



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Joint Venture of Diversified Turnkey
Construction Company and Holmes & Narver
Constructors, Inc.

File: B-239831; B-239831.2

Date: September 18, 1990

William C. Martin for the protester.
John T. Sinton, for Hunt Building Corporation, an interested party.
Vasio Gianulias, Esq., Department of the Navy, for the agency.
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DIGEST

1. Protester's complaint that its proposal received unreasonably low scores on a number of technical evaluation subfactors is denied where record reveals that agency had a reasonable basis for scoring the proposal as it did.
2. Agency was not required to award to lowest-priced, technically acceptable offeror where request for proposals did not provide for price to be the determinative factor in the selection of an awardee.
3. Agency reasonably determined that higher-priced proposal was worth its additional cost where agency found significant differences in technical quality between higher-priced proposal and protester's proposal.

DECISION

The joint venture of Diversified Turnkey Construction Company and Holmes & Narver Constructors, Inc. ("Diversified") protests the Department of the Navy's award of a contract to Hunt Building Corporation under request for proposals (RFP) No. N62474-86-R-0631, for the design and construction of family housing units at the La Mesa site, San Diego, California. Diversified contends that its proposal received unreasonably low scores on a number of the technical evaluation subfactors and that the agency failed

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to accord sufficient weight to the price advantage of its proposal in selecting an awardee.

We deny the protest.

The RFP provided for award to be made to the responsible offeror whose proposal was determined to be most advantageous to the government considering price and technical evaluation factors, with technical evaluation factors considered more important than price. Four technical evaluation factors were listed in descending order of importance: building design, site design and engineering, building engineering material quality and maintenance, and energy performance. Technical evaluation subfactors were listed, also in descending order of importance, under each of the four factors.

Three offerors submitted proposals by the September 5, 1989, closing date. Contracting officials determined that one proposal was outside the competitive range and held discussions with the other two offerors, Diversified and Hunt. After discussions had been completed, the Navy requested best and final offers from both offerors. Although Diversified submitted a lower final price than Hunt (\$26,297,000 versus \$28,634,000), source selection officials determined that Hunt's proposal was technically superior to Diversified's, rating it very good overall, as compared with Diversified's rating of acceptable. In particular, the selection officials determined that Hunt's proposal was superior to Diversified's in exterior appearance and unit layout, the two most important subfactors under building design; in grading and drainage, street layout, and building rating, the three most important subfactors under site design and engineering; in quality of material and in electrical systems, two subfactors under building engineering material quality and maintenance; and in appliances and equipment (energy label), a subfactor under energy performance. The agency concluded that the difference in technical quality significantly outweighed the price differential between the two proposals and that Hunt's proposal represented the best value to the government. On May 18, 1990, the Navy awarded a contract to Hunt.

Diversified argues that its proposal received unreasonably low scores on a number of the technical evaluation subfactors. The protester contends that its proposal was essentially equal to Hunt's in all important respects, and

that price therefore should have become the determinative factor in selecting an awardee.^{1/}

In reviewing protests against the propriety of an agency evaluation of proposals, it is not the function of our Office to evaluate those proposals independently. Institute of Modern Procedures, Inc., B-236954, Jan. 23, 1990, 90-1 CPD ¶ 93. Rather, the determination of the relative desirability and technical adequacy of the proposals is primarily a function of the procuring agency which enjoys a reasonable range of discretion in proposal evaluation. Consequently, we will question the agency's technical evaluation only where the record shows that the evaluation

^{1/} The protester also argued initially that Hunt's proposal had failed to meet several of the RFP's requirements, including the requirements that building arrangements be informal and imaginative, that the street system provide convenient and safe access and circulation, and that cut and/or fill slopes be limited to a maximum of 16 feet grade separation (existing grade versus new grade). Diversified also argued that it had provided for less paved area in its proposal, which should have been viewed as a factor in its favor; that Hunt's proposal should not have been deemed superior because of its predominant use of six to eight unit buildings; and that if the agency were going to view proposals providing for cars backing out onto streets as undesirable, it should explicitly have so stated in the RFP.

In its report, the agency responded to all of these arguments, explaining why it thought that Hunt's proposal had satisfied the RFP's requirements. With regard to the protester's argument regarding the amount of paving in its proposal, the Navy indicated that it had recognized that Diversified's proposal provided for less paved area and had given the protester a higher score on the subcriterion where this was considered (i.e., "landscape, recreation, and usable open space"). With regard to the protester's argument that the solicitation should explicitly have stated that cars backing out into streets would be viewed as undesirable, the agency responded that the RFP had addressed this issue by providing that the street system had to be safe and allow for good vehicular circulation.

In its post-conference comments, the protester did not attempt to rebut the agency's response. We therefore consider it to have abandoned these issues.

does not have a reasonable basis or is inconsistent with the evaluation criteria listed in the RFP. The fact that the protester disagrees with the agency does not itself render the evaluation unreasonable. Id.

Here, we find that the Navy's evaluation of the proposals and selection of Hunt were reasonable and consistent with the evaluation criteria in the RFP.

EXTERIOR APPEARANCE

Diversified argues first that the agency evaluators unreasonably assigned its proposal a rating of acceptable for exterior appearance while rating Hunt's proposal excellent.

The RFP provided, with regard to exterior appearance, that the project should provide "variety and interest in building exteriors, massings, building setbacks, rooflines, materials, textures, fenestration details and color schemes." The solicitation further provided that all project components were to be visually integrated and compatible, and that "barracks-like" featureless elevations or overly repetitive elevations were prohibited.

The selection officials rated Hunt's proposal excellent because it offered superior planar relief through the use of bay windows, balcony/garage projections, and setbacks within the buildings. It also featured varied rooflines and arched windows, which provided visual relief. Diversified's proposal was rated less highly because it offered more repetitive buildings and less planar relief. Furthermore, in the evaluators' judgment, it failed to develop a cohesive architectural character.

We have examined the proposals and our review confirms the agency's description of the offerors' exterior design approaches. We think that it was reasonable and consistent with the evaluation criteria for the evaluators to have determined, based on the differences described above, that Hunt's proposal was superior to Diversified's in exterior appearance.

UNIT LAYOUT

Diversified also complains that Hunt should not have received credit under the subfactor "unit layout" for providing two-car garages in nearly all units. The protester contends that two-car garages are not normally provided in family housing units for junior enlisted men and

that the additional cost of such an amenity outweighs its utility.

In response, the agency takes issue with the protester's assumption that two-car garages are more costly than single car ones. According to the agency, the two-car garages lower overall project costs since they reduce the need for site grading to meet the RFP requirement for two off-street parking spaces per dwelling unit. In addition, the Navy notes that locating more vehicles under the units improves site layout. Given these considerations, we see nothing unreasonable about the agency's having viewed the double garages proposed by Hunt as desirable.

GRADING AND DRAINAGE

Diversified challenges the rating of acceptable (as compared with Hunt's score of very good) that it received on the subfactor grading and drainage.

The source selection officials found that Hunt had proposed a site plan well adapted to the hillside conditions, which minimized cut and fill slopes and retaining walls. Diversified, in contrast, had proposed a plan that made extensive use of retaining walls. In addition, the selection officials expressed reservations about Diversified's grading and drainage solution since it was impossible to tell from its proposal drawings, which were at a concept level that did not show final grading details, whether the RFP's requirements regarding cut and/or fill slopes had been satisfied in all instances.

The protester contends that it was unreasonable for the agency to downgrade its proposal for not having demonstrated compliance with the cut and fill slope requirements for all proposed buildings, given that it had stated that it would comply with the requirements.^{2/} We disagree. The agency found that although the protester had confirmed that its final design would comply with the requirements, this introduced an element of risk into its proposal since in order to comply with the cut/fill slope requirements, Diversified would need to make other changes in its proposed site design. We see nothing unreasonable in the agency's downgrading Diversified's score to account for this uncertainty.

^{2/} The RFP required that cut and/or fill slopes be limited to a maximum of 16 feet grade separation (existing grade versus new grade), except in an existing ravine/gully area where 24 feet cut and fill slopes would be permitted.

STRUT LAYOUT AND BUILDING SITING

Diversified protests the ratings of acceptable that it received on street layout and building siting. Hunt received a rating of excellent on the former subfactor and a rating of very good on the latter.

The Navy found Hunt's proposal to be superior to Diversified's with regard to street layout and building siting since, in its estimation, Hunt's plan allowed for better traffic circulation and was safer. In particular, the selection officials noted that Hunt had situated all of its units on deadend driveways, which meant that vehicles would exit onto the streets facing frontwards rather than backwards and that the number of points of entry would be far more limited than under Diversified's proposal, which provided for 240 individual driveways from which cars would back directly onto streets. The evaluators also noted that Hunt's common driveways were relatively level at the points where vehicles would enter and exit buildings, whereas Diversified's proposal provided for fairly steep drives. The agency further observed that under Diversified's proposal vehicles entering the housing development would encounter an intersection requiring a right or left turn almost immediately, which would impede the smooth flow of traffic, whereas under Hunt's proposal there was no such intersection. Another feature of Diversified's proposal that the agency considered to be undesirable was its location of guest parking on alternating sides of the street, which resulted in the centerline shifting back and forth with regard to the curblin. According to the Navy, this posed a potential safety hazard and further impeded the smooth flow of traffic.

We do not think that it was unreasonable for the Navy to have rated Diversified's proposal lower than Hunt's on street layout and building siting. The protester does not take issue with the agency's position that Hunt's proposal provides for better traffic circulation than its own, nor does it argue that it was inappropriate for the agency to consider such a factor in rating proposals. The protester does, however, dispute the agency's finding that its plan was less safe than Hunt's. Diversified contends that backing directly onto the street is, if anything, safer than backing onto a common drive where there is no defined pedestrian path and where service vehicles may be circulating.

We think that the agency reasonably concluded that the chance of a serious collision between vehicles would be

substantially higher where cars are backing directly onto the street than where they are backing onto common driveways. The flow of traffic on the driveway would presumably be far lighter than the flow of traffic on the street, and vehicles would be moving considerably more slowly. Furthermore, although we agree with the protester that in general one would expect pedestrians on a sidewalk to be safer than pedestrians on a driveway since drivers will know to be watching for them, we nonetheless think that the agency could reasonably have concluded that a driver backing out onto the street poses more of a danger to pedestrians than a driver backing out onto a level drive, given that the former will be concentrating on negotiating the slope (by either braking or accelerating hard) and on completing the maneuver as quickly as possible so as to avoid oncoming traffic.^{3/}

QUALITY OF MATERIAL

Diversified argues next that the Navy could not reasonably have rated its proposal as only acceptable under the subfactor "quality of material," while rating Hunt's proposal excellent. The protester contends that it was unfair for the Navy to give Hunt extra credit for offering 5/8-inch gypsum wallboard rather than the specified 1/2-inch board since the applicable building code generally requires the use of the 5/8-inch board in buildings larger than "4-plexes." The protester also argues that the agency incorrectly considered the vinyl siding offered by Hunt as requiring less maintenance--and therefore as superior--to the stucco that it offered. The protester contends that vinyl siding has no proven maintenance history and thus it is impossible to determine the degree of maintenance that it will require.

The Navy responds, with regard to the gypsum wallboard, that Hunt offered 5/8-inch board in all of its housing units and not merely in the larger units where the building code

^{3/} The protester also argues that the agency incorrectly determined that guest parking located on alternating sides of the street posed a safety hazard. Based on the information available to us in the record, it is unclear whether the alternating parking does in fact pose a safety hazard. We do not think this is a significant issue, however, because even assuming that Diversified is correct that the alternating parking does not pose a safety hazard, we think that the agency still had adequate justification for assigning the protester the ratings that it did for street layout and building siting.

required it; thus, according to the agency, it properly viewed Hunt's use of the wider wallboard throughout as an upgrade.

With regard to the protester's argument that it is not clear that the vinyl siding will in fact cost less to maintain than stucco since it has no proven maintenance history, the agency responds simply that vinyl siding is warranted by at least one manufacturer for the lifetime of the original owner. The fact that an item is warranted does not necessarily imply that it will be maintenance-free. However, even if we assume that the agency should not have viewed vinyl siding as lower in cost to maintain and therefore superior to stucco, Diversified still would have received a lower score on the quality of material subfactor than Hunt given other differences between the two proposals, such as Hunt's use of 5/8-inch gypsum wallboard throughout and its use of higher quality sectional garage doors as compared with Diversified's use of one piece doors.

ELECTRICAL SYSTEMS

Next, the protester questions its rating of acceptable versus Hunt's rating of very good on electrical systems, another of the subfactors under Building Engineering Material Quality and Maintenance. The protester speculates that the difference in scores was attributable to Hunt's offer of higher quality lighting fixtures.

Diversified is incorrect in its assumption that Hunt received a higher score than it on this subfactor because of the lighting fixtures it offered. Hunt in fact received a higher score because it offered electrical amenities beyond those required and offered by Diversified, including garage door openers and ceiling fans.

APPLIANCES AND EQUIPMENT

Diversified challenges its rating of acceptable versus Hunt's rating of very good on the subfactor "Appliances and Equipment (Energy label)" under the factor "Energy Performance." The protester contends that since the refrigerator and the water heater are the only appliances that have energy rating labels, the energy savings in dollars of the appliances offered by Hunt could not be significant when compared to overall energy costs.

The protester's argument is in essence that this subfactor should not be given much weight in the evaluation process since any differences in energy consumption among the appliances offered are insignificant when compared with

overall energy consumption. The agency apparently agrees: energy label was the least important subfactor under the least important evaluation factor. The fact that this was a relatively unimportant subfactor does not mean that the agency should have given all offerors the same rating on it, however.

PRICE/TECHNICAL TRADEOFF

Diversified argues that in view of the current cutbacks in defense spending and given that the RFP originally contained a cost limitation of \$21,930,000 and provided that proposals in excess of this amount would not be considered, prudent offerors would have assumed, even after the cost limitation was deleted by amendment No. 0005, that overall project cost was of "overriding importance" and that the Navy was seeking a proposal meeting its minimum requirements at a price as close to \$21.9 million as possible. The protester contends that the Navy has not adequately justified its decision to award to a higher priced offeror when both proposals met or exceeded the RFP's requirements.

We cannot agree with the protester that a prudent offeror responding to this RFP would have assumed that the agency was seeking a minimally acceptable proposal at the lowest possible price. The RFP did not provide that price would be the determinative factor in selecting an awardee; thus, the agency was not required to award to the firm offering the lowest price. Technology Applications, Inc., B-238259, May 4, 1990, 90-1 CPD ¶ 451. Instead, the RFP provided for award to the offeror whose offer was determined to be most advantageous to the government, considering both price and technical factors, with technical factors more important than price. It was therefore within the discretion of the source selection officials to determine whether or not Hunt's proposal was worth its higher price. Henry H. Hackett & Sons, B-237181, Feb. 1, 1990, 90-1 CPD ¶ 136.

Furthermore, to the extent that the protester is arguing that any technical difference between the proposals was outweighed by the price differential, where 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. GP Taurio Inc., B-238420; B-238420.2, May 24, 1990, 90-1 CPD ¶ 497. As discussed previously, the agency determined (reasonably, we concluded) that Hunt's proposal was superior to Diversified's exterior appearance and unit layout, the two most important subfactors relating to building design; grading and drainage, street layout, and building design, the three most important subfactors under

site design and engineering; and under quality of material, the most important subfactor under building engineering material quality and maintenance. Given the difference in technical quality between the proposals, and given that the difference in overall price amounted to only approximately 7 percent, we think the agency reasonably concluded that Hunt's proposal was, overall, most advantageous to the government.

The protest is denied.

for Robert T. Murphy
James F. Hinchman
General Counsel