

Ahearn



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Paper Corporation of United States
File: B-229785
Date: April 20, 1988

DIGEST

General Accounting Office determines award decision was inadequately supported as fair, reasonable, and consistent with the evaluation criteria, when performance testing was not conducted on an equal basis and performance evaluation criteria were treated as absolute technical acceptability requirements for protester, but not awardee.

DECISION

Paper Corporation of United States protests the rejection of its offer and the award of a contract to L&CP Corporation under request for proposals (RFP) No. BEP-87-204(TN), issued by the Bureau of Engraving and Printing, Department of the Treasury, for postage stamp paper. The protester essentially contends that the testing of its sample paper was not conducted on a basis equal to that of the awardee's.

We sustain the protest.

The RFP contemplated award of a fixed-price requirements contract, and solicited offers for an estimated 4,320 rolls of pre-gummed, coated, bright-white paper for the printing of postage stamps. The specifications required the paper not to shrink, stretch, or change in dimensions to an extent that would cause registration (i.e., alignment of the paper on the press) problems in the image. The specifications also required the paper to be suitable for stamp processing on the Bureau's perforator-sheeter and book forming equipment. Award was to be made based on three factors: price, an evaluation of the sample to the specification requirements, and an evaluation of the performance of samples when

used in the Bureau's production process. The RFP did not indicate that any factor was more important than the others. Offerors were to submit three sample rolls for the testing and evaluation processes. Requirements for the test rolls included five splices on one roll, extensive specific

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physical characteristics, and general performance capabilities.

The agency received three offers--one from the protesting firm and two from the awardee firm (only one of the awardee's samples is in issue here). In the laboratory specification tests (not in issue here), both the protester's sample and L&CP's sample were determined to have one minor deviation. In the performance evaluation, both offerors also were determined to have deficient samples. Paper Corporation's sample had a total of four instances of deficiencies under the registration and perforation requirements, while L&CP's sample had a total of two deficiencies, in the areas of registration and print quality. The Bureau's Test and Evaluation Division recommended award to L&CP on the basis of the "acceptable" performance of its sample, and the "poor and unacceptable" performance of Paper Corporation's sample. The contracting officer relied on this advice and made award to L&CP at a total price of \$3,429,216, which was \$460,858 more than the protester's offered price of \$2,968,358. Delivery under the contract was begun notwithstanding the pendency of the protest; a determination was made by the agency that the best interests of the government would not permit delaying performance to await our decision in the matter. See 31 U.S.C. § 3553(d)(2) (Supp. III 1985).

Paper Corporation contends that it should not have been downgraded under the registration requirement on its 5-splice roll, since it was not competing on an equal basis with L&CP; contrary to the express RFP requirement, L&CP did not submit a 5-splice roll for testing and was evaluated instead on the basis of a 4-splice roll. While the protester concedes that its test roll experienced registration problems, it attributes these problems (and the absence of similar problems from L&CP's 4-splice roll) to its compliance with the 5-splice requirement. The firm explains in this regard that, whereas a 4-splice roll is a standard manufactured item that has splices built into the paper and edges then trimmed to the finished roll width, preparing a 5-splice roll entailed a special process of artificially inserting splices into a finished-width roll, making further edge-trimming impossible. The protester maintains that since this artificial splicing of its roll resulted in uneven edges, which in turn can prevent the paper from lying flat on the surface of the press (registration), it was unfair to downgrade its sample without also requiring L&CP to submit a 5-splice roll for testing.

The protester also alleges that the deficient registration on the first half of its zero-splice roll should not be considered, or the roll should be retested, because it

appears to have been caused by the agency's failure to wipe off the press plates before running Paper Corporation's test roll. The protester alleges the press plate build-up was present prior to the introduction of its roll, as evidenced by the fact that after the plates were wiped halfway through the roll, the roll performed satisfactorily.

In considering protests against an agency's evaluation of proposals, we will not evaluate the proposals anew in order to make our own determinations as to their acceptability or relative merits. However, we will examine the record to determine whether the evaluation was fair, reasonable, and consistent with the evaluation criteria. Programmatics, Inc., et al., B-228916.2, et al., Jan. 14, 1988, 88-1 CPD ¶ 35; Federal Acquisition Regulation (FAR) § 15.612(d)(2). The evaluation here does not meet this standard.

The Bureau maintains that its acceptance of a 4-splice sample from the awardee was a minor deviation from the RFP, not affecting the price or quality of the paper. While acknowledging that splicing could affect registration, the agency maintains that registration should come right back after a splice and that it should not have taken one-half of the protester's 5-splice sample roll for registration control to be achieved. This argument seems to ignore the essence of Paper Corporation's position, that is, that putting together a 5-splice roll is not merely a matter of adding one splice more than a 4-splice roll but, rather, entails a different process altogether that precludes edge-trimming and thus may cause poor registration. Thus, even if the agency is correct that registration should come right back after a normal splice, Paper Corporation's argument appears to establish--and the Bureau has not responded otherwise--that while this may be the case for a 4-splice roll, it may not be uncommon for registration to return only after all the splices have passed on a 5-splice roll, precisely what happened here. Under these circumstances, we must agree that it was improper to base Paper Corporation's performance evaluation on a 5-splice roll without also requiring L&CP to submit a 5-splice test roll, and that it was unfair to downgrade Paper Corporation based on deficiencies that appear to have resulted from problems inherent in preparing a 5-splice roll.

As for the registration problem on Paper Corporation's zero-splice roll, the agency acknowledges that excessive build-up on the plates at the start of the test could have affected the registration performance results, but asserts that it is standard procedure for the press plates to be wiped before commencement of performance testing. The Bureau has no record, however, as to whether the plates actually were wiped prior to testing Paper Corporation's zero-splice roll,

and offers no representation by any employee to the effect that the plates in fact, or likely, were wiped. Under these circumstances, and given that Paper Corporation's zero-splice roll had no registration problems after the build-up was wiped, we find reason to believe that this deficiency also may have been caused by the agency's failure to assure that performance testing was conducted fairly and in accordance with established test procedures.

The agency argues that, regardless of the above alleged testing deficiencies, Paper Corporation had further evaluated deficiencies rendering none of its rolls acceptable, including registration problems with its third test roll. However, while the record shows that the foreman present during the performance trials did comment on the evaluation worksheets that registration was not at the recommended level for this roll, the quality assurance representative rated the roll either equal to standard or acceptable in all evaluated areas and the final written narrative recommending award, on which the contracting officer relied, stated that this roll had equal to standard registration. Thus, as the Bureau has not endeavored to explain the cause of this discrepancy, we do not find it clear from the record that this third roll did not perform acceptably. The protester's sample rolls also were initially evaluated as having two instances of unacceptable roll unwind, but since these deficiencies were not included in the final evaluation narrative, and have not been raised by the agency as support for its evaluation, we assume that they were not deemed significant.

Although the Bureau terms Paper Corporation's performance testing "unacceptable," the record indicates that the evaluation here was comparative, and that the RFP "requirements" were not absolute. First, nothing in the RFP indicated that failure of a sample to meet certain testing standards would render an offer technically unacceptable. Further, we find most persuasive the fact that L&CP was not disqualified based on the performance testing deficiencies in its sample rolls. The deficiencies in both offerors' samples were related to RFP "requirements," i.e., printing, registration, and perforation, but there is nothing in the RFP or elsewhere in the record indicating why the awardee's deficiencies were deemed acceptable while the protester's were not. Absent such an indication, the Bureau could not treat certain requirements as absolute while allowing deviation from other apparently equivalent requirements. The record thus does not support a finding that the protester's sample was technically unacceptable.

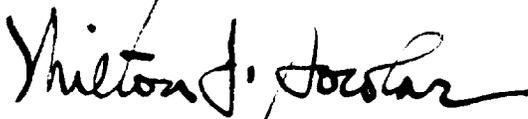
Discounting the deficiencies related to what we have found to be testing defects, the performance test results for the

awardee and the protester are close: two evaluated deficiencies each, Paper Corporation with two instances of deficient perforation, and L&CP with one instance each of deficient print quality and registration (the results remain close even if the unwinding problems are considered). Therefore, considering that Paper Corporation's proposed price was low, had the performance testing been conducted properly the Bureau's award decision could have been different, and we sustain the protest on this ground.

By separate letter of today to the Secretary of the Treasury we are recommending that offerors be permitted to resubmit sample rolls for proper testing; that an evaluation then be properly conducted on a comparative basis; and if, based on this reevaluation, Paper Corporation is in line for award, that the agency terminate the contract awarded to L&CP for the convenience of the government and award the remainder of the contract to Paper Corporation. If Paper Corporation is entitled to award and is unwilling to accept it for that portion of the contract that is not completed, we find Paper Corporation entitled to reimbursement for the costs of preparing its offer and filing and pursuing its protest.

Our recommendation is made without regard to the extent of performance, the cost of termination, or the potential disruption, since performance was authorized under 31 U.S.C. § 3553(d)(2)(A)(i) (Supp. III 1985), as required by 31 U.S.C. § 3554(b)(2). Teleflex Inc., B-220848, Feb. 5, 1986, 86-1 CPD ¶ 133.

The protest is sustained.


for Comptroller General
of the United States