



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Madico, Inc.

File: B-280003

Date: August 12, 1998

Jay Larkin for the protester.

John S. Albanese, Esq., Department of Defense, for the agency.

Linda C. Glass, Esq., and Paul I. Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency improperly selected higher-priced proposal is denied where the solicitation made technical considerations more important than price and the agency reasonably concluded that the technical superiority of the awardee's proposal warranted payment of the associated price premium.

DECISION

Madico, Inc. protests the award of a contract to Mid-Atlantic Service & Supply Corporation under request for proposals (RFP) No. MDA946-98-R-3001, issued by the Department of Defense, Washington Headquarters Services for the purchase and installation of security glass coverings at the Pentagon. Madico objects to the agency's decision to award to Mid-Atlantic at a price higher than that offered by Madico.

We deny the protest.

The solicitation, issued December 5, 1997, contemplated the award of a fixed-price contract for the purchase and installation of fragment retention film on windows at the Pentagon building and windows at the Child Care Center at the north side of the Pentagon. The RFP provided that proposals would be evaluated on the basis of (in descending order of importance) technical capability of the item offered to meet the government requirement, price, and past performance, and that award would be made to the offeror whose proposal conforming to the solicitation would be most advantageous to the government. RFP, Addendum No. 4, § 52.212-2, Evaluation -- Commercial Items. One of the RFP requirements for the fragment retention film was that it "shall exhibit a flame spread index not exceeding 25 and a smoke

density index not exceeding 100 when tested in accordance with ASTM E-84."¹ RFP, Addendum No. 3, § 08850, Fragment Retention Film for Glass ¶ 2.2.5. Amendment No. 0001, issued on December 5, 1997, stated that there were a total of 958 windows that needed treatment, 332 of which required category II window film, 7 mils thick or thicker.

Four offerors responded to the solicitation. Madico submitted an offer of \$42,521.67 and provided an independent test report, as required by the RFP, indicating a flame spread index of 8 for its proposed film. Mid-Atlantic's offer was for \$52,944 and its independent test report indicated a flame spread index of 2. In its offer, Mid-Atlantic stated that for Category II film, it was proposing the use of ArmorGard 7 mil single ply clear, and as an alternative at the same price, it proposed a product called SecureVue 400, a 4 mil thick (2) ply product. The contracting officer reviewed the technical evaluator's assessment that Mid-Atlantic's proposal provided greater security protection than Madico's and determined that the proposal submitted by Mid-Atlantic with the SecureVue 400 was worth the additional cost and provided the best value to the government. A contract was awarded to Mid-Atlantic on March 6, 1998. After receiving notice of the award and a debriefing, Madico initially filed an agency-level protest that was denied by letter dated April 29. On May 8, Madico filed this protest with our Office. Because Madico did not file this protest with our Office within the time period requiring a stay of performance under the Competition in Contracting Act, 31 U.S.C. § 3553(d) (1994), a stop work was not issued and Mid-Atlantic has substantially completed performance of the contract.

Madico asserts that the agency's decision to award to Mid-Atlantic at a higher price based on a lower flame spread rating was unreasonable. The agency's position is that, in accordance with the solicitation, it made an appropriate technical/price tradeoff and properly awarded the contract to Mid-Atlantic. We see no basis to conclude that the agency's decision to award the contract to Mid-Atlantic was unreasonable.

¹Flame spread ratings are intended as a guide in the selection and use of finishing materials and are obtained by measuring the extent and rapidity with which flames spread over their surfaces under test conditions. The ratings are a method of numerical classification which permits comparison of a given material's flame spread performance with that of another. The ASTM E-84 is the standard fire test used to evaluate flame spread. During the test, flame spreads along the surface of the test material under a controlled air flow. Distance of flame travel and the rate at which the flame front advances during a 10-minute exposure determine the calculated flame spread index. Surface Burning Characteristics, www.westroc.com/9intbrn.htm; Design for Code Acceptance (Jan. 1998 Revision) Flame Spread Performance of Wood Products, www.awc.org/DCA_No1/index.html.

In a negotiated procurement, the government is not required to select the lowest-priced, technically acceptable proposal unless the RFP so specifies. General Servs. Eng'g Inc., B-245458, Jan. 9, 1992, 92-1 CPD ¶ 44 at 9. Agency officials have broad discretion in determining the manner and extent to which they will make use of technical and price evaluation results. Price/technical tradeoffs may be made; the extent to which one may be sacrificed for the other is governed by the test of rationality and consistency with the established evaluation factors. Id. Where, as here, the RFP indicates that technical considerations are more important than cost considerations, selection of a technically superior, higher-priced proposal is proper where the record shows that the price premium was justified in light of the proposal's technical superiority. Dynamics Research Corp., B-240809, Dec. 10, 1990, 90-2 CPD ¶ 471 at 2. Here, the record supports the contracting officer's decision to award the contract to Mid-Atlantic as the technically superior offeror, even though Mid-Atlantic proposed a higher price than Madico.

In reaching his decision to award the contract to Mid-Atlantic, the contracting officer relied on the evaluators' technical evaluations which rated Mid-Atlantic's product superior to that of the protester because of Mid-Atlantic's lower (*i.e.*, superior) flame spread index. While the evaluators considered Madico's product to be good, it was consistently rated second to Mid-Atlantic's and that of another offeror because of its higher flame spread index. Further, the chief of the office of Safety and Occupational Health Branch (SOHB) recommended Mid-Atlantic's product based on its flame spread index of 2 and smoke density index of 28, which were lower than those of the other proposals. Memorandum from the SOHB Chief to the Facilities Contracts Office (Mar. 4, 1998). The contracting officer states that because improved physical security was a paramount concern, the superior protection offered by Mid-Atlantic's product was determined to offer the best value to the government. Contracting Officer's Statement at 2.

The protester maintains that flame spread should have never been a determining factor because all polyester products have the same flame spread and there is no significant difference between a flame spread of 2 and 8.

The determination of the relative merits of proposals is primarily a matter of agency discretion. Saco Defense, Inc., B-252066, May 20, 1993, 93-1 CPD ¶ 395 at 5. In reviewing a challenge to an agency's technical evaluation, we examine the record to ensure that the evaluation is reasonable and consistent with the stated evaluation criteria. Id. A protester's mere disagreement with the agency's judgment does not render that judgment unreasonable. Id.

The agency points out that a flame spread rating provides an indication of the speed with which fire may spread across the surface of a material and that, while both offerors' products' flame spread ratings were within the acceptable range set forth in the RFP, Mid-Atlantic's flame spread rating of 2 is better than Madico's rating of 8. The agency concluded that the lower flame spread rating of the proposed

Mid-Atlantic film warranted payment of the associated price premium because of the greater security protection provided by the Mid-Atlantic product. Contracting Officer's Statement at 2.

Notwithstanding the protester's disagreement, we see no basis to conclude that the agency's technical evaluation was unreasonable. The test report provided by the protester states that "flame spread values are a function of the maximum flame spread reading occurring between one and ten minutes." The Burns & Russel Co., Test Report, Jan. 30, 1980, at 5. While the protester insists that there is no significant difference between a flame spread index of 2 or 8, the protester does not explain why its product with a flame spread index of 8 should be considered equal to the awardee's, which has a lower index rating, thus indicating slower and lesser flame spread. The agency considers the difference to be meaningful and important and reports that, because of safety concerns and the need to protect the inhabitants of the Pentagon, the difference in the performance of these products will provide greater security protection and is worth the additional cost. As noted above, the SOHB chief recommended Madico's product because of its lower flame spread index.

We note that with regard to solicitation provisions relating to human safety, an agency has the discretion to set its minimum needs so as to achieve not just reasonable results but the highest possible reliability and effectiveness. Tucson Mobilephone, Inc., B-250389, Jan. 29, 1993, 93-1 CPD ¶ 79 at 5. Here, in view of the agency's legitimate concern with the need for safety, we see no basis to question the reasonableness of the contracting officer's determination that because of a better flame spread rating, Mid-Atlantic's higher-priced product offered the best value to the government.

Madico also argues that the agency relaxed the requirement for category II windows for the awardee. Specifically, Madico contends that the agency allowed Mid-Atlantic to substitute a category II rated 4 mil film in lieu of the required 7 mil. The agency points out that it did not relax this requirement and that the awardee is required to install "4 mil 2ply" material to the windows, which results in 8 mils of material being applied to the windows, which is in excess of the 7 mils required in the solicitation. Agency Comments, July 2, 1998, at 1. The agency's assessment is consistent with the RFP requirements, and to the extent that the protester is asserting that Mid-Atlantic will not provide category II windows that are compliant with the

solicitation, the allegation raises a matter of contract administration which is not for our review. Bid Protest Regulations, 4 C.F.R. § 21.5(a) (1998).²

The protest is denied.

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²In comments filed on July 29, the protester raises several allegations of impropriety in the conduct of this procurement based on information that was contained in the agency report filed with our Office on June 10. These issues are untimely and not for consideration on the merits as they were required to be raised within 10 days of receipt of the agency report. 4 C.F.R. § 21.2(a)(2) (1998).