

Ashen 1499.35



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

221258

Decision

Matter of: Ameriko Maintenance Company
File: B-253274; B-253274.2
Date: August 25, 1993

Dean Francis Pace, Esq., Pace and Rose, for the protester.
Jeffrey A. Lovitky, Esq., for NVT Technologies, Inc., an interested party.
Thomas Y. Hawkins, General Services Administration, for the agency.
David A. Ashen, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Where request for proposals provided for award to the offeror whose proposal is most advantageous to the government, contracting agency properly made price/technical tradeoff in awarding contract to a higher priced, higher technically rated offeror; tradeoff was proper where record shows it reasonably was based on awardee's significantly superior rating in most important areas of evaluation.

DECISION

Ameriko Maintenance Company protests the General Services Administration's (GSA) award of a contract to NVT Technologies, Inc., under request for proposals (RFP) No. GS-09P-KSC-0118, for mechanical maintenance services at the Bell Federal Service Center in Bell, California. Ameriko challenges GSA's evaluation of proposals.

We deny the protest.

The solicitation contemplated award of a fixed-price contract for a term of up to 5 years--including a base period of 3 years and up to two 1-year option periods--to operate mechanical, electrical, plumbing and utility equipment at the Bell Federal Service Center, which consists of nine warehouse-type buildings providing both office and storage space. The RFP required offerors to furnish a single fixed price for the "Basic Services" in each period, and fixed hourly labor rates for emergency, overtime, and incidental services. The solicitation further provided for



award to be made to the responsible offeror whose conforming proposal was most advantageous to the government based upon the application of evaluation factors for technical quality and price, with technical quality described as more important than price.

The RFP listed in descending order of importance under technical quality three subfactors; (1) experience and past performance, described as "significantly more important" than the second subfactor; (2) technical approach; and (3) proposed organization and management. The solicitation provided that the evaluation of experience would take into consideration contracts for "similar" services performed within the last 5 years; it specifically defined the requisite similar experience as experience involving "a commercial office building, of professionally occupied spaces similar in size and complexity" to the Bell Center buildings, and which contains air conditioning units of 20 tons or more.

Six proposals were received; only those of Ameriko and NVT were included in the competitive range. Although GSA found Ameriko's proposal to be unacceptable in all areas other than organization, the agency determined that the proposal was susceptible of being made acceptable such that Ameriko had a reasonable chance for award. (In contrast, NVT's proposal was rated as outstanding in all areas but organization, under which it was evaluated as containing several minor weaknesses and deficiencies.) In the ensuing negotiations, the agency asked Ameriko to address each of the perceived deficiencies in its proposal. For example, with respect to experience and past performance, the agency specifically asked Ameriko (the incumbent contractor at the Bell Center) whether it had performed other mechanical maintenance contracts besides the Bell contract.

NVT's revised proposal was rated superior to Ameriko's; 9.55 of 10 available points versus Ameriko's 5.3 points. More than half of this disparity resulted from NVT's superiority under experience and past performance, the most important evaluation factor (accounting for 45 percent of the available technical points). NVT received a weighted score of 4.5 of the 4.5 points available in this area. NVT listed 16 contracts in its proposal; 9 of the contracts were found by GSA to be of comparable size and nature and 2 were determined to be of substantially greater size and complexity than the contemplated Bell Center contract. Furthermore, GSA received very favorable reports from each of NVT's references contacted by the agency; the quality of NVT's performance generally was described as "excellent" or "very good."

In contrast, Ameriko initially received only .9 of 4.5 available weighted points for experience and past performance, and ultimately received a weighted score of only 2.25 points (minimally acceptable) under the factor. Agency evaluators initially determined that Ameriko's experience under the Bell Center contract could not be considered because during Ameriko's performance the Center did not have 20-ton air conditioning units and thus did not meet the solicitation definition of a similar installation. In any case, the agency ultimately reviewed Ameriko's current contract notwithstanding the 20-ton criterion, and questioned Ameriko's experience and past performance for other reasons. Specifically, Ameriko's performance at the Bell Center was rated only "fair," and it was noted that substantial agency effort was required to administer this contract. Ameriko's claim to experience under another recent contract was disregarded because the contract had been awarded in December of 1992 and performance had not yet begun. (The start of performance had been delayed because of Ameriko's failure to satisfy certain prerequisites to performance.) Finally, other experience cited by Ameriko in its best and final offer (BAFO) was not considered relevant because the buildings, owned by Ameriko, were of lesser size and complexity than those at the Bell Center and, moreover, Ameriko had listed as references only its own subcontractors, and not the building tenants.

GSA determined NVT's revised proposal to be most advantageous to the government. Although NVT's revised price (\$1,687,306) was higher than Ameriko's (\$1,331,288), the agency concluded that NVT's technical superiority justified payment of the price premium and on this basis made award to NVT.

Ameriko essentially argues that since GSA determined its revised proposal to be "minimally acceptable," Ameriko was entitled to award on the basis of its lower priced, acceptable proposal.

This argument is without merit. Ameriko's position is based on a misreading of the solicitation. The RFP did not state that award would be made on the basis of the low technically acceptable offer; rather, as indicated above, the solicitation stated that award was to be made "to the responsible offeror whose offer conforms to the solicitation and is most advantageous to the government, cost or price and technical factors listed below considered." In addition, the solicitation provided that technical quality was more important than price and specifically cautioned that the government "may . . . accept other than the lowest offer." In a negotiated procurement, the government is not required to make award to the firm offering the lowest price unless the RFP specifies that price will be the

determinative factor. Miller Bldg. Corp., B-245488, Jan. 3, 1992, 92-1 CPD ¶ 21; see D'Wiley's Servs., Inc., B-251912, May 11, 1993, 93-1 CPD ¶ 377.

Since the RFP did not provide for award on the basis of the lowest priced technically acceptable proposal but, rather, stated that the award would be made to the offeror whose offer is most advantageous to the government, considering price and other factors, the contracting officer had the discretion to determine whether the technical advantage associated with NVT's proposal was worth its higher price. Such price/technical tradeoffs are subject only to the test of rationality and consistency with the established evaluation factors. Grey Advertising Inc., 55 Comp. Gen. 1111 (1976), 76-1 CPD ¶ 325; Centro Mgmt., Inc., B-249411.2, Dec. 2, 1992, 92-2 CPD ¶ 387. We will uphold awards to offerors with higher technical scores and higher prices so long as the results are consistent with the evaluation criteria and the contracting agency reasonably determines that the price premium involved was justified considering the technical superiority of the selected offeror's proposal. PECO Enters., Inc., B-232307, Oct. 27, 1988, 88-2 CPD ¶ 398.

The record provides no basis for questioning GSA's determination of the technical superiority of NVT's proposal. As noted above, NVT's perceived technical superiority in large measure resulted from its more extensive relevant experience. Although Ameriko did have experience managing buildings it owns, Ameriko has not disputed the agency's determination that Ameriko's buildings were not comparable to the Bell Center in size and complexity. Further, we think the agency could reasonably determine that references from Ameriko's own subcontractors were of little value as disinterested, objective evaluations of Ameriko's performance. We conclude that the agency reasonably accorded this experience little weight.

As for Ameriko's experience at the Bell Center, we find that GSA's initial determination to ignore that experience was proper since the Center did not then meet the 20-ton air conditioning unit criterion. In any case, the agency reasonably concluded that NVT nevertheless possessed significantly more relevant experience, even considering the Bell Center contract. Not only did NVT cite at least nine contracts of similar or greater size and complexity, as compared to Ameriko's single arguably relevant Bell Center contract, but in addition the evaluations--excellent or very good--received by the agency from NVT's references were significantly more favorable than the fair evaluation of Ameriko's performance at the Bell Center.

The agency's decision to forgo Ameriko's lower price in favor of NVT's technical superiority is unobjectionable. Again, a contracting agency may make award to an offeror with a higher technical rating and higher price so long as this is consistent with the evaluation criteria and the agency reasonably determines that the price premium involved was justified considering the technical superiority of the selected offeror's proposal. See Centro Mgmt. Co., Inc., supra. Here, the solicitation described technical quality as more important than price, and experience and past performance as significantly more important than either of the remaining two technical subfactors. The fact that NVT received a significantly higher rating in the most important evaluation areas was a reasonable basis for concluding that award to NVT at a higher cost would be most advantageous to the government.¹

Ameriko alleges that one of the evaluators was biased against it as a result of disputes with Ameriko during his tenure as the contracting officer's technical representative at the Bell Center. Government officials are presumed to act in good faith; we will not attribute unfair or prejudicial motives to procurement officials on the basis of inference or supposition. Triton Marine Constr. Corp., B-250856, Feb. 23, 1993, 93-1 CPD ¶ 171. In addition to producing credible evidence showing bias, the protester must demonstrate that the agency bias translated into action which unfairly affected the protester's competitive position. Id. Ameriko has furnished no credible evidence of bias against it on the part of the evaluator. Because the record supports GSA's conclusion that NVT's proposal was superior to Ameriko's, we have no basis upon which to

¹Ameriko also questions GSA's determination under the organization criterion under the management and organization subfactor that its proposal of an average 3.5-member resident staff was inadequate; Ameriko notes that a 1988 most efficient organization (MEO) study by the agency undertaken in conjunction with an Office of Management and Budget Circular A-76 cost comparison determined that an average staff of 3.64 persons was most efficient. (NVT proposed a resident staff of 5 personnel.) According to GSA, however, the scope and work under the current solicitation exceeded that considered in the 1988 MEO study as a result of the addition of maintenance repair hours and the assumption of a larger equipment inventory. In any case, the resulting disparity in technical scores under the organization criterion accounted for only 7 percent (.3 points) of the overall difference (4.25 points) in technical scores, and thus had no apparent effect on the award decision.

question the motives of the evaluators. See D.M. Potts Corp., B-247403.2, Aug. 3, 1992, 92-2 CPD ¶ 65.

The protest is denied.


for James F. Hinchman
General Counsel