



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: T.H. Taylor, Inc.
File: B-227143
Date: September 15, 1987

DIGEST

1. A protest alleging that evaluation of the protester's experience was improper is denied where the record shows that the agency's downgrading of the protester's proposal for lack of experience directly related to the work to be performed was reasonable.
2. Award of a contract to a higher priced offeror is proper where the awardee's price-per-technical-point ratio was the lowest among all offerors, even though use of this ratio was not specified in the solicitation, since use of this ratio was consistent with the evaluation scheme which accorded equal weight to technical and price factors.
3. Contentions that evaluation of proposed subcontractors was improper because offerors were not bound to utilize subcontractors listed in their respective offers, and that agency improperly failed to utilize sealed bidding procedures for the procurement, are untimely where filed after the contract has been awarded.

DECISION

T.H. Taylor, Inc. protests the award of a contract to Couch, Inc., under request for proposals (RFP) No. DACA01-87-R-0036, issued by the United States Army Corps of Engineers, for the construction of an aerial gunnery range at Fort Rucker, Alabama. Taylor principally alleges that the Corps did not properly evaluate proposals, and failed to disclose the evaluation factors to be considered in award of the contract.

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

The RFP set forth two major technical evaluation factors, the first of which was accorded more weight in the evaluation of proposals: (1) Technical Capabilities and Experience, and (2) Organization and Personnel. The RFP provided that cost would not be scored but would be evaluated through the use of price analysis. The RFP also

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stated that award would be made to that responsible offeror whose offer, as evaluated, was deemed most advantageous to the government, technical, price and other factors considered, and that the government reserved the right to accept other than the lowest offer.

Based on an evaluation of best and final offers, Taylor received a technical score of 310 (out of a possible 400) points; Couch received 357 points. Taylor submitted the low offer at \$15,398,608.27, while Couch was next low at \$15,670,227.21. Using these technical scores and prices, the Corps calculated a price-per-technical-point ratio for each offeror. Taylor's ratio was \$49,672.93 per point, Couch's was \$43,894.19. This ratio eventually was used to determine the proposal most advantageous to the government, all factors considered, resulting in the contract award to Couch.

Taylor primarily questions the agency's evaluation of its proposal with respect to experience. In this regard, Taylor refers to the construction of a multi-purpose range recently completed at Fort Bliss, Texas, which, Taylor maintains, demonstrated its experience in projects of substantially the same scope as the Fort Rucker facility, as well as its ability to complete such a project ahead of schedule and in complete conformance with specifications.

In reviewing protests against allegedly improper evaluations, our Office will not substitute its judgment for that of the contracting agency but, rather, will examine the record to determine whether the agency's judgment was reasonable and in accord with listed criteria. See Service Ventures, Inc., B-221261, Apr. 16, 1986, 86-1 CPD ¶ 371. After examining the record in its entirety, we find that the Corps' evaluation of Taylor's proposal was reasonable.

The solicitation specified that experience would be considered under two separate evaluation subcriteria, the first related to experience in jobs of similar site and scope, and the other to experience on all major construction projects performed during the previous 3-year period. Taylor received a score of 45 out of a possible 60 points for the first of these two factors, and a score of 28 out of a possible 40 points for the second.

The record reveals that the technical evaluation panel, while recognizing Taylor's considerable experience as a prime contractor for building construction, downgraded Taylor because of its apparent lack of experience in horizontal construction (cleaning and grubbing, earthwork, and road construction), the sort of work required here. The construction at the range at Fort Bliss, which was the only

comparable project listed by Taylor in its proposal, was found to differ from the work required at Fort Rucker in three material respects: (1) the project at Fort Bliss covered a considerably smaller area (2,500 acres versus 13,200 acres at Fort Rucker); (2) it required only small amounts of road construction; and (3) it did not require any asphalt paving (277,813 square yards of asphalt were required at Fort Rucker). Additionally, the vast majority of the construction project referenced by Taylor as indicative of its broad experience in construction did not entail extensive site work but, rather, generally involved building construction. In view of this lack of documented experience in the specific type of construction required here, the Corps' evaluation of Taylor's proposal under the two evaluation criteria relating to experience seems reasonable and not subject to legal objection.

Taylor next contends that it was improper for the Corps not to disclose to offerors that a cost-per-technical-point ratio would be used in evaluating proposals. We do not agree. Agencies are not required to specify precisely how they will score proposals. All they must do is evaluate proposals in a manner that is consistent with the evaluation criteria and weights set forth in the RFP. Where, as here, the RFP does not assign relative weights to technical factors and cost, it must be presumed that technical and cost considerations will be given approximately equal weight. See Medical Services Consultants, Inc. et al., B-203998, et al., May 25, 1982, 82-1 CPD ¶ 493. The use of this ratio accords essentially the same weight to cost and technical factors, and as Couch was selected for award because its price per technical point was lowest among all offerors, the selection was consistent with the RFP and thus unobjectionable.

Taylor also questions the propriety of the Corps' evaluating the capabilities of proposed subcontractors in considering offerors' proposed methodologies for various items of work, since offerors were not bound to use the subcontractors listed in their proposals. As evidenced by Couch's alleged bid shopping for subcontractors after being notified of the contract award, Taylor asserts, basing a contract award on the ability of a subcontractor that may not perform the work is patently irrational.

This basis of protest is dismissed as untimely. Our Bid Protest Regulations provide that solicitation improprieties apparent prior to the closing date for receipt of initial proposals must be raised before that date. 4 C.F.R. § 21.2(a)(1) (1987). Here, the solicitation expressly provided that proposed subcontractors would be evaluated, but Taylor did not raise this contention until after

contract award. In any case, we find nothing inherently objectional in evaluating a proposed subcontractor, at least where, as here, the agency has no reason to doubt the subcontractor's availability.

In its comments on the agency's report, Taylor alleges for the first time that the Corps improperly failed to use sealed bidding procedures for this procurement. Since this contention was raised after contract award, it too, is dismissed as untimely.

The protest is denied in part and dismissed in part.

for Seymour E. Gross
Harry R. Van Cleve
General Counsel