



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Gracon Corporation--Request for Reconsideration

File: B-236603.2

Date: May 24, 1990

Daniel M. Gross, Esq., Oviatt, Clark, and Gross, for the protester.

Joan Swanson, United States Mint, Department of the Treasury, for the agency.

V. Bruce Goddard, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Decision denying protest of source selection is reversed and the protest sustained where the factual basis upon which earlier decision was based--that protester's excessive electrical work manhours component made up virtually the entire amount of the difference in price between it and awardee--was erroneous and where agency had no reasonable basis to select lower rated offeror for award under the solicitation's evaluation criteria in which technical was worth 75 percent and cost only 25 percent.

DECISION

Gracon Corporation requests reconsideration of our decision Gracon Corp., B-236603, Dec. 26, 1989, 89-2 CPD ¶ 592, in which we denied Gracon's protest against the award of a fixed-price contract to Welch Equipment Co., Inc., under request for proposals (RFP) No. USM88-44, issued by the United States Mint, Department of the Treasury. The award was for a fixed-price contract for the construction and installation of an automated materials handling system for the Denver Mint.

We reverse our earlier decision and sustain the protest.

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The solicitation provided that each acceptable proposal would be assigned a point value in each of two categories, price and technical, with 25 possible price points and 75 possible technical points. The RFP provided formulae to assign precise points for the technical and price factors.^{1/} The solicitation also provided that "the government will evaluate proposals in accordance with the requirements specified herein" and "award would be made to the contractor whose offer is most advantageous to the Government, cost and technical factors considered."

After best and final offers (BAFO) were evaluated, Gracon received 75 technical points and Welch 61.3 points. Welch submitted the low BAFO price of \$2,627,748.80 and received 25 points for the price factor. Gracon's BAFO price was \$3,019,500 and it received 22 price points under the RFP formula, with the result that Gracon's total score was 97 points while Welch's score was 86 points. The Mint selected Welch for award because its proposal was considered technically as acceptable as Gracon's, and since it offered a significantly lower price.

Gracon protested that the Mint impermissibly changed the criteria for award so that price was given a predominant weight instead of the 25 percent weight specified in the solicitation. We denied Gracon's protest, however, because the Mint contended that virtually the entire \$391,752 difference between Welch's and Gracon's prices reflected Gracon's excessive number of manhours for electrical work.^{2/}

^{1/} The points for price were determined by awarding the lowest priced acceptable offeror 25 points, and awarding the higher priced proposals points according to the following formula:

$$\frac{\text{Lowest priced offer} \times 25}{\text{Higher priced offer}}$$

^{2/} The record shows that the Mint found that the 3,000 manhour difference between the offerors "appeared to add \$381,000" to Gracon's price, and that this additional \$381,000 could not be justified.

The Mint stated that although the excessive electrical work manhours was brought to Gracon's attention during discussions, Gracon failed to reduce its price in this regard.^{3/} We concluded that since "both offerors' technical approaches were similar and the price difference was caused by Gracon's failure to propose a reasonable price for the electrical work manhours, the contracting officer could properly reject Gracon's proposal because of the unreasonable pricing, even though it was scored higher than Welch."

Gracon contends that there is a significant factual error in the decision. Gracon states that the decision places heavy reliance on the contracting officer's conclusion that the \$391,000 difference between Welch's and Gracon's prices was due almost entirely to Gracon's higher estimate of electrical work manhours. Gracon contends, however, that the solicitation's Davis Bacon Act wage determination set electrician wages at \$20.16 an hour including fringe benefits. When that rate is increased for labor burden, payroll taxes, insurance, overhead, and profit, Gracon's hourly electrician's rate is \$30.47.^{4/} This means that the alleged excess labor costs for the 3,000 electrical work manhours is approximately \$91,000 rather than the \$381,000 calculated by the Mint. Gracon concludes, therefore, that the contracting officer's understanding of Gracon's prices was so deficient she could not have made a reasonable judgment to award a contract to Welch instead of Gracon.

In commenting on Gracon's reconsideration request, the Mint does not defend or support its prior statements that excessive electrical work manhours represented \$381,000, or almost all of the price difference between Gracon and Welch. However, while admitting Gracon's BAFO does not contain a detailed cost breakdown, the Mint continues to assert that

^{3/} Gracon asserts, however, that it did justify these hours. Gracon contends that its electrical subcontractor, who was experienced in the Mint, had found the working conditions at the Mint extremely confined and difficult.

^{4/} Gracon proposed to subcontract this work. This cost treatment is comparable to the cost breakdown contained in the cost proposals of Gracon and its subcontractor.

the majority of the price difference is within the electrical portion of the work, involving not only excessive manhours but also a higher cost for materials. The Mint does not specify in any way what the price difference in direct materials was.

To obtain reversal or modification of a decision, the requesting party must convincingly show that our prior decision contains either errors of fact or law or information not previously considered that warrants its reversal or modification. Richards Painting Co.--Recon., B-232678.2, May 19, 1989, 89-1 CPD ¶ 481.

Our earlier decision was primarily based on our finding that Gracon's high price was caused by its substantial overstatement of costs for its electrical work manhours, such that the Mint could properly find Gracon's price unreasonable. However, Gracon has now shown that its allegedly excessive costs for electrical work manhours was approximately \$91,000 instead of the \$381,000. The Mint has not rebutted this position. Therefore, our conclusion "that virtually the entire amount of the \$391,752 difference between Welch's and Gracon's prices was in the number of manhours for the electrical work" was in error.

Since the record does not show why Gracon's price is otherwise unreasonable, we no longer believe that the Mint could properly make such a finding. That being so, we must conclude, as explained below, that the award was not consistent with the solicitation's evaluation criteria.

While procuring agencies have broad discretion in determining the evaluation plan they will use, they do not have the discretion to announce in the solicitation that one plan will be used and then follow another in the evaluation. Once offerors are informed of the criteria against which their proposals will be evaluated, the agency must adhere to those criteria or inform all offerors of any significant changes made in the evaluation schedule. Greenebaum and Rose Assocs., B-227807, Aug. 31, 1987, 87-2 CPD ¶ 212. Further, where cost is secondary to technical considerations under an RFP evaluation scheme, award to an offeror with a lower-priced, technically "average" proposal over an offeror with a technically superior proposal requires an adequate justification. TRW, Inc., 68 Comp. Gen. 511 (1989), 89-1 CPD ¶ 584.

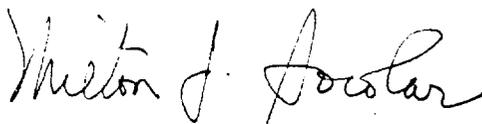
In the present case, although the evaluation criteria gave more weight to technical considerations than to cost, the record indicates that the award was based solely on price considerations with no discussion of why Gracon's technical advantage did not represent an actual significant difference in technical merit. See Dyncorp, B-232999, Feb. 14, 1989, 89-1 CPD ¶ 152.

Although, as we noted in our earlier decision, the two proposals used essentially the same technical approach, the two proposals were not technically equal. Gracon received a significantly higher score, and, as indicated by the point scores and the detailed documentation supporting these scores, Gracon's proposal was clearly considered technically superior. The fact that the two offerors proposed similar technical approaches did not eliminate that superiority.

Under the circumstances, in the absence of an adequate justification for choosing the lower-priced Welch over the clearly superior Gracon, we must now conclude that the Mint's selection of Welch was improper.

Since award was made on August 2, 1989, and performance has been on-going, we do not find it would be in the government's best interest to terminate this ongoing construction contract. However, Gracon is entitled to receive its costs for preparing its proposal and filing and pursuing the protest and request for reconsideration. 4 C.F.R. § 21.6(d)(1) (1989).

We reverse our earlier decision and sustain Gracon's protest.


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