



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Southern Commercial Industries, Inc.

File: B-229969

Date: April 25, 1988

DIGEST

1. Where solicitation provided for the technical score received by a proposal to be divided by the total proposed price to obtain a price/quality point ratio--price per technical point--agency did not act unreasonably in selecting the low-priced proposal over a technically superior proposal whose total price was more than twice that proposed by the awardee and whose price per technical point was at least 40 percent higher than the awardee's price.

2. Protest that agency failed to obtain waiver required under the Arms Export Control Act, 22 U.S.C. § 2791(c), to permit competition by other than domestic firms, provides no basis upon which to object to award to El Salvadoran firm where record shows procurement was covered by applicable waiver.

DECISION

Southern Commercial Industries, Inc. (SCI) protests the award of a contract to Viviendas Inversiones, S.A., under request for proposals (RFP) No. DACA01-87-R-0083, issued by the United States Army Corps of Engineers for premanufactured metal buildings to be erected in El Salvador. SCI questions both the evaluation of proposals and whether award to Viviendas, an El Salvadoran firm, was authorized under the governing statute, the Arms Export Control Act, 22 U.S.C. § 2791(c) (1982).

We deny the protest.

The solicitation requested proposals from United States and El Salvadoran firms for a fixed-price contract to erect five metal buildings in El Salvador as temporary replacements for military facilities damaged in a 1986 earthquake. The RFP provided for the evaluation of technical proposals based on (1) technical capabilities and experience, and (2) organization and personnel, and the resulting technical evaluation point score was to be divided by the total proposed price to obtain a price/quality point ratio. The solicitation

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statement of evaluation factors further provided that for purposes of evaluating financial capacity (one of four subcriteria under the organization and personnel factor), offerors were required to submit a standard financial statement reflecting their financial condition within the past 12 months. In addition, in a section entitled "Preaward Information," the solicitation provided that for purposes of evaluating responsibility, each offeror was required to furnish its latest financial statement either with its offer or within 3 calendar days of a request to do so.

Three of the eight offers received by the Corps were rejected because technical proposals were not furnished and a fourth proposal was rejected because it was not accompanied by a required proposal guarantee. The Corps ultimately found SCI's proposal to be unacceptable because it did not include a financial statement. The agency reports, however, that it first evaluated SCI's technical proposal, and that while SCI's technical proposal received the second-highest technical score (308 points), SCI's price/quality point ratio (\$3,223 per technical point) was the highest of the four evaluated offerors because of its highest proposed total price, \$992,624. In contrast, while Vivendas' technical proposal received a technical score of only 273, its price/quality point ratio (\$1,751 per technical point) was the lowest among the offerors due to its significantly lower total price, \$478,100. Since Vivendas proposed the lowest total price and its proposal was evaluated as offering the lowest price per technical point, the Corps made award to the firm on the basis of its initial proposal without conducting discussions. SCI thereupon filed this protest with our Office.

SCI denies that its failure to provide a financial statement with its proposal rendered the proposal unacceptable; it points out that its most current financial statement had already been submitted to the contracting activity for purposes of another procurement, and maintains that, in any case, it should have been given the option, as provided for under the requirement for "Preaward Information," of submitting a statement within 3 days of a request by the agency. The firm further contends that the technical superiority of its proposal was such that it should have received the award based on a proper evaluation.

The determination of the relative merits of proposals is primarily within the judgment of the contracting agency, and we will review such determinations only to assure that they are reasonable and consistent with procurement laws and regulations. Emerson Electric Co. B-227936, Nov. 5, 1987, 87-2 CPD ¶ 448. The protester's mere disagreement with a

technical evaluation does not render the evaluation unreasonable or contrary to law. See Ridge, Inc., 65 Comp. Gen. 663 (1986), 86-1 CPD ¶ 583.

The record shows that, contrary to SCI's general contention, the Corps in fact recognized the technical merit of SCI's proposal; although SCI received zero of 40 possible technical points for financial capacity because the firm had not submitted a financial statement with its proposal, it nevertheless received the second highest overall technical score. SCI's elimination from award consideration, however, ultimately turned on its price, not its technical merit. SCI's price was more than twice as high as that proposed by Viviendas; accordingly, SCI's price/quality point ratio would have significantly exceeded that of the awardee (\$1,751 per technical point) even if SCI had received the maximum technical score for financial capacity (which would have given SCI a ratio of \$2,852 per technical point), or the maximum score for all technical criteria (a ratio of \$2482 per technical point). We conclude that the record provides no basis upon which to question the Corps' determination of the relative technical merits of the proposals, and that the selection of Viviendas' proposal as most advantageous was reasonable under the solicitation evaluation scheme.

SCI also contends that the Corps lacked the authority to award a contract to Viviendas because it is an El Salvadoran firm and this procurement is being financed through the Foreign Military Sales (FMS) program. The governing statute, the Arms Export Control Act, 22 U.S.C. § 2791(c), provides that:

"Funds made available under this Act may be used for procurement outside the United States only if the President determines that such procurement will not result in adverse effects upon the economy of the United States or the industrial mobilization base, with special reference to any areas of labor surplus or to the net position of the United States in its balance of payments with the rest of the world, which outweigh the economic or other advantages to the United States of less costly procurement outside the United States."

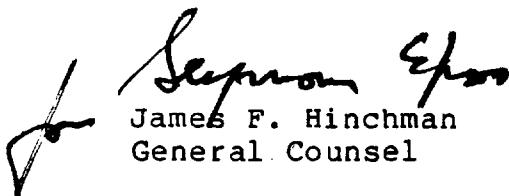
SCI, which claims that it is located in a designated labor surplus area, questions whether the Corps has obtained the waiver required under the Act for an offshore procurement.

The record shows that, in March 1987, the Corps requested Defense Security Assistance Agency (DSAA) approval for procurement of approximately \$70.3 million of earthquake-

related repair and reconstruction in El Salvador, including \$5.8 million for temporary facilities (DSAA has been delegated authority to approve a waiver with the concurrence of the Departments of State and the Treasury. See Security Assistance Management Manual, DOD Manual 5105.38M (July 31, 1987).) In considering the request, DSSA noted that the Corps had found limited interest on the part of United States firms in performing security assistance projects in El Salvador. DSAA concluded that it would be necessary to permit El Salvadoran firms to compete for a contract to construct 84 temporary metal buildings--at an estimated cost of approximately \$4.6 million--in order to assure the selection of a qualified contractor willing to deliver quality work, and to obtain significant savings by maximizing competition. Subsequently, in May 1987, with the concurrence of the Departments of State and of the Treasury, DSAA approved a waiver under the Act.

SCI principally argues that the current procurement of five temporary buildings was not encompassed by the waiver for the 84 buildings.^{1/} The waiver did not specify particular dollar limits, however, and was not restricted by its terms to any particular types of construction materials or services. Moreover, the five temporary buildings included in the procurement in question appear to be within the general scope of the original procurement (i.e., temporary replacement buildings in similar areas of El Salvador), and the contract ultimately was awarded to Vivindas at a price of only \$478,100, significantly less than the estimate for which the waiver was granted. On this record, therefore, we find that the DSAA waiver encompassed this procurement.^{2/}

The protest is denied.


James F. Hinchman
General Counsel

^{1/} Our decision here addresses only the scope of this waiver, not with whether the waiver should have been granted.

^{2/} We point out that the General Accounting Office is conducting a separate investigation of Corps procurements in El Salvador to determine overall compliance with the Arms Export Control Act.