



The Comptroller General
of the United States

Washington, D.C. 20548

Melody

Decision

Matter of: Pantel Associates

File: B-230793

Date: June 17, 1988

DIGEST

1. Contention that contracting agency's evaluation of technical proposals was inconsistent with the evaluation scheme in request for proposals (RFP) is without merit where, based on evaluation panel's conclusion that all the proposals were technically acceptable, contracting officer concluded that the proposals were technically equal and, as contemplated by the RFP, made award based on lowest price.
2. Contention that contracting officer improperly engaged in auction techniques by referring to current contract price in oral request for best and final offers is denied since the making of such statement is not itself an improper auction technique and there is no indication that the contracting officer's statement had any effect on offeror's pricing.

DECISION

Pantel Associates protests the award of a contract to DuBois & King, Inc. under request for proposals (RFP) No. WASO-88-01, issued by the National Park Service for land surveys of three segments of the Appalachian Trail. Pantel contends that the Park Service failed to follow the evaluation scheme set out in the RFP and conducted an improper auction in connection with its request for best and final offers (BAFOs). We deny the protest.

The RFP called for the award of one or more fixed price contracts for land surveys of two areas in Maine and one in New Hampshire. Offerors were authorized to submit proposals for one or more of the three areas; the proposals were to be evaluated separately by area. Under section M.3 of the RFP, technical proposals were to be rated as acceptable or unacceptable under the following five criteria: methods/techniques; personnel; availability of crews and equipment; past performance and experience; and exhibits. The RFP provided that award would be made to the responsible offeror

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"whose technical price relationship is most advantageous to the Government." The RFP also stated that the contracting officer would consider other factors, such as whether an offeror responded to all the RFP requirements and included all the information specifically requested in the RFP. In addition, to the extent that the proposals were found to be substantially equal technically, price was to be a "major selection factor."

Pantel submitted a proposal only for the segment located in New Hampshire. Two other offerors, DuBois & King, Inc. and C.T. Male Associates, P.C., also submitted proposals for the New Hampshire segment. The technical proposals were reviewed by the technical evaluation panel, which found DuBois and Male technically acceptable. Pantel was considered technically acceptable provided that it revised one portion of its proposal relating to use of a compass. In response to a subsequent request from the Park Service for clarification of that portion of its proposal, Pantel revised the proposal to conform to the RFP requirements. Based on that revision, the technical evaluation panel concluded that Pantel was technically acceptable.

The contracting officer then orally requested submission of BAFOs. The contracting officer states that she spoke with the president of Pantel, who expressed concern about preparing a final price without knowing what price the Park Service was "looking for." The contracting officer states that she then told Pantel the price of a previous contract for similar services to be used as a guide in preparing its BAFO. Pantel disagrees with the contracting officer's description of the conversation, arguing that she spoke with the office manager, not the president, and without being asked for the information, recited Pantel's initial price (\$71,900) and stated that the "current price" was \$64,170. In response, Pantel later advised the contracting officer that its initial price would remain unchanged. Award subsequently was made to DuBois, which submitted the lowest-priced (\$70,770), technically acceptable offer.

Pantel challenges the Park Service's evaluation of the proposals, arguing that the agency was required to go beyond determining that each proposal was technically acceptable and score the proposals to indicate their relative technical merit. In this regard, Pantel relies on section M.2(2) of the solicitation which states that the technical proposals will be scored and on the following descriptions of two of the five evaluation factors in the RFP which, in Pantel's view, indicate that scoring of the proposals was required:

"(2) Personnel. A more favorable rating will be given where the key personnel to be assigned to work under this contract have demonstrated experience in rural or remote survey projects or where licensed Land Surveyors have demonstrated experience in boundary and control survey.

"(4) Past Performance and Experience. Favorable ratings will be awarded for successful completion of similar projects. Experience within remote areas of Maine or New Hampshire will also be viewed favorably." (Emphasis added.)

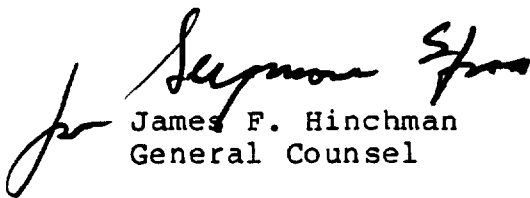
Pantel also argues that the Park Service failed to consider the "technical price relationship" of each proposal referred to in the RFP, and that basing award solely on the lowest price was inconsistent with the statement in the RFP that unspecified other factors in addition to the five set out in the RFP would be considered in the award decision.

We find that the evaluation was consistent with the evaluation scheme in the RFP. As noted above, the RFP advised offerors that to be eligible for award, their proposals at a minimum would have to be rated acceptable in each of the five specified categories. In addition, as indicated by the description of the evaluation factors relied on by Pantel, the Park Service reserved the right to distinguish among the offerors based on differences in their technical proposals. The technical proposals were reviewed by the technical evaluation panel, which concluded that all three were technically acceptable. Based on that evaluation, the contracting officer decided that the proposals were technically equal and, as provided in the RFP, price became the determining factor in the award decision.

Contrary to Pantel's contention, there is no requirement that numerical or other scores be assigned to the proposals. Further, to the extent Pantel argues that the Park Service improperly failed to take the proposals' relative technical merits into account, we disagree since the contracting officer's conclusion that the proposals were technically equal represents a determination that none of the technical proposals was superior to the others. In this regard, Pantel does not contend and we see no basis to conclude that its proposal was technically superior to the awardee's. Given that the proposals were found to be technically equal, award based on lowest price clearly was consistent with the RFP.

Pantel also argues that the contracting officer improperly used auction techniques in the request for BAFOs by implying that Pantel was required to lower its price to the "current price" of \$64,170. We find Pantel's argument to be without merit. While the parties disagree as to who initiated the contracting officer's reference to the "current price," in our view quoting the price of a current contract does not rise to the level of an improper auction technique within the meaning of Federal Acquisition Regulation § 15.610(d)(3). Further, there is no indication that the contracting officer's statement had any impact since Pantel did not lower its initial price in its BAFO. With regard to the awardee, DuBois, there is no indication that the contracting officer mentioned the current contract price when she requested that DuBois submit a BAFO. In addition, although DuBois' final price (\$70,700) was lower than its initial price (\$72,250), it is clear from the record that the reduction was made solely to correct an initial error in the extension of DuBois' unit prices; the unit prices themselves were the same in its initial and final offers.

The protest is denied.


James F. Hinchman
General Counsel