



Comptroller General
of the United States

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Washington, D.C. 20548

Decision

Matter of: Best Temporaries, Inc.

File: B-255677.3

Date: May 17, 1994

Paul J. Seidman, Esq., and Robert D. Banfield, Esq., Seidman & Associates, P.C., for the protester. Eridnetta D. Edwards, Esq., and Mildred Steward, Esq., Alexander, Gebhardt, Aponte & Marks, for PAJ Business Staffing, the interested party. John P. Opitz, Esq., Department of Housing and Urban Development, for the agency. Charles W. Morrow, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Award to lower-rated, lower-priced offeror was reasonably justified in accordance with the evaluation criteria that gave predominant weight to the technical factors, where the source selection official determined that the particular technical advantages offered by a higher-rated, higher-priced offer were not worth the significant associated cost premium when compared to the awardee's lower-priced, technically acceptable proposal.

DECISION

Best Temporaries, Inc. protests the award of a contract to PAJ Business Staffing under request for proposals (RFP) No. DU100C000018159, issued by the United States Department of Housing and Urban Development (HUD), for temporary personnel services.

We deny the protest.

The RFP was to obtain temporary secretarial and clerical personnel under a firm fixed-price, indefinite quantity contract for a 12-month base period with 2 option years. The RFP required the contractor to furnish temporary personnel for "Word Processor," "Secretary," "Clerk/Typist," and "Data Entry Operator" positions. In addition, the RFP required the contractor to provide an on-site representative to administer the temporary personnel and the contract. Pursuant to the Service Contract Act, the RFP incorporated

the Department of Labor (DOL) wage determination which established the minimum hourly wage rate for each position. The DOL wage determination required the foregoing employees to be paid hourly wages of no less than \$12.03, \$11.13, \$9.15, and \$9.04, respectively.

Award was to be made to the offeror whose proposal represented the best value to the government, price and other factors considered, and the RFP advised that technical merit was more significant than price. The RFP also advised that the price must be reasonable and reflect the offeror's proposed technical approach, and cautioned that award may be made to other than the lowest-priced offeror, but that price would become determinative in the case of technically equivalent proposals.

The RFP required the submission of a detailed technical proposal reflecting the offeror's business management, business experience, and plan of contract accomplishment. Technical proposals were to be evaluated based upon a 100-point scale under the following criteria: (1) resource management (40 points), (2) business experience (45 points), and (3) plan of accomplishment (15 points).

The RFP required offerors to propose a separate hourly price for each employment category. For evaluation purposes, the RFP contained an annual estimate of hours for each position: Word Processor was estimated at 23,400 hours, Secretary at 8,300 hours, Clerk/Typist at 1,100 hours, and Data Entry Operator at 200 hours. The estimated hours were to be multiplied by the offeror's proposed hourly rates in order to determine the total evaluated price. Offerors were also requested to furnish a cost breakdown on a Standard Form (SF) 1411.

On June 14, HUD received 18 proposals in response to the RFP, including Best's and PAJ's. The proposals were evaluated by a four-member technical evaluation panel (TEP). Based upon the evaluation of initial proposals, four proposals were determined to be in the competitive range, including Best's and PAJ's. The TEP rated Best's proposal (priced at \$1,782,414) highest with a technical score of 97.7, while PAJ's proposal (priced at \$1,325,730) received a score of 85.

Following discussions, HUD received best and final offers (BAFO) from the competitive range offerors on September 21. The TEP again rated Best's proposal (priced at \$1,723,585)

¹The positions were delineated in the wage determination under the following employee categories: Word Processor II, Secretary I, Typist I, and Key Operator I.

the highest with a score of 99. PAJ's BAFO (which remained priced at \$1,325,730) received a score of 84. Because Best was the highest-rated technical proposal, the TEP recommended award to Best, notwithstanding its higher price.

The contracting officer, who was the source selection official, did not follow this advice. Instead, she requested the TEP to identify why Best's higher-rated proposal was worth the \$400,000 price premium. The TEP attempted to so justify the award, but the contracting officer remained unpersuaded. Thus, in a documented cost/technical tradeoff, she determined that "paying the higher price premium [was] not justified given the acceptable level of technical competency obtainable at the lower priced proposal [from PAJ]." On November 2, HUD awarded the contract to PAJ.

The crux of Best's protest is that HUD made award on the basis of the low-priced, technically acceptable proposal without regard to the fact that the RFP provided that technical factors were to be more significant than price.

In a negotiated procurement, an agency may make award to a lower-priced, lower technically rated offeror if it determines that the price premium involved in awarding to a higher technically rated, higher-priced offeror is not justified given the acceptable level of technical competence obtainable at the lower price. Securiquard, Inc. et al., B-254392.8 et al., Feb. 9, 1994, 94-1 CPD ¶ 92. While point scores and technical evaluation narratives may be indicative of whether one proposal is technically superior to another and should be considered, source selection officials are not bound by the recommendations of lower level evaluators, even though the working level evaluators may be expected to have the technical expertise required for such evaluations. Wyle Laboratories, Inc.; Latecoere Int'l, Inc., 69 Comp. Gen. 648 (1990), 90-2 CPD ¶ 107. Thus, source selection officials have the discretion to make cost/technical tradeoffs and the extent of such tradeoffs is governed only by the test of rationality and consistency with the evaluation criteria. See Hardman Joint Venture, B-224551, Feb. 13, 1987, 87-1 CPD ¶ 162. Even if price or cost is the least important factor, an agency properly may award to a lower-priced, lower-rated offer. The determining element is not the difference in technical merit, per se, but the reasonableness of the source selection official's judgment concerning the significance of that difference and the consistency of this judgment with the RFP evaluation scheme. Wyle Laboratories, Inc.; Latecoere Int'l, Inc., supra.

Based upon our review of the contemporaneous documentation of the source selection decision, as well as the contracting

officer's hearing testimony, we find that the contracting officer performed a reasonable cost/technical tradeoff between PAJ's lower-rated, lower-priced proposal and Best's higher-rated, higher-priced proposal, in accordance with the RFP evaluation scheme. The record specifically shows that the contracting officer concluded that the areas in Best's proposal resulting in the higher technical rating (99 points), that is, under the resource management factor and the business experience factor, as compared to PAJ's acceptable proposal (84 points), were not worth the significantly higher (\$400,000) price. See Hearing Transcript (Tr.) at 11-22, 67, 68-69, and 137-139.

The technical difference between PAJ's proposal and Best's proposal under the resource management factor was that Best provided the name and resume of the proposed on-site technical representative while PAJ did not. Tr. at 15-16. The contracting officer found that this discriminator was insufficient to outweigh PAJ's price advantage because the RFP did not require offerors' to specify the individual to perform these duties, HUD could administer the contract to assure that this individual performed acceptably, and PAJ's proposal demonstrated that it could and would provide a qualified on-site representative. Tr. at 16, 18, and 62-63. For instance, the contracting officer noted that PAJ's initial proposal contained detailed information with respect to the on-site representative's responsibilities and that in its BAFO PAJ further detailed the responsibilities and requirements of the on-site representative, which included a draft job description, and that PAJ proposed to provide a backup for the position. Tr. at 16-17.

With regard to the business experience factor, Best was rated higher because it has more experience than PAJ. Tr. at 21-22. The contracting officer found that while Best had more experience, PAJ's proposal reflected a number of references showing experience in providing the temporary personnel required by this RFP, and that when contacted these references consistently rated PAJ's performance highly. Tr. 20-21. The contracting officer found that, notwithstanding the TEP's views that this relative level of experience translated into a quantifiable cost risk-- which the contracting officer reasonably found was unsubstantiated--Best's higher volume of prior work did not necessarily mean that Best would provide better quality or more cost effective work than PAJ. Tr. at 22.

The record reflects that the contracting officer conducted an extensive review to ascertain the significance of the difference between the two proposals, which involved identifying and analyzing the significance of the areas of technical difference between the two proposals, and requesting the TEP to justify why the Best proposal was

worth the substantial price premium. Based on this review, the contracting officer detailed the reasons (outlined above) that the technical differences did not offset the considerable price premium. In so doing, she acknowledged that the evaluated technical differences between the proposals were real, but found that they were not sufficient, in terms of better contract quality or performance, to justify the additional price, given that PAJ's proposal was fully acceptable. See Tr. at 11. Notwithstanding certain statements made by the contracting officer under cross examination that have been cited by the protester, see Tr. at 23 and 73,² the record, including the hearing testimony, when considered as a whole, demonstrates that the award selection was reasonable, documented, and consistent with the RFP's "best value" award scheme, and acknowledged the greater weight accorded technical factors; the award decision was not a matter of simply selecting the low-priced, technically acceptable offer. See Tr. at 12-13, 17-18, 22, 58, 67-69, 93, and 137-138.

Best argues that HUD did not properly determine that PAJ's price was reasonable and consistent with its technical approach as required by the RFP. For example, Best notes that HUD did not properly consider whether there were sufficient amounts in PAJ's price to provide for contract requirements other than wages and fringe benefits, that no cost or price analysis was conducted to determine whether PAJ's price for each line item was proportionate to its cost, and that HUD failed to review PAJ's cost breakdown on the SF 1411 that allegedly reflected that PAJ intended to pay less than the Service Contract Act rate and benefits for Word Processor II employees.³

The contracting officer testified that she considered PAJ's proposed hourly rates to be reasonable and consistent with its technical approach because they exceeded the required Service Contract Act wage rates. She further testified that she considered PAJ's overall price to be reasonable based upon the adequate price competition obtained. We think the foregoing price analysis of PAJ's proposal was reasonable.

²For example, the contracting officer answered "yes" in response to Best's question "was PAJ's proposal the best value to the government because it was technically acceptable and it had the lowest price?"

³PAJ's cost breakdown for Word Processor II employees reflected an hourly rate of \$13.20, which exceeds the designated wage rate, but also contained the figure \$261,510 for "temp salary" payroll that, when divided by the 23,400-hour estimate, equals \$11.17 per hour.

See Family Realty, B-247772, July 6, 1992, 92-2 CPD ¶ 6.⁴ While Best argues that PAJ's SF 1411 shows that PAJ would make no profit on the Word Processor II line item, the record confirms that PAJ's proposed hourly rates met the DOL wage rate requirements and we do not think this pricing suggests that PAJ's technical approach was unacceptable. Id. In this regard, PAJ has confirmed that it elected to propose below cost for this item as a business decision to lower its overall price, and that it will provide the services in accordance with the RFP provisions and its proposal. A below-cost offer, by itself, does not provide a legal basis to reject an offer.⁵ Id.; Contract Int'l Corp., B-246937, Dec. 20, 1991, 91-2 CPD ¶ 571.

Finally, Best argues that HUD failed to conduct meaningful discussions with Best, since HUD never informed Best that its technical approach exceeded the agency's minimum requirements and that its price was too high. However, there is nothing in the record even suggesting that the agency considered Best's technical approach to be deficient or too plush, or its price to be unreasonably high, so as to give rise to an obligation to mention these matters during discussions. Thus, HUD did not fail in its obligation to conduct meaningful discussions with regard to Best. See Global Assocs., B-244367.3, Feb. 26, 1992, 92-1 CPD ¶ 229.

The protest is denied.

Robert P. Murphy

 Robert P. Murphy
Acting General Counsel

⁴Since there was adequate price competition, no further price or cost analysis was required. Family Realty, supra.

⁵Best also argues that PAJ's proposal was materially unbalanced in view of its below-cost pricing on the Word Processor II services. This contention has no merit as Best has made no tenable argument that any item in PAJ's offer--all of which are priced less than Best's offer--was overstated in price. See Hampton Roads Leasing, Inc., B-250645.2, Feb. 1, 1993, 93-1 CPD ¶ 486.