



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: S. & S. Garment Mfg. Co.

File: B-252807

Date: August 2, 1993

Nathan G. Sellers for the protester,
Michael Trovarelli, Esq., Defense Logistics Agency, for the
agency.
David Hasfurther, Esq., and Michael R. Golden, Esq., Office
of the General Counsel, GAO, participated in the preparation
of the decision.

DIGEST

Award to a higher priced offeror is reasonable where record shows that source selection authority reasonably concluded that magnitude of protester's price advantage was insufficient to offset awardee's technical superiority under the two technical factors and where solicitation stated that the price was the least important factor.

DECISION

S. & S. Garment Mfg. Co. protests the award of a contract to A-1 Sewing Contractors, Inc. for the manufacture of 49,000 flyers helmet bags by the Defense Personnel Support Center (DPSC) under request for proposals (RFP) No. DLA100-92-R-0236. S. & S. contends that it should have been awarded the contract because it received the same adjectival ratings as A-1 and its price was 26 percent lower than A-1's price.

We deny the protest.

The RFP, issued on June 22, 1992, as a total small business set-aside, required the submission of proposals by July 13. The RFP provided that the agency was to evaluate the two evaluation factors, samples and prior performance history, using an adjectival rating scheme of "highly acceptable," "acceptable," marginally acceptable," or "unacceptable." Price was the least important evaluation factor. Award was to be made to the offeror whose proposal offered the best value--the proposal most advantageous to the government, price, technical quality and other factors considered. The RFP further stated that although cost was not to be the

controlling factor in making an award, its importance could become greater depending upon the equality of the other factors evaluated; where the competing proposals were determined to be substantially equal, cost would become the controlling factor. The RFP also stated that this procurement was a best value buy which would favor offerors which showed the ability to deliver on time and to consistently improve their products.

S. & S. and A-1 submitted proposals. The agency evaluated these offers. Under prior performance history, A-1, which had not produced this item for the government, was rated as acceptable on the basis of its commercial performance. (The evaluators checked the references of the contracts listed by A-1.) S. & S. was rated marginally acceptable because it had not submitted sufficient information concerning its prior performance history. Under samples, both offerors were rated as marginally acceptable. A-1's sample had 10 major deficiencies; S. & S.'s sample had four deficiencies. Both offerors received an overall rating of marginally acceptable.¹

Discussions were conducted with each offeror. Both A-1 and S. & S. submitted a second sample. The evaluators found A-1's had three deficiencies, one minor² and two major.³ The evaluators did not change A-1's marginally acceptable rating for its sample as a result of the reevaluation. The evaluators found that S. & S.'s new sample had seven deficiencies, one minor and six major. The evaluators also did not change its marginally acceptable rating for S. & S.'s sample. S. & S. also submitted further information regarding its past performance history, showing that in the previous 3 years, S. & S. had completed four contracts with no quality problems with DPSC--two had been completed ahead of schedule, one (for this item) was completed on schedule and one recent contract was completed 3 months delinquent for inexcusable reasons. As a result of this information, the agency gave S. & S. a rating of

¹A marginally acceptable rating meant the technical proposal was unacceptable as submitted but had the potential to become acceptable through corrective action.

²A major defect is a defect other than critical that is likely to result in failure, or to reduce materially the product's use for its intended purpose.

³A minor defect is a defect which is not likely to affect use of the product.

acceptable under past performance history. The overall technical rating of marginally acceptable for both A-1 and S. & S. did not change.

On November 18, both offerors were requested to submit best and final offers (BAFOs). In their BAFOs, as requested by the agency, both firms certified that all items delivered under any resultant contract would comply with the required specifications. A-1 offered a total price of \$538,510. S. & S. offered a total price of \$427,446.

The contracting officer, while recognizing that both offerors were rated marginally acceptable overall due to the defects in their samples, believed that the two proposals were not equal in technical merit. First, she concluded that, although the evaluators had rated both firm's past performance as acceptable, S. & S. should have been considered marginally acceptable because S. & S. had been delinquent in deliveries on a recent government contract. In contrast, A-1 had successfully performed either on-time or ahead of schedule on all the contracts it had listed under prior performance. Second, the contracting officer believed A-1's final sample was superior to the one submitted by S. & S. She noted that S. & S.'s second sample contained six major deficiencies, four more than its original sample, and still had a minor defect which had been identified during discussions. In contrast, A-1 had reduced the number of major defects significantly from its original sample (10 to 3) and had not repeated any deficiencies previously identified in discussions. The contracting officer thus concluded A-1 had submitted an offer superior to S. & S.'s offer and that payment of a premium of \$111,064 was reasonable in view of A-1's consistent on-time or ahead of time delivery and its ability to furnish samples superior to that of S. & S. Award was made to A-1 on March 15 on the basis that its proposal represented the best value to the government and less risk. Performance has been withheld pending resolution of S. & S.'s protest.

S. & S. basically contends that the agency has not justified the award to A-1 at its higher price since both firms received the same overall technical rating. Technical evaluation ratings themselves are not controlling, however. The numeric point scores and adjectival ratings of the evaluators are merely guides to intelligent decision-making; they do not mandate automatic selection of a particular proposal. Harris Corp.; PRC, Inc., B-247440.5; B-247440.6, Aug. 13, 1992, 92-2 CPD ¶ 171. In other words, the selection official is not bound by the recommendation of lower-level evaluators. See Bank St. College of Educ., 63 Comp. Gen. 292 (1984), 84-1 CPD ¶ 607. The determinative question is whether the award decision was reasonable and

adequately justified in light of the evaluation scheme. Wyle Laboratories, Inc.; Latecoere, Int'l, Inc., 69 Comp. Gen. 648 (1990), 90-2 CPD ¶ 107.

Although the protester is correct that the two proposals received the identical adjectival ratings, the adjectival ratings were not the basis for selecting the awardee. The contracting officer decided that A-1's proposal was superior to S. & S.'s under the two technical evaluation factors. While we recognize that a reasonable argument can be presented against this decision, we cannot say that the contracting officer's judgment was without any rational basis.

A-1 did significantly reduced the number of defects in its second sample, thus showing its ability to produce a better, albeit not a completely conforming, product. In contrast, S. & S.'s final sample, rather than improving, contained a significant increase in defects, including a defect identified in discussions which remained from the original sample. We think the contracting officer could view A-1's performance with regard to the samples as superior to S. & S.'s. A-1 had a record of consistent ahead-of-time and on-time high quality performance on six contracts, while S. & S.'s performance record, with that company's recent delinquency on one of its four contracts, fell short by comparison. Under the circumstances, we believe that the contracting officer reasonably conclude that A-1 was superior to S. & S. under prior performance.

Awards on the basis of proposals with higher technical ratings and higher costs are proper where it has been determined that the technical difference is sufficiently significant (the proposal is technically superior) to outweigh the cost difference. Oregon Iron Works, Inc.; Lakeshore, Inc., B-250528 et al., Jan. 29, 1993, 93-1 CPD ¶ 82; Herley Indus., Inc., B-251792.2, Apr. 16, 1993, 93-1 CPD ¶ 327.

Given the contracting officer's determination that A-1's offer was technically superior, since the RFP emphasized technical merit with price the least important evaluation factor, we think the contracting officer could further

reasonably determine based on A-1's better demonstrated capabilities, that A-1's proposal was worth the additional cost premium and was overall the proposal most advantageous to the government.

We deny the protest.⁴


James F. Hinchman
General Counsel

⁴The protester asserts that the agency provided insufficient time to produce an acceptable initial sample and second sample. This contention relating to solicitation improprieties, filed after award, is untimely under our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1993); Hospital Klean, Inc., B-249391.4, Feb. 3, 1993, 93-1 CPD ¶ 96.