



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Great Lakes Roofing Company, Inc.

File: B-240731

Date: November 28, 1990

Joseph D. West, Esq., and Douglas E. Perry, Esq., Jones, Day, Reavis & Pogue, for the protester.
Albert B. Krachman, Esq., Bracewell & Patterson, for Brunson Associates, Inc., an interested party.
Lester Edelman, Esq., Department of the Army, for the agency.
Linda C. Glass, Esq., Andrew T. Pogany, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Award to higher-rated, higher-priced offeror was proper where price and technical factors were of equal importance and where agency reasonably determined that the technical advantage associated with the proposal was worth the difference in price.

DECISION

Great Lakes Roofing Company, Inc. protests the award of a contract to Brunson Associates, Inc. under request for proposals (RFP) No. DACA41-90-R-0017, issued by the Army Corps of Engineers, Kansas City District, for maintenance, repair and replacement services for housing at Fort Riley, Kansas. Great Lakes contends that the Army misapplied the stated evaluation criteria by its failure to give price and technical proposals equal consideration during the evaluation process.^{1/}

We deny the protest.

The RFP provided for the award of a fixed-priced contract to the responsible offeror whose offer was technically acceptable and would be most advantageous to the government, price and

^{1/} In its written comments, Great Lakes withdrew an additional allegation contained in its initial protest that a conflict of interest tainted the procurement.

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other factors considered. The five technical evaluation areas, listed in descending order of importance, were management ability, subcontracting support capability, experience, technical staff capability, and plan for management and technical support by home or corporate office. The original RFP provided that price would not be scored but would be a major category of consideration in the award selection, although secondary in weight to technical superiority. A subsequent amendment to the RFP revised the evaluation with respect to price and provided merely that price would be an evaluation factor.

The agency received two proposals by the June 11, 1990, due date. After initial evaluation, both offerors were requested to submit additional information concerning deficiencies in their proposals. Great Lakes was also requested to provide an acceptable bid guarantee. As a result of the evaluation of the revised proposals, Great Lakes scored 595 out of 1000 and Brunson scored 756 out of 1000. The Source Selection Evaluation Board (SSEB) recommended that award be made to Great Lakes who had the lowest technical score but also the lowest price. The Source Selection Authority (SSA) did not accept the recommendation because the prices submitted by both offerors exceeded the government's estimate by more than 15 percent and some of the item prices in the offerors' price proposals appeared excessive.

By letter dated July 19, 1990, the SSA identified to both offerors the items in their respective price proposals considered to be excessive and requested best and final offers by July 23. Neither offeror made changes to its technical proposal, so the scores remained the same. Brunson decreased its price from \$29,057,376 to \$28,841,892, while Great Lakes increased its price from \$24,988,357, \$27,549,146. The agency determined that the considerable superiority of Brunson's overall technical proposal, particularly its management ability which was the most important evaluation factor, more than offset the overall difference in total price (4.5 percent).^{2/} Consequently, award was made to Brunson on July 31, 1990.

Great Lakes maintains that the agency misapplied the evaluation factors in that it failed to give price proposals equal

^{2/} The agency found that Brunson's technical proposal was substantially superior to the protester's technical proposal, including the areas of proposed management staff, on-site staff, safety and security plan, quality control plan and purchasing system. The protester has not disputed the results of the technical evaluation or the agency's characterization of Brunson's technical proposal as "vastly superior."

consideration to the technical proposals. Great Lakes contends that the record does not support the agency's decision to make an award to Brunson at a higher price. Great Lakes further argues that since Great Lakes satisfied the agency's minimum needs, the agency's award to a higher-priced offeror suggests that the agency awarded a contract that exceeded its minimum requirements.

In a negotiated procurement, the government is not required to make award to the firm offering the lowest price unless the RFP specifies that price will be the determinative factor. University of Dayton Research Inst., B-227115, Aug. 19, 1987, 87-2 CPD ¶ 178. Where, as here, a solicitation indicates that price will be considered but does not indicate the relative importance of price and technical factors, they are considered approximately equal in weight. Bachy/Bauer/Green Joint Venture, B-235950, Sept. 18, 1989, 89-2 CPD ¶ 240.

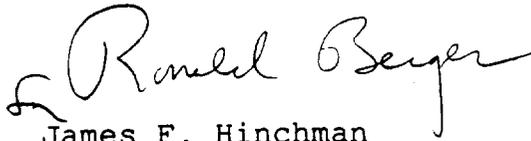
Since the RFP did not provide for award on the basis of the lowest priced technically acceptable proposal, the agency had the discretion to determine whether the technical advantage associated with Brunson's proposal was worth its higher price, even where price and technical factors were of equal weight. See ADI Facilities Management, Inc., B-236122.2, Dec. 12, 1989, 89-2 CPD ¶ 541. Award to a technically superior, higher-priced offeror is proper so long as that result is consistent with the evaluation criteria and the procuring agency has reasonably determined that the technical difference is sufficiently significant to outweigh the price difference. Id.

As explained above, the Army determined that even though Great Lakes' price was less than Brunson's, Brunson's technical advantage outweighed the price advantage of a contract with Great Lakes. The record shows that, on the basis of initial proposals, Great Lakes was recommended for award even though rated technically lower than Brunson because at that time its price was 16 percent lower. The agency did not believe Brunson's technical superiority was worth that high a price premium. When Great Lakes increased its price so that there was only a 4.5 percent difference, the Army determined that Brunson's clear and substantial technical advantage outweighed the price difference.

In sum, we find no legal basis to object to the Army's decision to select Brunson for award. Based on our analysis of the agency's evaluation of proposals, we think the agency properly exercised its discretion when it determined that the superiority of Brunson's proposal was worth more than the

price advantage associated with the Great Lakes proposal. Additionally, nothing in the record indicates that the Army awarded a contract for more than its minimum needs.

The protest is denied.

A handwritten signature in cursive script that reads "Ronald Berger". The signature is written in dark ink and is positioned above the typed name of the signatory.

James F. Hinchman
General Counsel