

Lebowitz 148457



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

Decision

Matter of: Atlantic Scaffolding Company

File: B-250380

Date: January 22, 1993

Peter P. Vrettakos for the protester.
Sherry K. Kaswell, Department of the Interior, 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. Protest challenging the solicitation's stated evaluation criteria is dismissed as untimely where the matter, involving an alleged solicitation impropriety, was not protested prior to the closing time for receipt of initial proposals.
2. Award to a technically superior, higher priced offeror was reasonable and represented the most advantageous offer to the government in accordance with the solicitation's stated evaluation criteria where the agency reasonably determined that despite the awardee's higher price, the awardee's proposal was technically superior to the protester's proposal and offset the protester's lower price.

DECISION

Atlantic Scaffolding Company protests the award of a contract to Universal Builders Supply, Inc. (UBS) under request for proposals (RFP) No. 1443RP300092902, issued by the Department of the Interior for the furnishing of all-aluminum scaffolding at the Jefferson Memorial. We deny the protest.

The RFP, issued on April 2, 1992, contemplated the award of a firm, fixed-price contract for the furnishing of stationary, all-aluminum scaffolding¹ at the portico and

¹Except for connectors/fasteners, which the RFP provided could be made of either stainless steel or electroplated steel, the components of the scaffolding system were required to be all-aluminum.

statuary chamber of the Jefferson Memorial in order to provide access for the visual survey and inspection of the stones of the monument's interior dome and portico vaulted ceiling; for the design of safety netting to be installed over cracked volutes; and for the design and installation of temporary lighting to illuminate the statue of Thomas Jefferson. The specifications in the RFP provided that "no substitutions [would] be permitted" for the all-aluminum scaffolding.

The RFP listed in descending order of importance the following technical evaluation factors: (1) qualifications and experience of the prime contractor and subcontractors, (2) qualifications and experience of the key personnel of the prime contractor and subcontractors, and (3) qualifications and experience of the prime contractor and subcontractors to schedule and manage the work required by the RFP. For each technical evaluation factor, the RFP listed in descending order of importance the following technical evaluation subfactors: (1) qualifications and experience with aluminum scaffolding spanning distances and meeting statue view parameters as outlined in drawings and specifications, (2) qualifications and experience with aluminum scaffolding to provide access to unique dome and vaulted ceilings, (3) qualifications and experience with erection and dismantling of aluminum scaffolding and protection of the public in highly visible and visited public access areas, and (4) qualifications and experience with erection and dismantling of aluminum scaffolding and protection of the architectural fabric on National Register/National Landmark Properties. The RFP required firms to address in their respective technical proposals all technical evaluation factors and subfactors.

The RFP stated that the award would be made to the most advantageous offeror considering technical evaluation factors and price. In making the award determination, the RFP stated that technical evaluation factors were of greater importance than price and that only where proposals were judged substantially equal in technical merit would price become the controlling factor.

Several firms, including the protester and UBS, submitted initial proposals by the closing time for receipt of proposals on May 20. The agency included in the competitive range the initial proposals of the protester (rated marginally acceptable), UBS (rated technically acceptable with clarification), and two other firms (each rated marginally acceptable). Following written and oral discussions with the competitive range offerors, the agency requested the submission of best and final offers.

The protester submitted the second highest technically rated proposal which was considered to be above-average in most features. The agency found that while the protester and its personnel had considerable steel scaffolding experience, the protester and its personnel lacked experience using all-aluminum scaffolding in dome and portico architectural configurations. The agency noted that the protester's only experience with all-aluminum scaffolding was its current contract with the agency for furnishing all-aluminum scaffolding at the Lincoln and Jefferson Memorials, which the agency noted has been less than satisfactory. Primarily because of the protester's lack of relevant all-aluminum scaffolding experience, the agency did not give the protester's proposal a superior rating.² The protester submitted a price of \$930,845. In contrast, UBS submitted the highest technically rated proposal which was considered technically superior. The agency found that UBS had extensive experience with all-aluminum scaffolding in dome and portico configurations. UBS submitted a price of \$1,080,224. On September 8, the agency awarded a contract to UBS because its proposal was determined to represent the most advantageous offer to the government. On September 17, the protester filed this protest with our Office.

The protester, which has extensive experience in erecting steel scaffolding, essentially argues that the technical evaluation factors and subfactors placed too much emphasis on an offeror's experience and qualifications in erecting all-aluminum scaffolding. The protester believes that since it submitted a lower price, it should have received the award as the most advantageous offeror.

Here, the specifications in the RFP clearly stated that only all-aluminum scaffolding could be used in performing the contract and the RFP's stated evaluation criteria focused on an offeror's experience and qualifications in furnishing all-aluminum scaffolding to provide access to dome and portico configurations. Thus, to the extent the protester is challenging the RFP's stated evaluation criteria as restrictive of competition because the agency's emphasis in the evaluation on specific all-aluminum scaffolding experience and qualifications effectively would result in the discounting of other types of scaffolding experience and qualifications, for example, steel scaffolding experience and qualifications, this matter, which involves an alleged solicitation impropriety, is dismissed as untimely. Our Bid

²The record shows that the protester's lack of all-aluminum scaffolding experience at National Register/National Landmark Properties was identified as a weakness during discussions.

Protest Regulations require that protests based upon alleged improprieties in a solicitation which are apparent prior to the closing time for receipt of initial proposals must be filed prior to the closing time. 4 C.F.R. § 21.2(a)(1) (1992); Engelhard Corp., B-237824, Mar. 23, 1990, 90-1 CPD ¶ 324. Here, the protester's allegation concerning the RFP's stated evaluation criteria, filed after award, is clearly untimely.

Where, as here, the RFP does not provide for award on the basis of the lowest price, technically acceptable proposal, an agency has the discretion to make the award to an offeror with a higher technical score and higher price where it reasonably determines that the price premium is justified considering the technical superiority of the awardee's proposal and the result is consistent with the evaluation criteria. Technical Evaluation Research, Inc., B-247200, May 1, 1992, 92-1 CPD ¶ 411.

The record shows that, consistent with the RFP's stated evaluation criteria, past experience and qualifications in erecting all-aluminum scaffolding at National Register/National Landmark Properties, particularly those with dome and portico configurations,³ was the critical consideration in the agency's selection of the most advantageous offeror. Concerning the protester, the agency rated its technical proposal as above-average. The agency recognized that the protester and its personnel had extensive and strong experience in furnishing steel scaffolding for significant historical structures. However, the agency found that the protester and its personnel lacked experience and qualifications in all-aluminum scaffolding in dome and portico configurations, and failed to demonstrate in its proposal an understanding of the special characteristics of all-aluminum scaffolding (for example, because of its lighter weight, all-aluminum scaffolding is more susceptible to wind and other environmental conditions and therefore requires special design planning). Although the protester had a current contract at the Lincoln and Jefferson Memorials for all-aluminum scaffolding, the agency determined that the protester's performance to date had been less than satisfactory and did not include dome and portico

³There is no dispute in the record that the erection of scaffolding for dome and portico configurations involves different considerations than those encountered in the erection of scaffolding for use against a flat surface.

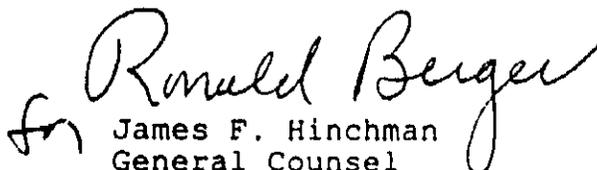
configurations.⁴ The agency found that while the protester's subcontractor had extensive experience in furnishing all-aluminum scaffolding, the subcontractor lacked experience in dome and portico configurations, and the protester did not clearly address through its management plan how the subcontractor's all-aluminum scaffolding experience would be used under the contract. For example, the foreman with strong aluminum scaffolding experience was not given site control and the division of responsibilities between the project manager and site foreman was never clearly defined. Also, the agency found that the protester's plan for design and fabrication of aluminum components was weak because of a lack of clearly defined management responsibilities. The agency did find that the protester provided a detailed plan for protecting the Jefferson statue and that the protester furnished the best plans for unobstructed public access at the memorial and for interior lighting. The agency also determined that the protester was strongly committed to safety and understood the problems associated with working in a limited staging area. We find this evaluation was reasonable and consistent with the RFP's stated evaluation criteria.

Concerning UBS, we find that the agency reasonably evaluated its technical proposal as superior. Specifically, in contrast to the protester's proposal, the agency found that UBS' proposal clearly demonstrated its strong past experience in furnishing all-aluminum scaffolding in dome and portico configured National Register/National Landmark Properties. The agency noted that UBS was the only firm that had actually completed an all-aluminum scaffolding project at a dome-configured structure and that UBS, in its

⁴For example, in its report, the agency states that at the Lincoln Memorial, a scaffolding tower erected by the protester overturned and caused damage to the memorial. The agency also states that the protester was required to re-engineer scaffolding configurations due to inaccurate dimension measurements; the protester took weeks to correct bent caster wheels on a movable section of scaffolding; and the protester did not focus on safety requirements. In its comments to the agency report, the protester states that the scaffolding tower overturned on an evening with unusually high wind velocities and that the overturned scaffolding tower did not damage the memorial. Since the current RFP requires that the all-aluminum scaffolding withstand wind velocities similar to those encountered on the evening when the protester's scaffolding tower overturned, in our view, the agency could reasonably consider the incident of the overturned scaffolding tower and the other performance problems specifically cited by the agency but not rebutted by the protester.

management plan, showed in-house personnel experienced in aluminum scaffolding projects who would have clearly defined roles in this project, UBS also showed in its proposal that it possessed the capability to shorten fabrication and erection time which would ensure that performance schedules would be met. The agency determined that UBS' proposal strongly demonstrated a sensitivity to protecting the memorial's historic architectural appearance and that UBS offered a superior plan for protecting the Jefferson statue. The agency also determined that UBS demonstrated in its proposal its understanding of the need to protect contractor personnel and the public. The agency found that UBS offered an acceptable plan for unobstructed public access to the Jefferson statue and that it provided a plan for interior lighting. The agency determined that UBS clearly understood the complexities of working in a limited staging area with continued public access.

Based on our review of the record, we find that the agency reasonably determined that UBS' proposal was superior to the proposal offered by the protester and that UBS' technical superiority offset the protester's lower price. The record shows that UBS demonstrated in its proposal significantly more relevant experience and a better management plan for providing the all-aluminum scaffolding for the specific work at the Jefferson Memorial. We think that it was reasonable for the agency to conclude that UBS' proposal was worth the price premium of approximately \$149,000. Thus, we find that the agency's award to UBS was proper.⁵


for James F. Hinchman
General Counsel

⁵Initially, the protester also alleged that UBS had participated in the preparation of the specifications and had engaged in monopolistic practices. The agency rebutted these arguments in its agency report. The protester, in its comments to the agency report, did not address these issues. Therefore, we deem these issues to be abandoned. See Heimann Sys. Co., B-238882, June 1, 1990, 90-1 CPD ¶ 520.