



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Power Conversion, Inc.

File: B-239301

Date: August 20, 1990

Richard J. Ney, Esq., and Timothy Hughes, Esq., Chadbourne & Parke, for the protester.
Paul Schnitzer, Esq., and Robert T. Ebert, Esq., Crowell and Moring, for the interested party.
Judith Sukol, Esq., and Lucie Sterling, Esq., Department of the Army, for the agency.
C. Douglas McArthur, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Source selection official had reasonable basis to select a lower priced, lower technically-scored offeror where after having been fully briefed on the relative advantages of the offerors, he determined that the cost premium involved in awarding to a higher rated, higher priced offeror was not justified given the acceptable level of competence at the lower cost.

2. Award to offeror who received adjectival rating of marginally acceptable did not violate award criteria that required offerors to receive a rating of acceptable, where source selection plan provided that proposal had to meet all requirements to receive rating of marginal, and record shows that offeror did not receive unacceptable rating.

DECISION

Power Conversion, Inc. protests the award of a contract for the BA-5590 battery to Whittaker-Yardney Power Systems under request for proposals (RFP) No. DAAB07-89-R-C073, issued by the U.S. Army Communications-Electronics Command for multiple award of firm, fixed-price multi-year production

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contracts for five battery types.^{1/} The protester essentially objects to the decision to make an award for the BA-5590 battery to a lower cost offeror, despite the technical superiority of its proposal.

We deny the protest.

On August 31, 1989, the agency issued the solicitation for five types of lithium sulfur dioxide batteries--BA-5112, BA-5567, BA-5590, BA-5600 and BA-5800, to support Tri-service agreements as well as other government agencies and foreign military sales. The batteries are the primary power source for much of the current communications-electronics equipment being fielded through the current decade.

The RFP advised offerors of the agency's intention to maintain a mobilization base of at least two producers for each battery type and therefore provided for award of two 5-year (multi-year) contracts for each battery type, with an evaluated 200 percent option for each program year, with 60 percent of the requirement for each battery to be awarded to one producer and the remaining 40 percent to be awarded to a second producer, for a total of ten awards. The agency stated its intention to make its award determination based on the best overall value to the government, defined as the integration of areas of safety, process and quality control, manufacturing capability and technical personnel to give the government a safe, quality battery with on time delivery at a reasonable price.

The solicitation further advised offerors that technical factors would be of substantially greater weight than price and that to receive consideration for award, an offeror had to achieve a rating of no less than "acceptable" for the factor of quality production and manufacturing, as well as each of the subfactors contained therein. These subfactors included safety (design and manufacturing parameters, system safety program and incident investigation), process and quality control (statistical process control program, quality program and failure analysis and corrective action system/failure review board), manufacturing capability (manufacturing/production plan and past performance) and technical personnel (qualifications).

^{1/} Power Conversion also filed a protest against the award of a contract under the solicitation to Ballard Battery Systems for production of the BA-5567 battery, but withdrew its protest upon receipt of the agency report.

The agency received five proposals on October 16, identified weaknesses and deficiencies in offerors' proposals and conducted discussions, including an on-site evaluation, that resulted in the elimination of one offeror from the competitive range. On March 1, 1990, the agency requested best and final offers (BAFOs); on March 12, three offerors, Power Conversion, SAFT America, and Whittaker-Yardney, submitted BAFOs for production of the BA-5590 battery.^{2/}

The agency found that the protester offered a safe and proven design and that its proposal was acceptable in all technical areas. Regarding risk, the evaluators found Power Conversion's offer posed low risk for safety and technical personnel subfactors and medium risk under the process and quality control and manufacturing capability subfactors. SAFT America was rated as acceptable, with low risk under each subfactor. Whittaker-Yardney was rated overall marginally acceptable, and was viewed as having a limited production capacity; it was rated acceptable with medium risk under the process and quality control and technical personnel subfactors and marginally acceptable with high risk under the manufacturing capability and process and quality control subfactors. Power Conversion's price of \$58.50 per unit, \$289 million overall, was considerably higher than the price proposed by other offerors. The low offer was submitted by Whittaker-Yardney at a price of \$41.98 per unit, \$200 million overall. The third proposal, submitted by SAFT America, was priced between the other two.

After reviewing the report of the source selection evaluation board, the source selection advisory council (SSAC) advised the source selection authority (SSA) that the risks of Whittaker-Yardney's proposal precluded its receiving the larger award, for 60 percent of the agency's requirement. Since the agency believed the SAFT America proposal to be better than or equal to the protester's proposal and since its price was considerably less, the SSAC recommended that SAFT receive award for 60 percent of the BA-5590 requirement; for the remaining 40 percent of the requirement, the SSAC felt that Whittaker-Yardney's limited capacity would not be a concern. Furthermore, while there was some concern regarding that company's design, if Whittaker Yardney received the award for the smaller quantity any needed re-design of its battery would have much less impact on the agency; the SSAC therefore believed that the technical superiority of the protester's proposal

^{2/} The RFP did not require offerors to submit proposals for all battery types, and Ballard Battery Systems did not submit a proposal for the BA-5590 battery.

would not warrant paying a price 44 percent higher than that available from Whittaker-Yardney. The SSAC recommended that Whittaker-Yardney receive the second award, for 40 percent of the BA-5590 requirement.

The source selection authority accepted this recommendation, and on April 6 contracts were awarded to SAFT America for the 60 percent requirement and to Whittaker-Yardney Power Systems for the 40 percent requirement. This protest, against the award to Whittaker-Yardney, followed.

The protester argues that the agency violated the award criteria set forth in the solicitation, which contained a heavy emphasis on technical factors. The protester interprets the award criteria as prohibiting any cost/technical tradeoff and mandating award to the technically superior offeror so long as that offeror's price is reasonable. The protester believes that its price was reasonable and argues that if the agency believed otherwise, it had an obligation to so advise the protester in the course of discussions. The protester asserts that where an evaluation scheme emphasizes technical factors as this one does, the source selection official must provide a compelling justification for awarding to a lower rated, lower priced offeror.

Generally, agencies may make cost/technical tradeoffs, and the extent to which an SSA may sacrifice one for the other is governed only by the tests of rationality and consistency with the established evaluation criteria. TRW, Inc., 68 Comp. Gen. 511 (1989), 89-1 CPD ¶ 584. Even where a solicitation indicates that technical factors are more important than price, an agency may award to a lower priced, lower scored offeror if it determines that the cost premium involved in awarding to a higher priced, higher scored offeror is not justified given the acceptable level of technical competence at the lower cost. Dayton T. Brown, Inc., B-229664, Mar. 30, 1983, 88-1 CPD ¶ 321. The RFP here, although emphasizing technical factors, provided for award to the firm offering the best overall value, which was defined to include both specific technical considerations and price. We think this award language reasonably contemplated the possibility of a cost/technical tradeoff.

As for the tradeoff itself, we find that the award to Whittaker-Yardney was reasonable and consistent with the award criteria. The agency rated Whittaker-Yardney's proposal as marginally acceptable overall but as posing high risk that it would not meet the agency's requirements in a timely manner. However, the SSA found that the award of the smaller quantity reduced the strain on Whittaker-Yardney's

resources and significantly reduced the risk associated with its proposal. The SSA also determined that there were no significant advantages to the protester's proposal, which, although it was rated higher overall than Whittaker-Yardney's, received only an "acceptable" rating and posed some risk, and therefore did not warrant the significantly higher cost. Since the SSA found that the protester's proposal offered no significant advantage compared to Whittaker-Yardney's significantly lower-priced offer, we think the SSA could reasonably decide against paying a premium.

The protester also believes that the agency violated the award criteria set forth in the solicitation, which required that an offeror needed to attain an acceptable rating for each subfactor. In the protester's opinion, the awardee, whom the agency's technical evaluation team rated marginally acceptable in the subfactors of safety and manufacturing capability, did not qualify for award.

In this instance, the record shows that the agency used a five-category adjectival scheme for rating proposals during evaluation; the original source selection plan provided for ratings of superior-acceptable-marginal-susceptible-unacceptable.^{3/} While the agency modified the plan to change the "marginal" rating to "marginally acceptable," the plan consistently provided that either rating applied only where proposals met agency requirements. The agency concedes that it modified the plan because some members of the SSAC were initially unaware that marginal proposals were acceptable for award, but denies that the technical evaluation team experienced any confusion in this regard. The agency changed the terms used to communicate to the SSA that he could consider a marginally acceptable proposal for award, but should be aware that such a proposal contained disadvantages.

Our chief concern in the application of evaluation methods is the ability of the method in question to give the SSA a clear understanding of the relative merit of proposals. See Ferguson-Williams, Inc., 68 Comp. Gen. 25 (1988), 88-2 CPD ¶ 344. We have compared the evaluators' score sheets and comments to the summaries presented to the SSA and find no evidence that any evaluator assigned a "marginal" rating to an unacceptable proposal or that the SSA was unable to gain an appreciation of the risks and advantages involved in

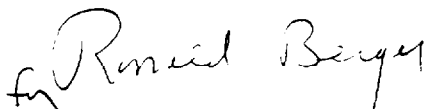
^{3/} The evaluation team did not apply the "susceptible" rating in its final report, as that rating was used only to identify areas requiring clarification during negotiation.

choosing between the protester's proposal and the Whittaker-Yardney proposal.

The use of the rating "acceptable" in the source selection plan, which is an internal agency instruction and was not provided to offerors prior to award, creates no right in the protester to expect the agency to reject a proposal merely because it received an adjectival rating of marginally acceptable, rather than acceptable. See Quality Sys., B-235344 et al., Aug. 31, 1989, 89-2 CPD ¶ 197. The source selection plan and the evaluation scheme in the RFP were two separate documents, and so long as the terms used clearly communicated to the SSA the evaluation team's opinion regarding the relative merit of proposals, we see nothing improper in the agency's selection of a marginally acceptable proposal.

Regarding the content of discussions between the agency and the protester, an agency has no obligation to advise a protester that its price is too high, where it does not believe that price is unreasonable for the approach proposed. Proprietary Software Sys., B-228395, Feb. 12, 1988, 88-1 CPD ¶ 143. The agency points out that the protester's price was not out of line with those it offered previously under invitations for bids, that the agency had determined these earlier prices reasonable, and that the agency therefore had no basis to find unreasonable the higher price offered here, since the RFP did emphasize technical considerations and the protester's proposal reflected the emphasis on technical factors. Indeed, the protester's submissions demonstrate that the protester itself still considers its price reasonable for the technical effort proposed. Under the circumstances, we do not find unreasonable the agency's decision not to discuss price with offerors.

The protest is denied.


James F. Hinchman
General Counsel