



Comptroller General
of the United States

Washington, D.C. 20548

93-1 CPD 465

Decision

Matter of: BMAR & Associates, Inc.

File: B-252273

Date: June 16, 1993

Donald E. Barnhill, Esq., and Joan K. Fiorino, Esq., East & Barnhill, for the protester.
Andrew D. Fallon, Esq., and Roger E. Willmeth, Esq., Department of the Air Force, for the agency.
Sylvia Schatz, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Awardee's request for substitution of two key employees after award and one after initial performance period does not by itself establish that awardee engaged in improper "bait-and-switch," and there is no basis to conclude that tactic was used where record contains no evidence suggesting awardee proposed those individuals knowing they would not be available for contract performance.
2. Where solicitation provided that review of offerors' performance on past government contracts for vehicle operation and maintenance would at worst result in assessment of weakness against a proposal, downgrading risk from low to moderate was reasonable means of assessing weakness; given that awardee was found to have successful experience in performing aircraft maintenance contracts, agency reasonably determined that further downgrading was not warranted.
3. Defense Contract Audit Agency's (DCAA) criticism of awardee's cost proposal did not preclude consideration of awardee's low price in price/technical tradeoff; agency reasonably concluded that, although awardee's price was unrealistic and would inject risk into performance, it remained a valid consideration for source selection since it was significantly lower than protester's price, and contract's fixed-price nature would limit the risk of higher cost to the government.
4. Where agency determined that protester's proposal, although slightly superior, was essentially equal technically to awardee's, agency properly based award decision on awardee's significantly lower price.

DECISION

BMAR & Associates, Inc. protests the award of a contract to Southeastern Industrial Maintenance Company (SIMCO) under Department of the Air Force request for proposals (RFP) No. F05604-92-R-7002, for vehicle operation and maintenance at the Peterson Air Force Base Complex in Colorado. The protester argues that the agency improperly evaluated its and SIMCO's proposals.

We deny the protest.

The RFP, as amended, solicited proposals for a firm, fixed-price contract for a 1-month phase-in period, a 7-month basic period, and three 1-year option periods. The RFP required offerors to provide all management, supervision, personnel, equipment, tools, materials, and other items and services necessary to maintain and operate a wide variety of government-owned vehicles at the base. Offerors were required to submit separate technical and price proposals. The general introductory paragraph under section M provided that award would be made to the responsible offeror whose offer conformed to the RFP and was most advantageous to the government, when evaluated on the basis of three factors (listed in descending order of importance): technical, management and cost. However, there was a fourth factor, general consideration, set forth in the part of section M describing the factors to be applied. The RFP stated that past performance on government contracts would be assessed under this factor to determine whether a proposal should be assessed a "weakness." The technical and management factors included subfactors; only one subfactor--personnel--under management is relevant here. The cost factor also included four subfactors: reasonableness, realism, completeness, and compatibility with the technical and management proposals.

Seven offerors submitted proposals by the initial closing date. The Source Selection Technical Team (SSTT) evaluated technical/management proposals using a color-coded rating system: blue/exceptional, green/acceptable, yellow/marginal and red/unacceptable. The general consideration factor was applied on an acceptable/unacceptable basis. The evaluation also entailed the assignment of a risk rating to the proposals (low, moderate or high) under each factor. The SSTT initially determined that six proposals, including BMAR's and SIMCO's, were in the competitive range. Written discussions were initiated and best and final offers (BAFO) were requested and received. In the subsequent BAFO evaluation, the SSTT rated SIMCO's proposal acceptable/low risk under the technical and management factors, and acceptable/moderate risk under the general consideration factor. Although the Air Force found BMAR's proposal

slightly superior to SIMCO's overall, this difference was not considered significant; BMAR's proposal was evaluated as acceptable/low risk under the technical, management and general consideration factors.

The Source Selection Cost Team (SSCT) conducted a separate price evaluation. SIMCO's price was \$5,521,465 and BMAR's was \$7,076,057. The SSCT requested a Defense Contract Audit Agency (DCAA) audit report to obtain as much information as possible on each offeror's price proposal. The DCAA report found three areas of concern with SIMCO's proposal, but the SSCT nevertheless determined, based on DCAA's findings and its own analysis, that SIMCO's price was reasonable, realistic, complete and compatible.

After being briefed by the evaluators, the Source Selection Authority (SSA) conducted a price/technical tradeoff between the SIMCO and BMAR proposals. The SSA determined that, although BMAR's technical proposal was slightly better than SIMCO's, the proposals were essentially technically equal, and therefore made award to SIMCO based on its low price.

BMAR challenges several aspects of the evaluation, as discussed below.

MANAGEMENT

BMAR argues that SIMCO's rating under the management factor is improper because it fails to reflect SIMCO's proposal of several key individuals it did not intend to furnish under the contract. For example, with regard to SIMCO's proposed project manager, BMAR maintains that SIMCO secured his availability by promising a higher salary than it intended to pay, knowing he would not accept less. BMAR argues that the fact that SIMCO, after award, provided the individual on a consultant basis and proposed to replace him with an employee of the incumbent contractor after the phase-in period shows that SIMCO never intended to furnish the individual. BMAR concludes that SIMCO failed to demonstrate its ability to perform with a qualified staff, as required under the personnel subfactor, and thus should have received a lower rating under the management factor.

Offeror "bait-and-switch" practices, whereby an offeror's proposal is favorably evaluated on the basis of personnel that it does not expect to use during contract performance, have an adverse effect on the integrity of the competitive procurement system and generally provides a basis for proposal rejection. PRC, Inc., B-247036, Apr. 27, 1992, 92-1 CPD ¶ 396. However, this does not mean that substitution of employees after award is prohibited; such substitution is unobjectionable where the offeror proceeded

reasonably and in good faith. Unisys Corp., B-242897, June 18, 1991, 91-1 CPD ¶ 577.

There is no evidence of an improper bait-and switch here. First, there is no evidence in the record supporting BMAR's claim that SIMCO proposed certain individuals knowing that they would not be available to perform the contract; in fact, BMAR does not even explain the source of its information as to the alleged scheme. The mere fact that substitution of incumbent employees apparently has been requested for two of the individuals and, following the phase-in, for the project manager, does not establish that the award was improper. Informatics, Inc., 57 Comp. Gen. 217 (1978), 78-1 CPD ¶ 53.

With regard to the other five proposed key personnel, BMAR argues that the fact that SIMCO had only periodic conversations with these individuals indicates that SIMCO knew when it submitted its BAFO that they would not be available for contract performance. However, the absence of frequent contact by itself does not suffice to establish that SIMCO should have known the individuals would not be available. SIMCO was in possession of, and furnished with its proposal, resumes for all proposed key employees (the RFP did not require letters of commitment for proposed key employees). Absent some evidence to the contrary, there is no basis to conclude that SIMCO did not obtain the individuals' consent to use their resumes, or that SIMCO did not have a reasonable basis in currently believing that the individuals would be available to perform.

In any case, the impact of the qualifications of the six key personnel was ameliorated by the evaluation scheme. Under the personnel subfactor, the agency was to consider, not the specific qualifications of proposed individuals, but offerors' approaches to providing qualified personnel from an existing personnel base, and "acquiring needed qualified personnel not in [the] existing base."¹ Beyond the six proposed key employees, SIMCO's evaluated approach was based on maintaining an extensive pool of qualified applicants, and recruiting from various sources, including to a large extent the incumbent contractor's employees. Thus, SIMCO's acceptable rating under this subfactor was not dependent solely upon the six key individuals proposed. We conclude that there is no basis for finding that SIMCO's requested

¹Under the evaluation scheme, the specific qualifications of proposed individuals were not separately considered--they were reviewed only in considering an offeror's overall approach. Technical Exhibit 9 references personnel qualifications and approval of specific employees only in the context of performance requirements.

substitution for as many as three employees after award undermines the evaluation of its proposal under the management factor.

GENERAL CONSIDERATION

BMAR argues that the agency's rating of SIMCO's proposal as acceptable/moderate risk under the general consideration factor was improper in light of SIMCO's lack of prior similar government contract experience, the area examined under this factor; it believes SIMCO's proposal instead should have received a marginal rating. Similarly, BMAR asserts that SIMCO's risk rating under this factor should have been downgraded.

In reviewing protests of allegedly improper evaluations, we will examine an agency's evaluation to insure that it was fair and reasonable and consistent with the evaluation criteria stated in the RFP. CH2M Hill Southeast, Inc., B-244707; B-244707.2, Oct. 31, 1991, 91-2 CPD ¶ 413.

We find no basis to object to the rating of SIMCO's proposal under the general consideration factor. As discussed above, section M provided that the downgrading under this factor would be limited to assessment of a weakness. The Air Force did this by assigning the firm's proposal a downgraded risk rating of moderate (rather than low, the rating BMAR received). A greater reduction was not deemed warranted, the agency explains, because SIMCO did have experience performing aircraft maintenance contracts. References contacted by the evaluators confirmed that SIMCO's performance on these contracts had ranged from satisfactory to good. While BMAR disagrees with the agency's judgment that a moderate risk rating was an adequate downgrading, there is no basis for concluding that it was unreasonable; there certainly was nothing in the RFP that mandated a lower rating.

PRICE

BMAR argues that the agency improperly ignored three problems raised in the DCAA report concerning SIMCO's price proposal: (1) DCAA could not verify that SIMCO's reduced general and administrative (G&A) rates (from 4 to 3.4 percent) were accurate; (2) SIMCO's profit margin (2.2 percent) appeared low; and (3) SIMCO's direct costs were lower than the other offerors' costs. BMAR maintains that because the agency did not consider this negative information, it could not have properly determined that SIMCO's price was "reasonable, realistic, complete, and compatible with the technical and management proposals."

This argument is without merit. The record in this area is not extensive, but it does show that the evaluators considered the evaluation elements specified in the RFP. There was some question as to the realism of SIMCO's price, resulting in the evaluators developing a realistic price approximately \$900,000 higher (\$6,430,643). Even with this adjustment, however, SIMCO's price remained approximately \$800,000 lower than BMAR's adjusted realistic price (\$7,234,110.01). The record shows that the evaluators were well aware of the DCAA concerns, and that they did consider those concerns to inject some performance risk into SIMCO's proposal. The evaluators ultimately concluded, however, that because the contract was fixed-price in nature, the potential risk of a higher cost to the government was minimal, notwithstanding DCAA's concerns.²

DCAA's concerns did not suggest that SIMCO's understanding of the requirement (i.e., compatibility of its price with its technical and management proposals) was in doubt. Rather, the DCAA report seems to focus on the possibility that by including somewhat low cost elements in its price, SIMCO increased the possibility that it would not have sufficient funds to perform. The evaluators and the selection official fully considered this possibility. We conclude that the price evaluation was conducted in accordance with the RFP, and that the concerns with SIMCO's price were reflected in the evaluation results. We see nothing unreasonable in the evaluators' conclusion that SIMCO's price was not so low that it was not a valid element for use in the source selection, as BMAR suggests.

PRICE/TECHNICAL TRADEOFF

BMAR maintains that in selecting SIMCO for award, the Air Force essentially ignored the RFP evaluation scheme, which made technical and management considerations more important than price, and simply made award to SIMCO on the basis of its low price.

Where, as here, the RFP evaluation scheme assigns price less importance than some technical factors, an agency nevertheless properly may make award to a lower-priced, lower-scored offeror if it determines that the cost premium involved in awarding to a higher-rated, higher-priced offeror is not justified given the acceptable level of technical competence available at the lower cost. AMG Assocs., Inc., B-220565, Dec. 16, 1985, 85-2 CPD ¶ 673. We will review such tradeoffs to assure that they are

²Indeed, it is for this reason that the agency was not required to perform a detailed cost-type analysis.

reasonable in light of the evaluation scheme. Lockheed Corp., B-199741.2, July 31, 1981, 81-2 CPD ¶ 71.

We see nothing improper in the tradeoff here. As discussed above, the Air Force found that the two proposals were essentially equal. BMAR urges that this in fact was not the case--that its proposal should have been rated superior to SIMCO's--but the agency's conclusion is consistent with our findings above and the evaluation record. We already have found that the specific areas of SIMCO's proposal that BMAR argues were overrated in fact were reasonably evaluated as acceptable, and there is nothing in the record indicating that the agency unreasonably found that BMAR's proposal was only acceptable rather than exceptional. In this regard, while the evaluators noted that the maintenance portion of BMAR's technical proposal reflected a commitment to quality, they made no such comments regarding the operations portion; thus, there is no basis for concluding that BMAR's proposal warranted an exceptional (rather than acceptable) rating under the technical factor. Similarly, while the evaluators were impressed with the quality control and personnel portions of BMAR's proposal, there is no such indication with regard to the contingency plans and phase-in portions. Meanwhile, SIMCO's proposal also was considered good; the evaluators found that the maintenance portion of SIMCO's proposal also reflected a commitment to quality, and noted that the firm's management proposal was very good. We conclude that the agency did not disregard the evaluation scheme. Rather, it reasonably determined under that scheme that BMAR's proposal, while somewhat superior to SIMCO's, warranted the same adjectival ratings as SIMCO's.

Given that the technical/management proposals were reasonably deemed essentially equal, the agency properly based the award on SIMCO's significantly lower fixed price. While, as discussed above, the agency was concerned that SIMCO's proposed price introduced risk into contract performance, the SSA, in adopting the evaluators' findings, essentially determined that SIMCO's price was so much lower

than BMAR's, even as adjusted for realism, that award to SIMCO was warranted. There is no basis for finding this conclusion unreasonable.³

The protest is denied.

Robert P. Murphy
for James F. Hinchman
General Counsel

³BMAR maintains that the record shows the SSA was not presented with all of the evaluation results and therefore could not make a rational tradeoff decision. However, the agency reports that the evaluators briefed the SSA after completing their review, and the mere fact that the SSA was not persuaded--as BMAR urges he should have been--that the risk considerations eliminated the benefits of SIMCO's lower price does not mean that he did not consider this risk.

³BMAR maintains that the record shows the SSA was not presented with all of the evaluation results and therefore could not make a rational tradeoff decision. However, the agency reports that the evaluators briefed the SSA after completing their review, and the mere fact that the SSA was not persuaded--as BMAR urges he should have been--that the risk considerations eliminated the benefits of SIMCO's lower price does not mean that he did not consider this risk.