

## **PUBLIC VERSION**

### ***Office of Dispute Resolution for Acquisition*** **Federal Aviation Administration** **Washington, D.C.**

#### **FINDINGS AND RECOMMENDATION**

**Matter:**           **Protest of The Dayton Group, Inc.**  
                  **Pursuant to Solicitation No. DTFAAC-05-R-02789**

**Docket No.:**   **06-ODRA-00385**

#### *Appearances:*

For the Protester:   Fredric Abrams, President

For the Agency:     Linda Modestino, Esq.  
                          Counsel for the FAA's Mike Monroney Aeronautical Center

For the Intervenor:   J. Scott Hommer, III, Esq.

#### **I. INTRODUCTION**

On September 5, 2006, The Dayton Group, Inc. ("TDG") filed the instant Protest with the Office of Dispute Resolution for Acquisition ("ODRA"). The Protest challenges an award decision made by the Federal Aviation Administration ("FAA") Mike Monroney Aeronautical Center ("Center"). The underlying Solicitation is for the provision of support services for the development of a program management office for the Center ("Solicitation"). TDG, a disappointed offeror under the Solicitation, alleges in its Protest that the Center "misinterpreted" TDG's price proposal and that the Center's technical evaluation of the TDG offer was not done properly. *See* TDG Protest at 1 – 2. The successful offeror, KENROB Information Technologies, Inc. ("KENROB"), timely intervened in the Protest as an interested party.

For the reasons discussed below, the ODRA concludes, based on the entire administrative record, that TDG has failed to meet the burden of establishing that the Center's

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evaluation of the TDG offer lacked a rational basis, was arbitrary and capricious or constituted an abuse of discretion. The ODRA further concludes that the Center's interpretation of the TDG pricing proposal was reasonable given the manner in which TDG presented its pricing information. Finally, TDG has not demonstrated that the evaluation of its technical proposal was irrational, arbitrary and capricious or an abuse of discretion or that TDG was prejudiced by the technical evaluation. The ODRA therefore recommends that TDG's Protest be denied in its entirety.

### **II. FINDINGS OF FACT**

1. On August 8, 2005, the Center issued the Solicitation for "assistance in the development of its Program Management Office." *See* Agency Response ("AR") at Attachment 2. The Solicitation, which took the form of a Screening Information Request ("SIR"), was designed to assist the Center to find qualified firms that could perform the needed services. AR at 2.
2. A total of thirteen firms responded to the Solicitation. Seven, including TDG and KENROB, were determined to be qualified for consideration. *Id.*
3. The Center, on October 12, 2005, forwarded a second SIR to the seven firms determined to be eligible. *See* AR Exhibit 3. The closing date established for submission of offerors publicly was extended by an Amendment dated November 22, 2005. *See* AR Exhibit 4.
4. TDG and KENROB were two of four offerors who responded to the Solicitation by the due date. *See* Protest at 1; AR at 3.
5. The Solicitation called for an indefinite delivery, indefinite quantity ("IDIQ") contract for an initial one-year period with two one-year options. *See* AR Exhibit 3. During the initial year, the Solicitation required the performance of "all services" needed for a "Project Management Office ("PMO") Implementation

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- Plan.” The two one-year option periods specified in the Solicitation contemplated the performance of “all services associated with . . . PMO Development.” *See* AR Exhibit 3.
6. For their Pricing Proposal, offerors were required to complete and submit the “Price Schedule” set forth in Section B of the Solicitation. The Price Schedule’s first Contract Line Item (“CLIN 0001”) for the base year period required offerors to propose a price for “1 Job” of “PMO Implementation Services.” AR Exhibit 3. The remaining CLINs for the base year required offerors to propose hourly composite rates and total prices for estimated quantities of services to be performed by six required “labor categories” of staff which were identified in the schedule as Program Manager, Project Manager, Project Support, IT Analyst, Junior Project Support, IT Analyst, Financial Analyst and Technical Writer. *Id.*
  7. The Pricing Schedule similarly required offerors to separately submit hourly composite rates and total prices for these same six labor categories for each of the option years; however the services required during each option year were identified in the Price Schedule as “PMO Development” services, and the schedule required proposed prices to be based on different annual hour estimates for each labor category. AR Exhibit 3.
  8. Section M of the Solicitation expressly provided at Subsection (a) that:

Offerors will be evaluated and contract award made on the basis of ‘Best value to the FAA’, with technical being slightly more important than cost/price. Subjective judgment on the part of the FAA is implicit in the evaluation process.

AR Exhibit 3, at 38. The same section of the Solicitation provided at Subsection (c):

The offer that provides the overall best value to the FAA will be selected. The successful offeror may not necessarily be the lowest priced offer.

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*Id.*

9. The Solicitation provided at Section M.1(d):

Additional information may be requested from the offeror whose proposal the FAA considers to represent the overall greatest value. The information may clarify or supplement, but not basically change the proposal as submitted. The FAA reserves the right to award a contract based on initial offers received, without discussions or negotiations. For this reason, each initial offer should be submitted on the most favorable terms from the standpoint of technical and cost/price.

*Id.*

10. Section M.3 of the Solicitation entitled “Price Analysis,” provided at Subsection (e):

An offeror’s total proposed price will be determined by multiplying the estimated annual quantity times the hourly composite rate for the CLIN and totaling the product of the calculation for all priced CLINs and all option periods to arrive at a total estimated contract value.

AR, Exhibit 3 at 41.

11. The Center changed certain aspects of the Statement of Work (“SOW”) by amendment. These Changes were determined by the Center to have no impact on the technical evaluation. The Center, however, believing that pricing schedules could be affected by the amended SOW, allowed all offerors an opportunity to submit amended cost proposals by no later than June 21, 2006. *See* AR Exhibit 4. All four offerors including TDG and KENROB submitted revisions to their cost proposals. *See* AR at 3.

12. On June 20, 2006 TDG submitted its offer and included a cover letter which stated, among other things, that:

[DELETED]

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AR Exhibit 6.

13. TDG's offer included both an individual amount for Contract Line Item 001 and a total amount with [DELETED]. It also provided individual prices for Line Items 002 – 007 for the first year of the Contract as well as individual line items for each of the two option years. AR at Exhibit 7. After totaling up all of the line items in the TDG offer, exactly in accordance with Section M.3(e) "Price Analysis". The Center evaluation team established a total amount of the TDG offer as [DELETED]. In calculating the total amount the Center used all the rates in TDG's Pricing Schedule, including the [DELETED]. AR Exhibit 3.
14. KENROB's proposal was valued by the evaluators at [DELETED]. *See* AR Exhibit 15.
15. The Center's technical team report, as modified by the Contracting Officer, reflects a technical score for TDG of 2.20 and a technical score for KENROB of 2.22. *See* AR Exhibit 14.
16. The Government's independent estimate of the cost for the base year and two option years totaled [DELETED]. *See* AR Exhibit 15.
17. The Center's evaluation team met on June 22, 2006 to review the revised cost proposals and the technical scores. AR at 3.
18. In its award decision document, the Center's Evaluation Team ranked the four offers for technical score and proposed price as follows:

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Offeror	Tech Score	Tech Rank	Initial Estimated 3-Year Total	Revised Estimated 3-Year Total	Proposed Price	Price Rank
SRA	[DELETED]	[DEL.]	[DELETED]	[DELETED]	[DEL.]	[DEL.]
Kenrob IT	[DELETED]	[DEL.]	[DELETED]	[DELETED]		[DEL.]
Dayton Group	[DELETED]	[DEL.]	[DELETED]	[DELETED]		[DEL.]
Robbins Gioia	[DELETED]	[DEL.]	[DELETED]	[DELETED]		[DEL.]

19. Based on its review of the technical and pricing proposals, the Team specifically found with respect to TDG that:

The technical proposal submitted by The Dayton Group, Inc. (Dayton) was slightly lower than Kenrob and determined technically acceptable by the technical evaluation team; however, Dayton proposed the highest estimate cost/price of [DELETED].

AR Exhibit 15 at 4.

20. After comparing the offer of KENROB to that of a third party, SRA, the Team concluded by consensus decision that KENROB represented the best value to the Agency, inasmuch as “KENROB received the second highest technical score and the second lowest overall estimate cost.” *Id.*

21. TDG was informed by letter of August 18, 2006, of the award to KENROB. In that letter TDG was informed that:

Your proposal received an overall technical score of 2.20 on the 0 to 4 scale as set out in the RFO and was ranked third overall. Your total price proposal evaluated at [DELETED] was the highest price received.

AR Exhibit 18.

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22. On August 23, 2006, the President of TDG responded to the Center's August 18, letter. The TDG letter requested a debriefing and stated that:

Your letter states that our bid was [DELETED], when in fact our revised submittal of June 20, 2006, provided a total price of [DELETED] for the base year plus two option years for all work specified in the RFO.

AR Exhibit 19.

23. On August 31, 2006, a written debriefing was provided to TDG by the Center. AR Exhibits 23, 24. With respect to the evaluation of TDG's offered price, the debriefing noted:

There was a deficiency identified relative to the actual proposal amount. The proposal did not represent a mistake on TDG's part but rather a failure to understand the requirement in conjunction with the pricing arrangements.

AR Exhibit 23. The debriefing went on to discuss the method that the Center used to calculate TDG's price based on its entries on the line items. It stated among other things that: "TDG did not understand the requirement as it related to the Statement of Work (SOW) titled 'Project Management Office (PMO) Implementation Plan – Task 1.'" *Id.*

24. The debriefing also noted that: "TDG failed to recognize the different pricing arrangement contained in Section B, Supplies or Services and Prices/Cost Price Schedule, associated with Task. ..." *Id.* The debriefing further emphasized that: "Failure to understand the FAA's requirement in multiple pricing arrangements presented substantial risks to both the FAA and TDG were TDG to have been awarded the Contract." *Id.* Finally, the Center's debriefing noted that: "The three other offerors understood the requirement and pricing arrangement and proposed accordingly." *Id.*

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25. TDG filed this Protest with the ODRA on September 5, 2006.

### III. DISCUSSION

Under the Acquisition Management System (“AMS”) and the applicable ODRA Procedural Regulations set forth in 14 C.F.R. Part 17, bid protests are reviewed using a rational basis standard. The ODRA determines whether the complained of Agency action had a rational basis, was neither arbitrary, capricious nor an abuse of discretion and was supported by substantial evidence. *Protest of DMS Technologies*, 04-ODRA-00306. The protester challenging an Agency action has the burden of proof. *See Protest of L Washington and Associates*, 02-ODRA-00232. *See also Protest of Global Systems Technologies, Inc.*, 04-ODRA-00307. It further is well established that mere disagreement with the outcome of the evaluation or with particular evaluation scores will not in of itself satisfy the protester’s burden. *Protest of Optical Scientific, Inc.*, 06-ODRA-00387. Finally, in a best value determination where the decision of the evaluator passes the rational basis test, and is supported by substantial evidence, the ODRA will not substitute its judgment for that of the evaluators on the merits of particular offers. *Protest of Glock Inc.*, 03-TSA-003.

TDG raises two grounds in support of its Protest, namely: (1) misinterpretation of TDG’s price proposal; and (2) an improper evaluation of TDG’s technical proposal. With respect to these grounds, TDG states:

TDG believes it likely would have been selected had [the Aeronautical Center] not misinterpreted its bid [DELETED] of other bidders and had key elements of the technical evaluation been done properly.

TDG Comments at 1. Each of these grounds is discussed below.

#### A. The TDG Pricing Proposal.



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Based on TDG's offer, the Center calculated the total price bid by TDG as [DELETED] of the prices proposed by KENROB and the two other bidders. *See* Findings of Fact ("FF) 11, 12. TDG contends however that the Center misinterpreted its bid by adding the totals of individual Contract Line Items 002 – 007, to the total of the amount bid in Contract Line Item 001. TDG contends that its total bid for the entire job (the base year plus the two option years) actually amounts to [DELETED]. *See* TDG Protest at 2. TDG states that "TDG especially believes that the Center was negligent and evaluated TDG's price proposal unreasonably, since it failed to ask TDG about items which TDG could have quickly and easily clarified." AR Exhibit 29. TDG apparently prepared its bid based on its belief "that it could accomplish all of the base year work (Line 001 and Lines 0002- 0007) [DELETED]. TDG Protest at 2. Based on this belief "TDG elected to [DELETED] ... ." *Id.*

In this regard, TDG acknowledges that:

TDG faced a dilemma in bidding this work to FAA in that [the Center] requested a bid for the initial effort (in the base year) involved in evaluating the project management maturity of MMAC and the establishment of the MMAC PMO and provided a listing of labor rates against which labor rates were to be applied for the base year and two option years.

TDG Protest at 2. TDG further admits that: "TDG has obviously agonized over what it could or what it should have done to makes its pricing information clearer in its submittal." TDG Comments at 2.

In response, the Center points out that the terms of the Solicitation made it clear that "the FAA may consider offers that take exception to the terms and conditions of RFO Sections A – K to be ineligible for award, hence, offerors may not be given the opportunity to revise their offers." *See* Solicitation Section L.3(c), AR Exhibit 3. The Center further points out that the Solicitation expressly provides that: "If an offeror takes issues with the terms and conditions obtained herein the offeror shall submit a request for modification

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of terms and conditions under *separate attachment* to their proposal.” Solicitation Section L.4, AR Exhibit 3 (emphasis added).

Notwithstanding these provisions, it is undisputed that TDG did not request permission to modify the terms and conditions set forth in the Solicitation, or submit a modified offer under separate attachment. Rather, TDG only submitted a Section B Pricing Schedule modified based on [DELETED]. AR at 7 -8. It is clear that the Solicitation required offerors to propose the price for implementation of the project management office for the initial contract year. TDG’s proposal [DELETED]. In other words, TDG treated Line Items 0002 through 0009 as subsets of Line Item 0001, rather than as the separate, stand-alone Line Items called for in the Solicitation. There was no indication in the TDG proposal that the amounts proposed [DELETED]<sup>1</sup>

TDG expressly had been given notice in the Solicitation of how the price calculation would be done by the Center. *See* FF 10. When the Center performed the calculation of TDG’s pricing called for in Solicitation Section M.3 (e) by adding up all of the Contract Line Items to derive the total amount of the bid, TDG’s proposed price was valued at [DELETED]. As is pointed out by KENROB in its Comments to the Agency Response, TDG could have protested the terms of the Solicitation prior to bid opening if it felt that the Solicitation was defective with respect to [DELETED]. *See* KENROB’s Comments at 5, 6. It did not do so. Nor did it request a clarification or change of the Solicitation’s pricing requirements.<sup>2</sup>

Ultimately, it is the responsibility of the offeror to fully and accurately respond to a Solicitation and to provide information required by the Solicitation. *See Protest of International Services, Inc.*, 02-ODRA-00224. Here, TDG neglected to provide the information required for this pricing proposal and made a conscious decision to provide

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<sup>1</sup> The ODRA notes in this regard that the approach taken by TDG is not consistent with the usual treatment of line items as discrete categories of work that are individually priced.

<sup>2</sup> To the extent that TDG now purports to challenge the terms of the Solicitation, its Protest is untimely.

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different information in a form other than that required by the Center without seeking permission to do so.

The ODRA concludes that the Center's interpretation and its calculation of TDG's pricing was reasonable given how the information was presented, and consistent with the scheme set forth in the Solicitation. It simply does not matter that, after the award decision, TDG clarified its pricing proposal. The issue is whether the Center's evaluation was rational at the time it was made based on the information that the evaluators had in front of them. The ODRA will not substitute its own evaluation or judge the team's action based on additional information and explanations provided in the course of a debriefing or bid protest. Ultimately, TDG and not the Center was responsible for the content and information supplied in its bid. TDG chose to present its price proposal in a manner that led the team reasonably to conclude that it was proposing an uncompetitive [DELETED]. *See* Protest of Roylea's Aviation Consultants, 04-ODRA-00304.

### **B. The Technical Evaluation**

The record reflects that a technical evaluation was completed separate and apart from the pricing evaluation and that TDG's proposal was competitive from a technical standpoint. *See* FF 19. Nonetheless, TDG claims that the technical evaluation was faulty in several respects. *See* Protest at 3 -6, TDG Comments at 6 – 11. The ODRA views TDG's challenge in this regard to the technical evaluation as constituting "mere disagreement" with the conclusions reached by the evaluators. *Optical Scientific, Inc., supra.*

Notwithstanding TDG's suspicions that the technical scoring occurred "after - the - fact" there is no indication in the record in support of that contention. *See* TDG's Comments at 13. Rather the technical evaluation team appears to have rated TDG very highly i.e., only just below KENROB in terms of its technical evaluation proposal. *See* FF 18. Moreover, review of the evaluation record reflects that the evaluation team followed the stated criteria as published in the Solicitation in reaching their conclusions. The ODRA

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concludes that TDG has failed to establish that the technical evaluation was not rationally based or arbitrary or capricious nor an abuse of discretion.

Moreover, even if TDG were able to establish that the technical scoring of its proposal was defective in some way, it could not demonstrate any resulting prejudice. In order to demonstrate prejudice, a protester must show that but for the complained of action, it stood a reasonable chance of getting the award. *Protest of Royalea'l, supra*. Here, given that TDG's price reasonably was interpreted by the Center as [DELETED] its challenge to the technical evaluation is moot.

### IV. CONCLUSION

For the reasons set forth above, the ODRA concludes that TDG's price proposal, which TDG intentionally submitted in a form that was not consistent with the requirements of the Solicitation, was reasonably interpreted by the Program Office as being valued at [DELETED]. Additionally, TDG has failed to demonstrate that the Center's evaluation of TDG's technical proposal lacked a rational basis. Given its noncompliant and uncompetitive pricing proposal, TDG was not in a position to obtain the award and thus cannot be said to have been prejudiced by the evaluation of its technical proposal. The ODRA thus finds TDG's Protest to be without merit and recommends that it be denied in its entirety.

-S-

Anthony N. Palladino  
Associate Chief Counsel and Director  
FAA Office of Dispute Resolution for Acquisition

October 25, 2006