Alamos has not produced contemporaneous documentation which contains the rationale for the evaluation and has instead only provided an after-the-fact justification in response to the protest, which Computer One argues is inherently unreliable. While we may give less weight to documentation developed after award, we do consider such information along with the entire record if, as here, the documentation is provided in a timely manner so that the protester may comment on it. JJH, Inc., B-247535.2, Sept. 17, 1992, 92-2 CPD ¶ 185.

ANALYSIS

Technical Evaluation

The evaluation of technical proposals is primarily the responsibility of the contracting agency which is responsible for defining its needs and must bear the consequences resulting from a defective evaluation. Thus, our Office will not make an independent determination of the relative merits of competing proposals; rather, we will examine the entire record to ensure that the evaluation was reasonable and consistent with the criteria set forth in the RFP. Stay, Inc., Protective Servs., B-246336.3, Apr. 24, 1992, 92-1 CPD ¶ 393. A protester's disagreement with the evaluators' judgment, itself, does not provide a basis for concluding that the evaluation was unreasonable. Id.

Computer One's position that it should have received a higher evaluation score than the awardee is based in large part upon its view that the RFP clearly provided that an offeror's experience and technical expertise with Apple equipment would be a significant factor in determining a proposal's technical merit. An evaluation which did not rely heavily on such experience and expertise would, according to the protester, not be consistent with the RFP evaluation scheme. Whether a technical evaluation is consistent with the RFP criteria depends on the reasonableness of the interpretation given to the terms of the RFP by the agency. JJH, Inc., supra. To be reasonable, the interpretation must be consistent with the solicitation read as a whole, giving effect to all of its provisions. We will not read provisions in a manner which restricts competition unless it is clear from the solicitation that such a restrictive interpretation is intended. Id.

The SOW does provide that the subcontractor is required to provide and service Apple products. Los Alamos points out, however, that there are only two specific requirements regarding the subcontractor's relationship with Apple: (1) that it be an authorized Apple dealer; and (2) that it employ at least one Apple-certified technician. The detailed description of the evaluation criteria set forth in section F of the RFP does not refer to Apple or Apple-specific experience and is couched in rather general terms, requiring the offeror to describe its approach to meet the functional tasks set forth in the SOW such as inventory control, invoicing, warehousing, etc. Los Alamos states that the emphasis in the RFP evaluation criteria is on demonstrating the offeror's ability to perform a large J-I-T systems supply and service contract for computer equipment, irrespective of their manufacturer.

While the protester strongly disagrees with Los Alamos' interpretation of the RFP and submits that the uniqueness of Apple products requires a high degree of Apple-specific experience in order to successfully perform, we do not think that the language of the evaluation criteria or of the RFP SOW supports the protester's position. Although Los Alamos was seeking a subcontractor to provide and service Apple products, the RFP established only two requirements regarding a relationship with the manufacturer of the products and nowhere established a preference or a requirement for additional Apple-related experience. While some aspects of Computer One's view that Apple-specific experience might aid in the performance of certain SOW tasks appear to have merit, the record does not establish that the protester's understanding of what the agency needed in terms of an experienced systems' subcontractor is superior to the agency's own understanding. In view of the lack of any specific preference set forth in the RFP for Apple-specific experience or expertise, we cannot conclude that Los Alamos' less restrictive view of its RFP requirements as not establishing such a preference is unreasonable. JJH, Inc., supra.

Turning to Computer One's specific evaluation objections, the first involves the evaluation factor requiring a demonstration of warehousing and distribution capabilities. The protester received 131 points in this area while Holman's received 128. Computer One's objections to this difference rest on its RFP interpretation discussed above. In this regard, the protester argues that its proposal devoted more pages to the subject than did Holman's, and that its presentation was Apple-specific, and showed that its warehousing and distribution systems are devoted to Apple products while Holman's are not. The protester does not dispute, however, that Holman's has a satisfactory warehousing and distribution system, albeit not Apple-specific. Since there is no requirement in the RFP for such brand specificity and since we otherwise can find no reason why the evaluators' judgment as to the merit of Holman's warehousing and distribution operators was unreasonable, we have no basis to question the score assigned to the proposals under this factor.

Likewise, under the evaluation factor covering organization and resource commitments where the protester received 32 points and Holman's received 26, Computer One's objections rest on the fact that it offered to provide personnel with more Apple experience and more certified Apple technicians and engineers than Holman's. In this regard, the protester argues that Holman's one certified Apple technician cannot perform all the services required under the SOW. The agency, however, reports that in its experience only one technician, and no engineers, are needed

for satisfactory performance and points out that only one technician is required by the RFP.

Further, in this regard, Computer One argues that its employees have considerable experience in training individuals on Apple equipment and that Holman's training experience, and in-house training capability, is limited to Hewlett-Packard equipment which is totally different from Apple equipment. As the agency points out, however, the RFP does not require the subcontractor to perform any training; rather, the RFP only requires the subcontractor to hold quarterly seminars at Los Alamos in cooperation with the manufacturer to provide the laboratory with updated product information.

To the extent that the protester was given a higher score under this factor, it appears that Los Alamos recognized that Computer One's more extensive staffing was of some benefit. In view of the fact that Holman's has clearly met all of the specified RFP requirements, we have no basis upon which to question the evaluators' overall technical judgment regarding the merits of the proposals under this factor.

In the area of experience and past performance, offerors were required, among other things, to list three prior contracts of a similar nature and relate their experience under those contracts to the requirements of the SOW. Computer One received 20 points and Holman's received 38. Los Alamos credited the protester for the one large Apple J-I-T contract it listed, but questioned the other listed contracts because they were not large volume J-I-T systems contracts and because Computer One had not related its experience under those contracts to the SOW. In contrast, Holman's listed three large J-I-T contracts--one at Los Alamos--which the evaluators determined to be directly relevant to the scope of the RFP.

The protester does not dispute that the two contracts for which it was downgraded under this evaluation factor were neither large nor complex as called for in the RFP; Computer One also does not dispute that Holman's listed contracts were all large and complex. Rather, Computer One argues in essence that its contracts were all Apple-specific and Holman's were not. Insofar as the evaluation factor did not require the contracts to be Apple-specific and since Holman's listed three large J-I-T contracts while the protester listed only one, we find that Los Alamos had a reasonable basis for scoring the proposals as it did.

Finally, under the additional services factor, offerors were advised that points could be awarded for offering additional services not required by the SOW which are of use to Los Alamos. Computer One received a score of 29 and Holman's

received 38. Computer One objects to the awardee's higher score on the basis that it offered more additional services and services of an Apple-specific nature. The agency explains, however, that many of the services offered by Computer One, such as free training in the protester's Albuquerque, New Mexico office, a location not close to the Los Alamos and free Apple software upgrades, which Los Alamos already has access to, were not needed and notes, without contradiction, that a number of the services offered by the awardee were of use to Los Alamos. The agency was particularly impressed with Holman's having offered significantly more product update seminars than required and with its offer to provide additional monthly spending reports. Again, based on this record, and notwithstanding Computer One's disagreement, there is no basis for questioning the scores.

In sum, while other evaluators might have rated the proposals differently under these disputed factors, we can properly object only if we find no rational basis for the evaluation or an inconsistency with the evaluation criteria. As discussed above, on the record before us the protester has simply not shown, nor are we able to find that the evaluation runs afoul of either test. Stay, Inc. Protective Servs., supra.

DISCUSSIONS

Computer One also argues that since Los Alamos did not rate its proposal highly under experience because the evaluators questioned the relationship to the RFP SOW of two of the contracts listed by the protester, the agency was required to hold discussions with the protester concerning those contracts. Under the circumstances, there is no requirement for discussions with regard to subjects like past corporate experience as the matter essentially concerns historical fact and it is unlikely that discussions will provide an opportunity for an offeror to change those facts and improve its competitive standing. Stay, Inc. Protective Servs., supra. Here, Computer One chose the contracts it listed and, as noted above, two were not large J-I-T systems contracts as contemplated by the RFP; there is no basis to assume that discussions concerning those contracts would have changed the fact that they were marginally relevant to the scope of the work contemplated here.

PRICE ANALYSIS

Finally, Computer One argues that the market basket price analysis conducted by Los Alamos did not reflect the true difference in prices between the two firms because Holman's market basket prices were allegedly based on an outdated dealer price list which might have resulted in the use of

inaccurate data in the analysis. The protester also alleges that it alone was orally asked by Los Alamos officials to include a video card as part of one of the market basket monitors which increased its price by about \$100,000.

The agency states that a month prior to BAFOs it verified the currency of the prices from Holman's dealer and the record shows that these prices are virtually identical to the dealer prices submitted by the protester; in the final analysis, the sizeable difference in evaluated prices between the two offerors is almost exclusively accounted for in the adjustment factor for overhead and profit each offeror submitted. Further, the agency denies that it required Computer One to include a video card in its proposal and notes that, in any event, by the terms of the solicitation no video card was required and oral modifications to the RFP are not binding.

Given the wide difference in pricing which is accounted for in large part by Computer One's decision to include a higher adjustment factor, and given the fact that the \$100,000 for video cards that Computer One believes it was required to include in its pricing structure is immaterial in light of the overall difference in prices, we have no basis for disturbing the comparative price analysis.

Since award was, thus, made to the technically superior offeror offering a lower price than the protester, the protest is denied.

James F. Hinchman
General Counsel