



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Systems Engineering Associates Corporation
File: B-231597
Date: October 4, 1988

DIGEST

1. Contracting agency properly decided to award a cost-plus-fixed-fee contract to the offeror of the higher-rated, higher-cost proposal, where the solicitation emphasized that technical factors were more important than cost considerations, and the agency reasonably determined that the awardee's higher technical merit was worth the additional cost.

2. A protest based upon information provided to the protester at a debriefing conference is untimely where the protest was filed in the General Accounting Office more than 10 working days after the conference.

DECISION

Systems Engineering Associates Corporation (SEACOR) protests award of a cost-plus-fixed-fee contract to American Systems Engineering Corporation (AMSEC) by the Department of the Navy pursuant to request for proposals (RFP) No. N00024-87-R-4243(Q). The contract is for providing engineering and technical services in support of the Shipboard Weapons Elevator Improvement Program, and includes requirements for a base year and 4 option years. SEACOR contends it should have been awarded the contract because its proposal fully met the Navy's technical needs while its proposed price was approximately \$3.2 million lower than AMSEC's; the protester argues that as its technical proposal was substantially equal to AMSEC's cost to the government should have been the determinant factor under the RFP's evaluation scheme.

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

The RFP was issued on August 19, 1987, with an initial closing date of September 25. Proposals were received from three offerors. Based upon the evaluation of initial

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proposals by a technical evaluation review panel, and on an evaluation of initial cost proposals, the contracting officer concluded that all three proposals were in the competitive range. Discussions were held in December of 1987 and January of 1988, and offerors submitted best and final offers by February 12.

In its best and final offer, AMSEC proposed a total price of \$15,133,700, while SEACOR proposed a total price of \$11,919,588.93. The technical evaluation review panel evaluated the best and final technical proposals and reported its findings to the contract award review panel. That panel applied a weighted scoring scheme, based on the RFP's stated evaluation method, to the raw technical/cost scores to calculate an overall evaluation score. The panel determined that AMSEC's proposal offered the best value to the government, cost and technical factors considered, and recommended that the contract be awarded to AMSEC. The contracting officer agreed, and awarded the contract to AMSEC on May 20.

In its initial protest letter to our Office, SEACOR argued that it should have been awarded the contract because its proposed price was lower than AMSEC's. SEACOR contended that the agency must have ignored price, or at least not given sufficient weight to it, even though price was to be a significant evaluation factor according to the RFP. SEACOR did not allege that it considered anything else improper about the manner in which the Navy evaluated proposals and appeared to derive its conclusion that the evaluation was improper solely from the price differential.

We find no merit to SEACOR's contention. A procuring agency has the discretion to select a more highly rated technical proposal if doing so is reasonable and is consistent with the evaluation scheme set forth in the solicitation. Comarco, Inc., B-225504, et al., Mar. 18, 1987, 87-1 CPD ¶ 305. We have upheld awards to higher rated offerors with significantly higher proposed costs where it was determined that the cost premium was justified considering the significant technical superiority of the selected offeror's proposal. BDM Management Services Co., B-228287, Feb. 1, 1988, 88-1 CPD ¶ 93.

Here, the RFP stated that award would be made to the offeror whose conforming offer was determined to be most advantageous to the government, price and other factors considered. The RFP explained that the Navy would evaluate technical, cost and fee factors and, although cost was to be an important evaluation factor, technical factors would be considered most important. The technical evaluation

factors were listed in descending order of importance as technical approach, experience, and project management; a number of subfactors to be evaluated within each technical factor were also listed. Concerning cost factors, the RFP indicated that proposed costs and fees would be evaluated for realism and reasonableness for the basic contract period and all option years. The RFP cautioned offerors that the offeror of the lowest proposed cost would not necessarily be awarded the contract.

The record shows that the evaluation plan used by the Navy's evaluators, including the preestablished weights for each evaluation factor or subfactor, was totally consistent with the evaluation priorities set out in the RFP. We also point out that, while both AMSEC's and SEACOR's best and final proposals were considered to be technically acceptable, they were not considered to be substantially equal on technical merit by the Navy's evaluation team. In fact, the Navy determined after a thorough evaluation on all factors that AMSEC's proposal was a significantly better one, and rated it 42 percent higher than SEACOR's proposal on technical merit.^{1/}

The evaluation documents show that AMSEC's proposal was rated as superior to SEACOR's on 9 of the 10 evaluation subfactors and was rated equal to SEACOR's on the tenth. While SEACOR's proposal was considered to be technically acceptable on each evaluation subfactor, the evaluators noted several significant weaknesses (as well as many strong points) in the proposal. For example, SEACOR's proposal was not innovative and, therefore, received no points in the subfactor entitled "innovative approach." SEACOR's proposal also was downgraded under the "project manager" factor because the proposed project manager would not be located physically near Navy headquarters and the evaluators believed this provided less assurance of adequate communications. SEACOR also lost evaluation points because a large number of its proposed key technical personnel were not currently employed by SEACOR and the evaluators therefore had some doubt as to whether such personnel would be available to work on the contract if awarded to SEACOR. On the other hand, AMSEC's proposal was considered to "outstanding" in almost every evaluation factor/subfactor and completely responsive to the RFP's requirements. In

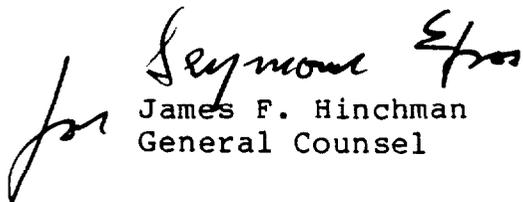
^{1/} Our calculations, using the figures provided by the Navy, show that AMSEC's proposal received an overall weighted technical score that was really 40.9 percent better than SEACOR's proposal. This minor discrepancy does not affect the outcome of this decision, however.

contrast to SEACOR's proposal, AMSEC's proposal did offer some innovative approaches, its management plan caused no concern to the evaluators regarding communications with Navy headquarters, and all key personnel were currently employed by AMSEC.

In essence, the Navy found that SEACOR's proposal was good, but that AMSEC's was even better, because AMSEC's proposal had no significant weaknesses. The Navy weighed AMSEC's extra cost against the benefits to be gained from its better technical proposal, and decided that the extra measure of technical merit in AMSEC's proposal was well worth its extra cost. In view of the fact that the evaluator's rated AMSEC's technical proposal at more than 40 percent better than SEACOR's, while AMSEC's total cost plus fee was only 26.9 percent higher than SEACOR's, we find that the decision to award to AMSEC was reasonable and consistent with the evaluation scheme's emphasis that technical factors were more important than cost. See ORI, Inc., B0231167, Aug. 30, 1988, 88-2 CPD ¶ _____. Accordingly, this portion of the protest is denied.

In its comments on the agency's report on the bid protest, SEACOR cited certain specific, detailed portions of its proposal that the Navy allegedly had evaluated improperly. According to the protester's own comments, these attacks upon the credibility of the technical evaluation are not derived from any information contained in the agency's report, but rather are derived from information provided to the protester by Navy personnel at a debriefing conference held on June 7, 1988. Under our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2), these new allegations had to be raised within 10 working days after the protester first became aware of the perceived improprieties. As SEACOR did not raise these grounds for protest until it filed its comments in our Office on July 18--almost 6 weeks after the debriefing conference--they are untimely and will not be considered on their merits. See Dayton T. Brown, Inc.--Reconsideration, B-223774.4, Jan. 21, 1987, 87-1 CPD ¶ 75; Canadian Commercial Corp., B-222515, July 16, 1986, 86-2 CPD ¶ 73.

The protest is denied in part and dismissed in part.


James F. Hinchman
General Counsel