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Comptroller General
of the United States

United States General Accounting Office
Washington, DC 20548

# Decision

**Matter of:** Duncan Security Consultants, Inc.

**File:** B-290574

**Date:** August 8, 2002

Nancy O. Dix, Esq., and Leonard L. Anthony, Esq,. Gray Cary Ware & Freidenrich, for the protester.
Mary E. Clarke, Esq., Defense Logistics Agency, for the agency.
Jacqueline Maeder, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

## DIGEST

Agency reasonably selected low-priced, technically acceptable proposal--without considering relative technical merits of proposals--where, although solicitation included standard evaluation provision stating that award would be based on offer "most advantageous to the government, price and other factors considered," it did not include technical evaluation factors, but instead stated that award would be based upon a proposal meeting all terms and conditions of the solicitation.

## DECISION

Duncan Security Consultants, Inc. protests the award of a contract to Nu-Way Security and Private Investigations under request for proposals (RFP) No. MDA113-02-R-0006, issued by the Defense Logistics Agency (DLA), Television Audio Support Activity for security and armed guard services. Duncan principally argues that the agency improperly made award on the basis of low price rather than a comparative evaluation of the proposals.

We deny the protest.

The RFP, issued March 6, 2002 as a competitive section 8(a) set aside, contemplated the award of a fixed-price contract for a base year, with 4 option years. The RFP included Federal Acquisition Regulation (FAR) § 52.212-2, Evaluation--Commercial Items, which provides for award to the responsible offeror whose offer conforming to the solicitation will be most advantageous to the government, price and other factors considered. At the end of the provision is the statement "[t]he following

factors will be used to evaluate offers[.]" RFP at 13. However, instead of evaluation factors, the RFP then set forth the following language:

> Award will be based upon a proposal that [meets] all the terms and conditions of the solicitation, together with a determination by the Contracting Officer that the price is considered fair and reasonable and that the offeror is responsible within the meaning of governing regulations.

DLA received three offers by the amended April 17 closing date. Agency Report (AR) at 4-5. DLA found all three offers to be technically acceptable, AR at 5, and Nu-Way's price was low at $3,450,356.20, while Duncan's was second-low at $3,875,988.12. AR, Tab T, Price Negotiation Memorandum, at 2. After finding that Nu-Way was responsible, DLA made award to that firm.

Duncan asserts that the RFP required the agency to make award to the offeror whose proposal represented the "best value" to the government, and that , instead of conducting a comparative assessment of the relative strengths and weaknesses of the proposals, DLA improperly awarded the contract based only on Nu-Way's "apparent low price, technically-acceptable offer." Protester's Comments at 3, 5.

This argument is without merit. While the RFP included standard "best value" evaluation language providing for award based on the "most advantageous" proposal, it did not go on to establish any evaluation factors or a scheme for conducting a comparative evaluation. To the contrary, in lieu of evaluation factors, the RFP stated only that proposals had to "[meet] all the terms and conditions of the solicitation," that the offeror had to be responsible, and that the price had to be considered fair and reasonable. Consistent with these limited evaluation considerations, the RFP required offerors to provide only a "technical description of the items being offered in sufficient detail to evaluate compliance with the requirements in the solicitation." RFP at 10. Reading these provisions together, there was no basis for the agency to conduct a comparative evaluation; rather, notwithstanding inclusion of the standard "best value" evaluation language, it was sufficiently clear from the RFP that the award was to be made to the low-priced offeror that demonstrated compliance with the RFP requirements, i.e., acceptability.[1] See Vistron, Inc., B-277497, Oct. 17, 1997, 97-2 CPD ¶ 107 at 4. Award to Nu-Way on this basis therefore was consistent with the RFP.

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[1] To the extent that Duncan argues that the evaluation scheme outlined in the solicitation is ambiguous, any ambiguity was obvious, and the protest is untimely. Protests based upon alleged solicitation improprieties must be filed prior to the time set for receipt of initial proposals. 4 C.F.R. § 21.2(a)(1) (2002).

Duncan challenges the evaluation of Nu-Way's proposal as acceptable, arguing that it did not address the requirement that employees be able to obtain and maintain secret clearances, or explain its procedures for protecting classified materials. Protester's Comments at 6. In this regard, Nu-Way's proposal specified minimum personnel qualification standards, and stated that it would "take care during the interview, screening, and hiring process to ensure that all contemplated-for-hire security personnel meet the minimum qualifications of our client's contract prior to hire commitment," NU-Way Proposal at 26, but did not otherwise explain how it would comply with the provisions cited by Duncan.

In reviewing an agency's technical evaluation, we will not reevaluate the proposal, but will examine the record of the evaluation to ensure that it was reasonable and in accordance with the evaluation criteria, and consistent with procurement laws and regulations. Oceaneering Int'l, Inc., B-278126, B-278126.2, Dec. 31, 1997, 98-1 CPD ¶ 133 at 6.

The evaluation here was unobjectionable. The RFP did not call for detailed technical proposals and, more specifically, did not require offerors to submit a detailed explanation of the manner in which they intended to obtain clearances, protect classified materials, or perform other aspects of the RFP's Performance Work Statement (PWS), which set forth the contract requirements. While the "technical description" provision noted above imposed some burden on offerors to set forth details of their approach to performing the contract, neither this language, nor anything else in the RFP, indicated that a paragraph-by-paragraph, detailed explanation of precisely how the offeror planned to accomplish every requirement under the PWS was necessary for an offer to be found acceptable. The absence of evaluation factors or any definition of what would be deemed an acceptable "technical description" reinforces the view that such comprehensive descriptive material was not contemplated. This being the case, we find that the agency reasonably determined that Nu-Way's proposals was acceptable, despite its failure to explain how it intended to perform in the areas in question.

Duncan challenges the agency's evaluation of Nu-Way's price as reasonable, arguing that Nu-Way failed to escalate its prices for the option years and that the awardee's total price is more than $800,000 below the government estimate. Protester's Comments at 6-7. This argument is based on a misunderstanding of the concept of price reasonableness. The purpose of a price reasonableness review is to determine whether the prices offered are higher--as opposed to lower--than warranted. WorldTravelService, B-284155.3, Mar. 26, 2001, 2001 CPD ¶ 68 at 4 n.2. Since Duncan asserts that Nu-Way's prices are too low, not too high, there is no reason to question Nu-Way's prices on the basis of price reasonableness.

Duncan seems to be arguing that Nu-Way's price is unrealistically low. This argument is without merit. Where, as here, an RFP contemplates the award of a fixed-price contract, the agency is not required to conduct a realism analysis, because a fixed-price (as opposed to a cost-type) contract places the risk and

responsibility for loss on the contractor. WorldTravelService, supra, at 3. An agency may provide for a price realism analysis for the limited purpose of measuring offerors' understanding of the requirements or to assess the risk inherent in an offeror's proposal, id., but there is no requirement that it do so. Here, the RFP did not provide that the agency would conduct a realism analysis, or otherwise assess technical understanding with reference to the offered prices. Consequently, since the agency determined that Nu-Way is responsible and, thus, that it can perform at its offered price, Nu-Way's low price does not provide a basis for questioning the award.[2] M-Cubed Info. Sys., Inc., B-284445, B-284445.2, Apr. 19, 2000, 2000 CPD ¶ 74 at 9.

The protest is denied.

Anthony H. Gamboa
General Counsel

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[2] Duncan complains that the agency failed to notify the Small Business Administration of the award to Nu-Way. Such a failure is a procedural deficiency and does not prejudice the protester or affect the validity of an otherwise properly awarded contract. See Telos Corp., B-279493.3, July 27, 1998, 98-2 CPD ¶ 30 at 11 n.8