



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Burco Systems Development, Inc.

File: B-256267.2

Date: December 5, 1994

Bobby L. Burns for the protester, Stellamaris Williams, Esq., Federal Aviation Administration; and David R. Kohler, Esq., and Susan L. Sundberg, Esq., Small Business Administration, for the agencies. Peter A. Iannicelli, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Where request for proposals stated that technical factors were slightly more important than price, contracting officer properly selected the awardee instead of the protester for award on the basis of the awardee's slightly higher-rated technical proposal and the awardee's lower price which was roughly half of the protester's price.

DECISION

Burco Systems Development, Inc. (Burco) protests the Federal Aviation Administration's (FAA) award of a contract to US Robotech, Inc. under request for proposals (RFP) No. DTFA07-94-R-0012, which was issued as a competitive set-aside under section 8(a) of the Small Business Act, 15 U.S.C. § 637(a) (1988 & Supp. V 1993). Burco contends that the FAA improperly awarded the contract to US Robotech on the basis of its low price instead of awarding the contract to Burco on the basis of its proposal's superior technical merit. The protester also contends that the Small Business Administration (SBA) is biased against Burco and used its influence to convince the FAA not to award the contract to Burco.

We deny the protest.

Issued on March 31, 1994, the RFP solicited offers for providing a variety of information systems and technology support services to the FAA's Southwest Regional Office. The RFP contemplated award of an indefinite delivery,

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indefinite quantity contract for a base period of 1 year and included options for four additional 1-year periods. The RFP stated that the contract would be awarded to the offeror whose proposal represented the overall greatest value to the government based upon evaluation of technical and cost/price proposals and reserved to the government the right to make award on the basis of initial proposals.

Six proposals were received by the April 29 closing date for submission of initial proposals. The individual members of the technical evaluation team evaluated and ranked all proposals on the six technical evaluation factors--experience and past performance, staffing, program management, understanding the requirements, transition plan, and risk to the government--that were set forth in the RFP. Next, the evaluation team members met as a panel and reached a consensus concerning overall ranking of proposals based upon technical merit. The evaluators decided that all proposals were technically acceptable and that no clarification was needed from any offeror.

The evaluation team recommended that the contracting officer award the contract to a firm whose technical proposal was rated as far superior to the other five proposals. However, the contracting officer requested a size status determination from the SBA which determined that the proposed awardee was not a small business for purposes of this requirement and, therefore, was ineligible for award of the contract.

The contracting officer next selected US Robotech--the offeror whose proposal had received the second-highest technical rating--for contract award. The contracting officer informed the SBA of his proposed selection and asked the SBA to perform a pre-award survey on US Robotech. By letter of June 29, the SBA responded by certifying US Robotech as eligible to perform this 8(a) contract. Accordingly, the FAA contracting officer awarded the contract to the SBA in turn which awarded the 8(a) subcontract to US Robotech on July 18.

Burco contends that the contracting officer improperly awarded the contract to US Robotech on the basis of US Robotech's lower proposed price.¹ Burco asserts that

¹In its initial protest letter of July 26, Burco also alleged that the award was improper because US Robotech's proposed price was unreasonably low. The FAA reported that proposed prices were compared to two independent government estimates, including one that was prepared by the contracting officer. Burco did not address the issue in its
(continued...)

the contracting officer improperly converted the RFP's evaluation scheme from one in which technical merit was considered more important than price to one based upon award to the offeror that submitted the lowest-priced, technically acceptable offer. We do not agree.

Evaluating the relative merits of competing proposals is a matter within the discretion of the contracting agency since the agency is responsible for defining its needs and the best method of accommodating them. Simms Indus., Inc., B-252827.2, Oct. 4, 1993, 93-2 CPD ¶ 206. In reviewing an agency's evaluation, we will not reevaluate proposals but instead will examine the agency's evaluation to ensure that it was reasonable and consistent with the stated evaluation criteria. Id. Where selection officials reasonably regard proposals as being essentially technically equal, price may properly become the determining factor in making award even if cost or price is accorded less importance than technical factors. See Astro Pak Corp., B-256345, June 6, 1994, 94-1 CPD ¶ 352; The Parks Co., B-249473, Nov. 17, 1992, 92-2 CPD ¶ 354.

Here, the RFP stated that technical merit was considered slightly more important than price/cost, but the RFP emphasized that price/cost would be a major factor in selecting between substantially equal technical proposals. As noted above, the RFP listed six technical factors that would be used in evaluating proposals and within each evaluation factor described the major evaluation subfactors that would be evaluated.

Our examination of the evaluation documents¹ reveals that each proposal was evaluated by all four evaluators on each of the technical evaluation factors and subfactors that were set out in the RFP. The evaluation documents show that it was the consensus of the evaluators that all five proposals

¹(...continued)
comments on the FAA's report. Therefore, we consider this protest ground to be abandoned. See Heimann Sys. Co., B-238882, June 1, 1990, 90-1 CPD ¶ 520.

²As the protester is not represented by legal counsel, and because the protester objected to our issuing a protective order, we did not issue one in this case. Therefore, while we have examined all pertinent evaluation documents, our discussion necessarily will be limited to prevent disclosure of proprietary and source selection sensitive information.

submitted by small businesses³ were technically acceptable and essentially technically equal. The individual evaluators' score sheets support the technical evaluation panel's consensus that the five small business proposals "ranked very close together."

The evaluation documents actually show that US Robotech's technical proposal was rated as better than Burco's technical proposal which received the lowest technical score from the evaluators. The record also reveals that Burco's price was extremely high. For example, US Robotech's proposed price (\$4,731,965) was roughly half of Burco's proposed price (\$8,270,557). Moreover, the prices proposed by the other four offerors were all very closely grouped at around the price proposed by US Robotech. In these circumstances, we see nothing objectionable in the contracting officer's decision to select US Robotech instead of Burco on the basis of US Robotech's slightly higher technical merit and very much lower price. See Astro Pak Corp., supra.

The protester also contends that SBA officials are prejudiced against it and have acted in bad faith in this and other procurements to prevent Burco from receiving contract awards. Burco has proffered no credible evidence showing that the SBA influenced the FAA award process and there is nothing in the record to establish SBA bias. Moreover, in view of the fact that Burco's proposed price was almost double US Robotech's proposed price and our finding that the FAA properly selected US Robotech for award, it does not appear that Burco's competitive position

³As noted above, the one proposal that was rated technically far superior to all other proposals was submitted by a firm that was determined to be a large business and ineligible for award.

could have been affected by the alleged SBA bias.⁴ See Northwestern Travel Agency, Inc., B-244592, Oct. 23, 1991, 91-2 CPD ¶ 363.

The protest is denied.


for Robert P. Murphy
Acting General Counsel

'Burco also contends that a pre-award survey concerning US Robotech's capability to perform the required work and an affirmative determination of US Robotech's responsibility were required before award could be made to that firm. However, as this was an 8(a) acquisition, the SBA initially provided the FAA with a list of companies, including US Robotech, that the SBA had determined were eligible and had the capabilities required for award of the 8(a) contract. See Federal Acquisition Regulation (FAR) § 19.804-3. Furthermore, before accepting the contract and awarding a subcontract to US Robotech, the SBA certified that US Robotech was eligible for award of the 8(a) contract. See FAR § 19.805-2(c)(2) and 13 C.F.R. § 124.313(a) (1994). In an 8(a) competition such as this, that is all that is required.