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The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Jim Welch Company, Inc.

File: B-233925.2

Date: July 12, 1989

DIGEST

Agency reasonably selected higher-priced, technically superior proposal under request for proposals for runway repair giving predominant weight to technical factors based upon reasonable determination that awardee had "company" runway repair experience and protester did not.

DECISION

Jim Welch Company, Inc., protests the award of a contract to Phoenix Pavers, Inc., under request for proposals (RFP) No. F41800-88-R-5100, issued by the Department of the Air Force, San Antonio Contracting Center. Welch alleges various improprieties with respect to the evaluation of proposals and the source selection decision. We deny the protest.

The solicitation requested fixed prices to repair runway asphalt and repair seal joints on runway pavement at Hondo Airfield, Texas. Additionally, the RFP required offerors to submit technical proposals sufficiently addressing the RFP's technical evaluation criteria to permit a thorough evaluation of each offeror's technical ability. In brief, the criteria were listed in descending order of importance as understanding the requirements and capacity to perform; capacity to meet delivery requirements; and experience and past performance.

The first criterion was identified as "significantly" more important than the second and the second criterion "slightly" more important than the third. Award was to be made to the offeror whose proposal was deemed most advantageous to the government with technical merit more important than price.

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On October 21, 1988, 10 firms responded to the RFP. Following an initial technical evaluation, the contracting officer by letters dated November 22 identified various deficiencies in each offeror's proposal and requested revised proposals by November 29. On the same day, amendment No. 4 was issued changing a portion of the third evaluation factor from "Number of years experience of company in Paving Construction, with three years being considered acceptable" to "Number of years experience of company in runway repair work, with three years being considered acceptable."

Revised proposals were received and evaluated. Seven of the 10 firms, including Welch and Phoenix, were determined to be technically unacceptable and thus their proposals were not included in the competitive range. The proposals from Welch, Phoenix and two other offerors were viewed as unacceptable because they did not show 3 years of experience in runway repair work. After Phoenix protested its exclusion from the competitive range to our Office, the agency determined that the mandatory 3-year requirement was arbitrary, reinstated the proposals from these four offerors into the competitive range, and amended the solicitation to eliminate the 3-year requirement and provide instead for a relative assessment of offerors' varying experience levels.

Discussions were reopened and offerors were requested to submit data to substantiate any company experience in runway repair. Ultimately, all seven offerors submitted new best and final offers. Phoenix was the second-ranked offeror for both technical merit (512.5 points out of a possible 600 points) and price ($673,732). Welch was the lowest-priced offeror ($622,521.77) but was ranked sixth in technical merit (468.3 points). The contracting officer, as source selection official, determined that Phoenix's technical superiority outweighed Welch's lower price and that Phoenix's proposal was most advantageous to the government. In this regard, Phoenix's ratings for understanding of the requirement and experience and past performance criteria were significantly higher than Welch's ratings for these criteria. Award was made to Phoenix and this protest followed.

Welch contends that it should have been selected for award on the basis of its lower-priced technically acceptable proposal, since it knows that Phoenix is less qualified, less experienced and less responsible than Welch. However, Welch has not provided any evidence to support this contention, nor does our review of the proposals submitted

by the two competing firms, or the evaluation thereof, provide us with a basis to conclude that Welch's proposal is superior to Phoenix's proposal.

After selection, Welch was advised that the primary reason its proposal was not selected was that it did not indicate that the firm had any "company" runway experience as required by the RFP. Welch disputes this evaluation. However, our review indicates that Phoenix's proposal demonstrated company runway repair experience while Welch's proposal did not. That is, Phoenix specifically identified specific runway repair jobs that the company had successfully completed whereas the protester only identified specific individuals and subcontractors who possessed some experience in runway repair.

Welch argues that the RFP did not require offerors "to have all the experience in runway repair performed as a company." Welch relies on the Performance of Work by the Contractor clause, Federal Acquisition Regulation (FAR) § 52.236-1 (Apr. 1984), incorporated in the RFP, as evidence that "company" experience was not required since this clause only requires the successful contractor to perform at least 20 percent of the work with its own company. However, the RFP and all correspondence between the contracting officer and the offerors consistently and unequivocally set forth the experience evaluation factor as "number of years experience of company in runway repair work." (Emphasis added.) There is nothing inconsistent between the agency's request for evidence of company experience and the contract provision permitting subcontracting of the work, since the selected firm is still ultimately responsible for the prosecution of the work and the agency could reasonably take steps to assure itself that the contractor with the overall responsibility for successful completion of the contract had appropriate experience. In this regard, the agency has stated that such demonstrated "company" experience is necessary because if an inexperienced firm prosecuted the work "several adverse consequences could occur, such as partial/total shutdown of the runway (due to surface damage) or more importantly, loss of life and aircraft due to the runway surface not having proper characteristics for safe maneuvering."

Thus, while in some cases we have allowed agencies to give credit for other experience to satisfy corporate experience requirements, see, e.g., Service Ventures, Inc., B-221261, Apr. 16, 1986, 86-1 CPD ¶ 371 at 5, the agency in this case had legitimate reasons to downgrade Welch for its complete

lack of company runway repair experience. See DAVSAM International, Inc., B-228429.5, Mar. 11, 1988, 88-1 CPD ¶ 252.

The protester also alleges that the agency failed to conduct meaningful discussions. However, the record indicates that by letters dated November 22 and December 22, 1988, respectively, the contracting officer identified all areas of concern in Welch's proposal. In this regard, Welch was specifically advised that company experience in runway repair was a deficiency and was provided an opportunity to cure this deficiency. Thus, the contracting officer fulfilled his obligation to conduct meaningful discussions. See The Earth Technology Corp., B-230980, Aug. 4, 1988, 88-2 CPD ¶ 113.

Finally, Welch complains that the "evaluation criteria were essentially the same as those in an invitation for bids (IFB)" and the contracting officer's failure to award it the contract as the low, technically acceptable offeror was arbitrary and capricious. We do not agree. The RFP clearly stated technical factors were most important and that price was of secondary importance--which is inconsistent with an IFB format.

Since Phoenix's proposal was clearly superior to Welch's, and since under this RFP technical factors were given predominant weight and Welch's price was only approximately 8 percent lower than Phoenix's price, Phoenix properly could be selected for award.

The protest is denied, as is the protester's claim for costs. 4 C.F.R. § 21.6(d) (1988).

James F. Hinchman
General Counsel