Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Seedburo Equipment Company

File: B-278659

Date: February 25, 1998

Tom Runyon for the protester.
Michael F. Kiely, Esq., United States Department of Agriculture, for the agency.
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DIGEST

Where the solicitation's evaluation scheme provided that the combined weight of the technical evaluation factors was significantly more important than price in determining the proposal representing the best value to the government, agency reasonably selected the higher technically rated, higher-priced proposal for award where the record supported the agency's conclusion that this proposal was technically superior to the protester's proposal and that the advantages of the awardee's proposal warranted the payment of a price premium.

DECISION

Seedburo Equipment Company protests the award of a contract to DICKEY-john Corporation under request for proposals (RFP) No. 54-M-APHIS-97, issued by the Animal and Plant Health Inspection Service, United States Department of Agriculture (USDA) for manual and automated grain moisture meters. Seedburo challenges the agency's price/technical tradeoff resulting in an award to an offeror submitting a higher technically rated, higher-priced proposal.

We deny the protest.

The RFP, issued on May 15, 1997, contemplated the award of a firm, fixed-price requirements contract for basic and option quantities of manual and automated grain moisture meters.[1] The RFP provided that only those moisture meter models that met all prequalification requirements and had a certificate of conformance under the National Conference of Weights and Measures, National Type Evaluation Program (NTEP) at the time the RFP was issued would be considered for award. As stated in section C.1 of the RFP, the intent of this procurement was to select a new technology for "official moisture measurement/inspection purposes." The RFP

[1]Amendment No. 0001 of the RFP, issued on May 19, stated that the procurement was a total small business set-aside.

also explained that it is not feasible to have more than one official moisture meter because the use of "multiple technologies degrades consistency of results even if accuracy is comparable."

The agency explains that grain is measured for moisture because, when buying grain based on weight, it is important to know what the moisture content is so that a buyer knows how many nutrients and things other than water are being purchased. Hearing Transcript (Tr.) at 16.[2] Moisture in grain generally adds no value to the grain as an end-use product. Id. Basically, the price of grain is adjusted to reflect the moisture content. Id.

As explained during the hearing, to determine the moisture content of grain, the moisture meter operator pours a grain sample into the instrument and selects the grain type to be analyzed. The grain sample drops into a test cell where weight, temperature, and other properties of the grain are determined; the moisture content is then displayed on the instrument. Tr. at 13-14. By selecting the grain type, the operator in essence selects the calibration or mathematical equation that will be used to convert the raw data results into moisture content for the particular grain type. Tr. at 15. Moisture content is ultimately expressed as a percentage of total weight of the grain sample. Id.

The RFP stated that proposals would be evaluated in two phases. The first phase involved the evaluation of technical proposals. The RFP provided the following technical evaluation factors and related subfactors: (1) technical design (range of applicability; environmental compatibility; and design requirements); (2) quality control, standardization, and check-test processes (adequacy of quality control plan; completeness of standardization error analysis; degree of conformance of production units with USDA regulations based on standardization error analysis and production quality control data; and completeness, effectiveness, and efficiency of check-test processes that assess the instrument's ongoing performance); (3) customer feedback on instrument performance; and (4) past performance (timeliness of delivery and business relations). (After the phase I technical evaluation, the agency determined the competitive range.) The second phase involved physical testing of proposed instruments. The RFP provided that the agency would randomly select 5 of the 15 current users of the offeror's instrument, as previously identified by the offeror, for on-site testing of the instrument at the user's facility. The RFP provided that the award would be made to the responsible offeror whose proposal was determined to represent the best value to the government, technical evaluation factors and price considered. The RFP further provided that the combined weight of the technical evaluation factors was

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[2]The transcript citations in this decision refer to the transcript of the hearing conducted by our Office in connection with this protest.

significantly more important than price, and that the award could be made to other than the lowest-priced offeror.

Four offerors, including Seedburo and DICKEY-john, submitted initial proposals by the closing time on June 18. Seedburo proposed its model GMA 128 "grain moisture analyzer," and DICKEY-john proposed its GAC 2100 "grain analysis computer." Only the proposals submitted by Seedburo and DICKEY-john were included in the competitive range. Both of the proposed moisture meters had NTEP certificates of conformance. (With respect to DICKEY-john, its certificate also referenced the predecessor model, the GAC 2000 NTEP version.)[3] Following discussions with Seedburo and DICKEY-john and the physical testing of their respectively proposed instruments, the agency requested the submission of best and final offers. Out of a possible total of 100 points, Seedburo's proposal received 63 points and DICKEY-john's proposal received 68 points. Based on physical testing of the proposed instruments, Seedburo's instrument was rated "good," and DICKEY-john's instrument was rated "excellent." Over the term of the contract, Seedburo's prices were approximately 9 to 18 percent lower than DICKEY-john's prices. Despite this price differential, the agency determined to award the contract to DICKEY-john, the offeror submitting the technically superior, higher-priced proposal as representing the best value to the government.

The protester challenges the agency's selection of a higher technically rated, higher-priced proposal for award.

In a negotiated procurement, an agency has the discretion to make award to an offeror whose proposal is higher technically rated and higher priced where the agency reasonably determines that the price premium is justified considering the technical superiority of the offeror's proposal and the result is consistent with the RFP's evaluation scheme. Marion Composites, B-274621, Dec. 20, 1996, 96-2 CPD ¶ 236 at 6.

The agency concluded that DICKEY-john's proposal was technically superior to Seedburo's proposal. Noting the differential between DICKEY-john's and Seedburo's prices, the agency considered the technical differences in the proposals and

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[3]In response to Seedburo's concern that the DICKEY-john GAC 2100 moisture meter was not eligible for award, the agency explained during the hearing that the DICKEY-john GAC 2100 moisture meter was, in accordance with the terms of the RFP, section C.3, "the same type as the original NTEP-certified model [the GAC 2000 NTEP version] and the modified model [was] included with the same model on the current NTEP Certificate of Conformance." Tr. at 36-38. The protester did not file any post-hearing comments, and so did not refute the agency's position in this regard.

ultimately concluded that the technical superiority of DICKEY-john's moisture meter warranted the payment of a price premium to that firm.

More specifically, the agency determined that DICKEY-john's proposal contained strengths in each of the four technical areas and for physical testing of its proposed instrument. With respect to the technical design evaluation factor, the agency determined that the DICKEY-john instrument demonstrated accurate performance (moisture measurements) on a significant number of grain types (with corresponding calibrations) and demonstrated the potential to develop other grain calibrations. Tr. at 64. In addition, the DICKEY-john instrument was easy to operate (for example, speed of operation and analysis of grain types) and DICKEY-john outlined required modifications to timely deliver an automated moisture meter. Tr. at 65. (The only two weaknesses with respect to DICKEY-john's proposal were listed under this evaluation factor. First, DICKEY-john did not demonstrate calibration accuracy for 1996 crop corn and soybeans, although these calibrations were subsequently adjusted and improved upon, and second, the firm's proposed instrument did not appear well-suited for use as a test weight device because of its use of a smaller sample size. Tr. at 65-66. The agency did not believe these weaknesses were significant in light of standardization and physical testing strengths for DICKEY-john's proposed instrument. See Tr. at 70.)

With respect to the quality control, standardization, and check-test processes evaluation factor, the agency considered a strength of the DICKEY-john proposal that the firm was certified by an international standards organization as having in-house quality control production processes, thus providing the agency with assurances that it would receive a quality product from that firm. Tr. at 66; see also Tr. at 52. Further, DICKEY-john demonstrated a very good understanding of how various intermediate measurements would affect the final moisture result and demonstrated in a well-organized and detailed manner the steps that would be necessary to standardize the instruments before they left the factory. Tr. at 66-67. DICKEY-john also provided a good plan for check-test processes in the field against the agency's control instruments. Tr. at 67. DICKEY-john's test procedures were outlined in great detail and provided a check-test that the instrument was performing accurately for all grain types and across applicable moisture ranges.

For the customer feedback on instrument performance and past performance evaluation factors, the agency received favorable comments from customers surveyed. These customers were positive about the performance (accuracy, consistency, and reliability) of the DICKEY-john instrument and for repairs made by the firm in the field. Tr. at 67. The customers also favorably commented on DICKEY-john's very extensive service organization. Id.

Finally, with respect to physical testing of DICKEY-john's proposed instrument, the agency compared moisture content results for five randomly selected DICKEY-john

GAC 2000 instruments included in the field study to moisture content results obtained on an NTEP DICKEY-john GAC 2100 calibration instrument using the same samples. The agency determined that the field performance of the DICKEY-john instruments was excellent--the moisture results of the field instruments agreed with the NTEP calibration instrument, consistent with USDA tolerances and across grain types. In other words, the agency "had a high degree of confidence that [it] could send out a single grain-type sample for the check test, line up instruments for that grain type that would be lined up for other grain types [the agency would] have to measure." Tr. at 68-69.

In sum, the agency determined that DICKEY-john's proposal demonstrated clear strengths in the areas of instrument standardization, customer satisfaction, and instrument service and support--all of these strengths supported by the results of the physical testing of DICKEY-john's instrument.

With respect to Seedburo, the agency determined that its proposal was overall technically acceptable. For the technical design evaluation factor, the agency determined that the Seedburo instrument had a wide range of applicability for measuring moisture content across grain types and demonstrated the potential to develop other grain calibrations. Tr. at 49-50; see also Tr. at 65. In addition, Seedburo's instrument could measure grain for properties other than moisture content, for example, test weight, because it uses a larger sample size. Tr. at 50; see also Tr. at 66. Seedburo's instrument was easy to operate (e.g., selecting a calibration, entering a calibration coefficient, and speed of analysis), Tr. at 50-51, and it performed well on 1996 crop samples, including corn and soybeans. Tr. at 50. Seedburo demonstrated its ability to timely deliver an automated moisture meter. Tr. at 51. These items constituted the strengths in Seedburo's proposal.

With respect to the quality control, standardization, and check-test processes evaluation factor, the agency listed no strengths in Seedburo's proposal. Among the weaknesses listed for this evaluation factor were that Seedburo was not certified by an international standards organization as having in-house quality control production processes which would help to assure the agency that it would receive a quality product. Tr. at 52.[4] Seedburo did not demonstrate a standardized error analysis, that is, the ability to manufacture and adjust instruments such that "a system of a hundred instruments would all provide the same reading as opposed to just the two" instruments the agency tested. Tr. at 52-53. Seedburo emphasized

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[4]In its protest, Seedburo challenged several RFP provisions such as those addressing certification by an international standards organization, procedures for physical testing, and minimum sample size. These issues, filed after award, are untimely as they constitute alleged solicitation improprieties which were apparent prior to the closing time for receipt of initial proposals. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1997); Engelhard Corp., B-237824, Mar. 23, 1990, 90-1 CPD ¶ 324 at 7.

analysis of grain samples to verify that instruments were properly adjusted, rather than taking adequate steps to ensure standardization of individual measurement characteristics or that standardization procedures applied across a wide range of grain types or moisture content levels. Tr. at 53. In addition, Seedburo did not provide a detailed plan for check-test processes in the field against the agency's control instrument. Id. The agency also did not believe that Seedburo's proposed field check-test procedure could be conducted using a single grain type.

For the customer feedback and past performance evaluation factors, the agency received neither positive nor negative comments from customers surveyed with respect to Seedburo. Tr. at 55.

Finally, with respect to physical testing of Seedburo's proposed instrument, the agency compared moisture content results for five randomly selected Seedburo GMA 128 instruments included in the field study to moisture content results obtained on an NTEP GMA 128 calibration instrument using the same samples. The agency determined that the field performance of the Seedburo instruments was good, but noted that the current level of instrument standardization, both between instruments and grain types, may not adequately meet the agency's requirements for measuring moisture content. In this regard, the agency explained that if the field instrument were properly aligned for a single grain type, then the field instrument should be properly aligned for other grain types. Tr. at 56. However, this was not the case for Seedburo's field-tested instruments. Id. In other words, the agency wanted to be able to check instrument standardization by using one grain type and "feel comfortable that the instrument then would be aligned for . . . other grain types." Id.

In sum, the agency determined that while Seedburo's proposal demonstrated strengths for the technical design evaluation factor, its proposal had weaknesses in the areas of quality control processes, standardization error analysis, and proposed check-test processes. These weaknesses were highlighted during the physical testing of Seedburo's instrument.[5]

Under the RFP's evaluation scheme, the combined weight of the technical evaluation factors was significantly more important than price in determining the proposal representing the best value to the government. The RFP also provided that the award could be made to other than the lowest-priced offeror. Although

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[5]During the hearing, Seedburo was afforded an opportunity to ask questions or to make comments regarding the agency's explanation of the strengths and weaknesses in its proposal. Other than asking a question about a particular specification requirement involving sample sizes, Seedburo asked no questions and made no comments concerning the evaluation of its proposal. Tr. at 58-59. As noted above, the protester also filed no post-hearing comments.

DICKEY-john's price was higher than Seedburo's price, the agency determined that DICKEY-john's proposed instrument was technically superior to Seedburo's proposed instrument based on strengths for all technical areas (particularly standardization and check-test processes) and for physical testing of the instrument, as discussed above. See also Tr. at 69-71. In light of the strengths associated with DICKEY-john's moisture meter, we conclude that the agency could reasonably determine that DICKEY-john's technically superior instrument was worth the payment of a price premium.

The protest is denied.[6]

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[6]In its protest, Seedburo alleged that the chairman of the agency's acquisition planning team for this procurement (an individual who signed a procurement integrity certificate) exercised undue influence in the selection of DICKEY-john's proposal for award. The individual in question formerly was a research and development engineer for DICKEY-john (more than 10 years ago) and contributed to the design development of the predecessor model of the proposed DICKEY-john moisture meter. At the hearing, GAO conducted in-depth questioning of this individual regarding any interest--financial or otherwise--that he may still have had in DICKEY-john. There was no evidence that this individual had any interest in DICKEY-john or that he was involved in the evaluation and source selection process for this procurement. Tr. at 16-47. Seedburo did not challenge this individual's testimony during the hearing and, as noted previously, Seedburo filed no post-hearing comments.