



Comptroller General
of the United States

Washington, D.C. 20548

MR. MORROW

Decision

Matter of: Cook International Inc. *MB*

File: B-244965.2

Date: December 18, 1991

Clarence Cook for the protester.
Dennis F. Hoffman, Esq., and Charles A. Walden, Esq.,
Department of Justice, Drug Enforcement Administration, for
the agency.
Charles W. Morrow, Esq., and James A. Spangenberg, Esq.,
Office of the General Counsel, GAO participated in the
preparation of the decision.

DIGEST

Contracting agency's decision to make award to the lowest-priced offeror is proper where the record indicates that the agency had a reasonable basis for viewing the competing proposals as essentially equal so that price became the determining factor.

DECISION

Cook International Inc. protests the award of a contract to Varicon International under request for proposals (RFP) No. DEA-91-R-0005, issued by the Department of Justice, Drug Enforcement Administration (DEA), for investigative services.

We deny the protest.

On January 11, 1991, DEA issued the RFP to acquire a contractor to furnish the personnel, facilities, supplies and equipment to provide background investigation coverage for DEA nationwide. The RFP contemplated the award of a fixed-price requirements contract, and required each offeror to propose unit prices and extended total prices for a specified estimated quantity of each investigation category.¹ The contract was for a base period from the date of award to September 30, 1991, with four 1-year option

¹The quantities were expressed in number of cases for the following investigation categories: Background Investigation, Special Background Investigation, Limited Background Investigation, and Collateral Coverage.

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periods, and a fifth option from October 1, 1995, to March 31, 1996.

The RFP indicated that award would be made to the responsible offeror whose proposal was considered to be the most advantageous to the government based upon price and the RFP's technical evaluation factors. The RFP stated that paramount consideration would be given to technical quality rather than price, but indicated that if the technical quality of the offerors was essentially equal, then price would become the determining factor in the award selection. The evaluation factors and their corresponding weights were listed in the RFP as follows: (1) "Plan for Accomplishing the Statement of Work," 25 points; (2) "Oversight, Control, and Monitoring of Investigators," 15 points; (3) "Prior Experience," 10 points; (4) "Understanding of Factors, Methods and In Coverage Requirements," 25 points; and (5) "Personnel," 25 points.

On February 25, DEA received 10 proposals in response to the RFP. These proposals were evaluated by a four member technical evaluation committee (TEC). After the technical and price proposals were evaluated, a competitive range consisting of the five top rated offers, including Cook's and Varicon's, was established. Discussions were then conducted and DEA received best and final offers (BAFO) on June 17. BAFO scores ranged from 82.50 to 87.25. Cook's BAFO, with a total price of \$53,138,140, received a final TEC score of 82.50 points. Varicon's BAFO was the lowest-priced offer at \$51,327,925 with a TEC score of 84 points. All five proposals in the competitive range were determined to be technically equal. On July 19, DEA made award to Varicon, the low-priced offeror.

Cook's protest followed. Cook argues that DEA did not properly evaluate proposals because, when compared to Varicon's proposal, the Cook proposal was technically superior such that Cook was entitled to the award.

In reviewing protests against the propriety of an agency evaluation of proposals, it is not the function of our Office to independently evaluate the proposals. Rather, we examine the agency's evaluation to ensure that it was fair and reasonable and consistent with the evaluation criteria stated in the RFP. See Correa Enters., Inc., B-241912, Mar. 5, 1991, 91-1 CPD ¶ 249. The protester's disagreement alone is insufficient to establish that the agency acted unreasonably. See ERC Envtl. and Energy Servs. Co., Inc., B-241549, Feb. 12, 1991, 91-1 CPD ¶ 155. Based upon our review of the record, we find that DEA's evaluation was reasonable and consistent with the evaluation criteria.

Cook argues that its proposal was technically superior to Varicon's because it has superior experience, especially in major urban areas, since it allegedly has conducted many more background investigations than Varicon. Cook states that it has conducted more than 100 background investigations per month, while Varicon allegedly has never conducted more than half that amount, and DEA's requirement is for approximately 600 cases per month. Cook also contends that it has superior personnel.

With regard to the past experience factor, our review indicates that, in the past year, Cook has handled significantly more investigation cases than Varicon. However, we are not persuaded that Cook was entitled to be rated significantly higher than Varicon under the prior experience criterion based upon this fact alone. The TEC viewed Varicon's prior experience in all areas to be sound and that Varicon had no apparent weaknesses in this area. Our review confirms that the prior experience of Varicon, which reflects significant experience in urban areas, is not materially different from that of Cook, save for the number of cases in the last year.² The TEC rated Varicon at 8.5 out of a possible 10 points; Cook received 9 points under this factor. Based on our review of the record, we find DEA's evaluation of Varicon's experience vis-a-vis Cook's was reasonable.

Cook also asserts, without elaboration, that its personnel are superior to Varicon's apparently because of Cook's allegedly superior experience. The record shows that these two offerors were rated relatively similarly for this factor, with Cook receiving 21 points and Varicon 21.5 points of the 25 possible points. Both offerors had some weaknesses; Cook failed to propose an investigator for Guam and some of its management personnel were considered not to have optimum experience for this type work, while Varicon did not submit some resumes. From our review of the record, including the proposals, it appears that the resumes submitted by these two offerors are for similarly qualified personnel. Thus, we have no basis to question the ratings under this evaluation criterion.

Cook does not argue that it has technical superiority over Varicon in the other three technical evaluation areas, and from our overall review of the record we find no evidence that the proposals were unreasonably found to be technically

²Cook's increased number of annual investigations is only a recent phenomenon.

equal. Therefore, given that the evaluation criteria indicated that award would be made to the lowest priced offeror if proposals were found technically equal, DEA properly selected Varicon for award.

Cook further argues that Varicon's price is not a viable one given the amount and quality of work necessary to complete the contract successfully, notwithstanding that Varicon's prices are only slightly less than Cook's. Since there is no RFP evaluation criterion that addresses cost realism, this allegation concerns Varicon's ability to perform the contract at the offered price, which is a matter of responsibility. DEA determined that Varicon was responsible and our Office will not review such an affirmative determination of responsibility, absent a showing of possible fraud or bad faith by government officials or misapplication of definitive responsibility criteria, none of which conditions is alleged here. Logistics Operations, Inc., B-240726.4, June 4, 1991, 91-1 CPD ¶ 526. The submission of a below cost offer is not legally objectionable in itself. Id.

In response to DEA's report, Cook also contends that DEA's evaluation of Varicon's BAFO proposal reflected bad faith because it was based on only half of the estimated quantity in each category. The record indicates this lesser number of cases was related to a shorter base period of performance caused by a delay in the anticipated award date and that DEA evaluated all proposals based upon this same number of cases. Accordingly, we find nothing objectionable in this evaluation.

The protest is denied.


for James F. Hinchman
General Counsel