



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

REDACTED VERSION*

Matter of: Whittaker Services Corporation

File: B-260951

Date: July 26, 1995

Ronald M. Greenberg, Esq., Rosenfeld, Meyer & Susman, for the protester.
Timothy Sullivan, Esq., and Martin R. Fischer, Esq., Dykema Gossett, for Telos Field Engineering, an interested party.
Lt. Col. Ronald K. Heuer, and Sharon B. Patterson, Esq., Department of the Army, for the agency.
Andrew T. Pogany, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest against contracting agency's evaluation of protester's technical proposal is denied where record shows that the proposal was reasonably evaluated as only "satisfactory" in its technical approach rather than "very good" or "outstanding" as requested by the protester.
2. Where contracting agency reasonably determined that protester's proposal was only "satisfactory" in its technical approach and another firm besides the awardee submitted a technically equal proposal at a lower cost, the protester is not an interested party to maintain a protest against the agency's evaluation of the awardee's proposal or the selection of the awardee.

DECISION

Whittaker Services Corporation protests the award of a cost reimbursement contract to Telos Field Engineering under request for proposals (RFP) No. DAAH03-94-R-0043, issued by the Department of the Army for computer and scientific

*The decision issued on July 26, 1995, contained proprietary information and was subject to a General Accounting Office protective order. This version of the decision has been redacted. Deletions are indicated by "[deleted]."

equipment maintenance and support services.¹ Whittaker principally argues that the agency misevaluated its technical proposal because its proposal should have received a higher rating for its technical approach. Whittaker also argues that the agency failed to downgrade Telos's technical proposal and improperly selected that firm for award.

We deny the protest.

The RFP, issued on April 18, 1994, provided that award would be made to the offeror whose proposal was determined to offer the best value to the government considering the evaluation factors involved. The RFP advised offerors that the four general areas of evaluation were technical, management, cost, and past performance.² The technical and management areas were of equal and of most importance. Within the technical area, the technical approach of each offeror was the most important subfactor and included the evaluation of each offeror's staffing plan, subcontracting and work order control. The other subfactor in the technical area was the minimum qualifications (education, training, and experience) of the employees identified in each offeror's staffing plan.³ Concerning cost, the RFP stated that cost proposals would be evaluated to determine the most probable cost (MPC) of contract performance for each offeror, including a detailed realism analysis of the specific tasks in the RFP.

¹The requirement encompasses maintenance and support services for a large number of complex systems, including computers used for missile weapon systems; computerized robots, laser equipment, spectrometers and gas chromatograph; and a wide variety of scientific equipment such as vibration analyzers, air bearing guidance test tables, and signal digital analyzers. The number of items for which maintenance is required is approximately 27,000, manufactured by more than 1,100 different companies.

²The RFP also designated certain key personnel, such as project manager and operations manager, who were to be rated only on a "GO/NO-GO" basis.

³The management evaluation area, not at issue here, included the evaluation of the offeror's organizational structure, management systems, and plans and programs. In the past performance evaluation area, the agency advised offerors that it would conduct a performance risk assessment based upon the offeror's current and past record of performance as it relates to the probability of successful accomplishment of the required effort.

On July 14, the agency received five proposals, including those from the protester, Telos, and a third offeror, [deleted].⁴ Initial proposals were evaluated, and discussions were subsequently conducted. On January 5, 1995, all offerors submitted revised proposals. The agency advised each offeror by letter dated January 23 of any additional discussion items resulting from its revised proposal. Best and final offers (BAFO) were received on January 27. The results of the agency's BAFO evaluation were as follows:⁵

| | | | |
|-----------------------|--------------|-----------|--------------|
| | Telos | [Deleted] | Whittaker |
| Key Personnel | GO | [Deleted] | GO |
| Technical Rating | Outstanding | [Deleted] | Satisfactory |
| Management Rating | Outstanding | [Deleted] | Outstanding |
| Past Performance Risk | Low | [Deleted] | Low |
| MPC | \$31,459,315 | [Deleted] | \$29,533,419 |

Based on the agency's finding that the Telos proposal represented a technically superior approach, the contracting officer determined that the Telos proposal offered the best value to the government.⁶ On March 16, the agency awarded the contract to Telos; this protest followed.

Basically, the protester first advances several arguments as to why its proposal should have received a "very good" or "outstanding" rating in the technical approach area instead of merely a "satisfactory." We discuss these below.

Generally, in reviewing protests concerning the evaluation of proposals, we will examine the agency's evaluation to ensure that it had a reasonable basis. RCA Serv. Co. et al., B-218191; 218191.2, May 22, 1985, 85-1 CPD ¶ 585. The fact that a protester does not agree with the agency's evaluation does not render the

⁴Because we find only the three proposals submitted by these firms to be relevant to our decision, we limit our discussion to the agency's evaluation of these proposals.

⁵The agency rated the proposals adjectivally as outstanding, very good, satisfactory, poor, and unacceptable.

⁶The contracting officer reaffirmed in her selection decision that Whittaker only had a "satisfactory" technical approach.

evaluation unreasonable. Logistic Servs. Int'l, Inc., B-218570, Aug. 15, 1985, 85-2 CPD ¶ 173.

In its initial protest, Whittaker principally argued that the agency unreasonably downgraded its proposal to a "satisfactory" rating solely because of a minor omission in its proposal concerning open work orders which, according to the protester, was the least important of the subfactors in the technical area. Our review of the record shows that this contention is simply factually erroneous. In fact, the agency rated the protester as "very good" for work orders. Rather, the agency downgraded the protester's proposal for two major reasons. First, in its BAFO, the protester proposed the use of 18 "Technician I" personnel, 11 "Technician II" personnel, and only 9 "Technician III" personnel. Whittaker's proposal explicitly defined the experience requirements for these categories as follows:

Technician I - 1 to 2 years
Technician II - 2 to 6 years
Technician III - 6 plus years

Thus, the agency found that the vast majority (29 out of 38) of Whittaker's proposed technical staff would have under 6 years of experience and that therefore its mix of technical personnel was weighed more toward a lower skill level.

In its comments on the agency report, the protester argues that during discussions the agency advised the firm to reclassify its personnel according to the Service Contract Act wage determination which contained only three technician classifications. Previously, the protester states that it proposed five categories and that the change in classification in its BAFO from five to three was not intended to change experience and skill levels as evidenced by the fact that hourly rates for its personnel remained unchanged. The protester argues, apparently admitting a mistake or the use of ambiguous language in its BAFO, that its BAFO "should have shown an experience level of 2-8 plus years" for Technician II.

We think that the agency reasonably evaluated Whittaker's proposal concerning its technical staffing. Despite the protester's arguments, its BAFO specifically defined the experience level of each technician level, and Whittaker generally proposed personnel with low levels of experience. The fact that the hourly labor rates did not decrease when Whittaker eliminated the higher-skilled labor categories in its BAFO is not sufficient, in our view, to have required the agency to disregard the definitions of the labor categories proposed by Whittaker. Offerors are required to provide adequate explanations of significant changes in their final offers, see The EC Corp., B-238505, May 30, 1990, 90-1 CPD ¶ 509, and here, Whittaker failed to

adequately explain its BAFO. We thus conclude that the agency reasonably downgraded the firm for this reason.⁷

Second, the agency found the Whittaker proposal to be only satisfactory because Whittaker proposed "to perform in-house maintenance on all equipment on the density list [(list of all equipment)] other than AMDAHL and CDC equipment without the benefit of OEM [(original equipment manufacturer)] backup support." The agency reviewed the actual use of OEM backup support under the predecessor contract and found that significant OEM support was required to be used. The agency therefore downgraded the firm for this reason.

In its comments, Whittaker argues for the first time that it did propose to use OEM backup support based on the following statement in its BAFO:⁸

"Other subcontracts will be instituted on an as required basis to obtain parts or particular expertise."

We again think that Whittaker failed to explain adequately its approach to obtaining OEM support in its BAFO. We think that the agency reasonably found that this statement in its BAFO, standing alone, was not sufficient to advise the agency or to commit the firm to substantial OEM backup support. We also note that while Whittaker argues that it included costs for additional unspecified subcontractor costs, it has not specified where those costs were included. We therefore conclude that the agency had a reasonable basis to downgrade Whittaker because it failed to adequately address OEM backup support. We therefore find no basis to disturb the agency's "satisfactory" rating of Whittaker's technical approach. Thus, contrary to the protester's arguments, its proposal was reasonably found by the agency as not substantially equal to Telos's proposal which received an "outstanding" rating for its technical approach.

Finally, Whittaker argues that Telos's cost proposal was not realistic and that this should have resulted in a technical risk downgrade of Telos's proposal. Whittaker

⁷Whittaker argues that Telos's proposed staffing approach deviated from the RFP. This contention is untimely since it was raised in its comments which were filed more than 10 working days after the protester received the agency report which provided the information upon which this protest ground is based. 4 C.F.R. § 21.2(a)(2) (1995).

⁸Whittaker also relies on its experience under a Fort Monmouth, New Jersey contract to show that it does employ OEM support to successfully perform contracts. Since this contract involved a different agency and different equipment, and since this previous experience of Whittaker was evaluated by the agency under the factor past performance, we do not find this argument to be relevant here.

also questions the selection of that firm as offering the best value to the government. We will not consider these issues since, under our Bid Protest Regulations, a party is not interested to maintain a protest if it would not be in line for award if the protest were sustained. 4 C.F.R. §§ 21.0(a) and 21.1(a); ISC Defense Sys., Inc., B-236597.2, Jan. 3, 1990, 90-1 CPD ¶ 8. Since there is another offeror [deleted] which has a technical rating equal to Whittaker's rating and which proposed a lower evaluated cost than Whittaker, this offeror would be in line for award if these contentions by Whittaker were sustained. Since Whittaker has not challenged the technical ratings of [deleted] nor its evaluated costs, Whittaker is not an interested party to challenge these aspects of the award decision. See Peterson Constr. Co., B-256841, Aug. 3, 1994, 94-2 CPD ¶ 55.⁹

The protest is denied.

Robert P. Murphy
General Counsel

⁹Whittaker also complains about the adequacy of its debriefing by the agency after award. Since the debriefing had no effect on the propriety of the selection decision, the protester suffered no competitive prejudice in any event regardless of the alleged lack of thoroughness of the debriefing. See Shah & Assocs., B-257405, Sept. 30, 1994, 94-2 CPD ¶ 123. We also note that the protester has now had full access under a protective order to the entire procurement file.