



Comptroller General  
of the United States

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Washington, D.C. 20548

## Decision

**Matter of:** Gardiner, Kamy & Associates, P.C.

**File:** B-253805

**Date:** October 13, 1993

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John M. Kamy for the protester,  
Jonathan D. Crowder, Tichenor & Associates, an interested party,  
Terrence J. Tychan, Department of Health & Human Services, for the agency,  
Linda S. Lebowitz, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

Where the solicitation stated that in determining the offeror submitting the most advantageous proposal, technical quality would be given paramount consideration over cost, the contracting officer reasonably awarded a contract to an offeror submitting a technically superior, higher-cost proposal after determining that the proposal's technical superiority was worth the payment of a cost premium.

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### DECISION

Gardiner, Kamy & Associates, P.C. (GKA) protests the award of a contract to Tichenor & Associates (TA) under request for proposals (RFP) No. 283-93-0003, issued by the Substance Abuse and Mental Health Services Administration, Department of Health and Human Services, for the furnishing of financial analysis and audit support services for its Financial Advisory Services Office. GKA basically argues that the contracting officer improperly awarded the contract to a higher-cost offeror.

We deny the protest.

The RFP, a total small business set-aside issued on December 29, 1992, provided for the award of an incrementally-funded, 3-year, cost-plus-fixed-fee contract. The RFP required the contractor to provide accounting services, including cost and price analyses, pre-award/post-award surveys, indirect cost analyses, and special reports and studies, for grantee and contractor organizations. The RFP provided that the award would be made to the responsible offeror whose proposal was deemed

most advantageous to the government, cost and technical evaluation factors considered. The RFP contained the following technical evaluation factors and the respective weight for each factor: (1) understanding the project and technical approach (15 points); (2) personnel (45 points); (3) management plan (15 points); and (4) timely performance (25 points). The RFP stated that a cost analysis would be performed. The RFP provided that an offeror's technical quality would be given paramount consideration over cost, and that only as offerors' technical quality became approximately the same would cost become the determining factor in the award selection.

Seventeen firms, including GKA and TA, the incumbent contractor, submitted proposals by the closing time for receipt of initial proposals. Following the evaluation of proposals by the agency evaluators, the contracting officer included the proposals of two firms--GKA and TA--in the competitive range. Following written discussions, both GKA and TA submitted revised proposals. The contracting officer then conducted oral discussions. GKA and TA subsequently submitted best and final offers (BAFO). GKA submitted the low proposed cost of \$704,733 and its proposal received a final technical score of 86.8 out of 100 points. TA submitted the second low proposed cost of \$914,949 and its proposal received a final technical score of 93.5 out of 100 points.

In the source selection documentation, the contracting officer, who served as the agency's source selection authority, found that while less than seven technical points separated the proposals of GKA and TA, GKA's proposal contained a number of technical deficiencies and TA's proposal contained none. For example, the contracting officer determined that GKA did not adequately address pre-award/post-award reviews of grantee applications and did not satisfactorily demonstrate its understanding of the application of various important Office of Management and Budget (OMB) circulars and a public health service grants policy statement to the review of grantee accounting systems. In addition, because this contract involves reviewing the financial responsibility and capability of both for-profit and non-profit organizations, the contracting officer took exception to GKA's statement that a "reviewer should not be as concerned with a prospective grantee's (non-profit organization's) net worth or financial capability as opposed to a [for-profit] contractor's net worth and/or financial capability." The contracting officer also determined that for a sample task, GKA provided a superficial response and the firm did not provide adequate labor hours to review unsupported costs.

Further, while GKA proposed experienced personnel for the five direct labor categories (partner, manager, senior, staff, and clerical), the contracting officer was concerned with the firm's labor mix for the senior and staff labor categories, namely that GKA proposed fewer senior hours than staff hours--approximately 1 senior hour for every 3.4 staff hours. The contracting officer believed that for these labor categories, a labor mix ratio of approximately 2 senior hours for every 1 staff hour, as reflected in the independent government estimate, was necessary to satisfactorily perform the contract. The contracting officer did not believe that GKA's proposed labor mix for senior and staff personnel provided enough experienced personnel to prepare a quality audit report.

The contracting officer also pointed out that historically, for the estimated 70 reviews to be performed during the first 6 to 8 months of the contract--characterized as a learning curve period--new and inexperienced contractors, such as GKA, could be expected to spend approximately 40 percent more time on each review. While GKA stated that it would prepare quality audit reports through a stringent review process from the staff level through the partner level, the contracting officer was not convinced that during the start-up, learning curve period, GKA's proposed stringent review process would compensate for its disproportionate reliance on less experienced, less costly staff personnel as compared to more experienced, more costly senior personnel. For this reason, in evaluating GKA's proposed cost, the contracting officer upwardly adjusted by \$63,714 GKA's proposed direct labor cost for the first year of the contract. The contracting officer transposed GKA's proposed higher staff hours with its proposed lower senior hours (which would more closely reflect the agency's historical experience with new contractors and the labor mix ratio in the government estimate) and recalculated GKA's direct labor cost for the first year of the contract based on the firm's higher senior labor rate (for a total evaluated cost of \$768,447).

Finally, the contracting officer consulted some of GKA's government references, which generally reported less than satisfactory performance by GKA with similar staffing ratios. One reference stated that it stopped using GKA because the firm always requested more time to perform the audits and another reference stated that it would not exercise a contract option because it was not satisfied with GKA's product.

Thus, the contracting officer determined that GKA did not adequately address the review of grantee applications and did not satisfactorily demonstrate an understanding of the application of OMB circulars and a policy statement in

reviewing grantee accounting systems. The contracting officer also determined that GKA minimized the significance of reviewing non-profit organizations and did not adequately demonstrate its capabilities under a sample task. Finally, the contracting officer concluded that GKA did not propose an adequate labor mix, particularly during the start-up, learning curve period, a determination which was supported by GKA's government references which reported less than satisfactory and less than timely performance by the firm with similar staffing ratios.

In contrast, the contracting officer concluded that TA demonstrated its understanding of the RFP's technical requirements. TA showed its ability to review grantee applications and grantee accounting systems and the firm demonstrated its understanding of the importance of auditing the financial responsibility and capability of both for-profit and non-profit organizations. The contracting officer determined that TA proposed experienced personnel and he was satisfied with TA's ratio of approximately 2.5 senior hours for every 1 staff hour, a labor mix ratio which basically reflected the agency's expectations and corresponded with the labor mix ratio in the government estimate. Finally, the contracting officer determined that TA offered a strong management and organizational plan with well-defined roles and responsibilities for all personnel, and the firm proposed the use of computers and the implementation of other initiatives to assist in the timely completion of the RFP's technical requirements.

The solicitation stated that technical quality would be given paramount consideration over cost in determining the offeror submitting the most advantageous proposal. The contracting officer determined that while GKA's proposed cost was 23 percent less than TA's proposed cost, TA's proposal was technically superior to GKA's proposal for the reasons discussed above. On June 7, 1993, the contracting officer awarded a contract to TA, the technically superior, higher-cost offeror because he concluded that TA offered the more advantageous proposal.

GKA does not challenge any of the contracting officer's conclusions concerning its technical proposal or TA's technical proposal. GKA also does not challenge the adequacy of discussions. In fact, the record shows that the contracting officer discussed with GKA all deficiencies in its technical proposal. Rather, GKA asserts that the contracting officer did not consider cost, or the cost savings associated with its proposal, in making the award decision. In this regard, GKA maintains that the contracting officer "wanted to retain the incumbent [TA] at any cost."

In a negotiated procurement, there is no requirement that award be made on the basis of lowest cost. Agency officials have broad discretion in determining the manner and extent to which they will make use of the technical and cost results. Cost/technical tradeoffs may be made, and the extent to which one is sacrificed for the other is governed only by the test of rationality and consistency with the established evaluation factors. Midwest Research Inst., B-240268, Nov. 5, 1990, 90-2 CPD ¶ 364. Awards to offerors with higher technical scores and higher costs are proper so long as the results are consistent with the evaluation criteria and the contracting agency reasonably determines that the cost premium involved was justified considering the significant technical superiority of the selected offeror's proposal. See JSA Healthcare Corp., B-242313; B-242313.2, Apr. 19, 1991, 91-1 CPD ¶ 388.

Here, the RFP stated that technical quality would be given paramount consideration over cost in determining the offeror submitting the most advantageous proposal. We conclude that the contracting officer reasonably viewed TA's proposal as technically superior to GKA's proposal. Specifically, TA's proposal contained no technical deficiencies. TA demonstrated its understanding of the RFP's technical requirements, including the requirement for reviewing grantee applications and grantee accounting systems and the importance of auditing the financial responsibility and capability of both for-profit and non-profit organizations. TA's labor mix ratio corresponded with the labor mix ratio in the government estimate and reflected the agency's historical experience that contractors need to rely on more experienced personnel to successfully perform the contract. Finally, in its management and organizational plan, TA clearly defined personnel roles and responsibilities, and it described various initiatives to assist it in timely performing the contract. In contrast, numerous technical deficiencies remained in GKA's technical proposal. Based on the evaluation record, we have no reason to question the contracting officer's determination that TA's proposal was superior to GKA's proposal. Further, in light of the RFP's evaluation scheme which placed more importance on technical quality than cost, the contracting officer made a reasonable technical/cost tradeoff, determining to award a contract to TA, the offeror submitting a technically superior, higher-cost proposal.<sup>1</sup>

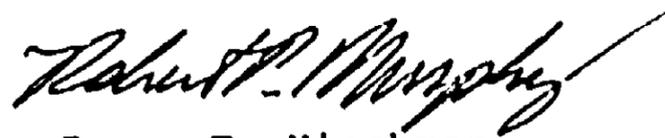
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<sup>1</sup>GKA complains that as the low-cost offeror, it should have been awarded the contract just as TA was awarded a contract as the low-cost offeror in a 1991 competition. In 1991, TA and another offeror submitted proposals which were deemed technically equal in terms of satisfying the agency's

(continued...)

Finally, contrary to GKA's assertion, there is no evidence in the record that the agency was biased against it as a "minority-owned" firm or that any competitive advantage enjoyed by TA as the incumbent contractor was a result of preferential treatment or other unfair action by the government. Military Prof. Resources, Inc., B-243548, Aug. 7, 1991, 91-2 CPD ¶ 135.

The protest is denied.

  
for James F. Hinchman  
General Counsel

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<sup>1</sup>(...continued)  
requirements. Since the proposals were deemed technically equal, the agency properly used cost as the determining factor in selecting TA as the awardee. See Mirada Assocs., B-245974, Jan. 30, 1992, 92-1 CPD ¶ 142. In this procurement, however, GKA's low cost alone could not properly serve as the basis for the contracting officer's award decision. Each procurement stands alone, and a selection decision made under another procurement does not govern the selection under a different procurement. Renic Corp., Gov't Sys. Div., B-248100, July 29, 1992, 92-2 CPD ¶ 60.