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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-190386

DATE: December 21, 1977

MATTER OF: Baden & Co.

DIGEST:

1. Rejection of best and final offer which proposed both the lowest price for unacceptable method of performance and an acceptable method at price higher than technically superior proposal of awardee provides no basis for protest.
2. Determination that proposal is in competitive range for discussion does not necessarily mean that proposal is acceptable as initially submitted but may indicate only that there is real possibility that it can be improved without major revisions to point where it becomes most acceptable.

Baden & Co. (Baden) protests the contract award to Transportation and Economic Research Associates, Inc. pursuant to Request for Proposals (RFP) No. 7-36550 by the Office of Procurement, U.S. Department of Commerce. Baden argues that award should have been made to it because its technically acceptable proposal offered a price below that of the awardee.

The RFP solicited fixed price proposals to conduct a 7 month study evaluating the effectiveness of the minority business enterprise programs in 20 states which are partially funded by grants by Commerce's Office of Minority Business Enterprise (OMBE). The solicitation provided award would be made to that responsible offeror whose technically acceptable proposal had the most advantageous technical/price relationship in accordance with the specified evaluation criteria. It warned that award would not necessarily be based upon lowest price or on technical capabilities exceeding those needed for successful performance.

Of the 11 proposals submitted, 5, including that of Baden, were considered to be in the competitive range to warrant further consideration. Oral discussions were held and best and final offers were requested. In requesting Baden to submit its best and final offer, the agency pointed out that the firm's initial proposal provided for on-site visits to only 11 states and requested that its best and final offer provide for such visits to and interviews in all 20 states. Baden's response of September 11, 1977 offered a price of \$78,970 for an effort encompassing visits to 11 states which it stated was all that was necessary. Baden stated, however, that if the Government awarded a contract to Baden at a price of \$78,970 and desired the additional visits, the contract could be amended to a total of \$96,354. Baden made a further response by letter of September 14, 1977 in which it stated that the additional visits would require 50 additional man-days. It again stressed that the additional visits were unnecessary because the additional 9 states could be evaluated upon the basis of a survey conducted by mail.

Baden's proposal and price was evaluated as including the required 20 on-site visits. Technically, it was rated below that of the successful offeror's proposal and Baden's price of \$96,354 was higher than the award price of \$94,414.

Determination of an agency's minimum needs is a function of the procuring agency which is accorded a reasonable range of judgment and discretion in this regard. Southern Methodist University, B-187737, April 27, 1977, 77-1 CPD 289. Our examination of such issues is limited to considering whether the agency's evaluations and conclusions are arbitrary. Julie Research Laboratories, Inc., 55 Comp. Gen. 374 (1975), 75-2 CPD 232.

As the study required evaluation of such varying factors as program emphasis and effectiveness, skills and caliber of personnel, potential resources and utilization of present resources, we believe it was reasonable to require on-site visits to and personal interviews in the 20 states whose programs required evaluation. Although the RFP as issued did not specifically require on-site visits to and personal interviews in all 20 states, it did require an in-depth examination into all state OMHE projects. There is no question about the clarity and specificity of this requirement in the request to Baden for best and final offer.

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Baden maintains that its initial proposal was found technically acceptable even though it had not proposed to conduct on-site visits to and personal interviews in all 20 states. However, the record does not support this position. To the contrary, the contracting officer reports that only the higher priced offer from Baden for on-site work in all 20 states was considered acceptable by the Technical Evaluation Committee. Our review of the technical evaluation committee chairman's report shows that negotiations were conducted with Baden in anticipation of a revised proposal which included more extensive personal interviews with all 20 state OMBE organizations. Generally, negotiations are required to be conducted with all offerors within the competitive range, Federal Procurement Regulations § 1-3.805-1(a). A finding that an initial proposal is within the competitive range may indicate only that, in the judgment of the evaluators, the proposal has a real possibility of being made acceptable and there is a reasonable chance it will be selected for award.

Inasmuch as the agency's requirement for on-site personal interviews in all 20 states is reasonable and Baden's final proposal for this requirement was rated technically inferior and was higher in price than the successful offeror's, we have no basis for objecting to the award made in this case.

Accordingly, this protest is denied.


Deputy Comptroller General
of the United States