



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

DOCUMENT FOR PUBLIC RELEASE

A protected decision was issued on the date below and was subject to a GAO Protective Order. This version has been redacted or approved by the parties involved for public release.

Matter of: PW Construction, Inc.

File: B-272248; B-272248.2

Date: September 13, 1996

Timothy A. Sullivan, Esq., Starfield & Payne, for the protester.

James G. Ehlers, Esq., Hillyer & Irwin, for C.E. Wylie Construction Company, an intervenor.

Christopher M. Bellomy, Esq., Edward B. Hanel, Esq., and George N. Brezna, Esq., Department of the Navy, for the agency.

Peter A. Iannicelli, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that the agency gave preferential treatment to the awardee in its evaluation of proposals is denied where the record shows that the evaluation was reasonable and consistent with the request for proposals's evaluation scheme, and the agency fairly evaluated both the protester's and the awardee's proposals.
2. Award of a contract to the offeror of the higher technically rated, higher-priced proposal was proper where the agency reasonably determined that the awardee's slightly higher-priced proposal was worth the additional cost.

DECISION

PW Construction, Inc. protests the Navy's award of a fixed-price construction contract to C.E. Wylie Construction Company pursuant to request for proposals (RFP) No. N62474-94-R-7479. The protester contends that the Navy gave preferential treatment to Wylie when evaluating proposals and that the Navy's evaluation of proposals was not consistent with the RFP's evaluation scheme. The protester also contends that it should have been awarded the contract because its proposed total price was lower than Wylie's.¹ We deny the protest.

¹The protester submitted a number of arguments in support of its general protest grounds; the Navy responded to each argument, justifying its actions. We have reviewed the entire record, considered all of the arguments, and find no basis for
(continued...)

Issued on March 4, 1996, the RFP solicited proposals for demolition of existing structures and construction of three dormitories and two mechanical buildings at Travis Air Force Base² and contained detailed drawings and specifications concerning the buildings to be constructed. The RFP stated that the contract would be awarded to the offeror whose conforming offer was determined to be most advantageous to the government after consideration of price and other factors.

Eight proposals were received by the April 10 closing date for submission of initial proposals. After evaluation, seven proposals were included in the competitive range. Because all offers were priced at more than the available funding, the Navy took several actions aimed at ensuring that the project would be completed within available funding constraints. The Navy had its project architect/engineer review the project to determine whether any potential savings could be identified. The Navy also asked the Air Force to provide additional funding; the Air Force complied. In addition, during discussions, competitive range offerors were asked for their recommendations for deleting requirements in order to lessen the overall cost. After considering potential cost-saving measures from all sources, the Navy issued amendment 0004 requesting best and final offers (BAFO), deleting a large number of requirements, modifying others, and generally reducing the scope of the project.

BAFOs were received by May 10 and were evaluated by the source selection board (SSB). The SSB gave Wylie's BAFO an overall rating of [deleted] and PW's BAFO an overall rating of [deleted]. Wylie's total proposed price (\$16,217,472) was the second lowest-priced proposal and PW's total proposed price of [deleted] was the lowest.³ Based on Wylie's BAFO's superior technical rating, the SSB recommended that Wylie be awarded the contract. The source selection authority (SSA) concurred, and the contract was awarded to Wylie on June 4. After a debriefing by the agency, PW filed its initial protest in our Office.⁴

¹(...continued)

sustaining the protest. However, we will discuss only the more significant arguments in this decision.

²The Navy conducted this procurement for the Air Force.

³We will discuss only the evaluations of the protester's and Wylie's proposals in this decision since the protester raised no issues regarding other offerors' proposals or the agency's evaluation of them.

⁴After receiving the agency's report on its initial protest (reference No. B-272248), PW filed a supplemental protest (reference No. B-272248.2) in our Office. Both protests are resolved in this decision.

Essentially, PW contends that the Navy's evaluation of proposals and award decision were flawed. The protester alleges that Wylie's proposal received higher ratings as the result of preferential treatment by the SSB. The protester also asserts that the Navy gave greater weight to technical evaluation factors than to price and that the SSA failed to conduct a cost/technical tradeoff analysis. According to PW, a proper cost/technical tradeoff analysis would have resulted in award of the contract to PW on the basis of its lower-priced proposal.⁵

The evaluation of proposals is primarily within the discretion of the procuring agency, not our Office; the agency is responsible for defining its needs and the best means of accommodating them and must bear the consequences of a defective evaluation. HospitalKlean, Inc., B-245158 et al., Dec. 17, 1991, 91-2 CPD ¶ 550. Consequently, our Office will question an agency's evaluation of proposals only if the evaluation lacks a reasonable basis or is inconsistent with the RFP's evaluation criteria. SRS Technologies, B-270341.2, Mar. 1, 1996, 96-1 CPD ¶ 120. A protester's mere disagreement with the agency over its technical evaluation does not establish that the evaluation was unreasonable. Id. Here, the record shows that the evaluation was reasonable and consistent with the evaluation criteria, and that the agency fairly evaluated PW's and Wylie's proposals.

The RFP stated that technical factors and price were approximately equal in importance. The technical evaluation factors, in descending order of importance, were experience, work schedule, past performance, and proposed utilization of small disadvantaged businesses (SDB) and women-owned, small businesses (WOSB). The experience factor was further divided into two subfactors: (a) corporate experience of prime and subcontractors; and (b) prime and subcontractor key personnel experience. Price proposals were to be evaluated to ensure award at a fair and reasonable price.

The protester contends that the SSB inexplicably and arbitrarily rated Wylie's proposal higher on several evaluation factors/subfactors even though the relevant portions of PW's proposal were equal to Wylie's on those factors/subfactors. For example, PW asserts that its proposed subcontractors had more construction experience than the subcontractors proposed by Wylie but the SSB rated Wylie's proposal as better than PW's in evaluating corporate experience and the experience of prime and subcontractor key personnel. As a second example, PW alleges that

⁵Initially, PW also protested that the Navy should not have considered risk in evaluating proposals because risk was not specifically set forth as an evaluation factor. The Navy addressed this argument in its report, but PW did not address this issue in its comments on the agency's report. Accordingly, we consider the protest ground to be abandoned. See Heimann Sys. Co., B-238882, June 1, 1990, 90-1 CPD ¶ 520.

the SSB gave Wylie's proposal a better rating on the past performance factor even though PW and Wylie had [deleted] calculated change order rates on prior contracts.⁶

The record does not support PW's claim of unfair treatment and, in fact, fully supports Wylie's better ratings on the above-cited factors/subfactors.

Regarding the evaluation of experience, the RFP emphasized the importance of experience in constructing multi-family housing, institutional dormitories or bachelor housing and that the agency was looking for experience with projects of similar scope and magnitude. Against this background, the RFP stated that key personnel of the prime and proposed subcontractors would be evaluated on their capability to manage the work and meet all contract requirements.

In evaluating Wylie's proposal on experience, the SSB noted that Wylie's proposal listed [deleted] recent contracts for new construction of military dormitories and commented that all [deleted] contracts closely matched the type of construction and the scope of the proposed project. The SSB was favorably impressed because most of Wylie's proposed key personnel--both prime and subcontractor--had worked together on the previous construction contracts. The SSB noted that all of Wylie's proposed prime and subcontractor key personnel had lengthy experience in relevant construction work and that Wylie's [deleted] prime contractor key personnel had been employed by Wylie for an average period of more than [deleted] years. Therefore, the SSB gave Wylie's proposal excellent ratings on both the corporate experience and key personnel experience subfactors of the experience factor, praising the proposal as "showing a very strong experienced team and increasing the potential of successfully completing future projects."

In evaluating PW's proposal on experience, the SSB noted that PW listed [deleted] prior contracts that were relevant multi-housing projects. The SSB stated that [deleted] similar to the proposed project (i.e., new construction of a dormitory); the others were for modernization or revitalization of existing housing (including single-family housing). The SSB also noted that, while many of PW's proposed prime and subcontractor key personnel had lengthy experience in general construction work, many had [deleted] in new construction of buildings of the type required under this

⁶In its supplemental protest, PW alleged that a third example of disparate treatment was the rating of both PW's and Wylie's proposals as acceptable on the proposed utilization of SDBs and WOSBs evaluation factor even though PW had proposed to use such firms for a higher percentage of the work. The Navy rebutted this allegation in its report on the supplemental protest; PW abandoned this protest ground when it did not address the issue in commenting on the agency's report. See Heimann Sys. Co., supra.

RFP.⁷ Additionally, the SSB commented that it was unclear from PW's proposal whether the experience of the proposed project manager and superintendent and many of the subcontractors' key personnel was derived from relevant new construction projects. The agency reports that, unlike in Wylie's proposal, there was no indication in PW's proposal whether the proposed subcontractors had worked with PW on the projects PW listed for evaluation of experience. Therefore, the SSB gave PW's proposal acceptable ratings on both the corporate experience and key personnel experience subfactors of the experience factor, stating that "PW was [deleted] of projects of similar scope and magnitude but their general construction experience indicates that they have a reasonable probability of success."

In our view, there was nothing objectionable in the SSB's giving Wylie's proposal better ratings than PW's proposal on the experience factor/subfactors. Wylie proposed a team of prime and subcontractors that had a plethora of experience in construction of new dormitory-type buildings--the exact type of work that will be required under the contract--while PW proposed a team of prime and subcontractors that had lengthy experience in renovation work and other general construction but not new dormitory construction. Also, Wylie's proposal showed that the prime/subcontractor team had worked together on new dormitory construction on several previous projects whereas PW's proposal did not. Moreover, the Wylie proposal showed that most of its proposed key personnel had worked for their present firms for long periods of time while PW's key personnel had worked for their present firms for relatively much shorter periods. Thus, there clearly was a reasonable basis for the SSB to conclude that Wylie's proposal merited a better rating on experience.

Regarding past performance, the RFP stated that the agency would evaluate an offeror's capability to successfully complete projects of similar scope and complexity with an emphasis on timeliness of performance, quality of work, cost controls, and cooperation. The RFP also stated that the Navy might verify past performance through various performance data bases. While PW contends that the SSB incorrectly gave Wylie's proposal a better rating on past performance even though PW and Wylie had virtually identical calculated change order rates on prior contracts, the record shows that the SSB considered more than just the offerors' calculated change order rates and that it was the other factors that led the SSB to decide to give Wylie's proposal a better rating on this factor.

⁷We note that, unlike Wylie's proposal which showed that prime contractor key personnel had been employed by Wylie for an average of more than [deleted] years, PW's proposal showed that [deleted] of its prime contractor key personnel had been employed by PW for more than [deleted] years.

The Navy considered the calculated change order rates experienced by offerors in prior contracts as one measure of an offeror's ability to control cost growth. In reporting to the SSA, the SSB noted that both Wylie's and PW's calculated change order rates ([deleted], respectively) were below the [deleted] rate typically experienced by the agency. Thus, both offerors were given credit for having low cost growth rates. However, the SSB also considered information on previous contracts contained in a performance data base maintained by the agency and discussed offerors's previous performance history with cognizant government contracting personnel. The SSB noted that Wylie, using most of the same subcontractors proposed here, had received an outstanding rating on a recent project of comparable cost magnitude as well as a satisfactory rating on an earlier contract. The SSB concluded that Wylie and its subcontractors had "a strong track record for timeliness, high quality of work, and cooperation" and, therefore, rated Wylie's proposal good on past performance. On the other hand, the SSB reported that the agency's performance data base showed that PW had received ratings of just satisfactory on two previous contracts that were much smaller in dollar amount and, after discussions with government personnel familiar with projects that PW had worked on, the SSB rated PW's proposal acceptable on past performance.

Thus, even though the offerors's previous change order rates were [deleted], Wylie's better rating for past performance was based on the agency's performance data base which showed that Wylie had received an outstanding rating on a recent project of comparable cost and size while PW had not received any outstanding ratings and, in fact, had received only two satisfactory ratings on contracts that were lower in cost and different in scope and complexity. In addition, the agency reports that PW had experienced [deleted] that were most similar to the present requirement. In short, the past performance ratings are reasonably supported by the record.

The protester contends that the Navy gave greater weight to technical factors than to price even though the RFP stated that technical factors and price were equal in importance. The protester also alleges that the SSA failed to conduct a cost/technical tradeoff analysis which would have shown that PW's lowest-priced proposal represented the best value to the government.

In a negotiated procurement, a procuring agency has the discretion to select a more highly rated technical proposal if doing so is reasonable and is consistent with the RFP's evaluation scheme. See Pacific Architects & Eng'rs, Inc., B-257431.7, Dec. 8, 1994, 95-1 CPD ¶ 202. We have upheld awards to higher-rated offerors with significantly higher proposed prices where the contracting agency reasonably determined that the cost premium was justified considering the significant technical superiority of the selected offeror's proposal. AAA Painting and Janitorial Contractors, Inc., B-270168, Feb. 13, 1996, 96-1 CPD ¶ 72; see also Medical Serv. Corp. Int'l, B-255205.2, Apr. 4, 1994, 94-1 CPD ¶ 305.

Contrary to PW's allegation, the record shows that the SSA did, in fact, conduct a cost/technical tradeoff analysis before concluding that the relatively small premium the agency would have to pay Wylie to perform the contract was outweighed by the extra technical merit of Wylie's proposal. The SSA considered the SSB's recommendation that the contract be awarded to Wylie, as well as the underlying rationale behind the SSB's recommendation. The SSA recognized that Wylie's proposed price was [deleted] percent higher⁸ than PW's but stated his belief that Wylie's proposal with an overall good rating was a greater value than PW's proposal with an overall acceptable rating. The SSA pointed out that Wylie's proposal was rated as exceptional under experience--the most important evaluation factor. Moreover, the SSA cited Wylie's proven success in completing [deleted] construction projects that were similar in scope and magnitude, the stability of Wylie's proposed key personnel, Wylie's long-term relationships with its subcontractors, and Wylie's low change order rate for [deleted] recent similar projects as factors favoring the selection of Wylie. The SSA also noted that PW's expertise was in [deleted] rather than [deleted], and that PW had [deleted] on projects equal in magnitude to the proposed project.

Where, as here, the RFP stated that technical factors and price were equal in importance, the SSA properly weighed the advantages of Wylie's technically superior proposal against the price advantage of PW's lowest-priced proposal. See Herley Indus. Inc., B-251792.2, Apr. 16, 1993, 93-1 CPD ¶ 327. While the agency recognized that both offerors were fully capable of performing the work, the SSA decided to select Wylie because of Wylie's long-term relationships with its proposed subcontractors, because Wylie's corporate team had worked together before on a number of projects involving very similar work, and because of the stability of Wylie's proposed key personnel. Moreover, while not specifically cited as a reason by the SSA, we note that Wylie's proposal generally received better ratings across the board from the evaluators. In this regard, Wylie's proposal received ratings of exceptional for experience, good for work schedules, good for past performance, and acceptable for utilization of SBDs and WOSBs, while PW's proposal received acceptable ratings for each evaluation factor. We see nothing unreasonable with the SSA's decision.

The protest is denied.

Comptroller General
of the United States

⁸In actuality, the record shows that Wylie's total price was only [deleted] percent more than PW's.