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Decision

Matter of: Beacon Auto Parts

File: B-287483

Date: June 13, 2001

Sam Zalman Gdanski, Esq., for the protester.

Scott Westerchil, Esq., Anderson & Westerchil, for Nash Auto and Body Shop, the intervenor.

Jerry Ann T. Foster, Esq., and George Barclay, Esq., General Services Administration, for the agency.

John L. Formica, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency's evaluation of the protester's proposal, submitted in response to a solicitation for maintenance, repair, and overhaul of vehicles, is unobjectionable where the protester provides no basis to find unreasonable the agency's determinations regarding the qualifications of the protester's proposed on-site manager, tools and equipment, and past performance.

2. Protest challenging the agency's best value source selection is sustained where the record shows that the agency failed to consider whether the awardee's higher-rated proposal was worth its higher price.

DECISION

Beacon Auto Parts protests the award of a contract to Nash Auto and Body Shop under request for proposals (RFP) No. 7FXI-T6-01-S27-N, issued by the General Services Administration (GSA) for the maintenance, repair, and overhaul of GSA-owned vehicles assigned to Fort Polk, Louisiana. Beacon protests the agency's evaluation of its proposal and that the agency did not consider price in selecting Nash's higher-priced proposal for award.

We deny the protest in part and sustain it in part.

The RFP provided for the award of a fixed-price, indefinite-delivery, indefinite-quantity contract for a base period of 1 year with two 1-year options. RFP at 3, 29. The contractor will be required to furnish all labor, parts, equipment, tools, and

supervision to inspect, maintain, and repair 770 GSA-owned vehicles located at Fort Polk. RFP at 3, 17. The solicitation stated that award would be made “to the responsible offeror whose offer conforming to the solicitation will be most advantageous to the Government, price and other factors considered.” RFP at 58. The RFP listed the following evaluation factors:

1. Technical Capability Evaluation Factors
 - A. On-Site Manager’s Resume/Commitment Letter
 - B. Motor Vehicle Mechanic’s Resume/Commitment Letter
 - C. Tools/Equipment/Manuals
2. Past Performance Evaluation Factors
 - A. Offeror’s/On-Site Manager’s Qualifications and Monthly Vehicle Rate
 - B. Parts Suppliers/Commitment Letter

Id. The RFP specified that the technical capability factors were more important than the past performance factors, and that these “non-cost” factors were significantly more important than price. RFP at 59.

The agency received proposals from Beacon and Nash (the incumbent contractor) by the RFP’s closing date. The proposals were reviewed by the agency to determine whether they included the information required by the RFP. Agency Report, Tabs 4 & 6, Initial Proposal Review. The agency subsequently identified five areas for Beacon and two for Nash, where their proposals failed to include the information required by the solicitation, and informed the offerors of these areas. For example, the agency found that neither offeror had submitted a letter of commitment signed by its proposed on-site manager, and that Beacon’s proposal did not include with its past performance information the types of vehicles maintained or provide the names addresses or telephone numbers of its references. Agency Report, Tabs 5 & 7, Letters to Beacon and Nash (Mar. 1, 2001).

Beacon and Nash provided the information requested by the agency, and the agency forwarded past performance survey questionnaires to three of the eight past performance references provided by Beacon, and to three of the four references listed by Nash. Agency Report, Tab 2, Nash’s proposal at 79A-B; Tab 3, Beacon’s Proposal at 79; Tab 9, Beacon’s Response to Agency (Mar. 7, 2001); Tabs 10 & 11, Agency Letters to Offerors’ Past Performance References. The agency received the completed surveys from the references, and evaluated the offerors’ proposals.

Nash’s proposal received [DELETED] out of [DELETED] points under the technical capability evaluation factors and [DELETED] out of [DELETED] points under the past performance factors for a total score of [DELETED] out of [DELETED] points, at an evaluated price of \$648,958. Agency Report, Tab 13, Evaluator Scoresheets for Nash’s Proposal; Tab 16, Price Negotiation Memorandum. Beacon’s proposal received [DELETED] points under the technical capability evaluation factors and [DELETED] points under the past performance factors for a total score of

[DELETED] points, at an evaluated price of \$608,095. Agency Report, Tab 12, Evaluator Worksheets for Beacon's Proposal; Tab 16, Price Negotiation Memorandum. The agency determined that Nash's proposal represented "the best value to the Government based on past performance and technical capability," and made award to that firm. Agency Report, Tab 16, Price Negotiation Memorandum, at 4.

Beacon first argues that the evaluation of its proposal under the technical capability evaluation factors was unreasonable.

The evaluation of proposals is a matter within the discretion of the contracting agency since the agency is responsible for defining its needs and the best method of accommodating them. Marine Animal Prods. Int'l, Inc., B-247150.2, July 13, 1992, 92-2 CPD ¶ 16 at 5. In reviewing an agency's evaluation, we will not reevaluate proposals, but instead will examine the agency's evaluation to ensure it was reasonable and consistent with the solicitation's stated evaluation criteria. MAR Inc., B-246889, Apr. 14, 1992, 92-1 CPD ¶ 367 at 4. An offeror's mere disagreement with an agency's evaluation does not render the evaluation unreasonable. McDonnell Douglas Corp., B-259694.2, B-259694.3, June 16, 1995, 95-2 CPD ¶ 51 at 18.

Beacon specifically argues that the agency's evaluation of its proposed on-site manager's resume was unreasonable, given that its proposed on-site manager "has a total of nine (9) years experience in the automotive industry" with 5 of those years under a GSA contract. Protester's Comments, attach. 1, at 1. The record reflects that the agency reviewed the number of years of experience provided on the resumes of the offerors' on-site managers as an element of the first technical capability evaluation factor. Beacon's proposal received [DELETED] of the [DELETED] points allocated to this element, and Nash's proposal received [DELETED] points based upon its proposed manager's 19 years of experience. Agency Report, Tabs 12 & 13, Evaluator Scoresheets. Beacon has not explained why the agency's slightly higher scoring of Nash's proposal, on the basis that Nash's proposed on-site manager had more years of experience than Beacon's, was unreasonable.

Beacon also argues that its proposal was unreasonably evaluated under the Tools/Equipment/Manuals technical capability factor, where its proposal received [DELETED] out of the [DELETED] points available.

The agency found in reviewing Beacon's initial submission that Beacon's proposal failed to include any information regarding the requirement for pneumatically operated chassis lubrication or front-end alignment equipment as required by the RFP. RFP at 80; Agency Report, Tab 2, Beacon's Proposal at 80; Tab 4, Initial Proposal Review of Beacon's Proposal at 5. The agency specifically pointed this out in the letter sent to Beacon after the agency's initial review of proposals. Agency

Report, Tab 5, Letter to Beacon (Mar. 1, 2001), at 2-3. The agency quoted the relevant section of the RFP (at 60) in its letter to Beacon as follows:

If the offeror does not own the tools/equipment/manuals, the offeror must indicate on the exhibit whether they intend to lease, purchase or sub-contract out the service when subcontracting is allowed. For leases or purchases of the tools/equipment/manual, the offeror must provide a signed and dated commitment letter from the company or person from which they intend to use. For services that will be sub-contracted out instead of leasing or purchasing the tools/equipment/manuals, the offeror must provide a signed and dated commitment letter from their proposed subcontractor that state[s] the subcontractor[] agrees to provide[] the service to you during the continuous of the contract.

Beacon responded by stating that it would purchase the required chassis lubrication equipment from a specified vendor, and would subcontract the wheel alignment services to another specified vendor. These notations included references to attachments, which consisted of a letter from the vendor identified for the chassis lubrication equipment stating only that it was a supplier to Beacon, and a notation on a repair order from the vendor identified for the alignment services stating that “yes we will Except your Alignment Business on a Monthly Billing Acct.” Agency Report, Tab 9, Beacon’s Response to Agency’s Request (Mar. 7, 2001).

The agency determined that neither the letter that only identified the vendor as a supplier of Beacon, nor the notation on the repair order, constituted acceptable letters of commitment in accordance with the terms of the solicitation. The agency points out here that the letter from the vendor identified for the chassis lubrication equipment does not mention anything regarding a sale of the requisite equipment to Beacon, and the notation from the vendor identified for the alignment services fails to provide any timeframes, estimates, or other specifics.

Beacon concedes that the letter it supplied from the vendor referenced for the chassis lubrication equipment was deficient. The protester points out, however, that it has had a “successful business relationship” with the vendor “for the past twenty (20) years,” and that Beacon has “always purchased the necessary items to fulfill our obligations.”¹ Protester’s Comments, attach. 1, at 1.

As quoted above, the RFP required that an offeror submit “signed and dated commitment letters” from the identified vendors if the offeror proposed to purchase the required equipment or subcontract out for services. Because an agency’s evaluation is dependent upon the information furnished in a proposal, it is the

¹ The protester does not respond to the agency’s concerns regarding the notation from the vendor identified for the alignment services.

offeror's burden to furnish an adequately written proposal for the agency to evaluate. See GEC-Marconi Elec. Sys. Corp., B-276186, B-276186.2, May 21, 1997, 97-2 CPD ¶ 23 at 7. Here, the record reflects that the agency reasonably considered Beacon's submissions inadequate in this regard, and Beacon's contentions thus provide no basis to sustain its protest of the evaluation of its proposal under this factor.²

Beacon argues that its proposal was unreasonably evaluated under the offeror's/on-site manager's qualifications and monthly vehicle rate past performance evaluation factor.

As mentioned previously, the agency randomly selected three of Beacon's eight past performance references and sent the selected references past performance surveys. Agency Report, Tab 16, Price Negotiation Memorandum. Each of the references completed the survey, with one reference rating Beacon as "outstanding" overall, another as "good" overall, and the third as "poor" overall. The agency considered the references' responses, and assigned scores under the offeror's/on-site manager's qualification and monthly vehicle rate evaluation factor of [DELETED], [DELETED], and [DELETED] points out of [DELETED] points, based upon the responses, for an average score of [DELETED] points.

Beacon contends that it should not have received an overall rating of "poor" from the third reference. In doing so, Beacon states that it "cannot understand how our overall performance could be rated poor when we were never written up for anything," and points out that its "on-site personnel had worked for other contractors for five (5) years, and had no problems." Protester's Comments, attach. 1, at 1-2.

Contrary to the protester's assertion that it was "never written up for anything," an attachment provided by the protester with its comments on the agency report supports the reference's conclusion regarding the quality of Beacon's performance on which Beacon received an overall rating of "poor." Specifically, the attachment includes numerous memoranda addressed to Beacon's project manager, prepared during the performance of the contract, notifying Beacon that its "performance was

² Nevertheless, while not specifically protested by Beacon, we fail to understand why the deficiencies resulting from Beacon's failure to provide the appropriate commitments for this equipment warranted a score of [DELETED] points for this factor. In this regard, the deficiencies related to 2 of the 17 pieces of equipment required by RFP, and there is no evidence that there were any problems with the other equipment proposed by Beacon. Since we sustain the protest and recommend that the agency appropriately consider price in performing a cost/technical tradeoff, we recommend that the agency review its rating of Beacon's proposal under this factor and make whatever adjustments are appropriate before proceeding to a cost/technical tradeoff.

deficient” with regard to the “[t]imely [r]epair” of certain vehicles. Given that the record contains memoranda documenting Beacon’s deficient performance on the subject contract, we find the agency’s evaluation of Beacon’s past performance was reasonably based. Thus, we deny Beacon’s protest of the evaluation of its proposal.

Beacon protests that the agency’s selection of Nash for award of the contract was improper because the agency failed to consider whether Nash’s higher-scored proposal was worth its higher price. We agree and sustain the protest on this basis.

Cost or price to the government must be included in every RFP as an evaluation factor, and agencies must consider cost or price to the government in evaluating competitive proposals. 41 U.S.C. § 253a(c)(1)(B) (1994); FAR § 15.304(c)(1); S.J. Thomas Co., Inc., B-283192, Oct. 20, 1999, 99-2 CPD ¶ 73 at 3.

The protester points out that the contemporaneous record does not mention or indicate that any sort of cost/technical tradeoff was performed, and in fact appears to establish that the agency simply made award to Nash because of its proposal’s higher rating with no regard to its higher price. As mentioned earlier, Nash’s proposal received an overall rating of [DELETED] out of [DELETED] points at an evaluated price of \$648,958, and Beacon’s proposal received an overall rating of [DELETED] points at an evaluated price of \$608,095. Agency Report, Tab 16, Price Negotiation Memorandum.

The agency raises two arguments in response to the protester’s contention that the agency failed to consider price in making its source selection decision. First, the contracting officer and the agency report contend that the agency did in fact consider price in determining that Nash’s proposal represented the best value to the government. Specifically, the contracting officer states that “prices were evaluated and considered, and the technical superiority of the awardee more than justified the insignificant price difference.” Contracting Officer’s Statement at 13. The agency report appears to make a similar claim, arguing that the “Price Negotiation Memorandum reflects the [contracting officer] evaluated and considered price, and concluded that Nash offered the best value. Implicit in that conclusion is the determination that the significantly superior technical ability outweighed the insignificant price difference.” Agency Report at 7. In the agency report, it was also argued that Beacon was not prejudiced by the contemporaneous record’s lack of a price/technical tradeoff, arguing that if one were written, “the result would remain the same. Nash would have received the award.” Agency Report at 10.

Although our Office considers the entire record in determining the reasonableness of an agency’s award decision, including statements and arguments made in response to a protest, we accord greater weight to contemporaneous materials rather than judgments made in response to protest contentions, such as the agency’s assertions here. Intellectual Properties, Inc., B-280803, Nov. 19, 1998, 98-2 CPD ¶ 115 at 7.

Based on our review of the record, we are not persuaded by the agency's argument, made in the face of a bid protest, that the agency had in fact explicitly or implicitly considered whether Nash's higher-rated, higher-priced proposal represented a better value to the government than Beacon's lower-rated, lower-priced proposal. First, the price negotiation memorandum does not mention or indicate in any way that the agency engaged in any sort of cost/technical tradeoff in determining to award the contract to Nash. To the contrary, with regard to the selection of Nash's proposal for award, the price negotiation memorandum states in relevant part only as follows:

Based on the above evaluation, Nash's Auto & Body Shop's proposal is considered the best value to the Government based on past performance and technical capability. Prices are considered fair and reasonable. Award is recommended to be made to Nash's Auto & Body Shop.

Determining that prices are fair and reasonable does not constitute a cost/technical tradeoff.

Moreover, according to the agency, the cognizant contracting specialist informed Beacon after award that "price was not an evaluation factor for this contract award, only technical capability and past performance." Agency Report, Tab 18, Agency Contact Record (Mar. 22, 2001). Additionally, the agency's own record of its telephonic debriefing of Beacon, which is signed by the contracting specialist, contracting officer and legal counsel, provides that these agency representatives explained to Beacon that "[c]ost was not an evaluation factor, but is considered only in the sense that prices are reasonable," and that "price was only looked at to determine reasonableness, and that tradeoffs for best value was not considered." Agency Report, Tab 18, Telephonic Debriefing of Beacon (Mar. 26, 2001).

In sum, the agency's own contemporaneous documentation establishes that the agency did not consider cost or price in evaluating the proposals to determine the awardee. See S.J. Thomas Co., Inc., supra. Notwithstanding that a source selection decision is required to be based on a comparative assessment of proposal against all source selection criteria in the solicitation and be documented, FAR § 15.308, the record here establishes that the agency failed to consider whether Nash's higher-rated, higher-priced proposal was a better value to the government than Beacon's lower-rated, lower-priced proposal.

Given this finding, we also reject the agency's argument that there is no reasonable possibility of prejudice based on the agency's assertion that a price/technical tradeoff was made or that it would have selected Nash's higher-rated, higher-priced proposal for award in any case. The contemporaneous record simply does not reflect that the agency performed a cost/technical tradeoff as required by the RFP. The agency's assertion that if it

had performed such a tradeoff the result would be the same was prepared in the face of this bid protest. Because it was prepared in the heat of the adversarial process, we accord little weight to this assertion, inasmuch as it may not represent the fair and considered judgment of the agency, which is a prerequisite of a rational source selection process. Intellectual Properties, Inc., *supra*, at 8.

The agency points out that our Office has found in certain instances a tradeoff unobjectionable, even where the source selection authority (SSA) did not specifically discuss the tradeoff, as long as the tradeoff is clearly supported by the record. See, e.g., Joppa Maintenance Co., Inc., B-281579, B-281579.2, Mar. 2, 1999, 2000 CPD ¶ 2 at 7; Southern Research, B-266360, Feb. 12, 1996, 96-1 CPD ¶ 65 at 3. The agency's reliance on these decisions is misplaced. The decisions recognize that the written analysis in support of the SSA's tradeoff determination may, at times, be brief, but nonetheless reasonable if it reflects that the SSA engaged in some consideration of the relative merits and costs of the competing proposals and arrived at a reasonable conclusion regarding which of the competing proposals represents the best value to the government, and the determination is otherwise supported by the record. Here, the contemporaneous record does not reflect or otherwise indicate that the agency engaged in any contemporaneous consideration of the relative merits and costs of the competing proposals prior to selecting Nash's for award. We therefore sustain the protest that the agency failed to consider price in selecting Nash's proposal for award.

We recommend that the agency perform a cost/technical tradeoff in accordance with the terms of the RFP. We further recommend that the agency reimburse Beacon the reasonable costs of filing and pursuing its protest, including reasonable attorney's fees, to the extent those costs were incurred in connection with Beacon's assertion that the agency failed to consider price in selecting Nash's proposal for award. 4 C.F.R. § 21.8(d)(1). Beacon's certified claim for costs, detailing the time spent and cost incurred, must be submitted to the agency within 60 days of receiving this decision. 4 C.F.R. § 21.8(f)(1).

The protest is denied in part and sustained in part.

Anthony H. Gamboa
General Counsel