

ms. Lebowitz



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Conax Florida Corporation
File: B-241743
Date: February 26, 1991

Paul Shnitzer, Esq., Crowell & Moring, for the protester.
Michael A. Hordell, Esq., Petrillo & Hordell, for S-Tron Corporation, an interested party.
Susan Miller, Esq., Defense Logistics Agency, for the agency.
Linda S. Lebowitz, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Where agency's evaluation of offers was reasonable and in accordance with the solicitation's stated evaluation scheme, and protester's and awardee's offers were determined to be essentially technically equal, price properly became the determining factor in the agency's selection of the low-priced offer for award.
2. Low-priced offer with higher unit prices for basic quantity than for option quantity is not materially unbalanced where it reasonably appears that the agency expects to purchase the option quantity so that award to the low-priced offeror will result in the lowest ultimate cost to the government.

DECISION

Conax Florida Corporation protests the award of a contract to S-Tron Corporation under request for proposals (RFP) No. DLA700-90-R-0951, issued by the Defense Logistics Agency (DLA) for a quantity of automatic/manual inflation assemblies for life preservers used by deck crews aboard aircraft carriers. Conax alleges that the evaluation of offers was arbitrary and capricious and that S-Tron's offer is unbalanced.

We deny the protest.

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BACKGROUND

The RFP, issued on April 9, 1990, contemplated the award of a firm, fixed-price contract and included contract line items for a basic quantity of 5,000 automatic/manual inflation assembly units, an option quantity of 5,000 units, a first article test (FAT) requirement, a product verification test requirement, and three sequences of manuals. The RFP schedule required the insertion of unit and extended prices for the basic quantity, a unit price for the option quantity, and a total price for each of the other line items.

The RFP, as amended, contained three weighted evaluation factors listed in descending order of importance--technical, management, and quality management. The technical factor included the subfactors of performance and associated tests (i.e., 11 test requirements such as an electromagnetic radiation requirement, a shock requirement, a vibration requirement, etc.), design features, and materials and components. The management factor encompassed the subfactors of production capability (which included manufacturing method, equipment/tooling subcontracting, production capacity, and personnel) and general management (which included production and management control systems, management organization, and financial resources). The quality management factor included the subfactor of quality inspection system. In addition, the RFP contained two unweighted evaluation factors--price and past performance (which included similar work/experience, delivery, and quality.) The RFP stated that prices would be evaluated for realism and reasonableness and that the subjective assessment of an offeror's past performance would be used to evaluate the credibility of an offeror's technical, management, and cost proposals and to evaluate the relative capability of the offeror and the other competitors. The RFP provided that the combination of weighted factors (technical, management, and quality management) was more important than cost or price and past performance, and as proposals became more equal in their technical merit, the evaluated cost or price would become more important. The RFP advised that the award would be made to the responsible offeror whose offer conformed to the requirements of the solicitation and was most advantageous--offering the "greatest value"--to the government.

Seven firms submitted initial proposals by the closing date of May 9. After the initial evaluation by the agency's source selection evaluation board (SSEB), the contracting officer, who was also the source selection authority (SSA), determined five offerors, including Conax and S-Tron, to be within the competitive range. After discussions with the offerors in the competitive range, revised proposals were requested from each. The SSEB and the contracting officer reevaluated the revised

proposals. On August 23, following completion of the preaward surveys and the conclusion of discussions, best and final offers (BAFOs) were requested with a closing date of September 3.

BAFOs, with respect to the three weighted evaluation factors, were evaluated using a color rating of blue (exceeds standards in a beneficial way; high probability of success), green (meets standards; good probability of success), yellow (fails to meet significant standards; low probability of success), and red (fails to meet significant standards; no reasonable likelihood of success). The color ratings also were generally supported by narrative evaluations reflecting the strengths, deficiencies, and overall risks of each offer with respect to each weighted evaluation factor.

The evaluators determined that the offers of Conax and S-Tron exceeded the RFP's standards in a beneficial way and had a high probability of success (blue) for the technical and management weighted evaluation factors, and both offers met the RFP's standards and had a good probability of success (green) for the quality management weighted evaluation factor. The offers of Conax and S-Tron were determined to be of low risk for each of the three weighted evaluation factors. Both Conax and S-Tron were determined to have submitted very good past performance information (which was considered under the management weighted evaluation factor): Based on the results of the technical, management, and quality management evaluations of the offers of Conax and S-Tron, and the evaluation of both offerors' past performance, the findings of the preaward surveys, and the evaluation of both offerors' prices, the contracting officer, acting as the SSA, determined Conax's and S-Tron's offers to be essentially technically equal and, therefore, awarded a contract to S-Tron, the low-priced offeror, on October 3. Conax filed this protest on October 19.

Conax first contends that the evaluation was arbitrary and capricious, and believes that it should have been rated technically superior to, not technically equal with, S-Tron. In this regard, Conax argues that the SSA relied upon incorrect information, specifically that S-Tron had completed and passed prior to the award of this contract the FAT requirements for an Air Force inflation assembly which was substantially similar to the one S-Tron offered under this procurement, and that Conax had not previously produced the identical item which it offered under this procurement. Conax also contends that S-Tron's offer is materially unbalanced and only becomes low if the option quantity is purchased.

We will examine an agency's evaluation to ensure that it was fair and reasonable and consistent with the evaluation criteria stated in the RFP. Research Analysis and Maintenance, Inc., B-239223, Aug. 10, 1990, 90-2 CPD ¶ 129. Here, after reviewing the record, we conclude that the evaluation was fair and reasonable and in accordance with the RFP's stated evaluation scheme.

EVALUATION OF S-TRON'S PRIOR EXPERIENCE

The record shows that prior to the determination to award this contract to S-Tron, the SSA, during S-Tron's preaward survey, spoke to the Air Force program manager who reported that S-Tron successfully completed and passed the FAT requirements for a substantially similar inflation assembly under an Air Force contract. The evaluation documents for S-Tron's management proposal reflect that this information was evaluated as part of, and considered a strength of, S-Tron's management proposal.^{1/} Subsequent to the award of this contract, however, although S-Tron ultimately passed the FAT under the Air Force contract, Conax learned that S-Tron actually had not completed and passed all of the FAT requirements at the time of the preaward survey or at the time of the award of this contract. Specifically, S-Tron had not completed a required reliability test. Conax, therefore, argues that the SSA relied on information which, as reported at the time, was incorrect and that this incorrect information had a significant impact on the evaluation and the determination by the SSA that S-Tron was essentially technically equal to Conax. We find that the SSA's determination was proper.

During the final evaluation of offers, the agency received the information, which was incorrect at the time, that S-Tron had completed and passed the FAT under the Air Force contract. The record, however, shows that before the agency had this information S-Tron's initial management proposal received a blue rating as exceeding the RFP's standards, the highest rating available, and was also rated a low risk. Under the management weighted evaluation factor, the evaluators were to look at production capability and general management which included production and management control systems, management organization, and financial resources. The agency evaluators found numerous strengths in S-Tron's management proposal. The evaluators identified as strengths S-Tron's computer tracking system which provides function area status/updates and automatically generates problem notification to management, its risk management system, its precise delineation of

^{1/} This information was not evaluated as part of S-Tron's technical proposal.

authority and responsibilities for the contract, its detailed procedures for subcontractor selection and control, its procedures for timely response to problems, and also its direct lines of communication to the president/chief executive officer of the company. The fact that S-Tron had a similar Air Force contract, in addition to prior related experience, was noted as a strength.

Based on the record, we think the initial blue rating for S-Tron was supported by the many strengths identified in S-Tron's management proposal by the evaluators. It also is clear that the fact that S-Tron had the Air Force contract was not significant to the initial proposal rating, since its prior related experience was found to be a strength apart from its Air Force contract, and prior experience was only one of many strengths found in S-Tron's management approach by the agency. These enumerated strengths were reiterated in the BAFO evaluation. Thus, there is ample support for the finding that the awardee's management approach reasonably received the highest rating available and was considered low risk, notwithstanding the Air Force contract. See Holmes and Narver, Inc., B-239469.4; B-239469.5, Jan. 17, 1991, 91-1 CPD ¶ ____.

EVALUATION OF CONAX'S PRIOR PRODUCTION

Conax argues that the SSA incorrectly concluded that Conax, just like S-Tron, previously manufactured only "similar" items and not the identical item which it offered for this procurement and thus did not give Conax proper credit for its prior experience. We deny this aspect of the protest.

The RFP required that for this procurement the inflation assemblies were to be manufactured in accordance with a new purchase description. The purchase description contained a requirement that an inflation assembly would be tested to ensure, among other things, that it would not inflate without command, or crack and deform, when exposed to specified electromagnetic environment levels which were stricter than those levels included in the predecessor purchase description. This procurement represented the first purchase of the inflation assembly in accordance with the stricter requirement, and at the time of the award of this contract, no manufacturer successfully had manufactured and tested this item in accordance with the stricter requirement.

The record reflects that the SSA considered that Conax successfully manufactured and delivered to the Navy under three separate contracts the inflation assembly--part number (P/N) 1812-158--which it offered for this procurement. Conax admits, and its initial proposal and BAFO reflect, that its P/N 1812-158 has been manufactured and tested in accordance

with the predecessor purchase description which called for testing of the equipment's capabilities at lower electromagnetic levels than required by the new purchase description. For this reason, we agree with the SSA that Conax previously manufactured only "similar" items, and we find no impropriety in the weight accorded Conax's prior experience producing the item.

UNBALANCED OFFER ALLEGATION

The RFP, which incorporated Federal Acquisition Regulation § 52.217-5, stated that the government would evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. The RFP warned that offers could be rejected if they were materially unbalanced as to prices for the basic requirement and the option quantities. The RFP defined an unbalanced offer as one based on prices significantly less than cost for some work and prices which are significantly overstated for other work.

S-Tron's unit price for the basic quantity of 5,000 units was \$76.17 per unit and its unit price for the option quantity of 5,000 units was \$67.87 per unit. S-Tron's total aggregate offer was \$894,985. Conax contends that S-Tron's offer is materially unbalanced and only becomes low if the option quantity is purchased.

There are two aspects to determine whether an offer is unbalanced--mathematical unbalancing, where an offer is based on nominal prices for some items and enhanced prices for other items, and material unbalancing, where an offer is mathematically unbalanced and there is a reasonable doubt that an award based on the offer will result in the lowest cost to the government. See District Moving & Storage, Inc., et al., B-240321 et al., Nov. 7, 1990, 90-2 CPD ¶ 373.

Here, although S-Tron's price per basic quantity unit was approximately 11 percent higher than its price per option quantity unit, we do not find this difference to be significant. S-Tron explains that the lower option quantity price reflects savings being passed on to the government. Also, S-Tron's offer is not materially unbalanced because it appears from the record that the contract option will be exercised. In this regard, the record includes an affidavit from the Director of the Damage Control Systems Safety Division of the Naval Sea Systems Command (the user activity) whose responsibilities include technical management of the acquisition of new shipboard safety equipment like the inflation assemblies. He states that the basic quantity of 5,000 units is needed to initially outfit all of the Navy's aircraft carriers and that there will be an immediate draw down of additional units to outfit existing ships and ships

under construction, and to replace units that have been used. Therefore, he reports, the Navy continues to need the option quantity. Because it reasonably appears from the record that the option quantity will be purchased, the award to S-Tron will result in the lowest ultimate cost to the government and is not materially unbalanced. See Reliable Trash Serv., B-194760, Aug. 9, 1979, 79-2 CPD ¶ 107.2/

CONCLUSION

After reviewing the record, we conclude that the evaluation of Conax's and S-Tron's offers was fair and reasonable and in accordance with the RFP's stated evaluation scheme. The SSA determined Conax's and S-Tron's offers were essentially technically equal based on the technical, management, and quality management evaluations, consideration of both offerors' past performance, and the findings of the preaward surveys. In accordance with the terms of the RFP which advised that as proposals became more equal in their technical merit, the evaluated cost or price would become more important and award would be made to the offeror whose offer was most advantageous--offering the "greatest value"--to the government, the SSA properly awarded the contract to S-Tron, the low priced offeror, whose total aggregate offer was less than Conax's total aggregate offer. When proposals are viewed as essentially technically equal, as here, price properly

2/ Conax also argues that S-Tron's price for the FAT requirement is front-loaded, thereby resulting in an improper advance payment to S-Tron. The RFP clearly stated that an additional quantity of 15 units was necessary for the FAT requirement, and that any costs involved for the FAT requirement were not to be included in the price for the production units. Our in camera review of S-Tron's cost breakdown for the FAT requirement indicates that its price reflected nonrecurring first article costs. This is consistent with the terms of the RFP and the price was found realistic. To the extent Conax is alleging that the RFP provision was improper, this protest allegation, first raised after award, is untimely. Our Bid Protest Regulations require that protests based upon alleged improprieties in a solicitation which are apparent prior to the closing date for receipt of initial proposals must be filed prior to the closing date. 4 C.F.R. § 21.2(a)(1) (1990).

becomes the determining factor in the selection of the awardee. Cajar Defense Support Co., B-239297, July 24, 1990, 90-2 CPD ¶ 76.

The protest is denied.


for James F. Hinchman
General Counsel