

Maeder



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Stanley Machining & Tool Company, Inc.--
Request for Reconsideration
File: B-239232.2
Date: June 25, 1990

D. Joe Smith, Esq., Jenner & Block, for the protester.
Jacqueline Maeder, Esq., and John F. Mitchell, Esq., Office
of the General Counsel, GAO, participated in the preparation
of the decision.

DIGEST

Contention that in selecting an awardee the contracting
agency was obligated to conduct a comparative evaluation of
offers on responsibility-related standards listed in the
solicitation is without merit where standards listed could
not reasonably be interpreted as proposal evaluation
criteria since there is no evidence offerors were required
to submit information regarding these standards which, as
the solicitation language itself indicated, were to be used
in making responsibility determinations.

DECISION

Stanley Machining & Tool Company, Inc., requests recon-
sideration of our dismissal of its protest concerning
request for proposals (RFP) No. DAAE07-89-R-A070 issued by
the U.S. Army Tank-Automotive Command (TACOM) for final
drive assemblies for the M1A1 tank. We dismissed the
protest as involving an affirmative determination of
responsibility which is not reviewed by our Office.

We deny the request for reconsideration.

The RFP included Federal Acquisition Regulation (FAR)
§ 52.215-16 (FAC 84-53), which provided that award would be
made to that responsible offeror whose offer, conforming to
the solicitation, will be most advantageous to the govern-
ment, price and other factors considered. In addition,
clause M.4 of the RFP, titled "Evaluation For Award-
Responsible Prospective Contractors (APR 1984)-TACOM,"
stated in part that:

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"(a) Award of a contract is not based on lowest evaluated price alone. Consideration is also given to those standards set forth in FAR Part 9 for responsible prospective contractors, including, but not limited to: (1) adequate financial resources; (2) ability to comply with required or proposed delivery schedules; (3) satisfactory record of performance on previous contracts; and (4) satisfactory record of integrity."

Stanley's total evaluated price was \$23,974,200. The total evaluated price for the low offeror, LOC Performance Products, Co., was \$21,640,100. The contracting officer determined that both Stanley and LOC met the minimum standards for contractor responsibility and on March 30, 1990, awarded the contract, without discussions, to LOC.

By letter dated April 9, Stanley filed a protest with our Office. On April 12, we dismissed this protest since it appeared to primarily concern a dispute concerning an affirmative determination of responsibility which we will not review absent a showing that such a determination was made fraudulently or in bad faith or that definitive responsibility criteria in the solicitation were not met. See Bid Protest Regulations, 4 C.F.R. § 21.3(m)(5) (1989).

On April 17, Stanley submitted its request for reconsideration, arguing that its protest did not involve a challenge to affirmative responsibility determinations or a contention that TACOM officials acted fraudulently or in bad faith, but the allegation that TACOM failed to adhere to the evaluation criteria stated in the solicitation.

Stanley argues that we have recognized that in negotiated procurements, contracting agencies may adopt for the technical evaluation of proposals evaluation criteria which include responsibility-type factors, and where they do, we will review the record to determine whether the evaluation was reasonable. See, e.g., EG&G Washington Analytical Servs. Center, Inc., B-233141, Feb. 21, 1989, 89-1 CPD ¶ 176. Stanley maintains that here it was improper for TACOM to have awarded the contract based solely on price because under clause M.4, quoted above, TACOM should have conducted a comparative evaluation of offers as to the four factors listed therein: financial resources, past performance, ability to meet delivery schedules, and integrity. Stanley says that had these factors been evaluated and scored, and comparisons made between the offerors, it, not LOC, should have been awarded the contract. Stanley contends that TACOM was obligated to consider these


criteria, giving them a weight equal to price, since they were specifically listed in that section of the solicitation dealing with the evaluation factors for award.

To support its position, Stanley submitted an affidavit from its representative who attended a debriefing. In the affidavit, the Stanley representative states that the contracting officer told him expressly that contract award was based on price alone and that award was made to the lowest responsive, responsible offeror. The contracting officer confirmed that there was no formula applied to comparatively evaluate offers on the basis of the factors Stanley argues are evaluation criteria under the RFP. Stanley argues that TACOM improperly treated these technical and financial factors not as evaluation criteria as required by the solicitation but simply as factors for determining contractor responsibility.

We do not agree with Stanley's view that award was to be made based on a comparative evaluation of the considerations listed in clause M.4 in addition to price. We think it is clear that the matters listed in clause M.4 were not to be used to make relative assessments of competing offers, but were to be used only to determine the responsibility of each offeror; once an offeror was determined to be responsible, price, not relative degree of responsibility, would be the basis for award. This is indicated by the clause's title, which refers to "Responsible Prospective Contractors," as well as its text, which simply indicates that in selecting an awardee the contracting agency would also consider those standards set forth in FAR part 9 (which governs determinations of prospective contractors responsibility), "including but not limited to" financial resources, ability to comply with delivery schedule, performance record, and integrity.

In addition, we note that while clause M.4 stated that "consideration" would be given by the government to "those standards [set] forth in FAR Part 9 for responsible prospective contractors," the protester does not allege that the RFP instructed offerors to submit technical proposals addressing the matters enumerated in clause M.4. The protester has not explained how it reasonably could interpret this clause as requiring the contracting agency to conduct a comparative evaluation of, for example, offerors' financial resources in the absence of a solicitation provision requiring a technical proposal in which such information is presented.

Since Stanley has not shown that we erred as a matter of fact or law in dismissing its protest, the request for reconsideration is denied.


for James F. Hinchman
General Counsel