



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Monfort, Inc.

File: B-256706

Date: July 5, 1994

Barbara Hail for the protester.
Tim Klein for National Beef Packing Company; and Jerry Kane for Sam Kane Beef Processors, Inc., interested parties.
Steve Hilkowitz, Esq., Defense Logistics Agency, for the agency.
Linda S. Lebowitz, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Where the agency reasonably evaluated the protester's proposal as marginally acceptable and the awardee's proposal as acceptable, the agency reasonably determined that the awardee offered the most advantageous proposal to the government and that the technical advantages inherent in the awardee's proposal warranted the payment of an overall, approximate 1-percent price premium.

DECISION

Monfort, Inc. protests the award of two contracts to National Beef Packing Company under request for proposals (RFP) No. DLA13H-93-R-1995, issued by the Defense Personnel Support Center, Defense Logistics Agency, for quantities of fresh chilled beef products for 35 military commissaries in the Defense Commissary Agency's midwest region. The protester basically challenges the agency's evaluation of its proposal in the technical area involving a manufacturing statement of work (SOW) requirement.

We deny the protest.

The RFP, which divided the midwest region into three groups, was issued on an unrestricted basis on June 30, 1993. Under the terms of the RFP, the agency reserved the right to make either a single award for the entire region or multiple awards, *i.e.*, two awards per group and multiple awards for the entire region. Accordingly, as amended, the RFP

contemplated the award of fixed-price, indefinite quantity/ indefinite delivery contracts for the 6-month base period and three 3-month option periods. The RFP stated that the awards would be made to the responsible offerors whose proposals, conforming to the requirements of the RFP, were deemed most advantageous (i.e., the best values) to the government, technical quality and price considered. With respect to technical quality, the RFP contained the following technical evaluation factors listed in descending order of importance: (1) experience/past performance, (2) quality, (3) (a) manufacturing, (3) (b) distribution, and (4) socioeconomic considerations. The RFP stated that technical quality was more important than price, and only as proposals became more equal in technical merit would price become more important. The RFP contained a 60/40-percentage formula for apportioning any multiple award quantities within groups.

Relevant to this protest, the SOW required that if the offeror planned to use subcontractors for the supply of beef products, the offeror had to address procedures and methods for maintaining technical control and surveillance over the subcontractors in order to ensure timely receipt of quality products consistent with what was expected of the offeror as the prime contractor. The offeror's ability to provide consistent quality products in accordance with this SOW requirement would be evaluated under the manufacturing evaluation factor.

Five offerors, including the protester, submitted initial technical and price proposals by the October 5 closing time for receipt of initial proposals. Regarding technical merit, the protester was rated overall marginally acceptable.¹ With respect to the manufacturing evaluation factor, the agency rated the protester marginally acceptable because the firm did not explain how it would provide consistent quality products using subcontractors. The

¹Technical proposals and individual evaluation factors were evaluated using the following adjectival ratings: highly acceptable (meets stated requirements with no noted deficiencies; highest probability for successful performance); acceptable (meets stated requirements with minor deficiencies; reasonable probability of successful performance); marginally acceptable (does not meet stated requirements, but deficiencies appear correctable; low probability of successful performance unless corrective action); and unacceptable (fails to meet stated requirements; no probability of successful performance). The adjectival ratings were supported by narrative descriptions of the strengths and weaknesses in each offeror's proposal.

agency noted that while the protester proposed to use two subcontractors for the supply of ground beef products, it did not address procedures and methods for maintaining technical control and surveillance over these subcontractors in accordance with the SOW requirement.

The agency included all proposals in the competitive range and conducted successive rounds of oral and written discussions with each offeror. Concerning the protester, the agency requested, among other items, that the protester provide information on its ground beef subcontractors in accordance with the SOW requirement. However, the protester failed to provide this information in a revised proposal. Accordingly, the agency rated the protester marginally acceptable for the manufacturing evaluation factor, and overall marginally acceptable.

All of the offerors, including the protester, submitted best and final offers (BAFO) by the closing time on March 2, 1994. The agency rated the protester overall marginally acceptable. Regarding the manufacturing evaluation factor, the protester retained its marginally acceptable rating because of its continued failure to describe procedures and methods for maintaining technical control and surveillance over its ground beef subcontractors.

Of the five offerors, the protester submitted the lowest total price for the three groups. National, which was rated overall acceptable, submitted the second-lowest total price for the three groups.

On March 10, the agency awarded contracts to National for two groups.² The agency determined that while National occasionally experienced late deliveries, National nevertheless had strong regional and commercial experience and past performance; it received positive customer feedback; and it has afforded, and will continue to afford, significant opportunities for contract participation by small and small disadvantaged business concerns. In contrast, the agency determined that while the protester had significant government and commercial experience and past performance, and had implemented programs to ensure food

²The agency awarded a contract for the third group to Sam Kane Beef Processors, Inc. In its protest, Monfort challenged this award and also the agency's alleged failure to consider Monfort's alternate proposal for "lite trimmed beef." The agency responded to these issues in its agency report. In its comments to the agency report, the protester did not rebut the agency's position on these matters. Therefore, we view these issues as abandoned. See Heimann Sys. Co., B-238862, June 1, 1990, 90-1 CPD ¶ 520.

safety, the protester received negative customer feedback from the region; it failed to address procedures and methods for maintaining technical control and surveillance over its ground beef subcontractors; and it will afford more limited opportunities for contract participation by small and small disadvantaged business concerns. Therefore, in accordance with the RFP's stated evaluation methodology, which provided that technical quality was more important than price in determining the most advantageous offeror, the agency determined that National's proposal, which was rated acceptable, was the most advantageous, in comparison to the protester's, which was rated marginally acceptable, and that the technical advantages inherent in National's proposal warranted the payment of a overall price premium of approximately 1 percent.³

The protester contends that for the management evaluation factor, it was unreasonably rated marginally acceptable.

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 ¶ 93.⁴

Here, the SOW specifically advised offerors of the requirement to address procedures and methods for maintaining technical control and surveillance over their subcontractors in order to ensure the timely receipt of consistent quality products. Offerors also were advised that their ability to comply with this SOW requirement would be evaluated under the management evaluation factor. The record shows that even after successive rounds of discussions and after the submission of a revised proposal and a BAFO, the protester still failed to address this SOW requirement. In fact, in its comments on the agency report, the protester conceded that "it addressed the inadequacies

³National's price was 1.3 percent higher than the protester's price for one region, but .16 percent lower than the protester's price for the other region.

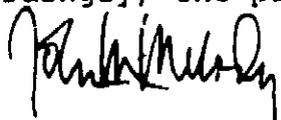
⁴While a protective order was issued for this protest, the protester did not have counsel admitted to the protective order for purposes of reviewing proprietary and competitive sensitive documents. This Office, however, has conducted an in camera review of all documents, including the protester's and the awardee's initial proposals, revised proposals, and BAFOs, and all evaluation documentation.

set forth in the [discussion] letter (except for the control over ground beef subcontractor surveillance)." Because of the agency's concern with an offeror's ability to maintain technical control and surveillance over its subcontractors in order to ensure that consistent quality products were provided--a concern which was conveyed to, but not addressed by, the protester--we conclude that the agency reasonably evaluated the protester as marginally acceptable for the management evaluation factor.⁵

The protester also raises a number of other allegations which are without support in the record. For example, the protester contends that National qualified its offer concerning a weight range for a particular cut of beef and for required delivery terms. However, the record shows that in its BAFO, National specifically "remove[d] all qualifications." The protester also questions the favorable evaluation of National's socioeconomic goals. In this regard, the record shows that National historically has achieved a significant contract participation rate by small and small disadvantaged business concerns, and there is no evidence in the record which suggests that this same rate cannot be achieved under these contracts. Further, the record shows that National's goals are significantly higher than the protester's goals. Finally, the protester contends that the agency did not make awards based on a 60/40-percentage formula. However, the RFP clearly stated that this formula would only apply if more than one award were made per group. In this case, the formula was not applicable since only one award per group was made.

Therefore, we conclude that the agency reasonably awarded contracts for two groups to National as the most advantageous offeror. We believe the agency reasonably determined that the technical advantages inherent in National's acceptable proposal (favorable experience and past performance, positive customer feedback, and significant contract participation by small and small disadvantaged business concerns) in comparison to the protester's marginally acceptable proposal warranted the payment of an approximate 1-percent price premium.

Accordingly, the protest is denied.


 Robert P. Murphy
 Acting General Counsel

⁵We note that the protester has not challenged the evaluation of its proposal in any other regard.