



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Techniarts Science & Technology Corporation

File: B-280521.2; B-280521.4

Date: October 15, 1998

Judith H. Deitz for the protester.

David R. Johnson, Esq., Kathleen C. Little, Esq., and Robert J. Rothwell, Esq., McDermott, Will & Emery, for Johnson Controls World Services, Inc., an intervenor. John E. Lariccia, Esq., Martin F. McAlwee, Esq., and Marian E. Sullivan, Esq., Department of the Air Force, for the agency.

Linda C. Glass, Esq., Glenn Wolcott, Esq., and Paul I. Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency's discussions with protester were meaningful and not misleading where agency advised firm of areas where proposal needed clarifications or revisions and in response to agency's concerns, protester elected to propose the more costly technical solution.

DECISION

Techniarts Science & Technology Corporation (TSTC) protests the award of a contract to Johnson Controls World Services, Inc. (JCWS) under request for proposals (RFP) No. F08650-98-R-0013, issued by the Department of the Air Force for visual information end products and technical services in support of pre-launch, launch, post-launch, and non-launch operations, also called the Visual Information Technical Contract (VITC). TSTC asserts that JCWS's proposal was unbalanced, and that the Air Force improperly evaluated JCWS's technical proposal and conducted misleading discussions with TSTC.

We deny the protest.

The RFP, issued on May 20, 1997, contemplated the award of a fixed-price, indefinite-delivery, indefinite-quantity, labor-hour contract for a base period with four 1-year options. The contract is to obtain visual imaging end products for launch and non-launch events for the 45th Space Wing and NASA's Kennedy Space Center. Offerors were to propose a fixed price per event for Basic Launch Image Acquisition Packages (camera/equipment setups and operations for missile launches and shuttle launches and landings), and Launch Image Acquisition Services (covering launches, landings, slips and scrubs). Additionally, offerors were to propose a price per hour for over and above image acquisition requirements

(requested still, motion picture, and video coverage for non-launch activities and government equipment maintenance support). Film, digital images and video processing and print products were to be proposed on a schedule identifying additional products with prices for each product. RFP § B. The VITC also contained five separately priced contract data requirements lists. RFP § B.

The RFP listed as the evaluation criteria technical/management factors (consisting of project management and image acquisition/processing/end products), cost, and general considerations. All technical evaluation factors, when combined, were approximately equal to cost. General considerations were of lesser importance but were to be an important consideration in the award decision. RFP § M-2.a. The RFP also provided that proposals would be evaluated for proposal risk, which would involve an assessment of the risk associated with the offeror's proposed approach to accomplish the requirements. RFP § M-2.d. Proposals were also to be evaluated for performance risk, which would involve an assessment of the probability of the offeror successfully accomplishing the proposed effort based on the offeror's demonstrated relevant present and past performance.¹ RFP § M.e. The RFP further provided that for the purpose of evaluating proposals, rental charges for the use of non-mandatory government-owned facilities and equipment which the contractor proposed to use would be added to the bid/proposal price. RFP § M-900.

While the RFP stressed that the government was seeking innovative approaches for performance of the VITC, it also recognized that offerors who propose significant capital investment in new technology and updated equipment would accept the greatest risk in performance of the contract, and therefore the evaluation criteria were structured so that offerors proposing to perform the VITC in substantially the same manner as the existing contract would meet the evaluation standards. To exceed the standards, a proposal had to offer contract performance which would provide superior customer support while providing technical solutions which would reduce overall VITC support costs (contract costs plus other support costs such as maintenance of facilities and equipment). RFP § M-2.b.

Five initial proposals were received by the June 20, 1997 closing date. After evaluation of these proposals, the Air Force determined that they all contained informational deficiencies and format errors. Amendment No. 0003 was issued to clarify common problem areas and allow offerors an opportunity to revise their proposals. Amendment No. 0003 also added clause M-901, which established a revised methodology for computing the total evaluated price for award purposes. This evaluation methodology was based upon a weighted average formula for the products described in exhibit C (additional products) to the RFP and was designed

¹The possible evaluation ratings for proposal risk and performance risk were high, moderate, and low.

to place emphasis on the pricing for the most requested items. Under this formula, offerors proposing lower prices for items seldom ordered and higher prices for items frequently ordered would earn a higher total evaluated price for the end products.

Each offeror submitted a revised proposal by the September 19 closing date. Each revised proposal was evaluated for performance and proposal risk in addition to being evaluated under a color/adjectival rating scheme for each of the evaluation factors.² After evaluation of the revised proposals, a competitive range determination was made. TSTC's proposal was initially excluded from the competitive range on the basis that it did not reasonably address the essential requirements of the RFP and that the extent and nature of the deficiencies were such that to remedy them would require the submission of virtually an entirely new proposal. TSTC protested its exclusion to our Office, whereupon the agency reinstated TSTC in the competitive range.

Discussions were held with the four competitive range offerors and numerous clarification requests and points for negotiations were issued. On May 29, 1998, a request for best and final offers (BAFO) was issued to the competitive range offerors. BAFOs were received from all four offerors and were evaluated. Three competitive range offerors, including TSTC and JCWS, were considered to represent significant technical strengths because of their mix of commercial management practices and innovative technical solutions and low proposal risks; however, JCWS's price was significantly lower than that of the other offerors. The source selection authority (SSA) concluded that these three offerors provided exceptional approaches to Project Management and Imaging Acquisition, Processing and End Products. The three offerors exceeded the requirements for four of the eight subfactors under the project management evaluation factor and met the requirements for the remaining four subfactors. The evaluated ratings and costs of these offerors were as follows:

OFFEROR	PROJECT MGMT.	IMAGE ACQUISITION	COST
JCWS	Blue	Blue	\$134M
OFFEROR A	Blue	Blue	\$154M
TSTC	Blue	Blue	\$169M

²The color/adjectival ratings were blue/exceptional, green/acceptable, yellow/marginal, and red/unacceptable.

Because JCWS's proposal thus offered the lowest cost of the three technically equal proposals, on June 19, the SSA determined that JCWS offered the best overall value to the government and contract award was made to JCWS on June 26. TSTC was provided a debriefing on July 3 and this protest was subsequently filed on July 7.

TSTC's objections to the agency's evaluation of proposals is essentially based on its allegation that the agency changed the evaluation criteria without notifying offerors. It is TSTC's position that in accordance with the solicitation's statement of objectives, the agency evaluators should have assigned higher ratings to offerors proposing to use less government-furnished equipment (GFE) and government-furnished facility (GFF) and to offerors making substantial investments in new capital equipment.

The evaluation of proposals is a matter within the discretion of the contracting agency. Our Office will question the agency's evaluation only where it lacks a reasonable basis or conflicts with the stated evaluation criteria for award. SC&A, Inc., B-270160.2, Apr. 10, 1996, 96-1 CPD ¶ 197 at 7.

We do not agree with TSTC that the agency failed to evaluate proposals in accordance with the evaluation criteria. Contrary to the protester's argument that the highest ratings must be reserved for offerors using the least GFE/GFF, the RFP did not provide for evaluation of proposals in this manner. The RFP specifically provided that "[i]n determining that a proposed technical solution exceeds the standards and merits a rating of exceptional (blue), the Government will consider all significant benefits of the approach, whether or not specifically identified in the proposal, which will provide superior customer support and technical solutions which will reduce government-furnished VITC support in the form of facilities and equipment." RFP § M-2.b. The record demonstrates that the agency's evaluation was unobjectionable and consistent with the stated evaluation criteria. The agency evaluators rated JCWS's proposal exceptional (blue) with a low proposal risk because it contained significant strengths with no significant weaknesses. Consistent with the solicitation evaluation criteria, the SSA viewed JCWS's proposed 84-percent reduction in GFF as offering contract performance which will provide superior customer support with a reduction in overall VITC support costs, and therefore as deserving an exceptional rating.

In support of its protest against the evaluation of proposals, TSTC also maintains that the agency failed to conduct meaningful discussions with TSTC because the agency failed to inform TSTC that the agency wanted "the lowest cost solution to its needs, one that would pay token homage to the Statement of Objectives goals while actually maintaining a reliance on existing GFE." Protest at 17. TSTC contends that, during discussions, the agency consistently directed it toward the higher-priced technical solutions that met the statement of objectives.

In negotiated procurements where discussions are held with offerors, they must be meaningful, which means that sufficient information must be furnished to offerors in the competitive range as to the areas in which their proposals are believed to be weak so that offerors have a reasonable opportunity to address those areas of weakness which could have a competitive impact. The government does not satisfy its obligation by misleading an offeror or by conducting prejudicially unequal discussions. Lucas Place, Ltd., B-238008, B-238008.2, Apr. 18, 1990, 90-1 CPD ¶ 398 at 4. Here, we do not find that the discussions were improper or misleading.

The record shows that TSTC was downgraded initially because it failed to demonstrate that it met the contract requirement for supporting three back-to-back events; failed to demonstrate the ability to meet the 4-hour turn-around time for motion picture film processing; failed to provide evidence of subcontractor commitments, describing their roles, responsibilities and capabilities in performance of VITC; failed to describe setup and operational processes for handling and processing classified film products; and relied on the government for coordination of contractor processes instead of associate contractor agreements. Memorandum from Contracting Officer to TSTC 1 (Dec. 12, 1997). In its revised proposal, submitted in response to amendment No. 0003, TSTC discussed three options for reducing costs and increasing customer responsiveness relative to processing, printing, finishing, captioning, packing and distributing still film products.

During discussions, TSTC was advised on several occasions that it had failed to provide its strategy to meet the RFP delivery requirements and that it was TSTC's responsibility to select which option it believed to be most viable to meet RFP requirements. In response, TSTC discussed the pros and cons of its different proposed solutions without selecting a particular solution. It was only after continued prodding by the agency that TSTC stated that its third proposed solution was the optimal solution that met all requirements. Thus, TSTC proposed to establish a commercial still laboratory in Port Canaveral and perform as much work as possible in that facility, subcontracting to other commercial facilities only that specialized work that cannot be economically justified in-house. On this basis, TSTC's proposal was rated blue (exceptional) for the project management factor and the imaging acquisition, processing, end products. The evaluators concluded that TSTC provided overall superior technical solutions for acquiring images by proposing advanced cameras and a new state-of-the-art processing facility providing a selection of end products not currently available, albeit at a higher cost to the agency.

The record shows that during discussions, it was never suggested to TSTC what solution would best meet the RFP requirements. Rather, the agency merely requested explanations as to TSTC's method for complying with the requirements. For example, with respect to the 4-hour delivery requirements, TSTC was advised that it had failed to identify its chosen strategy for meeting this requirement. TSTC DR-1R. With respect to the requirement for three back-to-back events, TSTC was

asked to clarify how it could handle three such events, in light of its statement that its normal production capacity could only support two events during a week. TSTC CR-27. Here, the agency merely requested that TSTC select its strategy and explain how its proposed solution would meet the requirements. Based on its own business judgment of how best to satisfy the agency's requirements, TSTC eventually proposed a more costly solution. We see nothing misleading or improper about the agency's conduct during discussions.

TSTC also argues that, based on the awardee's low price, the awardee will be unable to meet the RFP's delivery requirements and the requirement for supporting three back-to-back events, and therefore contends that these requirements must have been relaxed for the awardee. However, the record shows that the agency did not relax any of the RFP requirements for the awardee and reasonably concluded that the awardee demonstrated that it could meet all the RFP requirements, including delivery, at its proposed price. The record shows that, as a result of a detailed price analysis, the agency found JCWS's price to be reasonable and realistic and an accurate reflection of JCWS's proposed technical solution for meeting the RFP requirements. The evaluators concluded that JCWS demonstrated in detail how it could meet the 4-hour and 24-hour delivery requirements through its proposed use of off-site subcontractors, as well as some on-site work; the agency also determined that JCWS integrated the work processing both by quantity and technology. The evaluators concluded that both TSTC's and JCWS's proposed solutions provided exceptional approaches to meeting the requirements. However, the evaluated cost of JCWS's solution was approximately \$30 million less than TSTC's, and thus offered the best overall value to the government.

Finally, the record simply does not support the protester's contention that the agency changed its award criteria to give greater emphasis to price. As stated above, the RFP provided that price and technical were equal. Here, the SSA determined that three offerors, including TSTC and JCWS were essentially technically equal, with all receiving blue (exceptional) ratings for both technical evaluation factors, and made award to JCWS because its total evaluated price was significantly lower than that of the other offerors. Once the SSA determined that the proposals were essentially technically equal, price properly became the determinative factor. Oglivy, Adams & Rinehart, B-246172.2, Apr. 1, 1992, 92-1 CPD ¶ 332 at 5.

Since we conclude that the agency properly evaluated TSTC's proposal and did not mislead TSTC during discussions, TSTC is not an interested party to maintain its other protest issues concerning the awardee's proposal. Under the bid protest provisions of the Competition in Contracting Act of 1984, 31 U.S.C.A. §§ 3551-56 (West Supp. 1998), only an "interested party" may protest a federal procurement. That is, a protester must be an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a contract or by the failure to award the contract. 4 C.F.R. § 21.0(a) (1998). Determining whether a party is

sufficiently interested involves consideration of a party's status in relation to a procurement. Where there are intermediate parties that have a greater interest than the protester, we generally consider the protester to be too remote to establish interest within the meaning of our Bid Protest Regulations. Panhandle Venture V; Sterling Inv. Properties, Inc.--Recon., B-252982.3, B-252982.4, Sept. 1, 1993, 93-2 CPD ¶ 142 at 2; The Law Co., B-248631, Sept. 10, 1992, 92-2 CPD ¶ 165 at 4. A protester is not interested if it would not be in line for award if its protest were sustained. Abre Enters., Inc., B-251569.2, Mar. 16, 1993, 93-1 CPD ¶ 239 at 4.

Here, TSTC lacks the direct economic interest necessary to qualify as an interested party to maintain its other issues. As explained above, while TSTC's proposal received a blue (exceptional) rating and had the highest total evaluated price of all the competitive range offerors, another offeror's proposal was also rated blue (exceptional), and its total evaluated price was significantly lower than TSTC's. Because TSTC has not protested the evaluation of this offeror's technically equal, lower-priced proposal, even if we were to sustain the protest with respect to the awardee's proposal, TSTC would not be next in line for award. Accordingly, TSTC is not an interested party to protest JCWS's evaluation and award.

The protest is denied.

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of the United States