



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Compania De Asesoria Y Comercio, S.A.

File: B-278358

Date: January 20, 1998

Fernando Barria for the protester.

Carlos A. De Obaldia, Esq., De Obaldia & Garcia De Paredes, for CBH Construcciones, an intervenor.

Col. Nicholas P. Retson and Capt. John C. Lavorato, Department of the Army, for the agency.

Jacqueline Maeder, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency evaluation of protester's proposal is unobjectionable where the record shows that the evaluation was reasonable and consistent with the stated evaluation factors; protester's mere disagreement does not render the evaluation unreasonable.
2. Under best value solicitation in which technical factors were more important than price, selection on the basis that awardee's overall technical superiority warranted payment of the associated price premium is unobjectionable and consistent with the evaluation scheme where the agency reasonably evaluated the awardee's higher-priced proposal as offering a superior program management and technical approach.

DECISION

Compania De Asesoria Y Comercio, S.A. (ASECOSA) protests the award of a contract to CBH Construcciones, S.A. under request for proposals (RFP) No. DAJN21-97-R-0039, issued by the Department of the Army for grounds maintenance services at various U.S. military installations in Panama. ASECOSA objects to the evaluation of its proposal and asserts that the determination to award to a firm which did not offer the lowest-priced technically acceptable proposal was unreasonable.

We deny the protest.

The solicitation, issued July 18, 1997, contemplated the award of a firm, fixed-price contract for a base year with a 1-year option. The RFP was for grounds maintenance services at 11 installations on the south side of the isthmus of Panama.

The statement of work (SOW) at section C.5 listed 15 requirements, including: mowing, edging and trimming of improved grounds and semi-improved grounds, tree pruning, resodding, removal of dead/down trees, replanting trees and shrubs, leaf and debris removal, sanding and maintaining specified playgrounds, clearing right-of-way of aerial electrical lines, insect and disease control to damaged plants, clearing area, and special grass cutting services.

At section M, the RFP provided for award to the offeror whose conforming proposal was determined to be the best value to the government. The RFP identified the following evaluation factors and subfactors, listed in descending order of importance, except as specifically otherwise stated:

1. Management
 - a. Past Performance
 - b. General Management Techniques
2. Technical
 - a. Technical Approach
3. Quality Control
 - a. Specific Inspection Techniques
 - b. Corrective Action
4. Price

Management was more important than either technical or quality control, which were stated to be of equal importance, and price was least important. Subfactors under management and quality control were stated to be of equal importance. The RFP provided that each factor and subfactor, with the exception of price, would be evaluated using color/adjectival ratings--green/outstanding, blue/good, yellow/acceptable, orange/susceptible, and red/unacceptable--which would represent the evaluators' views as to an offeror's understanding of the problem, compliance with the requirements, and the soundness of its approach. In addition, performance risk ratings--green/low, blue/moderate, beige/high, and neutral¹--were used to

¹A neutral rating was to be assigned to a firm with no past performance history.

represent the evaluator's assessment of an offeror's probability of successful accomplishment of the requirement, based on the offeror's record of performance for the past 3 years.²

The RFP advised that overall price would be evaluated by adding the price for the base requirement to the price for the option. The RFP also provided for a cost realism analysis, which included an assessment of whether the offeror's proposed price reflected a clear understanding of the solicitation requirements.

The agency received five proposals, including those of ASECOSA (the incumbent contractor) and CBH, by the August 18 closing date. A four-member source selection evaluation board (SSEB) evaluated the proposals based on a 24-question checklist, which included detailed management and technical criteria.³ Based on the initial evaluation, four of the proposals, including ASECOSA's and CBH's, were included in the competitive range. On September 3, discussions in the form of written items for negotiations were issued along with the request for best and final offers (BAFO). BAFOs were received by September 10. The final ratings for the awardee's and the protester's proposals were as follows:

²In relevant part, section M provided that a blue/good rating would be assigned where the proposal demonstrated an approach which satisfied all the government's requirements with adequate detail to indicate feasibility of approach and an understanding of the problem, with a low to moderate degree of risk in meeting the government's requirements. A yellow/acceptable rating would be assigned where the proposal demonstrated an approach which barely satisfies all of the government's requirements with minimal detail to indicate feasibility of approach and an understanding of the problem, with a moderate to high degree of risk in meeting the government's requirements.

³For example, management criteria included such things as the inclusion and adequacy of the offeror's organizational chart, equipment storage and maintenance information, mobilization plans for transporting equipment and personnel, and procedures for completing special services. Technical criteria included such things as the adequacy of the offeror's description of personnel and equipment assigned to the different tasks and the description of how the offeror intended to accomplish the different tasks, such as insect and disease control, mowing improved and unimproved grounds, resodding, maintaining playgrounds, and tree pruning.

	ASECOSA	CBH
1. Management (Overall)	Acceptable/Yellow	Good/Blue
a. Past Performance	Good/Blue	Good/Blue
b. General Management	Acceptable/Yellow	Good/Blue
2. Technical (Overall)	Acceptable/Yellow	Good/Blue
3. Quality Control (Overall)	Good/Blue	Good/Blue
a. Specific Inspection Techniques	Good/Blue	Good/Blue
b. Corrective Action	Good/Blue	Good/Blue
4. Price	\$1,295,721.32	\$1,668,968

CBH's proposal was rated higher under management in large measure because the awardee proposed a unique organizational structure, which divided the work sites into two groups with a supervisor and work teams for each group. CBH also proposed a supply section/group. In contrast, the protester's management was evaluated as acceptable because it submitted an adequate organizational structure, with one supervisor responsible for all work sites. The agency determined that the awardee's organizational structure would provide superior overall management control and contract administration. Similarly, CBH's overall technical rating was higher than ASECOSA's primarily because CBH provided a complete detailed description of all tasks and listed equipment needed for each task. While ASECOSA provided a "Resources Utilization" chart, it did not provide specific details or descriptions, and the agency found the chart difficult to understand.⁴ In addition, because ASECOSA's price was 17 percent lower than the independent government estimate, the agency evaluators questioned whether ASECOSA had a clear understanding of the level of effort necessary to meet the RFP requirements. Based on these evaluation results, the source selection official determined that CBH's proposal represented the best value to the government and the agency awarded the contract to CBH on October 3. After ASECOSA received a debriefing on October 7, it filed this protest with our Office.

The protester argues that the agency improperly evaluated its management proposal concerning its performance risk and mobilization and also misevaluated ASECOSA's technical proposal. Generally, the protester argues that it provided sufficient information concerning its approach to tasks and its resources and that any

⁴The chart provided a matrix which contained a numerical listing of personnel, rental equipment, and maintenance equipment for each task. The chart also provided an analysis of the cost to perform each task based on the personnel and equipment to be used to perform the task.

omissions were insignificant. ASECOSA also argues that the agency's source selection determination was unreasonable, taking the position that it was entitled to the award because it submitted the lowest price offer that reflected the ability to meet the government's needs.

PERFORMANCE RISK

ASECOSA's proposal received a blue/good rating for the past performance subfactor under management, and a "moderate" risk assessment based on its past performance record. The protester challenges the moderate risk assessment, arguing that its past performance record should be assessed as low risk, pointing to, among other things, 10 years of grounds maintenance work, no evidence of poor performance, no "cure" notices or "show cause" notices in its government contracts, and the accomplishment of the required tasks in all of its contracts to support its position.

The evaluation of technical proposals is a matter within the discretion of the contracting agency, since that agency is responsible for defining its needs and the best method of accommodating them. Mesa, Inc., B-254730, Jan. 10, 1994, 94-1 CPD ¶ 62 at 5. In reviewing an agency's technical evaluation, we will not reevaluate the proposals; rather, we will examine the record to ensure that the evaluation was reasonable and consistent with the RFP evaluation criteria. Id. A protester's disagreement with the agency's judgment, standing alone, is not sufficient to establish that the agency acted unreasonably. Ionsep Corp., Inc., B-255122, Feb. 10, 1994, 94-1 CPD ¶ 97 at 3.

Here, we find without merit ASECOSA's contention that the evaluation of its past performance was improper. The record shows that the protester submitted a list of 13 references, four of which the agency determined were for work similar in size and scope to the work required here, including the protester's performance as the incumbent contractor. Three of the four references responded to the agency's requests regarding ASECOSA's performance.

ASECOSA received an overall evaluation of "satisfactory" from one reference and another reference stated that ASECOSA had not performed long enough for a fair evaluation. Under its current contract as incumbent, ASECOSA had received seven deficiency reports outlining, for example, deficient mowing, removal of trash and debris, edging, and maintenance of plantings. These deficiency reports, viewed in conjunction with the "satisfactory" rating on another contract, caused the agency evaluators to conclude that there was some doubt as to whether ASECOSA would be able to adequately perform the requirements under the RFP. Based on this, the agency determined that a past performance rating of "good" and a risk assessment of "moderate" were appropriate.

While ASECOSA apparently has never received a cure notice or a show cause notice, it concedes that under the current contract, "some problems have occurred" in its performance. Clearly, the six deficiency notices support the assessment that ASECOSA has not completely adequately performed the current contract and has been repeatedly notified of shortcomings. While it may be true, as ASECOSA argues, that it resolved the performance problems satisfactorily, the protester does not dispute the fact that the deficiency notices were issued and that, in response, it did re-perform some of the services. Accordingly, we see nothing unreasonable in the agency's risk assessment.

MOBILIZATION

The protester also argues that its proposal was improperly evaluated with respect to its proposed transportation for its work force. The RFP at section C.4.3 required that the contractor provide transportation for mobilization of its work force. Each contractor vehicle was to be identified with the contract number, contractor name, and office phone number.

In its proposal, ASECOSA listed the equipment it would use, including two pick-up trucks for moving personnel and small equipment and a flatbed truck for moving heavy equipment. The Army determined that the protester's proposal was not detailed enough, because the protester failed to explain how the equipment would be utilized in relation to the different SOW tasks. The protester's proposal was rated orange/susceptible under this management criterion.

While agencies must identify in a solicitation all major evaluation factors, they are not required to identify all areas of each factor which might be taken into account provided that the unidentified areas are reasonably related to or encompassed by the stated criteria. JoaQuin Mfg. Corp., B-275185, Jan. 29, 1997, 97-1 CPD ¶ 48 at 2. As noted above, the RFP required information from each offeror as to how the offeror intended to mobilize its work force. While the solicitation does not specifically request that an offeror explain its mobilization plan in relation to the different SOW tasks, this information reasonably relates to the need for the vehicles and the transportation of the work force. The protester points to nothing in its proposal to substantiate its position that it was misevaluated other than reiterating the information it provided and stating that "mobilization is not a complicated management problem" The protester's mere disagreement with the evaluation does not render the evaluation unreasonable.

TECHNICAL PROPOSALS

The RFP at section L stated that technical approach to performing tasks consisted of methodology and resources. The solicitation stated that offerors were to submit a narrative methodology section and a resources section. The RFP advised each offeror to describe in its methodology section how each task would be

accomplished and, in its resources section, specify its specific work resources in support of the contract effort, including personnel, equipment, and materials. The RFP also advised that the equipment and materials description should be provided in sufficient detail to demonstrate understanding of the materials necessary for meeting the solicitation's requirements.

In its technical proposal, ASECOSA provided, among other things, a three-page outline of its methodology for the tasks listed in the SOW, descriptions of its specific task teams, a three-page listing of equipment, and a discussion of its equipment repair and maintenance operation. As noted above, the proposal also included a Resources Utilization chart. In its final evaluation, the agency determined that ASECOSA's technical proposal did not adequately address how each task would be performed and, as noted above, found the Resources Utilization chart confusing and difficult to interpret.

ASECOSA argues generally that its proposal did explain how it would perform the work, citing specifically its response to clearing area procedures and maintaining playground areas in its BAFO. The protester also argues that its Resources Utilization chart is clear and legible and "only needed adequate research," in order for the agency to fully understand ASECOSA's proposed procedures.

Based on our review of the record and notwithstanding ASECOSA's disagreement, we see no reason to object to the evaluation. ASECOSA provided a three-page description of its methodology for completing the required tasks and discusses the equipment and workers it will use to complete each task, but provided little information on how it will perform the tasks. For example, its methodology for plant maintenance states:

[These services] will be performed by Team of Gardeners: team of trained gardeners are assigned to specific areas of performance. They are in charge of watering, plantings, resodding, insect and pest control or other special gardening functions. The assigned personnel will receive training at the COMPANY green house operation before they are assigned to gardening functions. The grounds maintenance crew of brush cutters and personnel for policing will identify gardeners under training, to support gardening functions. Personnel with gardening experience will be rotated through our green house operation to receive proper training and certification.

Similarly, the methodology on insect and disease control to damaged plants states:

[This function] will be performed by trained gardeners under the supervision of license[d] personnel. Personnel assigned to this function will be trained in our green house operation, and certified prior to being assigned to their duties.

The agency reasonably concluded that neither of these responses explains how the protester intended to perform the tasks. No steps to performing the tasks are outlined and no procedures are listed. The protester provides only general information; for example, that the work will be performed by experienced personnel and that workers will be trained in ASECOSA's greenhouse operations, which are unrelated to how ASECOSA will perform the tasks.

The protester's assertion that it provided a detailed methodology for clearing areas and maintaining playgrounds is also inconsistent with the record. The protester's narrative description of its procedures for clearing an area provides no concise steps or procedures the workers are to execute. Instead, ASECOSA's narrative describes the personnel and equipment to be used. As to procedures, ASECOSA's narrative simply states that workers "will execute the clearing, and will pick up the material resulting from the clearing." Similarly, ASECOSA's narrative on maintaining playgrounds reviews its experience with this task, states that personnel assigned must be excellent gardeners and specifies that it coordinates with playground personnel both before and after performing the task. The protester also discusses the sand to be provided and the equipment it would use for replacement of large quantities of sand.⁵

In addition, we reviewed the Resources Utilization chart provided by the protester, and we see why the agency evaluators found it difficult to understand. As an example, the agency points to the protester's entry on the chart for the mowing of improved areas and notes that ASECOSA identified 19 employees who would participate in completing the task, including two managers/supervisors and three truck/tractor drivers. Fifteen motor vehicles are listed as being used to complete this task and, of these, three types of vehicles are repeated three times. Other entries are similarly confusing. We see no basis to question the agency's determination that the protester's Resources Utilization chart was difficult to interpret. Under these circumstances, we find nothing improper in the agency's evaluation of the protester's technical proposal.

⁵In contrast, the awardee listed and detailed the steps in maintaining playgrounds. Specifically, the awardee stated that it would prepare within its facility a collecting area, stocked with sand approved by the agency and that, before delivering the sand, it would strain the sand with a number 4 sieve. The awardee also stated that it would replace 1 cubic yard of sand on a weekly basis and that the sand would be delivered in a dump truck, placed on resistant plastic sheets, and carried to the playground in wheelbarrows. The sand would then be raked and leftovers would be returned to the awardee's storage area. The awardee stated that the area would be perfectly cleaned due to the use of the plastic sheets, which facilitate collection of sand leftovers. Finally, a rubber band around the playground perimeter would be kept in proper position to keep the sand in the proper area.

SOURCE SELECTION DECISION

Finally, ASECOSA argues that the award selection was improper, alleging that any deficiencies shown in its proposal are insignificant and that the benefits offered by the awardee's proposal do not merit the payment of an additional \$373,246.68.

Source selection officials in negotiated procurements have broad discretion in determining the manner and extent to which they will make use of technical and cost evaluation results. Roy F. Weston, Inc., B-274945 et al., Jan. 15, 1997, 97-1 CPD ¶ 92 at 17. Agencies may make cost/technical tradeoffs in deciding between competing proposals and the propriety of such trade-offs turns not on the difference in technical scores or ratings per se, but on whether the selection official's judgment concerning the significance of that difference was reasonable and adequately justified in light of the RFP evaluation scheme. Id.

ASECOSA's objection is premised on its view that the agency was required to award to the lowest-priced technically acceptable offeror, which had been the award criterion for the predecessor contract under which ASECOSA received the award. However, as noted above, the current RFP provided for award on a best value basis, listing price as the least important factor, and indicated that price may become the determining factor if proposals are evaluated as equal under the management, technical and quality control factors. Here, the two proposals were not evaluated as equal under these factors.

The source selection authority (SSA) reviewed the full record, including advantages and disadvantages cited for the proposals as well as the color/adjectival ratings and cost evaluation results. The SSA concluded that CBH offered the most advantageous proposal on the basis that CBH submitted the highest-rated proposal, which demonstrated a clear understanding of the requirements, provided a complete description of all work tasks, and proposed a unique organizational structure, which warranted payment of the associated price premium.

The protester's objection provides no basis to call into question the selection decision, which reflects an appropriate comparison of the competing proposals and includes a reasoned determination for the selection of the higher-priced proposal under an RFP in which management and technical factors were set forth as more

important than price. ASECOSA's view that award was required to be made to the lowest-priced technically acceptable offeror simply does not accurately reflect the RFP award criteria.⁶

The protest is denied.

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⁶To the extent that ASECOSA is arguing, after award, that the award should have been made on the basis of the lowest-priced technically acceptable offer, its protest constitutes an untimely challenge to the RFP's award criteria, which did not so provide. Blue Cross-Blue Shield of Tennessee, B-210227, 83-1 CPD ¶ 555 at 2-3. Our Bid Protest Regulations require that protests of alleged improprieties in an RFP which are apparent prior to the closing time for submission of initial proposals be filed prior to that time. 4. C.F.R. § 21.2(a)(1) (1997).