



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: L&E Associates, Inc.

File: B-224448

Date: November 17, 1986

DIGEST

1. Where the solicitation for custodial services includes evaluation criteria specifically stating that technical factors are more important than price, protest that the award should have been based on price rather than technical factors was required to be filed prior to the closing date for proposals, and is untimely.
2. Although Federal Acquisition Regulation, 48 C.F.R. § 15.605(c) (1985), states that the lowest price is properly the deciding factor in many source selections, that provision does not require award on the basis of price where the solicitation specifically provides that technical factors are given greater weight.
3. Where the solicitation states that technical factors are more important than price and the record indicates that the technical evaluation panel based its evaluation of best and final offers strictly on price, the protester's contention that the contracting officer arbitrarily and capriciously disregarded the panel's evaluation of its low proposal is without merit.

DECISION

L&E Associates, Inc. (L&E), protests the award of a custodial services contract to United Maintenance Service, Inc. (UMS), under request for proposals (RFP) No. DAMD17-86-R-0062 issued by the U.S. Army Medical Research Acquisition Activity (Army), Ft. Detrick, Maryland. L&E contends that its low price rather than technical factors should have been the primary consideration in making the award under the Federal Acquisition Regulation (FAR), 48 C.F.R. § 15.605 (1985); and that the contracting officer (CO) arbitrarily and capriciously disregarded the technical evaluation panel's evaluation.

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The protest is dismissed in part and denied in part.

The RFP, amended twice after issuance on April 21, 1986, contemplated the award of a firm fixed price contract with 4 option years. The RFP required contract performance in accordance with a standard work schedule and the more stringent Fort Detrick Custodial Service Program Maintenance Schedule. With regard to the Hospital Clinic, the RFP outlined special cleaning requirements, specifying areas of the hospital that require cleaning by strict aseptic procedures. The RFP advised that the technical merit of each proposal would be evaluated in accordance with the following criteria, listed in descending order of importance:

1. Understanding and approach to the accomplishment of the required scope of work.
2. Scheduling of work, quality assurance, inspection and resolution of problems.
3. Corporate experience and qualifications.

Offerors were advised that in making contract award, primary consideration would be given to technical factors rather than price. Additionally, the RFP stated that if the technical competence of offerors is considered approximately the same, then price could become paramount.

Three of the offers submitted by the May 30, 1986, closing date for proposals were determined to be in the competitive range. L&E with the low proposal priced at \$2,280,392.40 for the base year and 4 option years received an initial technical score of 89.16 points; UMS's proposal, priced at \$2,482,148.02, received a score of 86 points, and H&A's proposal, priced at \$3,105,700.00, scored 89.16 points. Discussions were held with all three offerors and best and final offers (BAFOs) were submitted. The technical evaluation panel's report stated that all three offerors were equally competent to perform custodial services at Fort Detrick and awarded identical scores of 89 points to each offeror.

The CO, after noting that there were technical differences in the proposals and being informed by panel members that the technical evaluation of BAFOs was based strictly on price, found the result of the panel's evaluation unacceptable and requested that the panel thoroughly review the BAFOs and, provide another evaluation. With regard to L&E's proposal,

the CO requested that the following areas of concern be addressed: performance of yearly tasks, personnel for quality assurance and supervision, number of extra employees, number of employees to do floor work, corporate experience, employee experience and number of employees compared to service mentioned. With respect to UMS's proposal, the CO requested that the panel address the following: understanding scope of work, corporate experience, number of employees and crew breakdown.

In its second evaluation of the BAFOs, the panel provided the CO with a one-page summarized evaluation of the three offers with brief discussions (one or two phrases, generally) of each area of concern. The evaluation indicated whether there was a scoring change in the areas of concern but did not explain the original score or provide a detailed explanation of the basis for any of the scoring changes. As a result of the second evaluation of BAFOs, L&E's offer scored 89 points, UMS's offer scored 86.33 points and H&A's offer scored 89 points. The CO rejected the panel's second evaluation of BAFOs after finding it unacceptable, in part. The CO determined that an objective reassessment of the numerical scores was necessary in order to be fair and uphold the RFP's evaluation criteria. He therefore decided to evaluate the BAFOs himself. The CO used the RFP's evaluation criteria, assigning 60 points to understanding and approach, 30 points to scheduling of work and 10 points to corporate experience.

L&E's BAFO received a total score of 84 points--understanding and approach (52 points); scheduling of work (30 points); and corporate experience (2 points). L&E's low score for corporate experience reflects the CO's finding that L&E was a newly-formed business with no prior experience except for a one-time cleaning job at another government facility. The CO also found that L&E had no workforce or equipment of its own but proposed to utilize the employees and proposed to buy the equipment of the incumbent contractor who had defaulted on the prior contract. The equipment, the CO noted, was being held by the government because the incumbent contractor walked off the job and the termination for default was being processed.

UMS's BAFO, on the other hand, received a score of 98 points--understanding and approach (58 points); scheduling of work (30 points), and corporate experience (10 points). The CO noted that UMS has been in business for 16 years and has custodial services contracts with other government agencies under which it is performing in a satisfactory manner. With regard to UMS, the record of final negotiations indicates that

the company satisfactorily answered all of the technical questions raised, and its score was therefore increased from 86 to 98 points. Upon a determination of responsibility pursuant to the FAR, 48 C.F.R. § 9.104-1, the CO awarded the contract to UMS.

L&E contends that contract award should have been based on the lowest price and that since L&E submitted a technically acceptable proposal at the lowest price, it should have been awarded the contract under the FAR, 48 C.F.R. § 15.605. L&E asserts that technical factors should not be the primary consideration in awarding custodial services contracts. The Army states that L&E was advised by the RFP that technical factors rather than price would be given primary consideration, and that L&E's protest in this regard is untimely under GAO Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1986).

We agree. Under the RFP, potential offerors were specifically advised that technical factors were more important than price. Under our Bid Protest Regulations, protests based upon alleged improprieties in a solicitation which are apparent prior to the closing date for receipt of proposal must be filed prior to the closing date for receipt of proposals. In this case, the protest was filed on July 23, 1986, well beyond the May 30, 1986, closing date. This portion of the protest is therefore dismissed as untimely.

L&E contends that the CO's selection of UMS was improper under the FAR, 48 C.F.R. § 15.605(c), which states that the lowest price is properly the deciding factor in many source selections. However, FAR does not, contrary to the protester's contention, require that price govern in all instances, but envisions situations where, as here, technical factors may be given more weight. While, as L&E contends, price may generally be the determining factor in custodial services contracts, the RFP, in this case, specifically provides that technical factors will be given greater weight. L&E's contention that the CO's actions were contrary to the FAR, 48 C.F.R. § 15.605, requirements is, therefore, without merit. See Analytics, Inc., B-220431, Mar. 13, 1986, 86-1 CPD ¶ 250.

L&E has also alleged that the CO arbitrarily and capriciously disregarded the technical evaluation panel's evaluation under which L&E's low proposal would have been awarded the contract.

As a general rule, our Office will defer to the source selection official's judgment. The selection decision and the manner in which such an official uses the results of the technical and price evaluations and the extent to which one is

sacrificed for the other are governed only by the tests of rationality and consistency with established evaluation factors. Consolidated Group, B-220050, Jan. 9, 1986, 86-1 CPD ¶ 21. In this regard, we have consistently stated that selection officials are not bound by the recommendations of evaluators or individuals who may normally be expected to have technical expertise. Assns. for the Educ. of the Deaf, Inc., B-220868, Mar. 5, 1986, 86-1 CPD ¶ 220. See also Polaris, Inc., B-220066, Dec. 16, 1985, 85-2 CPD ¶ 669; Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 CPD ¶ 325.

The record indicates that the technical evaluation panel did not evaluate the BAFOS in accordance with the RFP's criteria. The CO states that he concluded, after the first evaluation of BAFOS, that the panel was driven by budgetary constraints because he was informed by panel members that the evaluation of BAFOS was based strictly on price. The CO also noted that although there were differences in the technical merit of the proposals, the BAFOS were given identical scores. Additionally, the record indicates that the panel's second evaluation of the BAFOS failed to adequately address the CO's areas of concern. Under the circumstances, the CO reasonably determined that a re-evaluation of the BAFOS was required.

In re-evaluating the BAFOS, the CO assigned weights to the evaluation factors that were consistent with the RFP's stated criteria. L&E's final score of 84 points was 14 points lower than UMS's 98 points due primarily to its lack of corporate experience. There is nothing in the record indicating that the evaluation was inconsistent with the evaluation criteria. We therefore find that L&E's allegation lacks merit. Further, based upon the technical superiority of UMS's proposal, the contracting officer properly determined that award should be made to UMS at the higher price. Analytics, Inc., *supra*.

The protest is dismissed in part and denied in part.

for *Seyman Sproz*
Harry R. Van Cleve
General Counsel