



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Ritchie Sawyer Corporation

File: B-281241.2

Date: January 25, 1999

Thomas J. Ritchie for the protester.

Calvin D. Trowbridge III, Esq., U.S. Trade and Development Agency, for the agency.
Robert C. Arsenoff, Esq., and Paul I. Lieberman, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Protest against agency technical evaluation is denied where protester merely disagrees with the agency evaluators' conclusions, the reasonableness of which are supported by the record.

DECISION

Ritchie Sawyer Corporation (RSC) protests the award of a contract to Ghenene & Associates under request for proposals (RFP) No. TDA-98-Q-064, issued as a total small business set-aside by the U.S. Trade and Development Agency (TDA) for a program audit of a central African grant which had been awarded in 1995 to perform a feasibility study to develop a cellular/telecommunications switching system, and of a subsequent follow-up contract to a U.S. company. The protester primarily alleges that the agency failed to properly consider the protester's low price in making the award determination and otherwise misevaluated the protester's technical proposal.

We deny the protest.

The RFP, issued on August 6, 1998, contemplated the award of a fixed-price contract for a program audit to be completed by January 30, 1999. Award was to be made to the offeror whose technically acceptable proposal offered the technical/price relationship that was determined to be most advantageous to the government. RFP § M.2, at 29. The solicitation further provided that price was "secondary to technical" and that award would not necessarily be made to the lowest-priced offeror. Id. Offerors were cautioned that they should submit initial proposals on their most favorable terms as award might be made without discussions. Id.

Technical merit was to be evaluated using two factors: (1) Company and Engagement Team Qualifications (up to 80 points); and (2) Proposal (up to 20 points). These factors were subdivided into weighted subfactors. The Qualifications factor was divided as follows: (a) education, training and auditing; (b) demonstrated experience in providing accounting, auditing and management services; (c) education and training in telecommunications systems engineering; (d) demonstrated international business experience with an emphasis on African business experience; and (e) demonstrated editorial experience. The Proposal factor was divided as follows: (a) demonstration of a clear understanding of the scope of the contract, demonstration of the qualifications of the company and staff, and full description of the proposed approach and procedures for completing the program audit; and (b) demonstration through the writing of a well written proposal that offeror is capable of delivering a high quality final report. RFP § M.1, at 28.

The RFP required the submission of a detailed employee biographical data sheet for each individual proposed to directly perform under the contract. RFP § J.1, at 20. Also, the proposal instructions prescribed the submission of a table detailing and demonstrating each team member's experience in providing services similar to those for the contract to be awarded; in particular, the table required offerors to identify the member's assignment worked, the contract under which it was worked, the specific tasks performed and the hours worked and date of engagement. RFP § L.7, at 26.

Six proposals were received by the August 27 closing date. Evaluations were conducted, as a result of which the following consensus assessment was reported on August 31:

Subfactor Scores								Total Tech.	Price
Offeror	1(a)	1(b)	1(c)	1(d)	1(e)	2(a)	2(b)		
Ghenene	15	19	14	18	10	14	5	95	\$ 52,750
Offeror A	14	19	13	17	9	13	5	90	\$135,907
Offeror B	14	19	14	12	9	13	5	86	\$157,580
Offeror C	13	14	12	17	8	10	2	76	\$ 59,300
RSC	13	16	0	0	4	7	2	42	\$ 38,410
Offeror D	12	15	0	0	0	1	1	29	\$ 57,261

Agency Report, Tab 9.

In her September 14 award analysis, the contracting officer (CO) stated:

The lowest [priced] proposal from [RSC] was not technically acceptable and promised to add required expertise if awarded. Though this is a fixed price contract, it is not inconceivable that this contractor could ask for additional funding to successfully complete the scope of work required to TDA's satisfaction. Even if no additional funding was granted, considerable time would most likely be lost in bringing the report up to TDA's expectations for this work.

Agency Report, Tab 10. In addition, the CO "determined that the Ghenene bid of \$52,750 was the lowest [priced] technically acceptable offer." Id. Award was subsequently made to Ghenene and, following a debriefing, RSC filed this protest.

In its protest, RSC challenges what it terms the technical/price "tradeoff" represented by the award to Ghenene based on its higher-ranked, higher-priced proposal; in this regard, the protester argues that the agency failed to give proper consideration to RSC's low price. RSC also challenges the evaluation of its own proposal in various respects.

With respect to the challenge to the "tradeoff," while the material prepared for the cover letter to the agency report suggests that some consideration was given to the significance of RSC's lower price, the contemporaneous record is clear that no preaward tradeoff analysis transpired. What the agency in fact concluded was that, as quoted above, the RSC proposal "was not technically acceptable." Because, consistent with section M.2 of the RFP, technical acceptability was a prerequisite to any award, if RSC's proposal was reasonably determined to be unacceptable, RSC could not properly have been considered for the award irrespective of its price. A proposal that is technically unacceptable cannot be considered for award, even where it is the lowest-priced proposal and thus would offer cost savings to the government. Spectrum Controls Sys., Inc., B-275505, Feb. 27, 1997, 97-1 CPD ¶ 89 at 3-4. Because Ghenene offered the lowest priced technically acceptable proposal, there was no need for a price/technical tradeoff, and the contemporaneous record shows that none occurred.

Accordingly, the appropriate question here is whether the record supports the agency's finding that RSC's proposal was technically unacceptable. The evaluation of technical proposals is a matter within the discretion of the contracting agency since the agency is responsible for defining its needs and the best way of accommodating them. In reviewing an agency's evaluation, we will not reevaluate proposals, but instead will examine the agency's evaluation to ensure it was reasonable and consistent with the solicitation's stated evaluation criteria. An offeror's mere disagreement with the agency does not render the evaluation unreasonable. Teleport Communications Group, B-277926.2, Sept. 17, 1998, 98-2 CPD ¶ 72 at 3.

Although the evaluators found that RSC had good accounting and audit experience, they found that the proposal did not provide details regarding education in telecommunications systems engineering. They further found that RSC's proposal lacked a demonstrated international business experience, particularly on telecommunications projects. They downgraded the proposal for failing to identify a professional editor, failing to provide the required detailed biographic data sheets and merely providing cursory biographical material, and failing to provide a detailed table of experience as required by the RFP. Finally, they found that the technical proposal merely parroted the RFP's scope of work without demonstrating an understanding of what was required or clearly demonstrating RSC's approach to the project.

With respect to telecommunications systems education and training, RSC concedes that its proposed engineer has no such credentials, takes issue with the need for such specific expertise, and argues that, should the need arise during performance for a trained engineer with this expertise, the firm has the ability to retain an expert. With respect to international business experience, and African experience in particular, the protester refers to its conceded lack of such experience and argues that this requirement is minor in nature insofar as most of the work will not be performed overseas.

With respect to the failure to identify a professional editor in its proposal, RSC again characterizes this as minor and notes that its management proposal stated that it would hire an editor upon contract award. With respect to the failure to submit detailed biographical data sheets, RSC essentially disagrees with the agency's conclusion that the materials submitted in lieu of the sheets were insufficiently detailed.

With respect to the failure to submit a detailed table of experience, RSC simply points out that, as it stated in its proposal, a lack of time precluded it from gathering the necessary information to complete the table and that, also as the proposal stated, the firm would be prepared to do so if retained in the competitive range for further consideration. Finally, RSC does not deny that its proposal parroted the RFP's scope of work.

If we view the protester's objections as essentially taking the position that the RFP requirements which it failed to satisfy were unnecessary or overly restrictive, RSC's post-award protest is not timely because protests based on alleged improprieties in a solicitation which are apparent prior to the time set for receipt of initial proposals must be filed prior to that time. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1998).

In the alternative, RSC's assertions merely reflect its disagreement with the evaluators regarding the significance of the shortcomings in RSC's proposal. RSC does not dispute that the requirements that its proposal failed to satisfy were clear,

with assigned weights in the RFP. Rather, the protester simply characterizes the conceded and obviously material shortcomings in its proposal as minor in nature, or as matters that it could later rectify; this subjective disagreement simply does not provide any basis to conclude that the agency evaluation was unreasonable. Teleport Communications Group, supra.

The protest is denied.

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