



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Park Systems Maintenance, Inc.

File: B-252453; B-252453.2

Date: June 16, 1993

James C. Burkett for the protester.
James G. Campbell, Esq., Ogden Newell & Welch, for Josco Construction, Inc., an interested party.
Craig R. Schmauder, Esq., and Beth Kelly, Esq., Department of the Army, for the agency.
Catherine M. Evans, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging agency's technical evaluation of proposals is sustained where record supports protester's allegations that the agency downgraded protester's proposal for certain deficiencies but failed to downgrade awardee's proposal for similar deficiencies, and correction of evaluation defects could affect outcome of competition.

DECISION

Park Systems Maintenance, Inc. protests the U.S. Army Corps of Engineers' award of a contract to Josco Construction Company under request for proposals (RFP) No. DACW27-93-R-0027, for operation and maintenance services at Nolin River Lake, Brownsville, Kentucky. Park Systems alleges that the agency miscalculated its proposal and improperly concluded that Josco's higher priced proposal represented the best value to the government.

We sustain the protest.

The RFP, issued on December 10, 1992, contemplated award of an indefinite delivery, indefinite quantity contract for a base year and 3 option years, primarily for recurring maintenance tasks. Sixteen different categories of work, such as janitorial service, maintenance of landscaped areas, and application of pesticides, were described in the RFP's technical provisions. The RFP guaranteed a minimum of \$200,000 worth of work orders to be placed against the contract each year, with a maximum of \$600,000. Proposals were to be evaluated based on the following four criteria, listed in order of importance: (1) plan of operation,

(2) experience, (3) financial, (4) safety, and (5) price. The plan of operation factor was the most important, worth 50 of 100 available points; the experience and financial factors were worth 30 and 20 points, respectively. The safety and price factors were not point scored.

The Corps received six proposals in response to the solicitation; these were evaluated by a source selection board (SSB). Josco's proposal received the highest technical score, 96 of 100 possible points; Park Systems was ranked third with 76 points. As to price, Park Systems was low at \$2,363,960 for all 4 years; Josco was second low at \$2,631,644. As Josco's proposal was considered substantially superior to that of Park Systems, and was priced lower than all of the remaining proposals, the SSB concluded that there was no need to open discussions; it recommended award to Josco on the basis of the initial proposals, as provided for in the RFP. The contracting officer concurred with the SSB's recommendation, and awarded the contract to Josco on February 22, 1993.

Park Systems protested the award to our Office on February 23, essentially challenging the agency's decision to make award based on a higher priced proposal than its own, and alleging that the agency was biased in favor of Josco because of its status as the incumbent contractor. On February 24, the contracting officer conducted a telephone debriefing with Park Systems to explain the evaluation of the firm's technical proposal. Park Systems challenged the SSB's evaluation findings in a supplemental protest filed on February 26.

The agency has identified a number of specific areas in which it found Park Systems' technical proposal inferior to Josco's. Park Systems challenges each of the perceived deficiencies, alleging either that the agency misunderstood its proposal, or that Josco's proposal was similarly deficient. As discussed below, we find that the agency's determination that Josco's proposal was superior to Park Systems' proposal in certain areas was unreasonable.

PLAN OF OPERATION--PERSONNEL

Under the plan of operation evaluation factor, the RFP required offerors to identify and describe the qualifications and experience of key managerial personnel. It also required offerors to describe the experience of "all technical and trades personnel to be utilized to perform the work described in the contract." The SSB downgraded Park Systems' proposal under this subfactor because it did not identify any truck drivers. Park Systems asserts that the RFP did not require that truck drivers be identified, and that, in any case, Josco's proposal was not similarly

downgraded, even though it also failed to identify truck drivers. Park Systems concludes that its proposal should have been scored the same as Josco's with regard to the truck driver requirement.

The evaluation of proposals and the determination of their relative merits is primarily the function of the procuring agency; the agency is responsible for defining its needs and the best method of accommodating them, and must bear the burden of any difficulties resulting from a defective evaluation. Dimensions Travel Co., B-224214, Jan. 13, 1987, 87-1 CPD ¶ 52. In reviewing protests against allegedly improper evaluations, therefore, we examine the record only to determine whether the agency's judgment was reasonable and in accord with the evaluation criteria listed in the RFP. Taft Broadcasting Corp., B-222818, July 29, 1986, 86-2 CPD ¶ 125.

We agree with Park Systems that the agency's evaluation in this area was unreasonable. First, while the agency downgraded Park Systems' proposal for failing to identify a truck driver, the record shows that Josco's proposal should have been downgraded for the same reason. Although the agency asserts that Josco's proposal lists one individual who has truck driving experience, our review of the proposal reveals that this person is proposed as a grounds maintenance worker and carpenter, not as a truck driver; there is no indication in Josco's proposal that his duties would include driving a truck. Thus, it was unreasonable for the agency to give Park Systems a lower score than Josco in this area.

Second, with respect to the RFP requirement for providing quality control inspectors, the SSB downgraded Park Systems' proposal relative to Josco's because Park Systems proposed to assign "crew members" to perform required inspections in addition to their other responsibilities, while Josco proposed three full-time inspectors. While no points were deducted from Park Systems' proposal, Josco's score was increased based on the perceived superiority of its approach. Park Systems alleges that Josco in fact proposed to use inspectors who also had other duties, just as Park Systems did; it concludes that the two proposals should have received equivalent scores in this area.

The record supports Park Systems' position. Our review of Josco's proposal shows that the firm did not offer full-time inspectors, as the agency maintains it did. In this regard, Josco's proposal states that two specified individuals "will normally do quality control inspections, but in the event other duties require their time, other personnel familiar with the requirements will be available to do these inspections." One of the named individuals is Josco's

proposed site superintendent; in addition to quality control inspections, his job description includes management of personnel, equipment, and safety programs. The second individual is proposed as a contractor's representative and supervisor; his additional responsibilities include operation of the sewage treatment plants, pesticide applications, and filling in for the first individual when necessary. Park Systems' proposed inspection team, in comparison, appears virtually identical to Josco's. It includes the proposed site superintendent (the same individual proposed as Josco's superintendent) and one other individual who is responsible only for quality control inspections and supervision of cleaning and janitorial personnel. Park Systems' proposal also states that the sewage treatment plant operator would have some responsibility for inspections, just as Josco's does. Since Park Systems' proposed approach to staffing the inspection requirement was the same as Josco's, including the use of personnel with similar or identical responsibilities to perform the inspections, we conclude that there was no reasonable basis for awarding Josco more points in this area.

PLAN OF OPERATION--EQUIPMENT

Under the equipment subfactor, the RFP required offerors to list the types and amounts of equipment that would be used in performing the required work, as well as all of the equipment owned by the offeror. The SSB found that Josco proposed the "optimum" amount of equipment for mowing operations. While the amount of mowing equipment proposed by Park Systems was considered adequate, it was not considered optimal; Park Systems therefore received a lower score than Josco for this subfactor.

The record does not support the reasonableness of the agency's evaluation in this area. First, the agency has not explained what the "optimum" amount of mowing equipment is, or why the equipment that Park Systems proposed does not meet that standard while Josco's does. In fact, a review of Josco's proposal shows that Josco did not actually state what equipment it proposed to use in the mowing operations. In this regard, the only equipment list in Josco's proposal is one showing the equipment the company currently owns; nowhere does the proposal state that all of the listed mowing equipment will be used in the day-to-day mowing operations, or indicate which of the listed equipment will be used. Park Systems' proposal, on the other hand, provided a list of equipment that would be used in the mowing operations, as well as a list of mowing equipment the company owns.

It appears that the agency's evaluation was based on a comparison of the list of equipment Park Systems proposed for mowing operations to the list of mowing equipment that Josco owns. For example, Park Systems proposed to use five string trimmers and no riding mowers, while Josco listed eight string trimmers and two riding mowers in its possession; the agency's conclusion that Josco proposed the optimal amount of equipment appears to have been based on these and similar figures. If the agency had compared the list of equipment Josco owns to the list of equipment Park Systems owns, it should have arrived at a different conclusion. For example, while Josco's proposal indicated that the company owns two riding mowers, Park Systems' proposal showed a total of four; while Josco's proposal showed eight string trimmers, Park Systems' showed nine. In addition, Park Systems' proposal indicated that all of the listed equipment would be available for contract work. Since Park Systems' proposal thus was at least as advantageous as Josco's in this regard, we see no reasonable basis for the agency's assignment of a higher score to Josco's proposal under this subfactor.¹

PLAN OF OPERATION--QUALITY CONTROL

The RFP required offerors to include in their proposals a detailed and comprehensive quality control plan. The plan was to address seven separate areas, including on-site superintendence, inspection methods and procedures, identification of declining performance quality, and action to correct deficiencies and restore substandard performance. The SSB downgraded Park Systems' proposal because it found that Park Systems proposed an unreasonable length of time--up to 3 weeks--for correction of deficiencies, while Josco proposed to take immediate corrective action. Park Systems alleges that the SSB's conclusion was unreasonable, as its proposal in fact stated that performance problems would be addressed immediately. Park Systems also contends that its quality control plan actually deserved a higher score than Josco's because it was more specific than Josco's as to what types of corrective action would be taken and when.

Based on our review of the two proposals, we agree with Park Systems that the evaluation of the quality control plans was unreasonable. In general, Josco's plan was much less detailed than Park Systems', consisting of three paragraphs

¹In addition to its assertion that Josco offered the optimal amount of equipment, the agency asserted that Josco proposed "better" equipment. However, the agency has provided no explanation for this position, and none is apparent from the record. We therefore also do not consider this to be a valid basis for Josco's higher score.

in which each of the seven plan requirements was addressed only briefly, Park Systems' plan, in contrast, contained a separate, detailed section for each requirement. For example, Josco's proposal did not address the area of on-site superintendence, while Park Systems' proposal explained that a foreman would be assigned for each area of work, and that the foreman would report to the quality control manager each day. With respect to the requirement for inspection methods and procedures, Josco's plan stated only that the quality control inspector would inspect all work as soon as possible after its completion, and that the inspector would have to be satisfied with the work before it could be reported to the agency as completed. Park Systems' plan similarly provided for inspections of each task, whenever performed, but also explained that inspection report forms--copies of which were included in the proposal--would be used for five major categories of work, and that copies of the completed report forms would be maintained on site for review by the government.

Beyond the level of detail provided, the difference between Park Systems' and Josco's quality control plans is particularly evident in the areas of identification of performance problems and correction of deficiencies. In this regard, Josco's plan spoke generally of "following up as soon as possible to correct and identify problems," without identifying any specific time frames or specific actions to be taken. In the event that a deficiency report was received from the agency, Josco proposed to "meet with the agency as soon as possible" to review the problem and discuss corrective measures, and then meet with the responsible employee or crew leader. In contrast, Park Systems' plan provided for corrective action--including correction of the problem and working with the responsible employees--"immediately" upon identification of a performance problem. Park Systems' plan further provided for close supervision of the employee or employees involved to prevent further problems, and a report to the agency enumerating the actions taken. Finally, the plan provided for additional measures if quality performance is not restored within 2 weeks. These included shifting responsibility for the affected area to the quality control manager for 1 week, replacing employees, or hiring additional employees.

The agency argues that Park Systems' quality control plan is deficient because it allows up to 3 weeks for correction of a performance problem. The agency explains that Park Systems' 3-week correction plan is inadequate to address performance problems with such critical daily tasks as restroom cleaning and garbage removal, where any problems must be corrected immediately. As noted above, however, Park Systems' proposal specifically stated that corrective

action, consisting of correcting the problem and dealing with the responsible employees, would be implemented "immediately" in order to prevent repetition of the substandard performance. The plan further provided for subsequent monitoring and training of employees in the affected area over a 2-week period. If problems still persisted after this period, then the plan provided for more serious measures such as direct supervision by the quality control manager for 1 week, or replacement of employees. Thus, what the agency perceived to be a 3-week period for correcting deficiencies clearly was a contingency plan for correction of recurring substandard performance when immediate corrective action did not have a lasting effect. We conclude that the agency did not have a reasonable basis for rating Park Systems' quality control plan lower than Josco's.

EXPERIENCE

Under the experience factor, the RFP required offerors to submit evidence of experience in each type of work called for in the 15 technical provisions. The SSB significantly downgraded Park Systems' proposal under the experience factor, deducting 12 of 30 available points, because it found that the proposal failed to demonstrate experience in 5 of the 15 technical provisions. The SSB awarded Josco a perfect score for this factor based on the firm's experience as the incumbent contractor. While conceding that its proposal did not specifically discuss certain types of work experience, Park Systems argues that Josco's proposal could not have been superior to its own in this regard, since Josco has never performed some of the required tasks. Park Systems concludes that Josco's proposal could not reasonably have been rated perfect under this factor in light of the firm's lack of demonstrated experience in some areas.

The record confirms that the agency downgraded Park Systems' proposal for failing to demonstrate certain types of experience, but failed to downgrade Josco's proposal for similar deficiencies. Park Systems' proposal was downgraded because it contained no evidence of any experience in the following technical provisions: TP 6, outlet structure and stilling basin; TP 8, gates, barricades, bumpers and posts; TP 9, maintenance and repair of roads, parking areas and launching ramps; TP 14, encroachment removal; and TP 15, maintenance of government vehicles. However, Josco's proposal did not address experience in any of these areas either. In fact, the only specific type of work Josco actually claimed to have performed was construction, which comprises only a small portion of the work required under this RFP. While the agency asserts that it properly gave Josco credit for having experience in each of the technical provisions because it is the incumbent contractor, the

record shows that Josco in fact has not performed all of the tasks required under the RFP. In this regard, Park Systems has furnished a list (obtained from the agency) of work actually ordered under Josco's contract through September 30, 1992.² The list shows that some of the RFP requirements had not been ordered up to that time, confirming that Josco in fact did not have certain experience for which the agency gave it credit. For example, Josco never received any work orders under TP 6 or TP 15, two of the five technical provisions in which Park Systems was found to have no experience. It also appears that no work was ordered under the other three technical provisions, 8, 9 and 14, in which Park Systems was also downgraded. While it is appropriate for an agency to consider an offeror's experience as the incumbent contractor in the evaluation, see Inlinqua Schools of Languages, B-229784, Apr. 5, 1988, 88-1 CPD ¶ 340, in giving Josco a perfect score based on its experience as the incumbent, the agency was giving Josco credit for having done work that it had never actually performed. In view of the RFP's express requirement that offerors demonstrate experience relative to each of the required tasks, it was unreasonable for the SSB to assume Josco as the incumbent had experience in all 15 technical provisions when in fact it did not. We conclude that Josco's 12-point advantage under this factor was unwarranted.

CONCLUSION

In the memorandum documenting her decision to award the contract to Josco, the contracting officer concluded that Josco's technically superior proposal offered the best value to the government. As discussed above, however, the conclusion that Josco's proposal was superior to Park Systems' in certain areas was unreasonable.³ Although each

²Since the park has not been opened in 1993, we assume that the list is complete as to tasks Josco has performed to date.

³With respect to two other areas of the evaluation challenged by Park Systems, we find the agency's conclusions reasonable. First, the agency downgraded Park Systems' proposal relative to Josco's because Park Systems proposed to subcontract more of the work than Josco did. Notwithstanding Park Systems' arguments concerning the expertise of its proposed subcontractors, we have no basis to object to the agency's concern that Park Systems' approach involved more risk than Josco's because it entailed less direct control over the work. Second, Park Systems' proposal was downgraded because most of the proposed

(continued...)

of the perceived deficiencies in Park Systems' proposal discussed above only resulted in a one- or two-point deduction from the firm's total score, taken together they account for approximately 16 of the 20-point difference between Park Systems' and Josco's technical scores. While we cannot ascertain exactly what the two firms' technical scores would have been under a proper evaluation, it is clear that they would have been close, such that Park Systems' 11.3 percent lower price would have become an important consideration in the award decision even if Josco's technical score remained higher. We conclude that the agency's best value decision in favor of Josco was unreasonable.

Accordingly, we sustain the protest. By letter of today to the Acting Secretary of the Army, we are recommending that the agency reevaluate all of the proposals,³ taking into consideration our stated concerns, and then perform a new technical/price tradeoff based on the new evaluation results. If Josco is not the successful offeror following the reevaluation, the agency should terminate Josco's contract for the convenience of the government and make award as appropriate. We also find Park Systems entitled to reimbursement of its costs of filing and pursuing the protest, including reasonable attorneys' fees. 4 C.F.R. § 21.6(d) (1993). In accordance with 4 C.F.R. § 21.6(f),

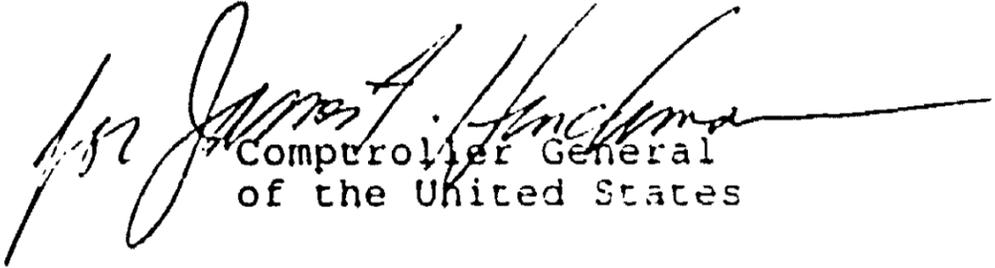
³(...continued)

personnel were to be transferred from a contract they are currently performing for the agency at Barren River Lake. The agency found this staffing approach objectionable because it would necessitate replacing most of the personnel at Barren River Lake, with a resulting adverse impact on performance of that contract; we find nothing unreasonable about the agency's conclusion.

⁴In addition to Josco and Park Systems, there were four other offerors in the competition, one of which had a higher technical score than Park Systems in the initial evaluation; our recommendation takes into account the possibility that one of these other offerors could be selected based on the new evaluation.

Park Systems' certified claim for such costs, detailing the time expended and costs incurred, must be submitted directly to the agency within 60 days after receipt of this decision.

The protest is sustained.


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