



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

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Matter of: Tri-J Contractors

File: B-277063.3

Date: July 6, 1998

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Sam Zalman Gdanski, Esq., for Tri-State Company, an intervenor.
Alan Groesbeck, Esq., Department of Agriculture, for the agency.
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DIGEST

In procurement where technical merit was to be more important than cost, agency properly selected higher-rated, higher-cost proposal where agency reasonably evaluated awardee's proposal as significantly superior to protester's, and source selection official reasonably determined that technical merit of awardee's proposal outweighed protester's slight cost advantage.

DECISION

Tri-J Contractors protests the award of a contract to Tri-State Company, Inc. under request for proposals (RFP) No. R8-08-97-2, issued by the Forest Service, Department of Agriculture, for flood damage repair of the Cascades Trail located in the George Washington and Jefferson National Forests, Giles County, Virginia. The protester complains that the Forest Service improperly evaluated proposals and conducted an improper best value analysis.

We deny the protest.

The RFP, which contemplated the award of a fixed-price contract, requested proposals for the construction/reconstruction of four trail bridges and abutments, as well as trails. The required work included removal of existing bridges, construction of treated timber glue-laminated bridges, clearing, excavation, rock steps, rock waterbars, rock masonry, mortared stone work with rebar base, rock demolition, movement of large rocks, rock sign installation, and log cribbing and benches. The solicitation permitted alternate proposals and provided for evaluation of proposals on the basis of the following technical evaluation factors (and possible points out of

a total of 100): (1) experience of prime contractor in Forest Service trail and foot bridge construction in remote locations with limited vehicle access (40 points); (2) feasibility of contractor's technical proposal and equipment availability (25 points); (3) experience of superintendents, foremen, and crew in trail and bridge construction, including experience in similar contracts in working in remote locations with helicopters and limited vehicle access (15 points); (4) for alternate proposals, description of construction materials and methods of construction to be used including transportation of materials to the site (10 points); and (5) logical sequence of work and approximate calendar days for each phase (progress schedule) (10 points). RFP at 116 and 117. The RFP provided that cost would be secondary to technical considerations and that award would be made to the offeror whose proposal presents the technical/cost relationship most advantageous to the government. RFP at 116.

Of the six offers received, three were determined to be in the competitive range. The agency initially made award to Tri-State but, following a protest by Tri-J to our Office (B-277063, B-277063.3), the Forest Service took corrective action; it opened discussions with competitive range offerors, sending them letters listing deficiencies (including negative past performance reference comments), and then requested best and final offers (BAFO). After receipt and evaluation of BAFOs, including responses to the negative references, the agency reevaluated and rescored the proposals. Tri-State's proposal received the highest technical score, 86 points, and offered the second lowest price, \$248,869. Tri-J's proposal received the second highest technical score, 66 points, and offered the low price, \$246,490. The agency determined that the technical superiority of Tri-State's proposal--particularly in the areas of demonstrated experience on all required work, excellent references, proposed logical sequencing of work, and understanding of site limitations/contract restrictions--outweighed the protester's \$2,379 price advantage and provided the best value to the government. Award to Tri-State was reconfirmed on March 10, 1998. This protest followed.

The protester argues that the agency evaluated proposals with undisclosed criteria, ignored information submitted in its proposal, and otherwise miscalculated proposals. According to the protester, its proposal should have received a score equal to the awardee's, which would have resulted in award to it based on its low price.

In reviewing a protest against an agency's evaluation of proposals, we will examine the record to determine whether the agency's judgment was reasonable and consistent with the stated evaluation criteria. ESCO, Inc., B-225565, Apr. 29, 1987, 87-1 CPD ¶ 450 at 7. We have examined the evaluation here and conclude that it was both reasonable and consistent with the evaluation criteria. We discuss some key areas of the evaluation below.

EXPERIENCE EVALUATION

Recent Experience

Under the experience of the prime contractor factor, Tri-J's proposal received 30 out of the 40 possible points, and, under the experience of superintendents, foremen, and crew factor, 11 of the 15 possible points. In contrast, the awardee's proposal received 36 and 13 points, respectively, under the two factors. Tri-J complains that its proposal improperly was downgraded based on consideration of the amount of recent experience on every line item of required work which, it claims, was an undisclosed evaluation factor.

We do not agree that recent and/or similar experience were undisclosed factors. Beyond the requirement that offerors furnish information on its and its superintendents', foremen's, and crew's experience, RFP § M.2 at 116, the solicitation required offerors to list the names and proposed duties of their proposed professional personnel, consultants, and key subcontractor employees, and stated that "[t]heir resumes should be included and should contain information on . . . recent work experience" RFP § L.14(b)(4) at 108 (emphasis added). The RFP also stated that "[t]he technical proposal must provide the general background, experience and qualifications of the organization," and that "[s]imilar or related contracts, subcontracts, and/or grants should be included" RFP § L.14(b)(5) at 108 (emphasis added). The requirement for this recent and similar experience information for both the offeror and its employees should have put Tri-J on notice that the evaluation under the two experience evaluation factors would extend to such experience.

In any case, an agency may assess offerors' experience differently based on differences in the mix of the offerors' experience, even if the basis for the different assessment was not expressly identified in the solicitation, so long as that basis is logically encompassed by or related to the stated evaluation criteria, Counter Tech., Inc., B-260853, July 20, 1995, 95-2 CPD ¶ 39 at 4, and we think that the recency and similarity of experience are obviously encompassed by even the most generic experience criterion. This is because the recency and similarity of a firm's experience logically could reflect the extent to which a firm's experience will be predictive of the firm's performance on the contract to be awarded. Since recent and similar experience clearly is related to the evaluation factors aimed at assessing offerors' (and their personnel's) experience, even had the RFP not contained adequate references to recent and similar experience, it would have been a proper basis for distinguishing between proposals.

The agency reasonably evaluated Tri-State's proposal as superior to Tri-J's under the experience factors. The evaluators noted as a strength the protester's 32 years of experience in trail and bridge construction, including excellent experience in prefabricated bridge construction, as well as related helicopter experience.

However, they also noted as a weakness/deficiency the absence of similar and/or recent experience in two required work areas--rock/stone work and fitted round pole (hand) rail construction. The rock/stone work deficiency was of particular concern to the evaluators because, based on the government estimate, 45 percent of the contract work would involve rock/stone work. The evaluators determined that Tri-J's proposal indicated limited rock/stone work experience, none of which was recent (i.e., since 1986); presented photographic stone work examples that were not impressive; provided limited information regarding the firm's crew and other specialty workers, including stone masons; and made little reference to the moving of rock. Additionally, the protester's one stone work reference indicated problems with the quality of work, including sloppy work on stone steps, and none of the protester's references indicated experience with equipment used to move large rocks.¹ The fitted round pole rail construction experience weakness was based on the protester's references and photographs included in Tri-J's proposal.

While the protester's experience scores reflected satisfactory experience, Tri-State's proposal received higher scores based on its recent experience with all line items of work and its performance of five contracts within the project area within the last 10 years. Tri-State's proposal was evaluated as demonstrating "excellent work experience in similar contracts," "demonstrated work experience on all bid items," "with photo and narrative documentation," and "documented excellent quality stone work." Evaluation Narrative and Appendices at 4 and 30. Tri-J does not challenge these conclusions. We conclude that the agency reasonably evaluated the proposals under the experience factors.

Stone Masons

Tri-J further asserts that the agency improperly failed to consider all of its experience information. For example, it maintains that its proposed plan to hire journeymen stone masons was ignored, and that its proposal then actually was downgraded for failing to include resumes for the stone masons, which were not required by the solicitation (since they were not professional personnel, consultants or key subcontractor employees for whom the RFP required resumes).

There is no evidence that the agency ignored information in Tri-J's proposal, and we find that the agency reasonably downgraded the proposal based on the protester's failure to provide adequate information. Specifically, with regard to stone masons, the proposal stated that "[t]his item is probably one of the most critical of all items," "[w]e will bring in journeyman rock masons," "[t]hese technicians did the rock work for us at New River Gorge (pages 15-16 of our picture presentation)," "[t]hey did a

¹The evaluators determined from a photograph of the stone steps (included in the protester's proposal) that, although the specifications were unknown, there appeared to be an erosion problem.

beautiful job," and "[p]lease excuse our picture quality in the dark canyon." Tri-J Proposal at 14. The proposal did not identify the proposed stone masons, and the indicated experience consisted of only one project of indeterminate quality. The proposal included only two photographs of stone masonry--a wall in progress (that appears to include rebar)--which because of shadows is essentially unviewable. Further, in the protester's listed reference for this project, no mention was made of stone masonry. Tri-J was on notice of the agency's finding that the information in this area was deficient based on the following discussion question: "As required by Section L.14(b)(4) of the solicitation, you must provide information on personnel and key subcontractor employees assigned to the project[;] your proposal as submitted does not include this information." Discussion Question No. 6 at 2.² An offeror has the burden of submitting an adequately written proposal for the agency to evaluate. Premier Cleaning Sys., Inc., B-255815, Apr. 6, 1994, 94-1 CPD ¶ 241 at 5. In light of Tri-J's failure to provide adequate information regarding its proposed stone masons and their work experience, the agency reasonably concluded that the protester's proposal presented minimal experience in this area.

In contrast, the awardee's proposal indicated that the two principals of the prime contractor (the president and field supervisor) would be performing the mortared stone work and submitted evidence of similar past contracts along with numerous photographs of their mortared stone work experience. Additionally, references indicated that the work was of high quality, which the agency confirmed from the submitted photographs. The record thus shows that the proposals differed materially in this area, and this difference provided a reasonable basis for the agency to distinguish between the two proposals in the evaluation.³

²We note that the protester's argument that it did not consider stone masons professional employees appears inconsistent with the statement in its response to the discussion questions that "[w]e will bring in from time to time, as needed, the professional carpenters and/or rock masons." Tri-J Response to Discussion Questions at 3 (emphasis added).

³The protester further contends that the rock/stone work in fact comprised no more than 34 to 36 percent of the contract work, rather than the 45 percent estimated by the agency, and that the agency thus assigned unreasonable importance to rock/stone work in the evaluation. This argument is without merit. Even if the protester's calculations were assumed to be accurate, we think the agency reasonably could consider 34 to 36 percent of the work to be sufficiently significant that the differences in the proposals in the area of rock/stone work provided a legitimate basis for distinguishing between the two proposals.

WORK SEQUENCE

Under this factor, offerors were to "[i]ndicate the logical sequence of work and approximate calendar days for each phase (progress schedule)." In regards to work scheduling, the specifications provided that (1) no construction could take place in the Little Stony Creek during the spawning season of native trout, which runs between October 1 and May 1, and (2) no stone construction, including rock masonry, could be done in freezing weather. RFP Specifications §§ 104, 930 at 12 and 67.

Tri-J received 4 of the 10 available points for its proposal to start work at the beginning of the trail and continue to the end, building abutments along the way and installing bridges last. As for its progress schedule, Tri-J advised the agency that "[w]ith the start date not stipulated, it is impossible to make a proposed progress schedule due to the spawning season and winter weather," and that a progress schedule would be provided "as soon as we know when the start work date is." Response to Discussion Questions at 9 and 10. The protester did include a proposed number of calendar days for each line item of work. *Id.* at 10.

The evaluators determined that Tri-J's proposal to start at one end of the trail and proceed to the other end did not present a logical sequence of work, because of the need to accomplish several items of work at certain times of the year due to the trout spawning and freezing weather limitations. The evaluators concluded that Tri-J had not demonstrated an awareness of the need to work within these limitations.

In contrast, Tri-State's proposal received 8 of the 10 available points for its proposed critical path diagramed work plan, which provided estimated total work days for two work cycles separated by a probable winter shutdown. Tri-State Proposal at 15. Details about each cycle of work and the specific work affected by the trout spawning season were identified, and the weather also was noted as an "impacting condition." Tri-State Proposal at 15. The awardee proposed to complete work on and open the lower half of the trail after the first cycle/season of work. The evaluators concluded that the awardee's critical path plan demonstrated a logical sequence and clear understanding of the work to be accomplished, with specific consideration of the trout spawning and weather limitations. In particular, the awardee's plan to open the lower half of the trail after the first season of work, or in the fall of 1998, was determined of value to the government, since it would allow public use of this high use trail, which had been closed since January 1996, one season earlier than under the other proposals.

Tri-J disagrees with the evaluation and contends that its proposed work progress from the beginning to the end of the trail provided a logical sequence of work based on the "way most trail work is done," rather than "having cross country movement to particular sites." Comments at 9. Further, the protester maintains that it "did

point out . . . specific concerns" regarding trout spawning and winter weather, "but that without some specific start time, the effect of these could not be directly scheduled." Comments at 11.

The evaluation in this area was reasonable. Even if Tri-J is correct that trail work usually is sequenced from the beginning of a trail to the end, this does not establish that the usual sequence was the most appropriate one here; the agency reasonably could determine that a different sequencing--such as the awardee's--was better given the trout spawning and weather limitations identified in the RFP. Further, while the absence of a firm start date may have precluded offerors from providing fine-tuned scheduling taking into account the effect of the trout spawning and weather limitations, we think the agency reasonably could expect offerors to demonstrate scheduling for these considerations using an estimated or probable start time. In this regard, faced with the same uncertainty, Tri-State nevertheless developed an "estimated" schedule, "dependent on [the] start date," which demonstrated how it would account for the trout spawning and weather limitations. Tri-State Proposal at 15. The agency therefore reasonably rated Tri-State's proposal superior in this area.⁴

PRICE/TECHNICAL TRADEOFF

The protester complains that the tradeoff was flawed because, while weaknesses in its own proposal were considered risks in the tradeoff, the awardee's evaluated weaknesses were ignored.

An agency has the discretion to make award to an offeror with a higher technical score and higher price where it reasonably determines that the price premium is justified considering the technical superiority of the awardee's proposal, and the result is consistent with the evaluation criteria. Atlantic Scaffolding Co., B-250380, Jan. 22, 1993, 93-1 CDP ¶ 55 at 4.

⁴Tri-J maintains that Tri-State's proposal unfairly was given credit for offering to open the lower half of the trail early, since a diagram in the RFP called for finishing the lower half of the trail (between bridge one and two), and opening it to public use, during the first season. However, Tri-J does not identify, and we have not found, the RFP diagram alleged to contain this requirement. The only RFP diagram of the entire trail is entitled "Maintenance for Traffic," which states only that "[l]ower trail between bridge #1 and bridge #2 currently closed" and "[u]pon completion and acceptance of bridges, this section to be open to foot traffic." RFP Specifications at 13. Consequently, we have no basis to question the agency's crediting the awardee for its proposed early opening of the lower half of the trail.

The agency met this standard here. While the source selection board (SSB) cited several weaknesses in Tri-State's proposal, it ultimately determined that award to Tri-State presented the best value to the government based on significant relative technical advantages which it found outweighed Tri-J's \$2,379 price advantage. These advantages included the following: proven quality track record through past performance and experience on all required items of work; proposed logical sequence of work; excellent references including excellent craftsmanship, as supported by submitted photographs and video, and no unfavorable references; ability to move large rock and incorporate them into finished product; and demonstrated experience of prime contractor as stone mason with similar projects, as indicated in submitted photographs. As discussed above, we find that the agency's evaluation of Tri-State's proposal as superior in these respects was reasonable. While Tri-State's proposal contained weaknesses, these weaknesses were offset by strengths, as reflected in Tri-State's evaluated relative superiority under all of the factors discussed. Given that technical considerations were more important than price under the RFP, there simply is no basis to question the agency's conclusion that these technical advantages outweighed Tri-J's slightly lower price.

ALTERNATE PROPOSALS

Finally, contrary to the protester's contention, there is no indication in the record that the agency evaluated alternate proposals unequally or improperly failed to consider the cost savings of the protester's alternate proposal. The protester maintains that while its alternate offer for rock cribbing in one line item was similar to the awardee's alternate offer for log cribbing on another line item (neither of which was accepted by the agency), the awardee's alternate proposal nevertheless received 8 points and its own proposal received zero points. The record, however, indicates otherwise. In fact, of the available 10 points, the protester's alternate proposal received 5 and the awardee's alternate proposal received 6.

Moreover, the slight difference in these scores is explained in the record by a concern which also demonstrates that the agency did consider the lower price of the protester's alternate proposal. The value of that lower price was discounted by the agency's conclusion that the lower price represented a risk to the government. The evaluators raised their concern about the low price with the protester during discussions. Specifically, during discussions, the following written question was submitted to the firm: "[p]rice of alternate bridge proposal-we have concerns over the low price offered for the alternate bridge proposal; please verify your price offered." Discussion Letter at 2. In response, the protester stated "my company [i.e., west coast supplier/fabricator] has given us a quote that is half that of the best east coast quote." Response to Discussion Questions at 4. Based on this response, the evaluators concluded that they had "no verification that the contractor can purchase these bridges on the west coast and have them delivered [to the east coast] and in place for half the price of the specified design." Evaluation Narrative

at 7. Further, the evaluators concluded that "[s]election of this alternative would be based upon costs that are not verified and would increase the risk to the government." Id. Consequently, based on a lack of "any written documentation supporting th[e] bid price," the evaluators determined that the alternate was "not fully acceptable." Id. While the protester complains that the agency should have been satisfied with its response, we believe that, after the agency had explicitly expressed concern regarding the low price during discussions, it was reasonable for it to view the protester's conclusory response as not allaying that concern. In this context, we find reasonable the slightly lower score awarded the protester's alternate proposal as well as the SSB's conclusion, after consideration of the 17 percent cost savings of that alternate proposal, that the technical benefits of the awardee's higher-rated technical proposal with very little risk outweighed the risks involved with the protester's unverified cost savings. Source Selection Report at 5.

The protest is denied.

Comptroller General of
the United States