



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

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Matter of: LTR Training Systems, Inc.

File: B-274996; B-274996.2

Date: January 16, 1997

Katheryn Bradley, Esq., Partnow Sharrock & Tindall, for the protester.
Jeff M. Sajdak, Esq., United States Customs Service, Department of the Treasury, for the agency.
Linda C. Glass, Esq., and Paul I. Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency improperly determined that technical proposals were equal where protester's proposal was allegedly clearly superior is denied where record establishes that the agency reasonably evaluated the respective technical proposals and that this evaluation supports the source selection authority's determination that the proposals were substantially equal technically. As a result, the agency properly made the award on the basis of the lower proposed price.

DECISION

LTR Training Systems, Inc. protests the award of a contract to Emergency Response Institute (ERI) under request for proposals (RFP) No. CS-I-96-010, issued by the United States Customs Service, Department of the Treasury, for an aviation survival training course. LTR, the incumbent contractor, alleges that the agency's evaluation of proposals was unreasonable and inconsistent with the RFP criteria and that the agency improperly made price the most important evaluation factor for award, contrary to the RFP evaluation scheme.

We deny the protest.

The solicitation contemplated the award of a fixed-price, indefinite delivery, indefinite quantity contract for the development of an aviation survival training course and an aviation survival refresher course. The RFP stated that technical merit would be more important than price in the award decision, but noted that price would become the deciding factor if proposals were found to be substantially equal. The RFP further provided that among acceptable proposals with a significant difference in technical merit, the importance or weight given price would be

substantially less than the importance or weight given to technical factors in the award selection. The RFP also provided that the contracting officer would determine whether technical proposals were substantially equal or whether any differences in the technical assessments were significant for purposes of evaluating the overall merit of proposals.

The technical evaluation factors, listed in descending order of importance, were technical approach, personnel resources, and contractor past performance. Within the technical approach category, section M identified five criteria of equal importance: (1) aviation survival training course; (2) proposed course materials; (3) practical exercise; (4) course completion standards; and (5) required equipment. Within the personnel resources criterion, three subcriteria of equal importance were listed: (1) instructor qualifications; (2) instructor certifications; and (3) staffing plan. Within the contractor past performance category, three criteria were identified: (1) quality of product or service; (2) overall customer satisfaction; and (3) quality certifications and awards. Quality of product or service was significantly more important than the other two factors which were of equal importance.

Six firms submitted initial proposals by the March 28, 1996, closing date. The source selection evaluation team (SSET) consisted of four evaluators, each of whom evaluated the proposals and assigned them a numerical rating. The four ratings were then averaged and the proposals categorized as unacceptable (U), susceptible to being made acceptable (S), or acceptable (A). The initial evaluation results were as follows:

<u>Offeror</u>	<u>Score</u>	<u>Rating</u>
LTR	95.3	A
ERI	69.0	S
Offeror #3	54.5	U
Offeror #4	51	U
Offeror #5	48.5	U
Offeror #6	43	U

The SSET found LTR's proposal to be acceptable as submitted, except for an issue concerning the number of instructors to be provided during the refresher training. ERI's proposal was determined to be susceptible to being made acceptable, but the evaluation panel concluded that ERI needed to address issues concerning its equipment, instructors, and past performance. After considering proposed prices,

the contracting officer found that all six proposals were either acceptable or capable of being made acceptable and included all proposals in the competitive range.

Discussions were held with all offerors, and best and final offers (BAFO) were requested. A new evaluation panel reviewed the BAFOs. The new panel was advised of certain concerns the contract administrator had with the conclusions of the first evaluation panel, which she felt resulted from the failure of the panel to familiarize itself with the statement of work (SOW). The contract administrator cited the following examples of discrepancies in the evaluation of initial proposals:

1. Two contractors proposed two instructors for the refresher course when the SOW required three, but the contractors were not penalized in this area;
2. One contractor, although not submitting certifications for three of its instructors and providing no evidence these instructors taught two out of the last five years as required by the RFP, received high marks in the area; and
3. Only one instructor was required per class by the RFP as an advanced first aid instructor or an Emergency Medical Technician (EMT), but several evaluators said one instructor for a large class was not enough.

After a technical review of the BAFOs by the new panel, four proposals were excluded from the competitive range. LTR's BAFO, with technical score of 87.34, and ERI's BAFO, with a technical score of 78.34, were found to be acceptable, but because of unresolved issues with both, the contracting officer decided to reopen discussions. After the second round of discussions was conducted, LTR and ERI were again requested to submit BAFOs. The contracting officer determined that the second BAFOs clarified the unresolved issues for both offerors and concluded that ERI's and LTR's proposals were substantially equal. As a result, the contracting officer awarded the contract to ERI whose proposed price was \$339,912 less than LTR's.

LTR essentially argues that the agency failed to adequately address the difference in technical merit between the two proposals and failed to provide a rational reason for awarding the contract to a technically inferior offeror.¹

¹In its comments to the agency report filed with our Office on December 3, 1996, the protester raised two additional issues: that the agency evaluated LTR's proposal
(continued...)

In a negotiated procurement, contracting officials have broad discretion in determining the manner and extent to which they will make use of technical and price evaluation results. TRW, Inc., 68 Comp. Gen. 511 (1989), 89-1 CPD ¶ 584. In reviewing an agency's source selection decision, we will examine the evaluation supporting that decision to ensure that the evaluation was reasonable and consistent with the stated evaluation criteria. Contel Fed. Sys., 71 Comp. Gen. 11 (1991), 91-2 CPD ¶ 325. The source selection official, however, is not bound by the recommendation of lower-level evaluators, Verify, Inc., 71 Comp. Gen. 158 (1992), 92-1 CPD ¶ 107; accordingly, in determining whether the award decision was reasonable and consistent with the solicitation evaluation criteria, we review the decision, not of lower-level evaluators, but of the source selection authority. Id. Consequently, the appropriate question is simply whether the contracting officer, who was the source selection authority, had a reasonable basis to conclude that the two proposals were substantially equal technically. We conclude that he did.

In a supplemental agency report, the contracting officer furnished a declaration in which he elaborated upon the reasons for his source selection decision.² Specifically, the contracting officer stated that he reviewed both SSET reports and the responses received from both offerors during discussions and conducted his own independent review, which led him to conclude that despite the SSET scoring, the two proposals were essentially equal.

While the protester complains that the contracting officer failed to consider its clearly demonstrated technical superiority and erroneously concluded that LTR and

¹(...continued)

based on improper criteria, and that the scoring of LTR's proposal by the two technical evaluation teams was inconsistent. We dismiss these protest allegations, which were first raised in the protester's comments on the agency's report, as untimely since they were filed more than 10 calendar days after LTR should have known their basis. Bid Protest Regulations, section 21.2(a)(2), 61 Fed. Reg. 39039, 39043 (1996) (to be codified at 4 C.F.R. § 21.2(a)(2)). The protester learned of these bases for protest, at the latest, when it received the agency report on November 15. While the protester was granted an extension of time for filing its comments, this did not toll the time for timeliness purposes with respect to raising additional issues.

²LTR objects to our consideration of this declaration because it is not contemporaneous with the selection decision. However, while we generally give more weight to contemporaneous records than to those prepared after the fact, we consider all documents of record, including explanations for evaluations and selection decisions furnished in response to a protest. Benchmark Sec., Inc., B-274655.2, Feb. 4, 1993, 93-1 CPD ¶ 133.

ERI were technically equal, the record shows that the contracting officer reasonably determined that both offerors, in their second BAFO, equally demonstrated the ability to successfully fulfill the solicitation requirements. For example, the RFP required the successful offeror to have personnel with requisite medical certifications. Offerors could meet this requirement by providing a currently certified advanced first aid instructor or EMT with current certification. The contracting officer concluded that ERI's plan to make three certified EMTs current within 3 months after contract award was acceptable and reasonably met this requirement. LTR's proposed plan to provide Red Cross training to all its instructors was also determined to be responsive to the RFP medical requirement. The record shows that each offeror proposed to take substantially comparable additional measures in order to qualify its available proposed staff to adequately meet the medical requirement, and that neither offeror's plan in this regard was superior.

The contracting officer also determined that ERI and LTR both deserved the maximum points under past performance. The contracting officer concluded ERI had a demonstrated record of conforming to contract requirements, good standards of workmanship, and experience in teaching survival or related courses [deleted]. The contracting officer also concluded that LTR had demonstrated a history of performing a very high quality of services on the same or similar contracts and demonstrated compliance with the contracts, accuracy of administrative functions and technical excellence. The record shows that both proposals contained extensive documentation demonstrating a history of high quality performance under similar contracts. While the protester contends that the ERI contracts were not of the magnitude or complexity of the current solicitation, the requirement was to demonstrate experience in meeting contract requirements and in teaching survival courses. ERI clearly documented that it had performed several similar contracts and had received outstanding recommendations for its performance, which the contracting officer could reasonably view as warranting a maximum score.

Similarly, with respect to the second element of contractor past performance, overall customer satisfaction, the contracting officer again concluded that both LTR and ERI deserved the maximum points for this evaluation factor. Our review shows that both offerors' records of overall customer satisfaction were well-documented with letters and memorandums which demonstrated the overall customer satisfaction on the same or similar contracts, and that there was no basis to assess one offeror as demonstrably different from the other in this regard.

Under the Quality Certifications and Awards evaluation factor, offerors were to be evaluated on the demonstrated receipt of any widely recognized quality of service awards or certificates of achievement on similar survival training projects. Both ERI and LTR were highly regarded in this area; however, the contracting officer

concluded that ERI provided more relevant information demonstrating that it had been recognized for its effort in aviation safety and survival education by two national organizations [deleted]. ERI also received wide acclaim for its book, "Survival Sense for Pilots and Passengers." While the protester disagrees and maintains that it should have been rated superior in this area, the record simply does not support the protester's position. In fact, as explained above, ERI provided more relevant information in this area. LTR now argues that it could have provided similar information if it had known what the agency required. However, the RFP clearly described the information needed, and having failed to provide all of the allegedly available information in its proposal, LTR is not now entitled to augment this information for consideration after the conclusion of the evaluation.

The protester, in contesting the contracting officer's determination that the two proposals were technically equal, focuses on the differences in the scoring of the two evaluation panels; however, as explained above, the contracting officer did not rely upon the points of either panel, but independently assessed the technical merit of each proposal in detail. This independent assessment provided a reasonable basis, consistent with the RFP evaluation criteria, to find that LTR's and ERI's proposals were substantially equal technically. That being so, award was properly made on the basis of lower price, notwithstanding that the evaluation criteria assigned price less importance than technical considerations. Prospect Assocs. Ltd., B-249047, Oct. 20, 1992, 92-2 CPD ¶ 258.

The protest is denied.

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