



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

Decision

Matter of: D'Wiley's Services, Inc.

File: B-251912

Date: May 11, 1993

Warren T. Chandler for the protester.
Gerald P. Kohns, Esq., Department of the Army, for the agency.
Christina Sklarew, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Where request for proposals did not provide for award on the basis of the lowest priced technically acceptable proposal, but provides for award to the offeror whose offer is most advantageous to the government, contracting agency may properly make a cost/technical tradeoff, subject only to the test of rationality and consistency with the established evaluation factors.
2. Where agency considered the protester's proposed staffing level inadequate and advised protester during oral and written discussions to increase its staffing, protest that the agency should have identified the specific areas requiring additional staff and should have provided historical staffing data as guidance is denied. Agency is only required to lead offerors into areas in which their proposals are considered deficient.

DECISION

D'Wiley's Services, Inc. protests the Army's award of a contract to Southfork Systems Inc. under request for proposals (RFP) No. DABT15-92-R-0014, to provide full food services to Fort Benjamin Harrison in Indiana. D'Wiley's challenges the basis of the award decision, contending that it was inconsistent with the terms of the RFP, and challenges the adequacy of the discussions that were held with the firm. We deny the protest.

The RFP contemplated the award of a firm, fixed-price contract for a base period of 1 year with two 1-year options. The solicitation advised offerors that award would be made to the responsible offeror whose offer, conforming

to the solicitation, would be most advantageous to the government, cost or other factors considered. The RFP listed two technical evaluation factors, each with five subfactors, under which proposals would be evaluated "to determine whether they are technically acceptable." The first factor listed was quality of management approach to meeting the government's stated requirements. The subfactors listed included overall staffing and organization structure, and management plan. The second factor listed was technical experience which included subfactors such as past performance and personnel qualifications. The RFP provision also stated that "the highest evaluation score of factors above, along with evaluation price, will determine which offer is most advantageous to the Government."

The Army received 17 proposals in response to the RFP. After evaluating the proposals, the agency rejected two of them as technically unacceptable and then conducted both oral and written discussions with the remaining offerors. During the discussions, D'Wiley's was advised to review the level of staffing it had proposed, since the technical evaluator considered it to be too low. Best and final offers (BAFOs) were submitted and evaluated. Although D'Wiley's had increased its staffing in its BAFO, its staffing was still considered weak during the final evaluation, resulting in an overall technical score of 37 on a scale of 100 possible points. Specifically, the evaluator believed that D'Wiley's proposed staffing would not ensure adequate staffing for the estimated number of patrons and for all shifts. D'Wiley's proposal was ranked 11th in technical merit among the 15 competing offers, and was fifth low in price at \$4,280,169. Southfork's offer received 62.5 points, which was the highest technical score awarded under the competition. The agency evaluator decided Southfork's proposal was superior to all other offers in its organizational, staffing and management approach. Although 10th low in price, at \$4,714,300 the agency determined that Southfork's price was fair and reasonable, and concluded that the offer represented the best value to the government. The contract was awarded to Southfork, and this protest followed.

D'Wiley protests that the award to Southfork was not consistent with the RFP because Southfork did not submit the lowest, technically acceptable offer. However, the RFP did not state that award would be made on the basis of the low, technically acceptable offer; rather, the contract award

¹If this were the basis for award, D'Wiley would not be an interested party to protest the award to Southfork, since D'Wiley's price (while lower than Southfork's) was not low.

(continued...)

section of the RFP stated that the award would be made to "the responsible offeror whose offer conforming to the solicitation will be most advantageous to the Government, cost or price and other factors, specified elsewhere in this solicitation, considered." In addition, this section of the RFP specifically advised offerors that the government might accept other than the lowest offer. In the section of the RFP that lists the evaluation factors for award, offerors were advised that the highest evaluation score, along with evaluation price, would determine which offer was most advantageous to the government. The phrasing of this evaluation factor section might not be as clear as an evaluation provision that specifically identifies the relative importance of price and technical factors.² Nonetheless, since the language states that the highest technical merit score along with price would be the basis for the most advantageous determination, we do not believe it can reasonably be construed to require award to the low priced, technically acceptable offeror, especially when read with the other award language.

In a negotiated procurement, the government is not required to make award to the firm offering the lowest price unless the RFP specifies that price will be the determinative factor. Miller Bldg. Corp., B-245488, Jan. 3, 1992, 92-1 CPD ¶ 21. Since the RFP did not provide for award on the basis of the lowest priced technically acceptable proposal, but, as discussed above, instead stated that the award would be made to the offeror whose offer is most advantageous to the government, considering price and other factors, the contracting officer had the discretion to determine whether the technical advantage associated with Southfork's proposal was worth its higher price. Such technical/price tradeoffs are subject only to the test of rationality and consistency with the established evaluation factors. Grey Advertising Inc., 55 Comp. Gen. 1111 (1976), 76-1 CPD ¶ 325; Centro Mgt., Inc., B-249411.2, Dec. 2, 1992, 92-2 CPD ¶ 387. We will uphold awards to offerors with higher technical scores and higher prices so long as the results are consistent with the evaluation criteria and the contracting agency

¹(...continued)

Thus, even if the protest could be sustained on this basis, D'Wiley would not be in line for award.

²Any objection to an ambiguity in the basis for award as it appeared in the RFP would be untimely raised at this point, since our Bid Protest Regulations require that protests based on alleged improprieties in a solicitation that are apparent prior to the time set for receipt of initial proposals must be filed prior to the time set for receipt of proposals. 4 C.F.R. § 21.2(a)(1) (1993).

reasonably determines that the price premium involved was justified considering the significant technical superiority of the selected offeror's proposal. PECO Enters., Inc., B-232307, Oct. 27, 1988, 88-2 CPD ¶ 398.

D'Wiley's does not challenge the superior rating that Southfork's proposal received or argue that its own proposal is equal or superior to the awardee's. D'Wiley's states in its protest comments that based on its experience in performing and managing comparable food service operations, there should be little relationship between patron number levels and staffing requirements and therefore its staffing was adequate. Based on D'Wiley's BAFO, the evaluators found that its staffing was suspect compared to its internal estimates, the staffing was not sufficient for all shifts, staffing was not adjusted for changes in number of patrons, and that the firm failed to address in detail specific contract requirements and contingencies. In contrast to D'Wiley's offer, Southfork specifically provided a number of different staffing plans in its proposal, indicating that it would increase or decrease its personnel according to the number of meals to be served at a given time. In addition, Southfork provided a strong organizational approach to fully staffing all tasks, a detailed management plan with a management person identified in each work area, and a detailed statement addressing all contract requirements. We think the agency reasonably could conclude that Southfork's proposal provided a superior organizational structure and staffing approach and management plan for the facility which ensured proper performance of services no matter what the patron demand. Accordingly, award on the basis of Southfork's higher priced, technically superior offer was reasonable.

D'Wiley also protests that the Army failed to conduct adequate discussions. The protester contends that when the contracting officer questioned D'Wiley's proposed level of staffing, he did not identify any specific areas in which the Army's staffing requirements were not met, nor did the agency disclose the exact staffing levels that had been considered adequate in the past.

When an agency requires goods or services by means of a negotiated procurement, the Competition in Contracting Act of 1984, 10 U.S.C. § 2305(b)(4)(B) (1988), as reflected in Federal Acquisition Regulation § 15.610(b), requires that (with a narrow exception not relevant here) written or oral discussions be held with all responsible sources whose proposals are within the competitive range. As is relevant here, discussions are adequate where the agency leads offerors into the areas of their proposals considered deficient. Contract Servs. Co., Inc., B-246585.3, May 7, 1992, 92-1 CPD ¶ 427.

The record shows that the Army's technical evaluator and institutional food advisor for this procurement discussed the perceived deficiency in D'Wiley's proposed level of staffing. The evaluator states in a memorandum that he advised D'Wiley that the 39 personnel listed in the firm's staffing plan was considered only sufficient to cover one shift; that explanations in the proposal for certain specific RFP requirements (such as field feeding, ration deliveries, and contingencies, etc.) were considered incomplete; and that staffing was not adjusted in the proposal to account for variations in the level of demand or numbers of patrons at different times.³ In addition, the contracting officer sent the following written discussion question to the protester: "Per our conversation, it was requested you evaluate/correct the following deficiencies: (1) Review staffing proposed for the work required." Under the circumstances of this case, we think the agency personnel adequately advised D'Wiley of areas of its proposal that required improvement or correction. There is no requirement that a contracting agency advise an offeror how to correct its proposal or provide the kind of information D'Wiley suggests, such as staffing data from previously performed contracts; to the contrary, providing specific information of this type would defeat one purpose of such a discussion question, which is to discover whether the offeror understands the requirement of the solicitation. See Centro Mgt., Inc., supra. We thus believe discussions concerning staffing were adequate.

The protest is denied.


for James F. Hinchman
General Counsel

³In its comments to the agency report, D'Wiley does not dispute the content of these oral discussions.