



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

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Pietrovi, 46
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Decision

Matter of: Sturm, Ruger & Company, Inc.

File: B-250193

Date: January 14, 1993

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DIGEST

In a negotiated "best value" procurement, in which technical considerations were stated to be more important than price, the agency's source selection of the awardee's proposal that had a higher technical point score, but which was significantly higher-priced than the protester's technically acceptable proposal, is unreasonable where the agency did not consider the offerors' proposed prices or consider whether the awardee's higher technical point score reflected any actual technical superiority that was worth the price premium.

DECISION

Sturm, Ruger & Company, Inc. protests the award of a contract to SIGARMS Inc., under request for proposals (RFP) No. RFP-WASO-92-024, issued by the National Park Service, Department of the Interior, for semi-automatic pistols. Ruger contends that the agency's source selection decision was not in accordance with the stated solicitation evaluation scheme or applicable law.

We sustain the protest.

The RFP contemplated the award of a fixed-price contract for 2,500 semi-automatic, double action,¹ .40 caliber pistols with an option to purchase an additional 500 pistols.

¹"Double action" is a mode of operation that permits the trigger to cock and fire the pistol.

The Park Service intends to make the .40 caliber pistols the standard side-arm for its park rangers. Detailed specifications and requirements were stated for the pistols, including that the pistols be current production models and have a minimum barrel length of 4 inches.

Offerors were informed that "[a]ward [would] be made to that offeror, (a) whose technical proposal is acceptable and (b) whose technical/cost proposal relationship is most advantageous to the [g]overnment; and (c) who is considered to be responsible." Technical factors were said to be more important than price, although price could become the determining factor where proposals were found to be technically equal. Offerors were also informed that "no award [would] be made based on superior technical capability when the offeror's proposed price is considered unreasonable or when the additional cost to the [g]overnment is not justified by the advantages of an award based on technical superiority." The RFP listed the following technical evaluation factors in descending order of importance:

1. Understanding of the statement of work and soundness of technical approach
2. Field test
3. Offeror's qualifications and resources
4. Offeror's responsibility and past performance
5. Schedule commitment

Besides technical and cost proposals, offerors were required to supply samples of their offered pistols, which the RFP stated would be subjected to a field test that would "include, but not be limited to: tests for accuracy, reliability, ease of handling, dimensional considerations, safety of operation, and safety when being carried, ease of field stripping and cleaning, and loading and unloading procedures."

The Park Service received five proposals, including offers from Ruger and SIGARMS. After evaluation of initial proposals and field tests, discussions were conducted with all

offerors and best and final offers received. Final evaluation results for Ruger² and SIGARMS were as follows:

	<u>Technical</u> (100 pts max)	<u>Price</u>
SIGARMS	94	\$1,366,550
Ruger (Offer A) ³	89	717,012
Ruger (Offer B)	89	768,012

SIGARMS and Ruger received identical, perfect point scores for all technical evaluation factors other than the second most important field test evaluation factor. For that factor, SIGARMS's pistol received a 5-point higher score (19 points out of the 25 points available, as compared to Ruger's 14 points).⁴ Both firms' proposals were found to be technically acceptable. The contracting officer reviewed the evaluation documentation and selected SIGARMS for award, as the offeror whose proposal had the highest technical point score. Award was made to SIGARMS on August 24, 1992, and this protest followed.⁵ Performance of SIGARMS's contract has been suspended pending our decision in this matter.

Ruger protests that the Park Service improperly did not consider the firms' proposed prices in making its source selection. Ruger argues that if proposed prices were considered in a rational cost/technical tradeoff, it would be entitled to award, given its close technical ranking to that of SIGARMS and its more than 43 percent lower price.

²Ruger and another offeror had the second highest technical point score, and Ruger offered the lowest price.

³Ruger offered two slightly different pistol models for evaluation, as permitted by the RFP. While the agency's evaluators noted some differences between the two models in the field test, the two models ultimately received identical technical evaluation point scores.

⁴There were no discussions with any of the offerors concerning the results of the field test evaluation.

⁵Portions of the protest record are subject to a General Accounting Office protective order to which counsel for Ruger has been admitted. Our decision, which is based upon protected, confidential information, is necessarily general.

The Park Service contends that the contracting officer considered price in her selection decision but admits that no formal cost/technical tradeoff analysis was done. Specifically, the contracting officer states that acquisition of the pistols concerns the safety of park rangers who will rely on the weapons and that since she could not "put a price tag on human life," she was unable to perform a cost/technical tradeoff. That is, the contracting officer explains, it was impossible to establish at what level a firm's proposed lower price would override a higher technical ranking in the contracting officer's best value determination. The contracting officer also states that:

"The requirement to perform a cost/technical tradeoff is required when the offers have essentially equal technical merit. The source selection official has the responsibility of determining whether the offers have essentially equal technical merit and as that official I reviewed all of the documentation and made the determination to award (in accordance with the requirements of the RFP) to the offer(or) with the highest technical score."

We disagree with the agency's contention that cost or price need only be considered in "best value" selection determinations where technical proposals are found to be essentially technically equal. See Wyle Labs., Inc.; Latecoere Int'l, Inc., 69 Comp. Gen. 648 (1990), 90-2 CPD ¶ 107; Latecoere Int'l, Inc.--Advisory Opinion, B-239113.3, Jan. 15, 1992, 92-1 CPD ¶ 70. The Competition in Contracting Act of 1984 (CICA) requires that the government consider cost or price in all its selection decisions. 41 U.S.C. § 253b(d) (1988). Moreover, the RFP informed offerors that "award [would] be made to that offeror . . . whose technical/cost proposal relationship is most advantageous to the [g]overnment" and specifically conditioned an award to a higher-priced, higher-rated offeror upon a finding that "the additional cost to the [g]overnment is . . . justified by the advantages of an award based on technical superiority." Accordingly, the agency was required to consider both the offerors' proposed prices and relative technical merits in determining which offeror was the most advantageous to the government. Stated another way, the contracting officer must determine whether Ruger's substantially lower-priced, technically acceptable proposal was the more advantageous to the government.

The record establishes that the contracting officer did not consider the firms' proposed prices in making her selection determination, as required by applicable law.⁶ The contracting officer readily admits that the basis for award was SIGARMS's highest technical point score, and there is no documentation or evidence in the record--despite the agency's several opportunities to respond to this protest issue--that shows that Ruger's low offered price was considered in the contracting officer's selection decision. While the agency argues that offered prices were considered (albeit not "formally"), it does not state how price was evaluated, other than to assert that SIGARMS's price was below the government's estimate and is reasonable. The statutory requirement to consider offerors' proposed prices in an agency's selection determination is not satisfied by the agency's determination that all proposed prices are reasonable, because a price reasonableness determination accords no relative weight to price in determining which offer represents the best value to the government. In addition, there is no exception to the statutory requirement that cost/price be considered in all procurements, even where the item being procured is critical to human safety. See, e.g., Wyle Labs., Inc.; Latecoere Int'l, Inc., supra; Latecoere Int'l, Inc.--Advisory Opinion, supra (procurement of high gravitational force centrifuge to train pilots).

The contracting officer also did not consider whether SIGARMS's 5-point higher technical score reflected any actual significant technical superiority that "could outweigh Ruger's substantial price advantage. An agency's acceptance of a higher-priced, higher-rated offer over a lower-priced, technically acceptable offer, in a best value procurement, should be supported by a specific, documented determination that the technical superiority of the higher-priced offer warrants the additional cost involved, even where, as here, cost is stated to be the least important factor. See System Development Corp., B-213726, June 6, 1984, 84-1 CPD ¶ 605.

Here, the 5-point spread reflected only the two firms' relative scoring under the second most important technical evaluation factor--the field test, which was worth 25 percent of the total available technical points.⁷ While

⁶As suggested above, it appears that the contracting officer misapprehended applicable law, believing that such a trade-off was only necessary if technical proposals were found to be technically equal.

⁷Evaluators, during the first phase of the field test, numerically scored the offered pistols for 20 elements of the weapon's handling, accuracy, reliability, safety, field (continued...)

the record indicates that SIGARMS's slightly higher technical point score in the field tests reflected the evaluators' subjective judgment that SIGARMS's pistol was relatively better than Ruger's, this does not in itself demonstrate that SIGARMS's proposal was technically superior to Ruger's in any significant way. Rather, from our review of the record, we find that major complaints were noted in the field test for both pistols concerning their triggers and how it affected accuracy and ease of handling. Moreover, the only real discriminator between the pistols, at least in the first phase of the field test, was assembly and disassembly, which is a factor that seems far less related to the human safety issues--which the contracting officer stated guided her selection decision--than other stated factors, such as accuracy, reliability and ease of handling. In contrast, there appears to have been little or no consideration of the number of malfunctions recorded for each firm's weapon, even though Ruger's pistol had significantly fewer malfunctions than SIGARMS's and even though this would appear to be an important element of several of the stated subfactors for which the weapons would be tested, e.g., reliability or safety of use.⁷ In sum, the field test results, as documented in this record, are unclear as to the extent that SIGARMS's proposal was technically superior to Ruger's, and there is no explanation of a basis on which the contracting officer concluded that the superiority was significant enough to justify SIGARMS's substantially higher price.

Our review of the record has disclosed other potential problems in the evaluation of proposals. Specifically, SIGARMS proposed a pistol whose barrel length was shorter

⁷(...continued)

stripping and cleaning, and loading and unloading. Ruger complains that these 20 elements were undisclosed evaluation subfactors. We disagree. Agencies are not required to specifically identify each element to be considered during the course of an evaluation where a particular not specifically identified element is intrinsic to the stated factors or subfactors. Marine Animal Prods. Int'l, Inc., B-247150.2, July 13, 1992, 92-2 CPD ¶ 16. Here, the RFP informed offerors of those subfactors for which the pistols would be field tested, and the 20 elements are intrinsic to these stated factors.

⁸There were nearly twice as many malfunctions recorded in the first phase of the field test for SIGARMS's pistol as for either of Ruger's offered pistols. The evaluation documentation does not record malfunctions for any of the offerors' weapons in the second phase.

than the 4-inch minimum length required by the RFP.⁹ One of the stated subfactors under the most important technical evaluation factor was compliance with all of the RFP's requirements and statement of work. We see no reasonable basis for the perfect evaluation score SIGARMS received for compliance with all the RFP's requirements, given the firm's failure to satisfy the mandatory minimum barrel length requirement.¹⁰ See J.M. Cashman, Inc., B-233773, Apr. 14, 1989, 89-1 CPD ¶ 380.

In sum, we sustain Ruger's protest because we find that the contracting officer did not consider the offerors' proposed prices in her selection determination, as required by CICA, nor consider, in determining which offeror's proposal was most advantageous to the government, whether SIGARMS's technical point score advantage reflected actual technical superiority that outweighed Ruger's nearly \$600,000 price advantage.¹¹ See Wyle Labs., Inc.; Latecoere Int'l, Inc., supra; Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 CPD ¶ 325 (cost/technical tradeoffs may be made where rational and in accordance with the stated evaluation scheme).

We recommend that the agency document a reasoned source selection determination that, in accordance with this decision, considers the relative merits of the offerors' technical proposals and considers the offerors' proposed prices to determine which offer is the most advantageous to the government.¹² If an offeror other than SIGARMS is found to be entitled to award, the Park Service should terminate SIGARMS's contract for the convenience of the government and make award to that offeror. We also find that Ruger is

⁹This issue was not raised or briefed by the parties during the protest; accordingly, we decline to comment on its significance or whether it renders SIGARMS's proposal unacceptable.

¹⁰Some of the evaluators noted SIGARMS's barrel length discrepancy but, without explanation, gave SIGARMS a perfect technical score for compliance with the RFP's requirements.

¹¹The difference between the firms' proposed prices is greater--nearly \$650,000--if Ruger's less expensive offered model is considered.

¹²In assessing the relative merits of the offerors' technical proposals, the agency should consider the significance of SIGARMS's apparent deviation from the RFP's mandatory dimensional requirements.

entitled to its costs of filing and pursuing the protest, including reasonable attorneys' fees. 4 C.F.R. § 21.6(d)(1) (1992). Ruger should submit its certified claim for its protest costs directly to the agency within 60 working days of receipt of this decision. 4 C.F.R. § 21.6(f)(1).

The protest is sustained.

for Milton L. Jester
Comptroller General
of the United States