



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

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Matter of: Dynamic Resources, Inc.

File: B-277213; B-277213.2

Date: September 16, 1997

Richard J. Conway, Esq., James Andrew Jackson, Esq., and Edward W. Kirsch, Esq., Dickstein Shapiro Morin & Oshinsky, for the protester.

Daniel B. Abrahams, Esq., and Raymond Fioravanti, Esq., Epstein Becker & Green, P.C., an intervenor.

Elaine A. Eder, Esq., Isaac Johnson, Jr., Esq., and Robert E. Korroch, Esq., U.S. Coast Guard, for the agency.

Andrew T. Pogany, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Pre-award survey conducted by contracting agency of successful offeror's prospective responsibility did not constitute improper discussions with only that offeror, even though agency subsequently decided to request best and final offers, where agency held discussions with the protester as well as other offerors prior to the request for best and final offers, the information obtained during the pre-award survey did not change the results of the selection decision in any way and, in any case, protester does not identify any specific areas of its proposal it should have been given an opportunity to improve.

2. An awardee did not materially misrepresent the availability of its proposed personnel where it obtained resumes from such personnel and had a reasonable basis to expect that the employees would be available for contract performance.

DECISION

Dynamic Resources, Inc. (DRI) protests the award of a contract to FC Business Systems under request for proposals (RFP) No. DTCG23-96-R-EA7001, a section 8(a) competitive set-aside, issued by the United States Coast Guard for professional services to operate and maintain computerized management information systems. DRI principally alleges that the agency conducted a comprehensive and detailed pre-award survey of FC prior to receipt of best and final offers (BAFO) which constituted improper discussions with only that firm; that the agency misevaluated FC's proposed key personnel and DRI's past performance; and that FC engaged in "bait and switch" tactics with respect to certain proposed personnel.

We deny the protest.

BACKGROUND

The RFP was issued on September 19, 1996, and contemplated the award of an indefinite delivery/indefinite quantity contract to maintain and operate the agency's aviation maintenance database systems--the Aviation Computerized Maintenance System (ACMS) and the Aviation Maintenance Management Information System (AMMIS)--including operation of computer hardware and telecommunications equipment, design and update of application software and other technical services. Additionally, the RFP potentially required the contractor to integrate the two large transactional databases, ACMS with AMMIS, into the Aviation Logistics Management Information System (ALMIS), which will support mission critical aviation logistic business processes such as aircraft maintenance, reliability, repair, overhaul, supply, flight operations and management analysis for the agency's Aircraft Repair and Supply Center and 26 Coast Guard air stations. The RFP requested prices for a base period and 4 option years, which were to be evaluated.

The RFP contained 33 separate and specific labor categories of personnel who were required to perform maintenance-related services, and identified specific education and experience requirements for each. The RFP also identified certain of these labor categories as "key personnel," which were defined as "those persons, whether employed by the offeror or by one of the offeror's [prospective] subcontractors and teaming contractors who will occupy the following positions or perform" any of the following duties: program manager; technical manager; senior reliability engineer; computer programmers; aircraft maintenance analysts; programmer/analyst; and software engineer (emphasis in original). The RFP required a personnel data form (PDF) to be completed for each key person, but did not require letters of commitment.

The RFP stated that the agency intended to award without discussions, unless discussions were later determined to be necessary, and would award the contract to the offeror whose proposal represented the best overall value to the government "on the basis of its offer and its capability to perform the work." The RFP contained the following evaluation factors, listed in descending order of importance: (1) offer acceptability (an initial determination of the acceptability of an offer on a pass/fail basis to ascertain that the offer assents to all terms and conditions of solicitation requirements); (2) cost and price, fee and profit reasonableness and realism (use of cost and price analysis for cost/price reasonableness/realism); and (3) capability of competing offerors, including the subfactors of past performance,¹

¹The RFP contained a past performance questionnaire which would be sent to past and present clients identified by each offeror. Past performance qualifications were evaluated for the prime and each subcontractor.

qualifications of key personnel, experience, and understanding of the government's requirements and the nature of the work. The RFP required each offeror to submit written capability information, a cost proposal, and oral presentation slides. The oral presentation slides were required because the RFP stated that the agency would employ an oral presentation medium, among other things, to evaluate and select the successful offeror. The RFP stated that the oral presentation and the question and answer session were tests of the offeror's capability and would not become a part of the proposal.

Six offers were received by the initial closing date, including those of DRI and FC. The agency convened a technical evaluation team (TET), which was responsible for evaluating technical information,² and which also sent out past performance questionnaires. The TET determined that all offers were acceptable and that all offerors were eligible to participate in oral presentations, which were conducted from December 5 through December 12. The agency's cost/price report, completed on January 24, 1997, stated that all offers were reasonably and realistically priced. However, the contracting officer was advised that negative past performance ratings had been received on proposed subcontractors of two offerors, DRI and another offeror not involved in this protest. DRI's proposed subcontractor, [deleted], had been given a negative rating by the Coast Guard program office for its performance of a contract concerning [deleted]. The agency requested a rebuttal from [deleted] (DRI was sent a copy of the request), and the rebuttal was received on March 3.

[Deleted] rebuttal, which disputed the poor negative rating, was referred to the Chief, Office of Aeronautical Engineering, who determined that the rebuttal did not alter the original past performance rating and so advised the contracting officer. The rebuttal was not shown to the TET, which was informed of the Office of Aeronautical Engineering Chief's decision. The TET submitted its final report on March 14 with the following results, including price/cost (which had been evaluated earlier as reflected in the agency's cost report):

Offeror	Technical Rating	Most Probable Cost	Risk
FC	Green	[deleted]	[deleted]
DRI	Green	[deleted]	[deleted]

The TET's ratings were based on its finding that both proposals were comprehensive and met or exceeded all requirements. For example, with respect to FC, the TET found that the "corporate teaming partners have successfully performed on several projects similar to ALMIS [and that its talent] pool is deep

²The TET used a color coded rating system consisting of blue (superior), green (satisfactory), yellow (marginal), and red (unsatisfactory).

and matrix arrangements are strong." The TET also noted that FC's project manager handled the key personnel quality/availability problem presented to the firm during the oral presentation session "most adroitly." Further, the TET noted that FC and its team have a "track record" with each other and experience with the company. The TET ultimately assigned a low technical risk to FC because its proposed team was "solid" and its past performance "indicates a pursuit of excellence."

Concerning DRI, the TET noted that its team [deleted].

[deleted].

Based on these considerations, the TET recommended award to FC as the best value offeror. The source selection official (SSO--the contracting officer) accepted the recommendation and made a formal determination to award the contract to FC. The agency's program officer then requested a pre-award survey to "validate the information presented by [FC] and [its] primary subcontractor during the oral presentation." The pre-award survey was conducted on April 1 and 2, with two quality assurance personnel, the contracting officer, and the TET Coordinator, among others, present. The agency continued to proceed to process the award without discussions. However, upon review of the acquisition files, the agency attorney recommended to the contracting officer that discussions be conducted to allow DRI (and the third offeror) to address the negative past performance ratings of their subcontractors in view of past correspondence with these subcontractors, which the agency attorney believed may have constituted partial discussions, necessitating the affording of an opportunity to submit a best and final offer (the FC proposal was not in issue in this determination). On April 17, the agency conducted discussions with each offeror, including discussions with DRI about the past performance of its subcontractor, [deleted]. Cost was the only topic of discussion with FC.

Subsequently, all offerors were requested to submit their BAFOs. After receipt of BAFOs, the agency evaluated FC's most probable cost at [deleted], and DRI's most probable cost was evaluated at [deleted]. Additionally, the TET reconvened on April 30 to review the BAFO past performance information submitted by DRI and the third offeror. In an "augmented" report (dated May 2) provided to the contracting officer, the TET continued to "maintain its original recommendation" that FC still be selected for award. The SSO, after reviewing the recommendation, maintained her selection decision of FC because she "determine[d] that the offer proposed by [FC] still represents the best overall value to satisfy the Coast Guard's requirements." She also stated that her "original determination to award to this firm, therefore, stands." This protest followed a debriefing afforded to DRI.

DRI raises numerous arguments concerning the evaluation and the award decision. We have reviewed the record and find all to be without merit. We discuss the principal arguments below.

ALLEGED IMPROPER DISCUSSIONS

DRI argues that the agency improperly employed the pre-award survey to supplement, modify, and improve FC's technical proposal and oral presentation. According to DRI, the TET Coordinator was involved in developing a list of documents and proposed pre-award questions that corresponded to the topics which were the subject of the oral presentation. DRI concludes that, had it been afforded an equally comprehensive opportunity to discuss its proposal with the agency, the evaluation results may have been different.

We find nothing improper in the agency's actions. The agency conducted a routine pre-award survey of FC, not to provide FC a competitive advantage, but because the agency had decided at that juncture to make award to FC based on the results of the evaluation. When the agency then determined, prior to the award, that circumstances required discussions with all offerors, it accomplished this by the only means available--by opening discussions with all offerors. The agency then provided all an opportunity to submit a BAFO, again, not to allow FC an unfair opportunity to revise its proposal, but because the regulations require it. See Federal Acquisition Regulation § 15.611(a). While the agency did not conduct a "pre-award survey" of DRI, the discussions with the firm addressed the agency's concerns with its proposal, and the call for BAFOs provided DRI the opportunity to revise its proposal in response; DRI was unable to allay the agency's concerns in its revised proposal. While DRI asserts generally that a "pre-award survey" would have provided it an opportunity to address more fully "technical issues" and deficiencies, DRI's protest and written comments do not identify even a single, specific "technical issue" or deficiency that the agency should have--but failed to--discuss with the firm during the procurement. Further, both offerors' technical proposals were rated "green" (satisfactory), and FC's offered price was lower than DRI's before and after receipt of BAFOs. There thus is no basis to conclude that FC "improved" its competitive standing as a result of the pre-award survey, or that DRI improperly was deprived of an opportunity to improve its own standing.

KEY PERSONNEL

DRI maintains that the agency misapplied the RFP's Key Personnel provision in evaluating FC's proposal. According to the protester, the agency improperly gave FC credit for proposing 29 key personnel, when, in fact, the firm had only designated 7 of the individuals it proposed as key personnel. DRI concludes that FC's proposal "should have been rejected as non-responsive" because it failed to propose enough key personnel.

This argument is without merit. The only significant difference between key and nonkey personnel in the RFP was that a PDF had to be included for key personnel. While FC may have labeled only seven individuals as key personnel, it included PDFs for all personnel it proposed, and the agency reasonably treated the mislabeling as a clerical error and therefore evaluated as key personnel those individuals proposed for positions whose occupants the RFP indicated were key personnel. In any event, it is not apparent why any significance should be attached to the mislabeling of the individuals in FC's proposal, since there is no indication that the mislabeling could have given FC any advantage in the evaluation. We conclude that the agency's evaluation in this regard is reasonable, particularly in light of the fact that the protester does not question the qualifications, credentials, education, or experience of the personnel FC proposed.

PAST PERFORMANCE

Past performance was the most important of the technical merit subfactors. Past performance information for both the prime contractors and their proposed subcontractors was obtained by the TET through the use of past performance questionnaires. DRI's proposal identified [deleted] work on the [deleted], and that program office responded to the past performance questionnaire with an unfavorable rating. For example, [deleted] received the following comments concerning the [deleted]:

[deleted]
[deleted]
[deleted]
[deleted]

The questionnaire concluded with the following statement:

[deleted].

However, despite the [deleted] rating received, the TET recognized [deleted] and awarded DRI a [deleted] for this evaluation factor.

DRI complains that [deleted]. DRI states that [deleted].

DRI's focus on the allegedly faulty past performance ratings of its subcontractor is misplaced. As stated above, the agency's primary concerns were not with [deleted], but with DRI's own past performance record. As part of the evaluation, DRI's past performance on eight contracts was reviewed (one additional contract report from the Federal Prison Industries was disregarded). The questionnaire responses on

[deleted] of the eight contracts received by the agency [deleted]. In the questionnaire, each respondent was asked, among other things, to provide summary ratings of 0 (unsatisfactory), 1 (poor), 2 (fair), 3 (good), or 4 (excellent) for quality, cost control, timeliness, business excellence, and customer satisfaction. DRI's average score for these factors on these five contracts were [deleted]. Its overall average score for all [deleted]. While the remaining questionnaires showed that DRI's performance was [deleted]. Consequently, even if we assume, arguendo, that the Coast Guard misconstrued one reference involving its subcontractor, there is no basis for questioning the rating of DRI's proposal as [deleted]--rather than [deleted]--for this subfactor.

ALLEGED BAIT AND SWITCH

In its initial protest, DRI alleged "on information and belief" that FC proposed a [deleted] as a key employee, knowing that he would be unavailable to be employed under the contract. When the agency and the intervenor presented evidence that [deleted] had entered into a consulting agreement with FC and had authorized the execution of an offer letter with FC, DRI abandoned this allegation. Instead, in its written comments, DRI alleged that FC proposed [deleted] and [deleted] without first obtaining their permission to use their resumes in the FC proposal.

Generally, an offeror's misrepresentation concerning personnel that materially influences an agency's consideration of its proposal provides a basis for proposal rejection or termination of a contract issued based upon the proposal. ManTech Advanced Sys. Int'l, Inc., B-255719.2, May 11, 1994, 94-1 CPD ¶ 326 at 5. A misrepresentation is material where an agency has relied upon the misrepresentation and that misrepresentation likely had a significant impact upon the evaluation. Id. at 5. We conclude from the record here that FC did not make any material misrepresentations concerning its proposed personnel.

FC has shown that it obtained [deleted] resume for use in its proposal, and [deleted] was present at an FC "open house for employment" shortly after the contract was awarded. There is nothing in the record suggesting that FC could not reasonably believe that [deleted] would be available for employment. DRI's allegation regarding [deleted] is based solely on a hearsay telephone conversation between another [deleted] manager and [deleted]. This conversation, by itself, is not sufficient to establish that FC did not expect [deleted] to be available, at least in light of the fact that FC has shown that it obtained [deleted] resume prior to submitting its proposal.

The protest is denied.

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