

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-221831 **DATE:** May 9, 1986
MATTER OF: Master Security, Inc.

DIGEST:

1. Source selection officials are not bound by the recommendations and conclusions of evaluators and may overrule those recommendations and conclusions if the decision to do so is rationally reached.
2. Where solicitation stated that technical factors would be weighted more than price factors in selecting a contractor, the source selection official properly selected a lower-priced proposal which the evaluators had given a 8 percent lower technical ranking and therefore 1 percent lower overall ranking, because the source selection official reasonably determined that the proposals were essentially equal technically and price therefore became determinative.
3. Allegation that the contracting agency led the protester to believe that it would receive the award provides no valid basis for protest where the protester was aware that any award was contingent upon determining the protester's financial responsibility and it is clear that the agency did not unconditionally accept the protester's offer.
4. Protest that the proposed awardee of a fixed price contract submitted an offer that was below cost provides no legal basis for questioning the award.

Master Security, Inc. (Master) protests the proposed award to another firm of a fixed-price contract for security guard services under General Services Administration (GSA) request for proposals (RFP)

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No. GS-11C-50068. The security services involve protecting classified information concerning nuclear technology at offices of the Department of Energy (DOE). The contract would be for an initial 1-year period with the government having an option to extend the contract on a yearly basis for up to 4 years. Master states basically that the agency's technical and price evaluations of the proposals resulted in Master's receiving the highest total evaluation score and contends that the award therefore should be made to Master.

We deny the protest in part and dismiss it in part.

The RFP's Evaluation Factors for Award provided that the best and final offers submitted by those offerors whose initial technical proposals were technically acceptable would be evaluated on the basis of technical merit and price (the total price for the initial year and the 4 option years), and that technical merit would be more significant.

The GSA Source Evaluation Board (SEB) determined that the initial technical proposals of Master and the proposed awardee were technically acceptable and should be included in the competitive range for discussions. After discussions and the receipt of best and final offers, the SEB ranked Master's technical proposal 8 percentage points higher than the proposed awardee's, and gave both technical proposals an adjective rating of "Very Good." The SEB applied a formula assigning price a weight of 40 percent and technical merit a weight of 60 percent. As a result, the SEB's final ranking of Master's proposal exceeded the proposed awardee's by less than a percentage point, since Master's total evaluated price was approximately 13 percent more costly than the awardee's. The SEB recommended that the contract be awarded to Master based on its higher overall ranking.

After reviewing the technical proposals of Master and the proposed awardee, the GSA Source Selection Official concluded that both offers were essentially equal in technical merit and both demonstrated the offerors' ability to provide the level of security services specified in the RFP. He therefore concluded that the cost impact on the government should be the determinative factor in selecting the contractor. The selection official decided that both Master and the awardee demonstrated that they could satisfy the RFP's security requirements completely, and, because the proposed awardee's proposal afforded a savings of approximately \$2 million, it should be selected.

Master primarily contends that considering the SEB's recommendation that Master should receive the award, and Master's past experience under similar DOE contracts, the selection official's determination that the proposals of Master and the proposed awardee were essentially equal is unsupportable. Master also states that since the SEB believed that Master's proposal was more advantageous to the government, the agency led Master to believe that it would receive the award as soon as the question of Master's financial responsibility was resolved and that the selection official's review only was a formality. Third, Master argues that the proposed awardee offered unrealistic prices and will attempt to increase the contract price after the contract is awarded.

Regarding the propriety of the selection official's award decision, the limits of a selection official's discretion--including the extent to which he uses the results of technical evaluations and makes technical/cost tradeoffs--are governed only by the tests of rationality and consistency with the established evaluation criteria. Advanced Technology Sys., Inc., 64 Comp. Gen. 344 (1985), 85-1 CPD ¶ 315. It is well established that the selection official is not bound by the recommendations and conclusions of evaluators such as the SEB. Id. Where the selection official reasonably regards proposals as being essentially equal technically, price may become the determinative factor in making an award notwithstanding that the evaluation criteria assigned price less importance than technical merit. See SETAC, Inc., 62 Comp. Gen. 577 (1983), 83-2 CPD ¶ 121. We have upheld determinations that technical proposals were essentially equal despite percentage differentials in ranking that were significantly greater than the one here. See Harrison Sys. Ltd., 63 Comp. Gen. 379 (1984), 84-1 CPD ¶ 572; Assoc. for the Educ. of the Deaf, Inc., B-220868, Mar. 5, 1986, 86-1 CPD ____.

Thus, to the extent that Master relies on the SEB's scoring per se, the protest clearly lacks merit. See Harrison Sys. Ltd., supra. Further, to the extent that Master asserts a technical advantage based on its experience as a DOE contractor, we have held that a selection official may consider a numerical scoring advantage which is found to be based primarily on the advantages of incumbency as not indicating a significant technical advantage which would warrant paying substantially more for it. Bunker Ramo Corp., 56 Comp. Gen. 712 (1977), 77-1 CPD ¶ 427; Assoc. for the Educ. of the Deaf, Inc., supra. We believe the source selection

official has the same discretion regarding any slight technical advantage based primarily on similar contracts with the same user agency.

Our review of the record provides no basis for objecting to the selection official's decision that the proposals were essentially equal technically as being unreasonable or inconsistent with the evaluation criteria. Price therefore properly became the determinative factor. See SETAC, Inc., 62 Comp. Gen., supra. In addition, we point out that the selection official was not bound to use the same formula as the SEB and had the discretion to use any formula consistent with the RFP's evaluation criteria. See Bunker Ramo Corp., 56 Comp. Gen., supra. The use of a formula assigning technical merit 58 percent and price 42 percent, which still would have been consistent with the RFP's statement that technical merit was more important than price, would result in the proposed awardee's proposal being higher ranked than the protester's. We therefore believe that the selection of the awardee's proposal based on its substantially lower price can be justified on this basis as well.

The protester's assertion that the contracting agency indicated that Master would receive the award provides no valid basis to question the award. It is a fundamental rule that the act necessary to bind the government is its acceptance of an offer, and the acceptance must be clear, unequivocal, and unconditional. See Mil-Base Indus., B-218015, Apr. 12, 1985, 85-1 CPD ¶ 421. Even supposing that Master may have been led to believe that it would receive the award, there was no question, as Master admits, that it was aware that acceptance could not occur until at least the question of Master's financial responsibility had been resolved.

Master's contention that the proposed awardee's price is too low also does not provide a legal basis for questioning a contract award, since a firm-fixed-price contract is not subject to adjustment based on a contractor's cost experience during performance and thus places no obligation on the contracting agency to pay more than the contract price. See Mesa, Inc., B-220657, Dec. 27, 1985, 85-2 CPD ¶ 724. Contracting officers are required to take appropriate action to ensure contractors' losses resulting from below cost offers are not recovered through change orders or otherwise. JAMATS, Inc., B-220839, Nov. 1, 1985, 85-2 CPD ¶ 508.

Accordingly, the protest is denied in part and dismissed in part.

for Raymond Egan
Harry R. Van Cleave
General Counsel