



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

Decision

Matter of: Patent Scaffolding Company

File: B-250380.2

Date: February 22, 1993

Russel S. Swanger, Esq., for the protester.
Sherry K. Kaswell, Esq., and Justin P. Patterson, Esq.,
Department of the Interior, for the agency.
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of the General Counsel, GAO, participated in the preparation
of the decision.

DIGEST

The agency reasonably evaluated the protester's low priced proposal as technically unacceptable in accordance with the solicitation's stated evaluation criteria and reasonably awarded a contract to the technically superior, higher priced offeror whose proposal represented the most advantageous offer to the government.

DECISION

Patent 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 scaffolding at the portico and statuary chamber of the Jefferson Memorial in order to provide access for the visual survey and inspection of the 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. Except for connectors/fasteners, which the RFP provided could be made of either stainless steel or electroplated steel, the specifications in the RFP required that the components of the scaffolding system--sections, plates, bars, tubing, fittings, platforms, and stairs--be made of all-aluminum. 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 superior with clarification), and two other firms (rated marginally acceptable). With respect to the protester, the agency found several weaknesses in its initial proposal. The evaluators determined that the firm demonstrated general scaffolding experience, but did not demonstrate relevant experience in erecting all-aluminum scaffolding; that the firm proposed a combination of aluminum and plywood platforms for this project which did not conform to the specifications in the RFP; that the firm did not detail its plans for hoisting the scaffolding; and that the firm failed to completely describe its proposed scaffolding system. By letter dated June 29, the agency conducted written discussions with the protester, asking questions which corresponded to the perceived weaknesses in its initial proposal, including requests that the protester clarify its prior all-aluminum scaffolding experience; whether all

components of its proposed scaffolding system were all-aluminum; its procedure for lifting scaffolding components into place; and its proposed scaffolding system, including a description of how the scaffolding system would be placed on the floor and the contact with the memorial's architectural fabric.

On July 13, the protester participated in oral discussions with the agency during which the parties discussed the various technical matters which were the subject of written discussions. The protester provided photographs and verbal explanations of prior completed scaffolding projects. The protester also explained blueprint drawings of its proposed scaffolding system, including drawings showing the use of plywood deck platforms over horizontal, ladder-like aluminum crossbars at various levels from the statuary chamber to the dome.

Following written and oral discussions with each competitive range offeror, by letters dated July 14, the agency requested the submission of best and final offers (BAFO) by July 23. The protester timely submitted its BAFO. While evaluating BAFOs, the agency realized that it had not allowed sufficient time for project completion. On July 30, the agency issued amendment No. 0003 which expanded the project completion time from 365 to 572 days. By letter dated July 30, the agency sent to each competitive range offeror a copy of the amendment and requested that each firm submit a second BAFO by August 6. In its letter to the protester, the agency asked the protester to clarify "if [its] system can be a complete aluminum system. In particular, can screwjacks, baseplates, and other hardware be fabricated from aluminum?" On August 5, the protester submitted its second BAFO and stated that "[it could] supply the majority of the metal components [screwjacks, base plates, top plates, and assorted hardware] in aluminum"

After the evaluation of second BAFOs, the agency concluded that the protester's proposal was below-average in most features. For example, the agency found that the protester and its personnel had considerable experience in erecting combination aluminum and non-aluminum scaffolding for historic, generally flat surfaced structures, but the protester did not clearly demonstrate its experience in erecting all-aluminum scaffolding systems for historic dome and portico configured structures. The agency found that although the protester offered a level platform from the statuary chamber to the portico for the protection of the Jefferson statue during the visual survey and inspection work, considered a positive feature of the protester's proposal, this platform was a combination of aluminum and plywood which deviated from the specification requirement in

the RFP which called for all-aluminum deck platforms. The agency also found that the protester failed to describe in its proposal how it would protect the Jefferson statue while the scaffolding was being erected. For these reasons,¹ the agency found the protester's proposal technically unacceptable, giving its proposal the lowest technical rating. The protester submitted the low price of \$532,758. In contrast, the agency considered UBS's proposal technically superior and its proposal received the highest technical rating. The agency found that UBS had extensive experience with all-aluminum scaffolding in historic dome and portico configured structures and that it offered an all-aluminum scaffolding system for this project. 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 October 5, the protester received a debriefing from the agency. On October 16, the protester filed this protest with our Office.

The protester argues that the agency improperly evaluated its proposal in the areas involving relevant all-aluminum scaffolding experience, erection of an all-aluminum scaffolding system, and plans for protecting the Jefferson statue during the scaffolding erection process. The protester believes that since it submitted a lower price, it should have received the award as the most advantageous offeror.

In reviewing protests against the propriety of an agency's evaluation of proposals, 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. Honolulu Marine, Inc., B-245329, Dec. 27, 1991, 91-2 CPD ¶ 586; Research Analysis and Maintenance Inc., B-239223, Aug. 10, 1990, 90-2 CPD ¶ 129; Institute of Modern Procedures, Inc., B-236964, Jan. 23, 1990, 90-1 CPD ¶ 93. Here, based on our review of the record, we conclude that the agency reasonably evaluated the protester's proposal in accordance with the RFP's stated evaluation criteria.

In this case, a critical consideration in the agency's evaluation of offerors was a firm's past experience and qualifications in erecting all-aluminum scaffolding at National Register/National Landmark Properties, particularly

¹The agency also had concerns with the protester's placement of a temporary access ramp at the project site. The record shows, however, that the protester's placement of this ramp did not have a significant effect on the overall evaluation of its proposal.

those with dome and portico architectural configurations.² The record shows that the protester provided photographs and verbal explanations of prior completed scaffolding projects, for example, scaffolding projects involving water tanks at the Kennedy Space Center, outdoor sites at the 1988 Calgary Winter Olympics, and a carousel at a California plaza. While these three projects apparently involved the erection of all-aluminum scaffolding, the record shows that these projects did not involve scaffolding for historic dome and portico configured structures. The record also shows that the protester provided photographs of completed combination aluminum and non-aluminum scaffolding projects for generally flat surfaced structures at the National Archives, the United States Capitol, the National Aeronautics and Space Administration's Deep Space Network 70-meter antenna extension project, and an unidentified modern, dome-type structure.

Based on our review of this information, we believe the agency reasonably determined that to the extent the protester had all-aluminum scaffolding experience, this experience was limited and did not involve historic dome and portico configured structures. Further, we believe the agency reasonably determined that to the extent the protester had scaffolding experience involving historic structures, this experience involved the erection of scaffolding for generally flat surfaced structures and did not exclusively involve all-aluminum scaffolding. Therefore, in accordance with the RFP's stated evaluation criteria, we find that the agency reasonably downgraded the protester for its lack of all-aluminum scaffolding experience at historic dome and portico configured structures.³

²To the extent the protester challenges as restrictive of competition the RFP's stated evaluation criteria concerning a firm's past experience and qualifications in erecting all-aluminum scaffolding in historic dome and portico configured structures, its allegation is untimely since the matter involves an alleged solicitation impropriety which was not protested prior to the May 20, 1992, closing time for receipt of initial proposals. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1992); Atlantic Scaffolding Co., B-250380, Jan. 22, 1993, 93-1 CPD ¶ ____.

³Contrary to the protester's assertion, the record shows that the agency did consider the photographs and verbal information provided by the protester during oral discussions even though the protester did not reduce this information to writing in either of its BAFOs.

In its evaluation, the agency also emphasized a firm's commitment to erect an all-aluminum scaffolding system and a firm's ability to protect the Jefferson statue not only during the visual survey and inspection work, but also during erection and dismantling of the scaffolding.

The record shows that the protester proposed to use plywood deck platforms over horizontal, ladder-like aluminum crossbars at various levels from the statuary chamber to the dome. The record shows that the agency found that a solid platform over the Jefferson statue was a positive feature of the protester's proposal, but the protester's use of plywood deck platforms was deemed unacceptable in light of the specification requirement for all-aluminum deck platforms, which were specifically listed in the RFP as components of the scaffolding system. The record also shows that although the protester explained during discussions how the Jefferson statue would be protected once the scaffolding was erected, the protester failed to ever explain in its proposal how the statue would be protected during the scaffolding erection process itself.

Based on this record, we find that the agency, in accordance with the RFP's stated evaluation criteria, reasonably downgraded the protester because it failed to propose an all-aluminum scaffolding system, a deviation from a material solicitation requirement, and it did not explain in its proposal its plans for protecting the Jefferson statue during the scaffolding erection process. The protester states in its comments to the agency report that it offered during oral discussions to remove the plywood deck platforms. However, the record shows that the protester never addressed this matter in either BAFO following discussions and that as late as its second BAFO, the protester stated, in response to a further discussion question, that the majority of the metal components of its proposed scaffolding system would be aluminum, but omitted any reference to the platforms. Further, the record shows that not until the protester filed its comments to the agency report for this protest did it furnish any detailed written explanation of how it would protect the statue during the scaffolding erection process. Since agencies are required to evaluate proposals based on the content of the proposal itself, an offeror in a negotiated procurement must demonstrate within the four corners of its proposal that it is capable of performing the work upon the terms most

advantageous to the government. Northwestern Travel Agency, Inc., B-244592, Oct. 23, 1991, 91-2 CPD ¶ 353; William B. Hackett & Assocs., Inc., B-232799, Jan. 18, 1989, 89-1 CPD ¶ 6. Here, we find the protester failed to demonstrate its capability in its proposal.⁴

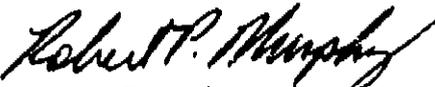
Therefore, we believe the agency reasonably judged the protester's proposal to be technically unacceptable because of its lack of relevant experience, its failure to offer an all-aluminum scaffolding design, and its failure to describe its plan for statue protection during scaffolding erection and, as such, the agency was not required, in making its award decision, to consider the protester's low price. ITT Federal Servs. Corp., B-250096, Jan. 5, 1993, 93-1 CPD ¶ ____.

Nevertheless, the agency's source selection document shows that the agency specifically found the awardee's proposal technically superior to the protester's proposal. In contrast to the protester's proposal, the record shows that the agency reasonably determined that UBS clearly demonstrated strong prior experience in furnishing all-aluminum scaffolding in historic dome and portico configured structures. The agency reasonably found that UBS was the only firm that had actually completed an all-aluminum

⁴In its comments to the agency report, the protester argues that prior to requesting a second BAFO, the agency should have afforded it another opportunity to resolve the agency's continuing concerns with its all-aluminum scaffolding experience, its plans for statue protection, and its furnishing of an all-aluminum scaffolding system. The record shows that the protester never challenged the adequacy of written and oral discussions prior to the agency's request that it submit its first BAFO. The record also shows that during these initial written and oral discussions, the agency questioned the protester concerning the firm's experience, the firm's procedures for erecting the scaffolding components, and whether all components of the firm's proposed scaffolding system were all-aluminum. We find that since the agency engaged in meaningful discussions, pursuant to Federal Acquisition Regulation § 15.610, on all of these matters prior to requesting the protester to submit its first BAFO, the agency was not required, prior to requesting a second BAFO, to notify the protester of these remaining deficiencies or to conduct successive rounds of discussions until these deficiencies were corrected. Culver Health Corp., B-242902, June 10, 1991, 91-1 CPD ¶ 556. We note, however, that prior to requesting a second BAFO, the agency again asked the protester to address whether its scaffolding system would be a complete aluminum system.

scaffolding project at a historic dome configured structure and that UBS, in its proposed management plan, showed in-house personnel experienced in aluminum scaffolding projects who would have clearly defined roles in this project. The agency also reasonably determined that UBS strongly demonstrated in its proposal a sensitivity to protecting the memorial's historic architectural appearance and that UBS offered a superior plan for protecting the Jefferson statue. Since 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 award the contract to UBS, the technically superior, higher priced offeror.

Accordingly, the protest is denied.


James F. Hinchman
General Counsel