J Mueller

Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: IBI Security Service, Inc.

File: B-238661

Date: June 25, 1990

Richard Bie Rowe, for the protester.
James F. Trickett, Department of Health and Human Services, for the agency.
Jacqueline Maeder, Esq. and John F. Mitchell, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency need not give other offerors pre-award notice of its selection of awardee where solicitation is not a small business set-aside.

2. Agency properly awarded contract to higher-priced technically superior offeror where award on that basis was consistent with solicitation's evaluation criteria and the agency reasonably found that the difference in technical merit outweighed the price difference.

DECISION

IBI Security Service, Inc. protests the award of a contract to Argenbright, Inc. under request for proposals (RFP) No. 90-01(N), issued by the Department of Health and Human Services (HHS) for security guard services at three facilities of the Centers for Disease Control (CDC) in Atlanta, Georgia.

IBI has raised a number of objections to the agency's actions which, taken together, essentially amount to a contention that the award was improper because the agency favored Argenbright, the incumbent.

We deny the protest.

CDC's first synopsis of this procurement in the Commerce Business Daily (CBD) erroneously stated that the procurement would be a total small business set-aside. Two correction notices were subsequently published in the CBD indicating

that the solicitation would not be set aside for small business and, in fact, the solicitation did not include the clause at Federal Acquisition Regulation (FAR) § 52.219-6, "Notice of Total Small Business Set-Aside," used to notify offerors that the solicitation involves a total small business set-aside.

Twenty-seven offers were received. Each offeror was to submit a technical proposal which was to be evaluated on personnel, experience and corporate ability, organizational plan, and detailed work plan and a business proposal which included the offeror's prices for the initial year and 4 option years. The solicitation provided that technical merit and price were of approximately equal value.

After reviewing the proposals received, CDC determined that 18 of them were so seriously deficient that they could not be made acceptable without major revisions. In fact, 11 of these 18 offers were evaluated as providing "little or no useful information relating to the solicitation." The remaining nine proposals, including those of the protester and the awardee, were judged technically acceptable; negotiations were held with all these firms, at the conclusion of which best and final offers (BAFOs) were requested, received and evaluated.

CBD concluded from its review of the BAFOs that three of the offerors, whose average score ranged from 92.7 to 95.7 out of a maximum of 100 points, were clearly technically superior to the remaining six technically acceptable offerors. Argenbright was the highest-scored of the three superior offerors, although the agency did not regard the 3-point spread among these offerors as significant and considered the three offerors essentially as technically equal. The remaining 6 technically acceptable proposals were scored between 79 and 85.7; the protester, with a score of 81, ranked fourth of the six, or seventh out of nine overall.

Only three firms submitted prices lower than Argenbright's price of $4,530,956 for the 12-month base period plus all option periods. These were the firms with technical scores of 85.7 and 79--each of which was only about one-half of one percent lower than Argenbright--and the protester, whose price was approximately 4.8 percent lower than Argenbright's. In making its selection of a contractor, the agency noted that not only was Argenbright the lowest-priced of the three technically superior offerors, but that of the three lower-ranked, lower-priced competitors two offered only a slight cost saving of less than one percent. CDC recognized that the protester's proposal was almost

5 percent lower in price than Argenbright's, but concluded that the protester's lower price was far outweighed by Argenbright's 14.7 point, or approximately 15 percent, technical advantage. The agency therefore made award to Argenbright.

IBI first complains that the agency failed to give it pre-award notice of the identity of the awardee and the awardee's location. However, regulations mandating such notice prior to the award of a contract are required only when the contract is a small business set-aside. FAR § 15.1001(b)(2). Here, as noted above, the solicitation was not set aside for small business. Accordingly, we find that the agency had no duty to give other offerors pre-award notice of the awardee it had selected.

Next, IBI suggests that it should have received the award as the "low responsive responsible proposer." It asks that we review the fairness of the evaluation process, especially since: (1) award was made to the incumbent contractor; (2) the award price was higher than that of the protester's technically acceptable proposal; and (3) the agency had relaxed certain requirements during the incumbent's performance of its prior contract and "there is no reason [not] to believe that this type of activity is and has been going on."

In reviewing protests against the propriety of an agency's evaluation of proposals, it is not the function of our Office to independently evaluate those proposals. Biological Research Faculty & Facility, Inc., B-234568, Apr. 28, 1989, 89-1 CPD ¶ 409; Ira T. Finley Invs., B-222432, July 25, 1986, 86-2 CPD ¶ 112. Rather, the determination of the relative desirability and technical adequacy of the proposals is primarily a function of the procuring agency which enjoys a reasonable range of discretion in proposal evaluation. AT&T Technology Sys., B-220052, Jan. 17, 1986, 86-1 CPD ¶ 57. Consequently, we will question the agency's technical evaluation only where the record shows that the evaluation does not have a reasonable basis or is inconsistent with the evaluation criteria listed in the RFP. See American Educ. Complex Sys., B-228584, Jan. 13, 1988, 88-1 CPD ¶ 30.

In a negotiated procurement, there is no requirement that award be made on the basis of lowest cost unless the RFP so specifies. Institute of Modern Procedures, Inc., B-236964, Jan. 23, 1990, 90-1 CPD ¶ 93. Agency officials have broad discretion in determining the manner and extent to which they will make use of the technical and cost evaluation results. Cost/technical tradeoffs may be made, and the

extent to which one may be sacrificed for the other is governed only by the test of rationality and consistency with the established evaluation factors. Grey Advertising, Inc., 55 Comp. Gen. 111 (1976), 76-1 CPD ¶ 325. We will not disturb awards to offerors with higher technical scores and higher costs so long as the result is consistent with the evaluation criteria and the procuring agency has determined that the technical difference is sufficiently significant to outweigh the cost difference. University of Dayton Research Inst., B-227115, Aug. 19, 1987, 87-2 CPD ¶ 178.

Here, we find that CBD had a reasonable basis in justifying the award to Argenbright at its higher price. Although IBI did submit the lowest-priced, technically acceptable proposal, the RFP did not provide that award would made on that basis; it stated that the technical proposal and price were of approximately equal value.

As for technical merit, the agency's evaluators concluded that Argenbright submitted an outstanding, comprehensive proposal in which it proposed well-qualified key personnel; demonstrated recent successful experience in performing like services; explained and documented its ability to furnish services in a timely manner; and provided excellent organizational and work plans. The agency reports, and our review of the record confirms, that the evaluation panel weighed the technical and cost consequences of an award to Argenbright against each of the technically acceptable offerors whose prices were lower. In this regard, although IBI's proposal was rated as technically acceptable, the evaluation panel expressed concern as to whether IBI could retain qualified supervisory personnel at the pay scales it had proposed; was critical of the lack of detail it had provided regarding certain aspects of work and of the brief responses it had made to questions asked during discussions; and perceived a failure to take certain training requirements into account. In contrast, as noted above, Argenbright's proposal received the highest average technical score and was scored and ranked higher in each individual technical criteria area than any of the other lower-priced offerors. Therefore, the evaluation panel concluded that Argenbright's higher-rated technical capabilities outweighed the cost differences of the lower-priced, technically acceptable offerors. Based on our review of the record and the technical evaluation results set forth above, we have no basis to conclude that the evaluation was other than reasonable and consistent with the RFP's stated evaluation criteria.

Even though, as the protester points out, this is the second consecutive guard service contract which CDC has awarded to

Argenbright, we do not think the mere fact of incumbency should preclude Argenbright from award. We have recognized that incumbent contractors with good performance records can offer real advantages to the government and that those advantages may properly be considered in proposal evaluation. Institute of Modern Procedures, Inc., B-236964, supra. An agency is not required to equalize competition with respect to these advantages so long as the advantages do not result from unfair action by the government. Id.

In this regard, the protester notes that certain performances bond requirements were changed or relaxed during the performance of Argenbright's prior CDC contract, which it says is "tantamount to sole-source solicitation." The agency argues that contract administration actions it took under the prior contract which did not reduce the contractor's price of performance and which were allowable under that contract's terms are basically irrelevant to the competition for the present contract and do not amount to "unfair government action" giving Argenbright an advantage over its competitors in this procurement. We agree. We see no indication in the record that Argenbright requested, or was evaluated upon, terms different from any other offeror. We cannot conclude from this record that Argenbright benefited from its position as the incumbent in any inappropriate way. The fact that the agency rated as "superior" and, for purposes of evaluation, as technically equal to Argenbright the proposals of two non-incumbent offerors indicates to us that the agency was not biased toward Argenbright to the exclusion of other offerors.

Accordingly, the protest is denied.

for James F. Hinchman
General Counsel