



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Balantine's South Bay Caterers, Inc.
File: B-236633
Date: December 12, 1989

DIGEST

1. General Accounting Office will not substitute its judgment for that of agency evaluators concerning technical evaluation of proposals where review of source selection documents shows that evaluation was fair and reasonable and consistent with evaluation criteria in the solicitation.
2. Although solicitation provided that technical factors would be weighted more than price, agency may award to technically lower rated, lower cost offeror instead of higher cost, higher technically rated offeror, where the contracting officer reasonably determines that there is no significant technical difference between proposals and that award to lower cost offeror is most advantageous to government.

DECISION

Balantine's South Bay Caterers, Inc., protests the award of a requirements contract to Americorp, Inc., and Barbe Contract Services, Inc., a joint venture (Americorp), under request for proposals (RFP) No. WRO-89-B-20, issued by the Western Regional Office of the Immigration and Naturalization Service. The protester generally alleges that the agency did not consistently apply the evaluation criteria stated in the RFP.

We deny the protest.

On January 19, 1989, the agency issued the RFP as a 100 percent small business set-aside, for providing food service, including all necessary labor, supervision, equipment, supplies and food, at its Los Angeles and San Diego staging facilities for illegal alien detainees for a 1-year base period, with four 1-year options. The statement of work required to successful contractor to provide an alternating menu of three meals a day, with a minimum of two

047301/140220

hot meals and with a provision for preparing meals for those detainees requiring special diet because of religious preference or dietary restrictions. The solicitation required offerors to provide menus evaluated, reviewed and certified by a registered dietician and offering 95 percent compliance with American Correctional Association guidelines for nutritional balance as well as meeting the Food and Drug Administration recommended daily allowance for nutrients.

The RFP stated that the government would award a contract to the responsible offeror whose offer conforming to the solicitation was the most advantageous to the government, cost or price and other factors, considered. The RFP contained several technical evaluation criteria, including general experience, food service menu proposal, food delivery system, and meal storage mechanism.

The solicitation warned offerors to be specific and complete and to discuss in detail their resources, knowledge of the government's requirements and plans for accomplishing the work required. The solicitation provided further that the agency would evaluate proposals "based upon the completeness and thoroughness of the proposal submitted, as evidenced by its clarity. The offeror should show that the objectives stated in the solicitation are understood and present a logical program for their achievement."

The agency retained discretion to make two awards under this solicitation, one for each facility, if it determined multiple awards to be in the government's best interest. The solicitation advised potential offerors that between substantially equal technical proposals, an award would be made to the lower price offeror, but that if two proposals differed significantly in technical merit, the contracting officer would make a determination whether the difference in technical merit would warrant payment of the difference in price. The solicitation went on to provide that in making this determination, the contracting officer would give substantially more weight to technical factors than to price, with an overall weight of 70 points for technical factors and 30 points for price.

The agency received initial proposals on March 14, 1989 and after a period of discussions, the agency requested best and final offers (BAFOs). The agency evaluated proposals, for the purpose of selecting a contractor and for determining whether it would be in the government's interest to make two awards. The results of this evaluation showed that Americorp had submitted the lowest price at both locations and had received the highest technical rating for its Los Angeles proposal while its technical proposal for San Diego

was second to that received from the protester. Specifically, the evaluation results were as follows:

FOR LOS ANGELES

| <u>Firm</u> | <u>Technical</u> | <u>Price</u> | <u>Total</u> |
|-------------|------------------|--------------|--------------|
| Americorp | 60.33 | 30.00 | 90.33 |
| Balantine's | 53.33 | 18.00 | 71.33 |

FOR SAN DIEGO

| | | | |
|-------------|-------|-------|-------|
| Americorp | 58.50 | 18.60 | 77.10 |
| Balantine's | 58.67 | 11.40 | 70.07 |

The contracting officer found that an award to the protester for the San Diego location would involve a significant price premium, which the small difference in technical scores did not seem to justify (approximately a 24-percent increase in price for a difference in technical score of less than half a point). With regard to the Los Angeles location, the contracting officer noted that the protester's proposal was lower rated technically and higher in price. Accordingly, the agency decided to award one contract to Americorp for both facilities and awarded a firm, fixed-price requirements contract to Americorp on August 10. This protest followed.

The protester argues that the solicitation required technical proposals to address the requirements in detail and required offerors to demonstrate their understanding of the requirements, their ability to perform and their acceptance of terms and conditions. In this respect, the protester notes that in addition to the requirements for specialty meals and the dietician's certification, the statement of work contained detailed requirements of the food delivery and preservation system. The protester notes that its proposal contained a much more in-depth discussion of its food delivery system than did the awardee; the protester also believes that the awardee neither explained its plans for preparing specialty meals or provided the dietician's certification. The protester believes that the awardee's proposal should have received a low score or been found unacceptable in these areas.

In reviewing such issues, our Office does not make its own independent determination of the relative merit of technical proposals, because the evaluation of proposals is properly the function of the procuring agency, which must bear the burden of any difficulties resulting from a defective evaluation. Litton Sys., Inc., Electron Tube Div., 63 Comp. Gen. 585 (1984), 84-2 CPD ¶ 317. We will question

an agency's determination of the relative merit of proposals only upon a clear showing of unreasonableness, abuse of discretion, or violation of procurement statute or regulations. Bank St. College of Educ., 63 Comp. Gen. 393 (1984), 84-1 CPD ¶ 607. Moreover, the protester has the burden of affirmatively proving its case, and the fact that the protester does not agree with the agency's evaluation of its proposal does not in itself render the evaluation unreasonable. Lear Siegler, Inc.--Reconsideration, B-217231.2, May 30, 1985, 85-1 CPD ¶ 613.

We have reviewed the technical proposals of the awardee and the protester, and the comments of the technical review team. We find that while the awardee did not provide the detailed discussion of its food delivery system that the protester did, it provided enough detail for the agency to reasonably find, as was stated in the evaluation criteria, that the awardee understood the requirements, accepted the solicitation terms and could perform. Specifically, we find that the awardee offered a logical and comprehensive plan for storing and shipping "flash frozen" meals from Pennsylvania to California as well as establishing and equipping production facilities with refrigeration equipment, storage trays, delivery vehicles and delivery carts. During discussions, the awardee specifically committed itself to creating the capability of preparing specialty meals in its production facilities. We also find that, contrary to the protester's assertions, the awardee's proposal did contain the required dietician's certification. We therefore find that the agency's technical evaluation was consistent with the evaluation criteria, and there is nothing in the record to show that the agency violated regulation or abused its discretion.

With respect to the San Diego facility, the protester essentially takes the position that with the solicitation's emphasis on technical factors, the agency could not make an award on the basis of price unless the technical scores of two offerors were equal. We disagree. Here, the San Diego technical proposals were virtually identically scored. Further, even assuming the protester's proposal was superior, we have generally held that notwithstanding an emphasis on technical factors, an agency may award to a lower priced, lower technically scored offeror if it determines that the cost premium involved in awarding to a higher rated, higher priced offeror is not justified given the acceptable level of technical competence at the lower cost. See Motorola, Inc., B-236294, Nov. 21, 1989, 89-2 CPD ¶ _____. Here, the solicitation specifically advised offerors of this possibility, and we find nothing in the record from which we can find unreasonable the contracting officer's

determination that the protester's proposal was not sufficiently superior in merit (if at all) to warrant the cost premium involved.

As an additional issue relating to the evaluation of proposals, the protester alleges that in scoring the protester's proposal, the agency apparently had a misconception that the protester intended to subcontract certain services at the San Diego facility. Although the protester argues that the agency failed in its obligation to conduct meaningful discussions when it did not ask about this during negotiations, we find that the record does not support the protester.

A review of the evaluators' score sheets confirms that evaluators reduced the protester's initial technical score for the Los Angeles facility and that evaluators expressed concern over the protester's plans to subcontract part of the work; for the San Diego proposal, however, the protester received nearly a perfect score in this regard and the evaluator's notes indicate no misgivings over subcontracting with regard to San Diego. Furthermore, the record shows that the agency advised the protester of this weakness in its Los Angeles proposal, received clarification and raised the protester's technical score accordingly. We therefore deny this protest ground.

The protester makes a general allegation of bias against agency personnel and raises additional issues regarding the computation of technical scores.^{1/} The protester's allegations of bias make reference to a series of events including delays in payment under the protester's ongoing contract and the cancellation of a previous solicitation for this requirement. The protester has offered no convincing proof of bias on the part of agency personnel regarding this procurement and has failed to identify any individuals involved. We therefore will not consider the matter further.

We note that with regard to the scoring, the agency did make errors in transcribing the protester's technical scores; nevertheless, while correction of these errors would raise

^{1/} The protester also challenges the awardee's size status. The agency advises our Office that the protester is applying the wrong size standard. In any event, our Office does not review such challenges, since such issues are for review solely by the Small Business Administration. 4 C.F.R. § 21.3(m)(2) (1989).

the technical score of the protester's Los Angeles proposal, the score for the Los Angeles proposal would remain lower than the awardee's. We therefore cannot find that these errors prejudiced the protester.

The protest is denied.

for *Simon E. Hinchman*
James F. Hinchman
General Counsel