Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: DDD Company

File: B-276708

Date: July 16, 1997

David B. Dempsey, Esq., and Kevin P. Mullen, Esq., Piper & Marbury L.L.P., for the protester.
Benjamin G. Perkins, Esq., Defense Logistics Agency, for the agency.
Susan K. McAuliffe, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Selection of awardee on the basis of its overall technical superiority and low risk, notwithstanding its higher price, is unobjectionable where agency's evaluation of proposals and determination that awardee's higher-priced proposal was worth the additional cost were reasonable and consistent with the evaluation scheme.

DECISION

DDD Company protests the award of a contract to Federal Express Corporation under request for proposal (RFP) No. SPO410-96-R-3145, issued by the Defense Logistics Agency (DLA), Defense Supply Center Richmond, for warehousing, order processing, and expedited transportation services. DDD contends that the agency's decision to award to Federal Express based on its higher-priced proposal was unreasonable.

We deny the protest.

The RFP, issued on September 30, 1996, contemplates the award of a firm, fixed-price requirements contract for a base year plus 4 option years for a Premium Service System under which DLA's federal agency customers store various equipment and parts at a contractor-owned and -operated facility. The RFP provides for the contractor to receive and store material, maintain inventory control, process customer orders, prepare packages for shipment, maintain appropriate billing, provide quality assurance, and provide commercial, expedited delivery services for the material to any location in the continental United States (CONUS) or outside CONUS (OCONUS). This is a follow-on procurement of a contract awarded to Federal Express in 1994 for the Premium Service System previously run from a government-owned, contractor-operated facility at the Defense Depot Memphis, Tennessee (DDMT). Due to the impending scheduled closure of DDMT, the RFP requires the contractor to relocate the materials and Premium Service System operation to the contractor's facility by June 30, 1997.

The RFP's statement of work includes requirements for the provision of the following: sufficient warehouse space for the storage of existing items to be transferred and to accommodate 50-percent growth in the amount of material stored; a computerized inventory management system that records the receipt and storage of items, processes customer orders for items and tracks delivery of items to their destination, provides for electronic data interchange and Defense Digital Network communications--interfacing with the government's Military Standard Requisitioning and Issue Procedures/Military Standard Transaction Reporting and Accounting Procedures (MILSTRIP/MILSTRAP) information systems; and four levels of transportation services.

Under section M of the RFP, the technical and management proposals were of equal importance and significantly more important than cost/price. The following evaluation subfactors were identified in order of descending importance: for the technical proposal--transportation services, inventory management/automated data processing system(s), and equipment and warehouse; for the management proposal--master program management plan, and past performance. Prices were to be evaluated for realism, reasonableness, and completeness. The RFP provided for a cost/technical tradeoff analysis, and award was to be made to the offeror determined to have submitted the overall most advantageous offer to the government.

DDD and Federal Express submitted the only two proposals. DDD's proposal included information about the firm's experience in warehousing and distribution services in operating the United States Postal Service (USPS) Critical Parts Center in Indianapolis, Indiana; DDD proposed subcontracting with Emery Worldwide for the provision of the RFP's transportation-related services. DDD proposed modifying its computerized warehouse management system (WMS) currently in use under its USPS contract to meet the RFP's inventory management system requirements. Federal Express, the incumbent contractor of the required services, proposed its current Premium Service System inventory management system.

Discussions were held with both offerors (through the issuance of numerous written clarification requests and deficiency reports and in person). During discussions, DDD was advised, among other things, of proposal deficiencies regarding its proposed modification of its WMS system, including the agency's concerns about DDD being able to meet the RFP's required time constraints in light of known complexities related to the interface requirements for MILSTRIP/ MILSTRAP transactions.

Revised proposals and best and final offers were received and evaluated. The Federal Express proposal (at $29,390,300) was rated as low risk/highly acceptable for the technical and management areas; the DDD proposal (at $26,322,300) was rated as moderate risk/acceptable for both evaluation areas. Although the evaluators were confident that DDD had the ability to modify its current system to meet the RFP system requirements, they expressed concern that the offeror would not be able to complete all necessary modifications within the required time constraints. The evaluators specifically found that the offeror's proposed implementation schedule was "optimistic." Citing advantages in the Federal Express proposal, the agency awarded a contract to Federal Express on March 31, 1997. Subsequent to a debriefing held with the firm, DDD filed this protest.

DDD challenges the agency's evaluation of its proposal as unreasonable.[1] We will examine an agency's technical evaluation to ensure that it is reasonable and consistent with the evaluation criteria. Sarasota Measurements & Controls, Inc., B-252406.3, July 15, 1994, 94-2 CPD ¶ 32 at 4. The protester's disagreement with the agency does not render the evaluation unreasonable. ESCO, Inc., 66 Comp. Gen. 404, 410 (1987), 87-1 CPD ¶ 450 at 7. Further, in a negotiated procurement, there is no requirement that award be made on the basis of lowest cost unless the RFP so specifies. Spectra Tech., Inc.; Westinghouse Elec. Corp., B-232565, B-232565.2, Jan. 10, 1989, 89-1 CPD ¶ 23 at 3. Cost/technical tradeoffs may be made, and the extent to which one may be sacrificed for the other is governed only by the test of rationality and consistency with the established evaluation factors. Awards to offerors with higher technical ratings and higher prices are proper so long as the result is consistent with the evaluation criteria, and the procuring agency has determined that the technical difference is sufficiently significant to outweigh the cost difference. Aumann, Inc., B-245898.3, B-245898.4, July 22, 1992, 92-2 CPD ¶ 35 at 4. Based on our review of the record, we conclude that the award to Federal Express was reasonable and in accordance with the RFP evaluation criteria.

---

[1]DDD also contends that the agency improperly double-counted under both the technical and management evaluation areas the agency's concerns regarding the firm's proposed implementation schedule for modification of its offered WMS. The perceived risk involved in modifying the offeror's WMS to meet the RFP's inventory management system requirements is reasonably encompassed under both the technical evaluation area (regarding evaluation of proposed approach, offeror capability, and compliance with requirements, including the required commencement of performance) and the management area (regarding the offeror's implementation plan in terms of time and resources in evaluating the offeror's overall management plan). Accordingly, we have no reason to question the agency's consideration of its concerns under both evaluation areas. See EBA Eng'g, Inc., B-275818, Mar. 31, 1997, 97-1 CPD ¶ 127 at 13.

The record shows that the most significant risk associated with the protester's proposal concerns the protester's proposed inventory management system requiring substantial modification to its current WMS.[2] The record further shows that the DDD system needs substantial modification to meet the current requirements. DDD, however, contends that the modifications are relatively simple given the operational structure of its WMS, and that its proposed 90-day schedule (60 days for modification design and development, with testing to begin in 75 days, leaving 15 days to resolve unforeseen problems) is reasonable. Although the firm's proposal does not present any actual DDD experience with the MILSTRIP/MILSTRAP system, DDD asserts that it can accomplish the necessary modifications within the 90 days prior to the required scheduled start of contract performance since it developed the WMS for USPS in 45 days. Contract performance was to commence no later than 90 days after contract award (with full transition completed by June 30). The agency reports that, based on its experience under prior contracts, the linking with MILSTRIP/MILSTRAP operations required here has taken significantly longer than 90 days--as much as almost twice as long under the awardee's prior contract for the same requirements, and even longer than that for other previous efforts. The agency evaluators believed DDD's proposal in this regard did not convincingly address the risk that the modifications would not be timely incorporated into the system. In response to discussions concerning DDD's ability to timely modify its WMS, DDD did not allay the agency's concerns. DDD generally explained that a more fully detailed description of its current WMS was not included in its proposal and that the system would be modified to meet all

---

[2]We have fully reviewed the other challenges raised by DDD in its protest against every other weakness cited in its proposal, including, e.g., the perceived risk of late delivery associated with DDD's proposed route/rate shopping among carriers determined by the protester to be able to make timely deliveries (the agency states that DDD's reliance on many different carriers could become unwieldy, adding to the risk of late delivery), the agency's concern that the protester's handling times/rates seemed low (where the agency noted material differences in the current RFP requirements from the protester's USPS contract, which served as an initial comparative basis for the protester's calculation of its proposed times/rates), and the use by the agency of informal survey comments received from other user agencies that Emery is not competitive in the under-150-pound delivery market (supporting the agency's concern about the protester's potential for significant reliance on other carriers). We think the agency's concerns in these areas were reasonable. In any event, the record shows that these perceived minor weaknesses had only a relatively insignificant effect on the award determination. The protester also questions why the agency failed to cite as a weakness in the Federal Express proposal that offeror's stated limit of liability. The record shows that the offeror otherwise provided information supporting the agency's determination of low risk in this proposal area, and, in our view, the protest contention does not raise a matter material to the overall selection decision.

listed requirements of the RFP. The agency evaluators specifically noted that the DDD proposal failed to provide information about potential contingencies and development issues related to possible unforeseen problems concerning the modifications.

The record supports the reasonableness of the agency's evaluation. Given the minimal information provided in the DDD proposal about the exact operations of its current WMS, precluding detailed assessment by the agency of the extent of the actual modifications needed to be made; the historical information available to the agency for similar efforts; and the short schedule allowed for system development, we have no basis to question the reasonableness of the agency's moderate risk assessment assigned to the DDD proposal.[3]

DDD next contends that the agency's evaluation of proposals was unequal because the Federal Express proposal was evaluated as having strengths where the DDD proposal did not, even though, DDD contends, its proposal offered the same strengths. We have reviewed the record and find the agency's evaluation fair, equal, and justified. For instance, the agency found as a strength that the Federal Express proposal exceeded the 24-hour CONUS delivery requirement because the proposal, and the awardee's experience as the incumbent contractor, showed that most deliveries would be made by the next morning. Although DDD's proposal offered to meet the RFP's 24-hour requirement, there was no documentation showing that the requirement would in fact be exceeded to the extent demonstrated by Federal Express; the awardee's proposal reasonably demonstrated that it exceeded the RFP requirement, resulting in the highly acceptable evaluation rating.[4] Related to the

---

[3]Contrary to the protester's contentions, the record shows that the agency's concerns in this technical area were meaningfully discussed with the protester, since the agency led DDD to the area of its proposal that needed amplification. See Teledyne Brown Eng'g, B-258078, B-258078.2, Dec. 6, 1994, 94-2 CPD ¶ 223 at 5. Specifically, the protester contends that the agency did not discuss the concern regarding its proposed resources (four individuals) for the modification effort, which was a factor leading to the moderate risk rating assigned to DDD's proposed implementation plan. On several occasions, however, DDD was advised about the agency's concerns about the protester's ability to modify its WMS as proposed within the RFP's time constraints (which reasonably encompasses the plan (and resources) proposed).

[4]The agency also noted as a strength the awardee's record of exceeding the RFP's 97-percent on-time delivery rate. Although the protester's proposal showed on-time delivery rates in excess of 97 percent on prior contracts, we believe the agency's rating of the DDD proposal as acceptable in this area, rather than highly acceptable with a cited strength as was assigned to the Federal Express proposal, is

(continued...)

transportation evaluation area, Federal Express was also credited for having a larger fleet of aircraft (decreasing the offeror's reliance on other carriers), and for having access to a major transportation hub (Memphis airport). Although Emery also has a large fleet, we think that the difference in fleet size was reasonably considered as a strength by the agency, since the DDD proposal indicated a more substantial reliance on additional carriers, which could adversely effect contract performance.

Another cited strength in the Federal Express proposal concerned that firm's existing inventory management system, which is currently tied into the required MILSTRIP/MILSTRAP system. In contrast, although the DDD WMS system is in use under its USPS contract, it does not currently meet the stated interface requirements. We think the agency could reasonably recognize this difference in comparing offers. An additional noted strength in the Federal Express proposal concerned that offeror's warehousing space. Both offerors' proposals met the RFP requirement for warehousing space (for current inventory plus room for 50-percent growth). However, Federal Express offered almost double the square footage offered by DDD; DDD was found to have optimized its offered space by vertically stacking material to the ceiling of its proposed warehouse, which allowed it to meet the RFP's space requirements. We believe that the Federal Express proposal of

---

[4](...continued)
reasonable. The agency relied upon a legitimate distinction between the proposals in finding that Federal Express more convincingly showed that it exceeded the requirement--the DDD/Emery rates were experienced on contracts not identical to the current requirements, where Federal Express's rate was demonstrated on its incumbent contract for the services. We note that, although DDD generally contends that the agency unfairly credited Federal Express in the evaluation of proposals for perceived benefits from the awardee's incumbency experience, an incumbent's actual experience on performing the same requirements may be a legitimate differentiating factor in the evaluation of proposals. See Main Bldg. Maintenance, Inc., B-260945.4, Sept. 29, 1995, 95-2 CPD ¶ 214 at 8; Benchmark Sec., Inc., B-247655.2, Feb. 4, 1993, 93-1 CPD ¶ 133 at 10-11.

additional space, which would allow for additional vertical stacking, only if necessary, was reasonably credited as a strength.[5]

DDD next challenges the source selection decision.[6] The source selection authority justified the award to the higher-priced offeror by citing the various strengths and weaknesses of each proposal and certain "values" associated with the Federal Express proposal. In comparing the proposals, the source selection authority stated:

> The strengths of the Federal Express proposal included CONUS delivery in less than 24 hours, their large fleet of aircraft and serviced areas, an on-time delivery rate well above the required level, an existing inventory management system in use today, a realistic implementation schedule with contingencies identified, and a flexible plan for facility growth from 75,000 to 1,000,000 [square feet].

The source selection authority noted:

> The Federal Express total is approximately $3 million more than the DDD Company offer for the base year and four option years based on the solicitation constraints and assumptions. However, the value represented by the Federal Express offer includes benefits which far outweigh this cost difference.

The source selection authority then quantified, in terms of dollar benefit to the agency, some of the evaluated advantages in awarding a contract to Federal

---

[5]Federal Express explained in its proposal that it would consider higher stacking, if necessary, but also, in our opinion, reasonably pointed out that certain benefits, in terms of time and safety, are associated with a lower multiple-level stacking approach. While DDD asserts in its protest submissions that its proposed stacking plan should have been credited as a strength, since it takes a shorter amount of time to retrieve items from a higher level within a smaller area, DDD's proposal in fact recognizes that picking items from lower stacks may save some time (i.e., for rush orders).

[6]DDD also challenges the evaluation of cost proposals as unfair, since DDD included in its proposal an escalation rate for cost reimbursable transportation and Federal Express did not do so in its proposal. The record does not support the protester's contention, however, that it was instructed to include the challenged escalation rate in its proposal, and, in any event, the record shows that the agency did not view the inclusion of the escalation rate as a material factor in the award decision--the amount was considered negligible in light of the cost-reimbursable nature of the contract item.

Express, including Federal Express's proposal of a larger facility (presenting a cost advantage in terms of additional income to DLA from customers); costs that would be saved in terms of system development (since those agency costs have already been spent in the prior development of the Federal Express system); the elimination of any additional costs for OCONUS deliveries for transportation to areas not serviced by Emery; the elimination of internal government costs that would result from government management of the risks associated with the DDD proposal; and the benefit from the incumbent's demonstrated current high customer satisfaction levels supporting the anticipated marketing and expansion of the customer base to be serviced under the contract.[7] Based upon an overall assessment, the source selection authority determined that the Federal Express proposal offered "the greatest overall value to the Government."

DDD questions the accuracy and reasonableness of the source selection authority's conclusions about the specific cost benefits associated with certain cited advantages of the Federal Express proposal. While particular elements in that quantification may be challenged, we conclude that the source selection decision was nevertheless reasonable. The agency was not required to quantify, in terms of the dollar value to the agency, the value of the technical superiority of the Federal Express proposal; our review is focused, not on that quantification, but rather on whether the source selection decision was reasonable, consistent with the solicitation criteria, and supported by the evaluation record. <u>See</u> <u>Delany, Siegel, Zorn & Assocs., Inc.</u>, B-258221.2, B-258221.3, July 10, 1995, 95-2 CPD ¶ 7 at 4 n.4. Here, the source selection documentation shows that the agency's efforts at estimating the cost value of some of the strengths in the Federal Express proposal formed only part of the agency's decision-making process, and the agency did not rely exclusively on the quantification analysis. Accordingly, regardless of the protester's challenges to the specific dollar amounts cited, in determining the reasonableness of the agency's source selection decision, the critical factor is the reasonableness of the agency's judgments regarding the nature and significance of the differences between the proposals.

Here, the source selection authority reasonably cited legitimate and meaningful strengths in the Federal Express proposal, not found in the DDD proposal, and

---

[7]The record shows that the evaluators identified other advantages of the Federal Express proposal, but the significance of those advantages was not quantified and therefore not captured in this analysis, although they do provide further support for the agency's determination that Federal Express's proposal was technically superior. Among those non-quantified advantages were the awardee's proposed move of the current inventory over 2 weekends (eliminating any risk of interruption in service), a management plan that provides for status reports exceeding those required under the RFP, and the use of existing employees (eliminating the learning curve associated with new personnel).

advantages in awarding a contract to Federal Express which directly relate to the stated evaluation criteria. As explained in our analysis above, the record shows that the strengths that the agency identified in the Federal Express proposal are legitimate discriminators which support the reasonableness of the award to the higher-priced offeror. As the agency points out, many of the strengths in the Federal Express proposal are difficult to quantify in terms of cost, such as the awardee's proven existing inventory management system, realistic implementation schedule and larger fleet of aircraft and service areas. The agency has shown that the program is important to DLA and that to remain viable, the risk in contract performance or to the program must be minimized.[8] Given the terms of the RFP, allowing for an award to other than the low cost offeror, we believe the record supports the reasonableness of the agency's determination to pay the cost premium involved for the benefits of the low risk/technical superiority of awardee's proposal.

The protest is denied.

Comptroller General

---

[8]Although the protester contends that the agency favored the awardee because of its incumbency experience and, in effect, has made a sole source award based on a predetermination that no other contractor's proposal could present the same degree of low risk found in the awardee's proposal, the record does not support the protester's contentions. DDD was given a fair opportunity to compete and was reasonably found to have submitted an acceptable proposal, albeit one which did not present the technical superiority of the awardee's proposal.