



Comptroller General
of the United States

Washington, D.C. 20548

123319

Decision

Matter of: Bara-King Photographic, Inc.

File: B-253631

Date: September 15, 1993

Karin K. King for the protester.
Stuart Young, Esq., for DynCorp, an interested party.
Timothy A. Beyland, and Jonathan Blucher, Esq., Department of the Air Force, 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 visual information technical support services which proposed a reduction in labor hours from the government's estimates where the solicitation advised offerors that the agency would consider unique approaches that maximized the use of personnel and resources; the solicitation was written in functional, performance-oriented terms without specifying type or number of required employees; and nothing in the solicitation prohibited offerors from proposing the level of professional and support staff they believed necessary to perform the work.

DECISION

Bara-King Photographic, Inc. protests the award of a contract to the incumbent, DynCorp, under request for proposals (RFP) No. F08635-93-R-0011, issued by the Department of the Air Force to operate and maintain the Visual Information Support Center and Photographic Laboratory at Eglin Air Force Base (AFB), Florida. The protester contends that the agency improperly accepted DynCorp's proposal for an approach that represents a reduced level of effort, below the total number of labor hours contemplated by the RFP.

We deny the protest.

BACKGROUND

The agency issued the RFP on February 10, 1993, to 90 firms, seeking proposals to provide visual information technical support services (VITS) at Eglin AFB. The RFP contemplated the award of a firm, fixed-price contract with cost

reimbursement provisions for certain line items, for a 3-year basic period, contract line item (CLIN) No. 0001, with a 2-year option, CLIN No. 0002. Attachment No. 4 to the RFP, the statement of work (SOW), required the contractor to provide various services including photographic management, base support photography, special mission activities, operation of a visual information library, a media depository, and logistical and related support functions necessary to meet the requirements of the laboratory complex as described in the RFP.¹

As a guide for offerors in preparing their proposals, technical exhibit (TE) Nos. 5 through 12 to the SOW provided samples of workload data based on actual services provided under DynCorp's existing contract between July 1, 1991 and June 30, 1992. Some of the exhibits provided estimates in the form of units of work for specific product areas, while others contained estimated total direct hours for various services. For example, TE No. 5, entitled "Still Photographic Products," listed estimated annual unit quantities for each of various photographic products such as black and white prints, negative processing, and color prints (e.g., 1,810 and 3,225 units of 2x2 and 3x5 black and white prints, respectively). While TE Nos. 7, 9, 10, 11, and 12, also listed estimated annual unit quantities for various products, these exhibits contained estimated total direct labor hours for some of the required services.

Offerors were required to submit separate technical and business proposals arranged in six different volumes. Offerors were required to submit prices for the base contract term and for the option period, CLIN No. 0001 and CLIN No. 0002, and a total price for those two CLINs. Section M of the RFP listed technical, management, and cost/price as the three main evaluation areas. Within the technical area, the RFP listed the following evaluation

¹The SOW listed the following required photographic and supportive services to be provided by the contractor:

"work and work order control center; most types of photography, videography, laboratory, and post-production operations of processing, printing, editing, library, and depository in video, motion picture, and still; operations of a base access channel, recorded and live; video teleconferencing; presentation services; audiovisual equipment maintenance for the entire base; airborne camera support for local and transient aircraft; and supply and property control functions."

factors of equal importance: (a) photography/video; (b) photographic laboratory; (c) maintenance; (d) presentation/video teleconferencing; and (e) other functional activities. Within the management area, the RFP listed (a) organization, (b) control, and (c) management, as the three evaluation factors, also of equal importance. The RFP stated that the technical and management areas were most important and of equal weight, while the cost/price area was of lesser importance.

The solicitation stated that each area would be assigned a color/adjectival rating, a proposal risk rating, and a past performance risk rating, and that within each main technical evaluation area, each of the three ratings (color/adjectival, proposal risk, and performance risk) would be given equal consideration in the award decision; cost/price would not be rated or numerically scored, but would be evaluated for realism and reasonableness. The RFP advised that award could be made without discussions, and would be made to the offeror whose proposal was most advantageous to the government based on an integrated assessment of the evaluation areas and which offered the best value to the government.

Four firms, including the protester and the awardee, submitted proposals by the March 25, 1993, closing date. A source selection evaluation team (SSET) rated proposals in accordance with section M of the RFP. The SSET documented numerous weaknesses in the protester's offer, earning Bara-King's proposal a rating of yellow (marginal) in the management area and red (unacceptable) in the technical area; the protester's proposal received an overall risk rating of high in both of those evaluation areas, and a past performance risk rating of moderate. By contrast, the SSET found virtually no weaknesses in the awardee's proposal, rating DynCorp's proposal green (acceptable) in both the technical and management areas, and assigning it an overall low risk rating in each of those areas, as well as for past performance. Of the four proposals, DynCorp's was the only one to receive ratings of green and low risk in the technical and management areas.

The protester submitted the highest total price of \$16,642,720, while DynCorp offered the lowest total price of \$11,344,512. An evaluation team consisting of several contracting officials conducted an independent analysis of prices and determined that DynCorp's price was both realistic and reasonable. Based on the evaluation results,

²Total prices submitted by the only other two offerors were \$11,738,615 and \$12,571,349.

the source selection authority concluded that DynCorp's proposal represented the best value to the government. The agency awarded the contract to DynCorp on May 21, 1993. This protest followed.

PROTESTER'S CONTENTIONS

Bara-King contends that the Air Force improperly accepted DynCorp's offer for a level of effort significantly below that contemplated by the RFP. The protester points to TE Nos. 5 through 12, arguing that when the estimated direct labor hours set forth in those exhibits are considered, the RFP contemplated a total of 97,163 direct labor hours, or 53.5 years of effort. The protester also asserts that based on other workload data related to products and associated services included in the TEs, Bara-King estimated that the RFP requires an additional 28.1 years of effort to perform the work. The protester maintains that by allowing DynCorp to depart from those estimated direct labor hours, the agency improperly permitted DynCorp to achieve an unfair price advantage over other offerors. Bara-King concludes that if DynCorp's proposal was acceptable, then the direct labor hour estimates listed in the solicitation, upon which it relied to prepare its proposal, were misleading.

AGENCY'S POSITION

The agency concedes that as the incumbent, DynCorp had direct knowledge concerning the operations of the laboratory complex which allowed the firm to meet the SOW requirements through effective cross-utilization of personnel, ultimately resulting in a lower-priced proposal. The agency maintains, however, that, contrary to Bara-King's assertions, nothing in the RFP required offerors to provide the same level of direct labor hours described in the TEs, or any other specific staffing level. The agency asserts that each TE was labeled to indicate that the information provided was historical data based on DynCorp's existing contract for a 12-month period, and that the figures presented in those exhibits were clearly labeled "ESTIMATED ANNUAL QUANTITY." The agency further states that section M of the RFP informed offerors that the agency would consider unique approaches to providing the required services, and that it reminded offerors during the site visit that they were permitted to offer alternative solutions. The Air Force essentially concludes that since the RFP was written in task-oriented terms, offerors were to design procedures and propose staffing levels they believed necessary to meet the agency's needs.

DISCUSSION

In negotiated procurements, unless specifically prohibited by the solicitation, offerors are generally not precluded from proposing to meet an agency's minimum requirements with staffing levels different from the government's estimate, so long as the proposal reasonably explains how the work will be accomplished in view of the differences. T. Head & Co., Inc., B-250897, Feb. 24, 1993, 93-1 CPD ¶ 231, and cases cited therein. Here, the SOW, together with the agency's reiteration of the RFP's evaluation notice during the site visit, reasonably conveyed to offerors that they were not required to propose an approach that included all of the estimated direct labor hours set forth in the TEs.

Rather than specifying any particular number of personnel, the SOW simply described the functions that the successful contractor would be required to perform. Section E of the SOW described in functional, performance-oriented terms all of the specific tasks and subtasks required under the contemplated contract without specifying any particular number of employees that were to be offered. For instance, except for requiring an on-site, full-time project manager, the SOW generally stated that "[t]he contractor shall furnish sufficient full-time personnel and resources to provide simultaneous operation" of the laboratory, and that "[t]he contractor shall furnish adequate full-time, on-site supervisory, administrative, and technical personnel to accomplish all work required." None of the detailed task descriptions required a specific number of personnel or specified direct labor hours that must be expended to successfully perform that task or subtask.

While the SOW referred offerors to the TEs for guidance on historical product unit quantities and services for specific tasks, the figures in the TEs were clearly identified as "ESTIMATED ANNUAL QUANTITIES," and the TEs indicated that

For instance, as a representative sample of the SOW, section 5.3, entitled "Photographic Services," stated that:

"[t]he contractor shall provide photographic services to include processing of black-and-white and color films, production or reproduction of black-and-white and color prints, color transparencies, and production of slides."

That section further listed in detail specific functional requirements related to the photographic services such as scheduling and studio photography.

they were based on historical data gathered between July 1, 1991 and June 30, 1992. The data in the TEs were clearly provided for informational purposes only. Nothing in the SOW or the RFP suggested that the quantities presented in the TEs were absolute requirements that offerors must include in their solutions to be acceptable, or that those figures represented actual orders for products or services the agency would place under the contract.

The RFP, in fact, encouraged offerors to offer alternate solutions. Section M(c)(1) of the RFP specifically stated that:

"[e]ach proposal will be evaluated based on the methods employed to effectively and efficiently accomplish the requirements. The government will entertain any reasonable new and/or unique approach of grouping/location/working personnel to reduce layering of supervision, eliminate excessive travel requirements, and maximize resource utilization. [Emphasis added.]"

This provision clearly placed offerors on notice that the agency would consider alternative approaches. The agency further states, and the protester does not dispute, that contracting personnel reinforced the RFP's notice regarding alternative solutions during a site visit attended by the protester. We thus think that the RFP, and the agency's reminder to offerors during the site visit, placed the protester on notice that the agency would consider other approaches to meeting its needs that did not necessarily include the exact number of direct labor hours or personnel listed in the TEs, and that offerors were specifically encouraged to design approaches that deviated from the agency's estimates as they deemed appropriate.

Bara-King points to section L of the RFP which instructs offerors to provide area (technical and management) and total staffing charts, implying that the RFP contemplated that offerors would propose a specific number and type of personnel. The purpose of the staffing charts requirement was clearly to assist the SSET in evaluating the offeror's understanding of the complexities and risks involved in the RFP requirements as reflected in its utilization of personnel and resources. While offerors were instructed to submit charts displaying proposed employee(s) keyed to the tasks described in the SOW, nothing in the RFP's instructions, the TEs, or in the sample chart provided in the solicitation required offerors to submit a specific number or type of employees or required offerors to meet predetermined total labor hours to be acceptable. Rather,

as already explained, offerors were free to design an approach they believed best met the government's requirements and to devise personnel charts that reflected that approach.

In its comments on the agency report, the protester asserts that it did not challenge the evaluation of its proposal in its protest because it did not learn that its proposal had been rated unacceptable until it received the agency report. Even after learning that its proposal was downgraded under several evaluation factors, however, Bara-King did not challenge the agency's ratings or provide any evidence suggesting that the agency improperly evaluated its proposal.⁴ Except for its blanket statement that any deficiencies in its proposal were "directly tied to the misleading data provided in TE Nos. 5 [through] 12," the protester has not shown that the agency's estimates did not reasonably reflect historical data. Contrary to the protester's assertions, our review of the evaluation documents reveals that the SSET documented numerous weaknesses in the protester's proposed approach that were unrelated to its proposed personnel or direct labor hours. In the absence of any evidence that the SSET's findings were unreasonable, we have no basis to object to the agency's conclusion that the protester's proposal was unacceptable.

Bara-King also argues that as the incumbent, DynCorp unfairly relied on "inside information" to prepare a proposal that represents a reduced level of effort from that contemplated in the RFP and that Bara-King, a non-incumbent

⁴The protester was not precluded from learning of the deficiencies in its proposal before filing the instant protest. The record contains the contracting officer's undisputed statement that on more than one occasion following award, she offered the protester an opportunity for a debriefing to answer questions regarding the firm's proposal. According to the contracting officer, Bara-King declined her offer.

⁵Bara-King also contends that had the agency conducted discussions, the firm could have remedied any deficiencies with its proposal. The RFP clearly announced that "award may be made without negotiations" and warned offerors to "rely exclusively on written material to convey their proposals," making it incumbent on offerors to prepare adequate initial proposals. (Emphasis in original.) Based on the results of the evaluation, the contracting officer reasonably determined that discussions were not necessary. The agency thus was not required to conduct discussions with any offeror. See Federal Acquisition Regulation § 15.610(a)(4).

firm, justifiably relied on the estimates announced in the RFP to its detriment. Although the Air Force acknowledges that as the incumbent DynCorp had direct knowledge of the daily operations of the laboratory complex, the agency was not required to mitigate any advantages DynCorp 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. The protester does not argue and there is no evidence in the record that the awardee gained an unfair advantage here. As already discussed, the RFP clearly placed offerors on notice that the agency would consider alternative approaches, and the agency further reinforced that notice during the site visit which the protester attended. Bara-King was in no way precluded from using its business judgment to design an approach which maximized the use of personnel and other resources and used fewer direct labor hours than estimated in the RFP. The fact that DynCorp 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. See T. Head & Co., Inc., supra.

The protest is denied.


for James F. Hinchman
General Counsel