



**G A O**

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## Decision

**Matter of:** The Right One Company

**File:** B-290751.8

**Date:** December 9, 2002

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Doris Hill for the protester.

Adele Ross Vine, Esq., General Services Administration, for the agency.

Paula A. Williams, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### **DIGEST**

Protest that the agency improperly excluded protester's proposal from consideration for award is denied where the decision to eliminate the protester's proposal was reasonably based on a finding that protester's proposed rates for certain line items were unreasonably high.

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### **DECISION**

The Right One Company (TRO) protests the elimination of its proposal from consideration for award under request for proposals (RFP) No. 6TA-02-MTV-0057, issued by the General Services Administration (GSA) for government-wide acquisition contracts for information technology services. TRO argues that the agency unreasonably excluded its proposal based on the agency's conclusion that TRO either qualified the solicitation requirements or otherwise proposed unreasonably high rates for many line items.

We deny the protest.

The RFP was restricted to firms certified under the Small Business Administration's Historically Underutilized Business Zone (HUBZone) program and provided for the award of multiple indefinite-delivery/indefinite-quantity contracts for a base period of 2 years, with three 1-year options. Work under the contracts was to be performed pursuant to specific task orders covering one or more of seven functional areas (FA) corresponding to various required services.<sup>1</sup> RFP at M-1. Offerors could elect to

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<sup>1</sup>For each FA, the solicitation anticipated not fewer than three and no more than ten awards to the responsible offerors whose proposals represent the best values to the

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propose on any one or more of the FAs and the solicitation advised that GSA intended to make awards based on initial proposals without conducting discussions. Id. at L-1. In addition, the amended RFP cautioned that a proposal would be considered unacceptable and would be ineligible for award if, among other things, it took exception to any of the terms and conditions in the RFP, or imposed additional conditions. RFP at M-1.

The RFP instructed offerors how to prepare their price proposals. The pricing schedules for the base and option periods for each FA included contract line item numbers (CLIN) corresponding to specific labor categories with an estimated number of hours for each labor category. Offerors were requested to provide an hourly ceiling labor rate for each labor category and to multiply this unit rate by the number of estimated hours to calculate the total price for each labor category. For each FA, the price schedule also contained CLINs for supplies, travel, and other direct costs (STODC), and provided an estimated cost amount of \$500,000 for supplies, \$50,000 for travel, and \$25,000 for other direct costs. The solicitation contained a pricing formula in which the estimated cost amount (A) was multiplied by the ceiling handling rate (B) proposed by each offeror; this amount was then added to the estimated cost amount to establish the total extended price for each STODC line item. RFP at B-6.

Regarding ceiling handling rates, the RFP provides:

Handling rates are markups applied to bare cost serving as maximum consideration for all indirect (i.e., overhead, general and administrative) charges, fringe benefits and profit. Handling rates will be expressed as a decimal and not a percentage, and be rounded to three places to the right of the decimal point. . . .

If authorized in an Order, the Contractor will be reimbursed the bare cost of supplies, bare cost of travel . . . and bare cost of ODCs plus the handling amounts (not to exceed the application of the ceiling rates) specifically definitized in the order. To reiterate, there is an absolute requirement that the bare cost amounts of the supplies, travel, ODCs and associated handling amounts be fixed at the time of Order inception. . . . The ceiling handling rates in the schedules of this Section B are caps on the markup allowed for overhead, G&A and profit--they do not serve as mechanical measures of those rates.

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government. RFP at M-1. Each awardee then will compete against the other awardees for task orders to be issued under each FA.

It is customary for profit to not be applied to travel costs and it is not allowable under this Contract.

. . . . .

The ceiling handling rate(s) proposed shall stand regardless of actual utilization (e.g., even if only \$5,000.00 of the estimated \$500,000.00 for supplies is ordered, the ceiling handling rate remains constant.)

RFP at B-4, B-5. In each pricing schedule, offerors were advised that “[t]he price evaluation case will be made on 100% of the extended item totals” and “[i]n no event will the Government agree to an individual item price or rate that is unreasonable, even if the arithmetic is satisfactory in the price evaluation case.” RFP at B-6, B-7.

In response to the solicitation, GSA received several proposals, including one from the protester for all seven FAs. TRO’s proposal was found technically acceptable; however, in the course of the price analysis, the contracting officer identified irregularities in TRO’s proposed ceiling handling rates for the STODC CLINs. For example, the contracting officer was concerned that for FA1, Price Schedule A, Years One and Two, TRO entered a negative handling rate of “-0.966” or -96.6% applied to the \$500,000 cost estimate for supplies for that performance period. The effect of this pricing methodology would result in TRO absorbing \$483,000 worth of the estimated cost of the supplies for that performance year and the contracting officer noted that it was highly unlikely that a small business would choose to absorb such costs. The handling rates TRO offered for supplies in FAs 1-4 had similar negative values. As for FAs 5-7, the contracting officer concluded that the proposed ceiling handling rates for supplies under these FAs were unacceptably high. Contracting Officer’s Statement of Fact at 3. In addition, the contracting officer determined that the handling rates proposed by the protester for travel and ODCs for all FAs were extremely high. For instance, in FA1, years 1 and 2, TRO offered a handling rate of 105.37 or 10,537.00% applied to a cost estimate for ODC of \$25,000 for that performance period. This resulted in an estimated cost of \$2,659,250 for that CLIN. Id.

When the contracting officer, apparently suspecting a mistake, brought these pricing concerns to TRO’s attention, TRO verified its offer as submitted. Specifically, TRO stated:

All of my prices are accurate and correct. Yes, there are negative rates on the FA1; On-Line Information Services; FA2: All other Information Services; FA3: Data Processing Services and FA4. Custom Computer Programming Services. Yes, there are negative

rates because the cost for supplies is well below \$500,000.00. Using your formula on the Price proposal:

Total for Supplies are  $[(A*B)+A]=[(500,000*-.966)+500,000]=\$17,000$ .

AR exh. 3, Price Verification from TRO to GSA, Aug. 22, 2002. After reviewing TRO's price verification, the contracting officer concluded that TRO had impermissibly qualified its offer under each FA. In particular, the contracting officer explains:

All indications . . . were that TRO consistently changed the estimates . . . for STODCs on every S, T and ODC CLIN . . . based upon its demonstrated fundamental misunderstanding of what was being asked for. After taking into account the totality of information, it was the [contracting officer's] supposition that TRO: disagreed with every Agency estimate for STODC CLINs in the RFP, implemented a means to change them to amounts it estimated it could provide complete STODCs for (rather than just the specific elements of STODCs being asked for in CLIN handling rates), and that it did not offer standing unit rates to be applied at the order level as solicited by the RFP.

. . . . .

There were three notes at the end of every pricing schedule in Section B. The second note states, "In no event will the Government agree to an individual item price or rate that is unreasonable, even if the arithmetic is satisfactory in the price evaluation case." The Agency should be permitted to exercise a right it reserved to itself, and has a vested interest in ensuring that no individual CLIN price is unduly high or low. TRO should have read that note 28 times (since it appeared at the end of every pricing schedule performance period [there are four per FA] and TRO proposed upon every FA [there are seven FAs].) No other offerors were even close to TRO's unconscionably high handling rates for S in FAs 5-7, T in all FAs, or ODC in all FAs. TRO's offered ceiling handling rates were compared with the average of all other offerors ceiling handling rates (with TRO's rates removed as they appeared to be outliers/assuming TRO's had qualified its offer) still under consideration in each FA. There was sufficient competition and corporate similarity for the CO to believe the offered pricing to be an accurate benchmark against which to measure TRO's rates. There was (and is) sufficient disparity between the averages and TRO's rates to reasonably conclude TRO's pricing to be unreasonable.

Contracting Officer's Statement of Fact at 7, 15-16. On this basis, TRO's proposal was eliminated from the competition and this protest followed.

TRO challenges the agency's decision to eliminate the firm from the competition and specifically disputes the contracting officer's conclusion that its rates were unreasonable. A determination concerning price reasonableness is a matter of administrative discretion involving the exercise of business judgment by the contracting officer; therefore, we will question such a determination only where it is clearly unreasonable or there is a showing of bad faith or fraud. Concepts Bldg. Sys., Inc., B-281995, May 13, 1999, 99-1 CPD ¶ 95 at 5. We find the contracting officer's determination here unobjectionable.

As quoted above, the contracting officer found TRO's proposed handling rates unreasonable because, when compared to the rates proposed by other offerors, TRO's rates were "unconscionably high." In its report, the agency furnished a chart which provides a CLIN-by-CLIN comparison of the handling rates proposed by the protester and the average rate of all offerors still under consideration for awards. In each and every instance, TRO's rates are substantially out of line with the average rate proposed by the other offerors. For example:

FA1 CLINs	TRO Decimally	TRO Percent	Average of all Decimally	Average of all Percentages
A9 (ODC) Years 1 & 2	105.37	10,537.00%	0.164	16.40%
B9 (ODC) Year 3/ Option 1	57.49	5749.00%	0.163	16.30%
D7 (Supplies) Year 5/ Option 3	-0.996	-99.60%	0.124	12.40%

Contracting Officer's Statement of Fact at 13.

Thus, for example, using the pricing formula set forth in the solicitation, TRO's total estimated price for ODC under FA1 for CLIN A9, was \$2,659,250 (that is,  $(\$25,000 \times 105.37) + \$25,000$ ), compared to \$29,100 (that is,  $(\$25,000 \times .164) + \$25,000$ ), based on the average ODC rate of all offerors still under consideration. This dramatic price disparity between TRO's proposed ceiling handling rates and the other offerors repeats itself under every FA for each performance year for both the ODC and travel CLINs.

It appears from the record that TRO disagreed with the agency's STODC estimates, in general, and with the estimated costs of supplies and travel, in particular. The firm was apparently using its proposed handling rates to "correct" the agency's

estimates. The firm's actions were misguided. The STODC figures were explicitly identified as estimates; actual costs would be used for reimbursement under individual orders. Acceptance of TRO's proposed ceiling handling rates could allow TRO to charge the government mark-ups on actual costs that for many items would be so high as to dwarf the firm's actual costs.

Under these circumstances, we conclude that the contracting officer reasonably determined that TRO's offered ceiling handling rates were unreasonably high and substantially out of line with the other firms remaining in the competition. Consistent with the clear language in the solicitation that the government would not accept an individual item price or rate that was unreasonable, even if the arithmetic was accurate, the agency reasonably excluded TRO's proposal from further consideration.

While the protester raises other protest allegations concerning how its proposal was evaluated, since we conclude that the agency's decision to eliminate TRO's proposal from the competition is justified on the one basis discussed above, we need not address the other agency bases for its decision to find TRO's proposal unacceptable.

The protest is denied.

Anthony H. Gamboa  
General Counsel