



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Sal Esparza, Inc.

File: B-231097

Date: August 22, 1988

DIGEST

In a negotiated procurement where the government reserves the right to award a contract to other than the low offeror, award to a higher-priced offeror is proper where it is determined that award to a technically superior offeror at a reasonable but higher price is justified.

DECISION

Sal Esparza, Inc. (SEI), protests contract award to American National Management Corporation (ANMC) under request for proposals (RFP) No. F41685-88-R0002, issued by Laughlin Air Force Base, Texas for grounds maintenance services. SEI basically contends that contract award should have been based on price; that award to a higher priced offeror was improper because SEI's proposal was unfairly evaluated; and that the agency was biased in favor of ANMC.

We deny the protest.

The RFP, as issued on January 5, 1988, requested a proposal for grounds and golf club maintenance services, and stated that award would be made on the basis of the most advantageous price to the government, and that the technical evaluation was substantially more important than price. Only amendment Nos. 1 and 3 are relevant to this protest. Amendment No. 1 added a request for an alternate proposal on grounds maintenance services only; and eliminated the provision which stated that award would be made to the offeror whose price was most advantageous to the government. Under amendment No. 3, which also modified the evaluation factors for award, the government reserved the right to award the contract to other than the lowest priced offeror or to other than the technically superior offeror, and advised offerors that an unrealistically low price might be grounds for eliminating a proposal from consideration either because the offeror did not understand the requirements of the solicitation or because the offer was improvident.

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Four companies submitted proposals by the February 12 closing date. After written discussions, two firms, ANMC and SEI, were determined to be in the competitive range, and were requested to submit best and final offers (BAFO). SEI's BAFO priced at \$1,633,902, for the basic year (5 months) and 4 option years, received a final technical score of 1,170.7 points. ANMC's BAFO was priced at \$2,051,571, and received a final technical score of 1,355.4 points. The government estimate for the 53-month contract period was \$1,823,663. After a determination of price reasonableness the contract was awarded to ANMC, based on the firm's superior technical proposal.

SEI contends that contract award to a higher priced offeror was not in accord with the RFP requirement that award be based on the price that is most advantageous to the government. As indicated, however, on January 13, the Air Force issued amendment No. 1 which amended the RFP by eliminating the requirement that contract award be based on the price most advantageous to the government, and reserved the right to award the contract to other than the lowest priced offeror. Thus, the award to a higher-priced offeror was consistent with the award factors contained in the solicitation as amended. We, therefore, find no merit to this basis for protest.

SEI also contends that the agency was biased in favor of ANMC because ANMC is operated by former Air Force officers. The protester, however, has provided no proof in support of its allegation, and there is no evidence of bias in the record. Since SEI has not met its burden of proof, we regard its allegation as mere speculation. Burnside-Ott Aviation Training Center, B-229793, Mar. 4, 1988, 88-1 CPD ¶ 236.

SEI also contends that its technical proposal was not evaluated on equal terms with ANMC's, and that the Air Force misjudged its strengths and understanding of and ability to perform solicitation requirements. SEI contends that the contracting officer acted unreasonably in awarding the contract to ANMC because the \$417,669 price differential is too substantial to disregard in making cost/technical tradeoffs in a situation where the services required are not highly technical--lawnmowing, fertilizing, etc.

In a negotiated procurement, the agency is not required to make award to the firm offering the lowest price unless the RFP specifies that price will be the determinative factor. Radiation Systems, Inc., B-222585.7, Feb. 6, 1987, 87-1 CPD ¶ 129. That was not the case here. We have upheld awards

to higher rated offerors with significantly higher proposed costs where it is determined that the cost premium was justified considering the technical superiority of the selected offerors' proposal. University of Dayton Research Institute, B-227115, Aug. 19, 1987, 87-2 CPD ¶ 178.

Moreover, we have recognized that the procuring agency is primarily responsible for and has reasonable discretion in evaluating the relative merits of offerors' technical proposals. Phone-A-Gram Systems, Inc., B-228546 et al., Feb. 17, 1988, 88-1 CPD ¶ 159. Our Office's review of allegedly improper evaluations is limited to a determination of whether the evaluation was fair and reasonable and consistent with the stated evaluation criteria. We will question the contracting agency's determination concerning the technical merit of proposals only upon a clear showing of unreasonableness or abuse of discretion. Jones & Co., Natural Resource Engineers, B-228971, Dec. 4, 1987, 87-2 CPD ¶ 555.

The record indicates that SEI's submission was rated as marginal because it failed to meet certain standards, had a low probability of success and contained significant deficiencies that were correctable but apparently were not corrected in the firm's BAFO. The risk to the government, rated in accordance with Air Force criteria, was determined to be moderate to high because SEI's response to the evaluation board's questions, raised after the initial review of proposals, did not allay the agency's doubts in two critical areas--manning and man-loading (scheduling) charts and the proposed project manager. Consequently, the Air Force determined the SEI's understanding of the performance work statement (PWS) requirements was doubtful. With respect to SEI's manning and man-loading charts, the Air Force found that they were unclear on the total number of people being proposed; indicated an inadequate number of tractor operators; and that adjustments in the types of personnel being proposed would be required in order to adequately perform in accordance with the PWS requirements. The agency also found discrepancies in SEI's proposed project manager's resume. The resume stated that he was a foreman at Laughlin (from 1980 to 1986) directly supervising crews of up to 16 grounds keepers, and that he was also a tractor operator (in 1987). The technical evaluation results indicate that SEI's proposed project manager was never a foreman at Laughlin but was only a temporary tractor operator and occasionally supervised crews of up to five people, including himself, on specific tasks. SEI, in response to a deficiency letter, admitted the mistake but insisted its proposed project manager was qualified for the position based on his experience as a temporary crew leader

and tractor operator. The Air Force, however, determined that SEI's proposed manager lacked the grounds management and leadership experience required to supervise performance under a contract of the type and scope being proposed.

On the other hand, the Air Force found that ANMC's technical proposal was totally acceptable and exceptional in the comprehension of requirements area, meeting or exceeding all PWS requirements. The Air Force noted that ANMC proposed a superior equipment maintenance program, including emergency warranty repair arrangements with manufacturers, which the agency thought would result in greatly improved "maintenance turnaround time" and less cost to the government. Further, the Air Force noted that ANMC's proposed project manager had 29 years of experience in grounds, pavement and equipment management at various Air Force bases and is presently project manager for grounds maintenance at Laughlin. The agency therefore determined that acceptance of ANMC's proposal would result in "low risk" to the government and that, since ANMC is the incumbent contractor, there would be almost no disruption or degradation of service.

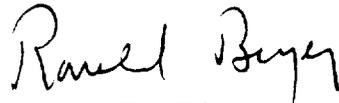
Based on our review of the record and the technical evaluation results set forth above, we conclude that the evaluation was reasonable and consistent with the RFP's stated evaluation criteria. The cost differential between the two proposals was not ignored, as suggested by the protester. The record shows that the cost difference was taken into account. In this respect, when cost/technical tradeoffs are made, the extent to which one may be sacrificed for the other is governed only by the test of rationality and consistency with the established evaluation factors. T. W. Hollopeter & Associates, B-227804, July 30, 1987, 87-2 CPD ¶ 118. While we agree that the services required here are not highly technical in nature, given the deficiencies in the protester's technical proposal, the fact that technical considerations were substantially more important than price and our conclusion that the technical evaluation was reasonable, we are of the opinion that the cost/technical tradeoff made in this case was rational.

To the extent SEI complains that the award price is not reasonable, the record shows that the Air Force determined that ANMC's price was fair and reasonable and that award to ANMC was in the best interest of the government. The record further shows that while the price proposals submitted by the parties are not readily comparable because the protester's price proposal does not break out the different cost elements as they relate to the grounds maintenance and golf course maintenance, as does ANMC's, there are substantial differences between the parties' proposals with respect

to such direct costs as equipment, fuel, parts, replacement vegetation, etc., as well as differences in the G&A and profit rates. These differences appear to make up the bulk of the higher price in the ANMC proposal. ANMC's proposed prices are in line with, although somewhat below, the government's estimate for these costs (prepared prior to the receipt of proposals), leading us to the conclusion that ANMC's price proposal may be more realistic than SEI's.

We have consistently held that the determination of price reasonableness is a matter of administrative discretion involving the exercise of business judgment by the contracting officer. We, therefore, will not question that determination unless it is clearly unreasonable or there is a showing of bad faith or fraud. Daylight Plastics, Inc., B-225057, Mar. 10, 1987, 87-1 CPD ¶ 269. Given the RFP's admonition concerning price realism, particularly as it relates to an offeror's understanding of the requirements of the contract, and based on our extensive review of the record, we cannot say that ANMC's price is unreasonable. Moreover, there clearly has been no showing of bad faith or fraud. Therefore, we have no basis to question the award price.

The protest is denied.

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James F. Hinchman
General Counsel