



Comptroller General
of the United States
Washington, D.C. 20448

Decision

Matter of: Premier Cleaning Systems, Inc.

File: B-249179,2

Date: November 2, 1992

Kathy C. Weinberg, Esq., and R. Chris Puffer, Esq., Doke & Riley, for the protester.

Donald E. Barnhill, Esq., and Joan K. Fiorino, Esq., East & Barnhill, for Main Building Maintenance, Inc., an interested party.

Gerald P. Kohns, Esq., Department of the Army, for the agency.

John Formica, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency's consideration of an offeror's large business subcontractor's experience under the relevant evaluation factor was proper where the solicitation allowed for the use of subcontractors to perform the contract and did not prohibit the consideration of a subcontractor's experience in the evaluation of proposals.

2. Award to a higher rated, higher priced offeror was proper under a solicitation in which price was significantly less important than technical factors and the agency reasonably concluded that the technical advantages associated with the awardee's proposal outweighed the higher price.

DECISION

Premier Cleaning Systems, Inc. protests the award of a contract to Main Building Maintenance, Inc., under request for proposals (RFP) No. DAK48-91-R-0111, issued by the Department of the Army for building maintenance (hospital housekeeping/custodial) services at Fort Hood, Texas. The RFP was issued as a competitive set-aside under section 8(a) of the Small Business Act, 15 U.S.C. § 637(a) (1988 and Supp. III 1991).¹ Premier argues that the evaluation of

¹Section 8(a) of the Small Business Act authorizes the Small Business Administration (SBA) to enter into contracts with government agencies and to arrange for performance through (continued...)

its offer and that of the awardee were unreasonable, and that the selection of Main for award was unreasonable in view of Main's higher price.

We deny the protest.

The RFP, issued on June 6, 1992, contemplated the award of a firm, fixed-price contract for a base period of 1 year with four 1-year options. The work encompassed in the RFP includes virtually all tasks related to the maintenance of the Darnall Army Community Hospital at Fort Hood. The successful contractor is required to furnish all labor, supervision, management support, transportation, equipment, and materials necessary to provide the services as specified in the RFP's detailed statement of work.

The RFP provided that award would be made to the offeror whose offer, conforming to the solicitation, was determined most advantageous to the government. The RFP listed the following evaluation criteria and subcriteria,¹ each listed in descending order of importance:

- (A) Quality
 - (1) Technical
 - (a) Technical Approach to Performing Specific Functions
 - (b) Technical Management
 - (c) Technical Experience
 - (2) Management
 - (3) Quality Control
- (B) Price

The solicitation also informed offerors that "[q]uality is weighted substantially more important than price," and that price would be weighed but not scored.

The RFP was issued to nine prospective offerors identified by SBA. Six offerors submitted proposals. The offers of Premier, Main, and another offeror were included in the competitive range. Two rounds of discussions were conducted

¹(...,continued)

subcontracts with socially and economically disadvantaged small business concerns. Federal Acquisition Regulation (FAR) § 19.805 and 13 C.F.R. § 124.311 (1992) provide for and govern competitively awarded contracts set aside for section 8(a) qualified concerns. Macro Serv. Sys., Inc., B-246103; B-246103.2, Feb. 19, 1992, 92-1 CPD ¶ 200.

²The subcriteria within the management and quality control technical evaluation subcriteria have not been included here as they are not relevant to the resolution of the protest.

and best and final offers (BAFOs) received and evaluated. Main's technical proposal received 79 out of 100 possible points with its BAFO receiving a total weighted score of 80.32 points (*i.e.*, technical (79), Management (80), and Quality Control (85)), at a total price of \$10,506,115. Premier's technical proposal received 67 points with its BAFO receiving a total weighted score of 69.79 points (*i.e.*, technical (67), Management (76), and Quality Control (68)), at a total price of \$8,266,725. The third offeror received a total score between that of Main and Premier.

The agency determined that Main's proposal offered the best overall value to the government based on technical and price considerations. Main was determined by SBA to be eligible for award under the section 8(a) program and qualified to perform the contract. The agency subsequently made award to Main under the section 8(a) procedures.

Premier generally protests that the evaluation of its proposal was unreasonable. The evaluators found Premier's technical proposal did not show a clear understanding of the procedures and standards for performing custodial services in a hospital environment. The evaluators found, for example, that Premier's proposal was unacceptable or incomplete with regard to the procedures for wall washing, floor cleaning, equipment cleaning, use of disinfectant, dust mopping, wet mopping, waste disposal, cleaning of the hospital entrance, and cleaning of occupied patient rooms. The evaluators concluded that because of these and other identified deficiencies, the risk of nosocomial infections would be increased to an unacceptable level.¹ Although the protester was provided with complete evaluation documentation under a protective order, it has not responded to the agency's evaluation concerns, and, based on our review, we have no basis on which to conclude that the agency acted unreasonably in its evaluation of this aspect of Premier's proposal. See Teltara, Inc., B-244930, Nov. 29, 1991, 91-2 CPD ¶ 510.

Premier protests that the agency acted improperly in considering the experience of Main's large business subcontractor in evaluating the awardee's proposal under the RFP's evaluation subcriterion "technical experience." The protester contends that the score of the awardee under this evaluation subcriterion actually applies to Main's proposed subcontractor, and that Main's favorable score is unreasonable because Main itself does not possess experience in the provision of hospital housekeeping/custodial services as sought here. The protester adds that the consideration of

¹Nosocomial infections are infections acquired by patients during their hospitalization.

the large business subcontractor's experience in the evaluation process "does not comply with . . . the nature of an 8(a) set-aside."

An agency may consider an offeror's subcontractor's experience under relevant evaluation factors where the RFP allowed for the use of subcontractors to perform the contract and did not prohibit the consideration of subcontractor's experience in the evaluation of proposals. George A. and Peter A. Palivos, B-245873.2, Mar. 16, 1992, 92-1 CPD ¶ 286; Commercial Bldg. Serv., Inc., B-237865.2, B-237865.3, May 16, 1990, 90-1 CPD ¶ 473 (experience of a large business subcontractor was properly considered in evaluation of offeror's proposal submitted in response to solicitation set-aside for small businesses). Based on our review of the record, the agency acted properly in considering the experience of Main's subcontractor in evaluating Main's proposal under the technical experience subcriterion. In any case, this contention only relates to the least important technical subcriterion--technical experience--and Premier does not contest, in any depth, any other aspects of the evaluation of Main's proposal.

The protester's allegation that the agency's consideration of the large business subcontractor's experience does not comply with the "nature" of an 8(a) set-aside basically relates to the awardee's eligibility for award under the 8(a) program. We previously dismissed Premier's protest that Main was ineligible under the section 8(a) program by virtue of its relationship with its large business subcontractor. Premier Cleaning Sys., Inc., B-249179.3, July 27, 1992, 92-2 CPD ¶ 51. As explained in that decision, SBA, not our Office, has conclusive statutory authority to determine a firm's eligibility for federal procurements under the 8(a) program, which cannot be challenged by a program participant or any other party.

Premier argues generally that the agency unreasonably selected Main for award in light of that firm's higher price. In a negotiated procurement, the government is not required to make award to the firm offering the lowest price unless the RFP specifies that price will be the determinative factor. Network Sys. Solutions, Inc., B-246555, Mar. 19, 1992, 92-1 CPD ¶ 294. As noted previously, the RFP here stated that "(q)uality is weighted substantially more important than price." Under such circumstances, agency officials have broad discretion in determining the manner in which they will make use of the technical and cost evaluation results. Institute of Modern Procedures, Inc., B-236964, Jan. 23, 1990, 90-1 CPD ¶ 93. Award to a higher rated, higher cost offeror is proper where the selection official reasonably determines that the cost premium involved is justified, considering the technical superiority

of the selected offeror's proposal, Stewart-Warner Elecs. Corp., B-235774.3, Dec. 27, 1989, 89-2 CPD ¶ 598.

The agency found that Main's proposal was technically superior to the protester's, with Main's proposal receiving a score of 80.32 out of 100 possible points and Premier's proposal receiving 69.79 points. The agency found that the awardee's methodology "assures good understanding of the requirements and will result in limited technical risk." In contrast, as explained previously, the agency determined that the protester's proposal did not show a clear understanding of the procedures and standards for performing housekeeping/custodial services in a hospital environment, and identified a number of areas in Premier's proposal that were either unacceptable or incomplete. The agency found that Premier's lack of understanding was reflected in its low price and manning levels. As discussed above, the protester did not show that Main's proposal was improperly overrated or Premier's proposal underrated. Given the technical disparity between Main's and Premier's proposals, which Premier has not successfully challenged, the selection official's determination that Main's technically superior proposal was worth the higher cost was reasonable. Network Sys. Solutions, Inc., supra.

The protest is denied.

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for James F. Hinchman
General Counsel