



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Able-One Refrigeration, Inc.

File: B-244695

Date: October 28, 1991

James C. Foster for the protester,
Herbert F. Kelley, Jr., Esq., and Capt. Gerald P. Kohns,
Department of the Army, for the agency.
Aldo A. Benejam, Esq., and Andrew T. Pogany, Esq., Office of
the General Counsel, GAO, participated in the preparation of
the decision.

DIGEST

1. The determination of the merits of an offeror's technical proposal is the responsibility of the procuring agency and will be questioned only where the protester has demonstrated that it was unreasonable.
2. Agency's use of broad adjectival scoring scheme to evaluate technical proposals, supported by narrative assessment of proposals' advantages and disadvantages, was proper where source selection official was able to gain a clear understanding of the relative merits of proposals.
3. Where solicitation does not explicitly indicate the relative importance of price and technical factors, it must be presumed that each will be considered approximately equal in weight.
4. Where selection official reasonably regards technical proposals as essentially equal, price properly may become the determinative selection factor.

DECISION

Able-One Refrigeration, Inc. (AOR) protests the award of a contract to Baker De la Guardia y Asociados, S.A. d/b/a BADELAG, under request for proposals (RFP) No. DAHC92-91-R-0025, issued by the Department of the Army, for air conditioning systems maintenance and repair services at two Department of Defense dependent schools and a hospital

complex in Panama.¹ AOR objects to the agency's determination that the BADELAG and AOR proposals were technically equal, arguing that the agency improperly awarded the contract to a lower-priced offeror solely on the basis of price, without adequately considering AOR's allegedly technically superior proposal.

We deny the protest.

The RFP, issued on February 27, 1991, contemplated the award of a firm, fixed-priced contract for 1 base year and 1 option year. Offerors were required to submit separate price and technical proposals. Award was to be made on the basis of the "best overall proposal with appropriate consideration" given to technical proposals and price. The RFP stated that the significant factors used for evaluation purposes would be technical experience and total price, including the option period.

Seven firms submitted offers in response to the RFP by the March 27 closing date. An initial evaluation of the offerors' technical proposals concluded that five firms, including the protester and the awardee, were "equally technically capable" of performing the contract; the contracting officer then solicited and received best and final offers (BAFO) from these five firms. The agency was unable to evaluate two of the BAFOs, however, because they were either incomplete or contained insufficient information. The evaluation of BAFOs submitted by the remaining three firms, which included BADELAG's and AOR's, found that each met the RFP's technical requirements; all three BAFOs received an overall adjectival rating of "highly regarded."

Based on the evaluation results, the contracting officer found that all three proposals were technically equal, and determined to make award on the basis of lowest total price. After reviewing each firm's price, the contracting officer concluded that BADELAG submitted the lowest total price (\$479,090), which was approximately 26 percent below the independent government estimate (\$649,249), 3 percent below AOR's price (\$494,196), and nearly 47 percent below the third offeror's price (\$903,000). On June 12, 1991, the contracting officer awarded the contract to BADELAG as the lowest-priced offeror. This protest to our Office followed.

¹ The facilities to be serviced are the Balboa Elementary School, the Balboa High School, and the Gorgas Hospital Complex. The services required under the RFP had previously been provided by the Panama Canal Commission, which will cease performing these services as of this year.

AOR argues that the adjectival scoring method the agency used to evaluate offers was not sensitive to the strengths of its allegedly superior technical proposal, thereby creating an illusory equality between AOR's and BADELAGE's proposal. The protester states, for example, that its proposal reflects AOR's unique advantages as a United States-based firm, capable of quickly supplying replacement parts at lower prices; that its proposal was based upon the results of an on-site visit, which BADELAGE and the other firms did not conduct; and that it reflects the firm's direct maintenance and repair experience. According to the protester, these elements--which AOR believes made its proposal superior to BADELAGE's--were not considered during the evaluation process. AOR essentially challenges the agency's evaluation method which concluded that its proposal was technically equal to BADELAGE's, and the resulting decision of the selection official to make award on the basis of lowest total price.

Determining the technical acceptability of a proposal is the responsibility of the contracting agency. Our Office will not question an agency's technical evaluation where the protester has not demonstrated that it was unreasonable. See Transportation Research Corp., B-231914, Sept. 27, 1988, 88-2 CPD ¶ 290.

The record shows that the Chief, Contract Management Division evaluated initial proposals on the basis of each offeror's relevant technical experience. This evaluation found that AOR's proposed supervisory personnel complied with the RFP's requirement for 3 year's experience with maintenance of air conditioning systems; and that AOR had a substantial record of providing air conditioning maintenance services since 1982. The initial evaluation concluded that although the Army had no prior experience with AOR, its proposal indicated that the firm had the potential to successfully execute the contract. As to BADELAGE, the evaluator found that, although no resumes were included in the proposal for supervisory and nonsupervisory personnel, the firm had experience in maintaining air conditioning systems since 1979, and it had satisfactorily performed previous Army contracts.

The evaluation of BAFOs was based on an analysis of each offeror's proposed workload distribution and scheduling, technical experience, and technical training received by proposed lead personnel. The narrative explaining the

evaluator's finding with respect to AOR's BAFO states in relevant part:

"This proposal presents a careful analysis of all aspects of the contract requirement, it reflects a clear understanding of the workload distribution . . . , considers execution of various tasks . . . , that would improve efficiency and reduce operating cost. . . . Certification of formal training and work experience for the project manager and lead technician complies with [the RFP's requirements].

As to BADELAG, the narrative states "[s]imilar to paragraph 1c above," referring AOR's evaluation, adding that "this proposal presents a complete and careful analysis of all aspects of the [RFP's requirements]"; that the proposal included a "well balanced schedule of workload distribution"; and that "formal training and work experience [of lead personnel] complies with [the RFP's requirements]." ² Both narratives describing BADELAG's and AOR's BAFOs concluded with the statement: "[t]his proposal is highly regarded and meets contract requirements for providing the government with efficient quality service." (Emphasis added.) Nothing in the record suggests that the evaluation was inconsistent with the "significant evaluation factors" announced in the RFP.

Contrary to AOR's suggestion, the RFP's evaluation factors did not contemplate rating the offerors' status as a United States or Panamanian firm. Regarding site visits, AOR concedes that the RFP merely "urged and expected" offerors to inspect the sites. The RFP did not condition award on such visits; nor did the evaluation factors contemplate rewarding or downgrading offerors which inspected or failed to inspect the sites. In short, nothing in the record suggests that the agency evaluated proposals on factors that were not published in the RFP, or that the evaluation of AOR's proposal was unreasonable. AOR's mere disagreement with the evaluation method and with the evaluator's ultimate conclusion that both AOR's and BADELAG's proposals deserved the identical rating of "highly regarded" does not establish that the evaluation was unreasonable. Transportation Research Corp., supra.

² With its BAFO, BADELAG submitted evidence of its technical experience, which included several contracts for similar services the firm completed from 1979 to date; a letter of appreciation from the Department of the Navy commending its work; and resumes and training certificates for its proposed technical personnel.


Regarding AOR's challenge to the agency's use of an adjectival evaluation method, even numerical scores, when used for proposal evaluation, are useful only as guides to intelligent decisionmaking, and are not generally controlling for award because they often reflect the disparate, subjective judgments of the evaluators. Bunker Ramo Corp., 56 Comp. Gen. 712 (1977), 77-1 CPD ¶ 427. We have in the past examined rating schemes which use other than strict numerical scoring and have recognize their validity. See, e.g., Ferguson-Williams, Inc., B-231827, Oct. 12, 1988, 88-2 CPD ¶ 344 (color rating scheme); Wickman Spacecraft & Propulsion Co., B-219675, Dec. 20, 1985, 85-2 CPD ¶ 690 (proposals rated using five adjectives ranging from "unsatisfactory" to "excellent"); MAXIMUS, B-195806, Apr. 15, 1981, 81-1 CPD ¶ 285 (proposals were ranked). Adjectival scoring methods are valid if they give the selection official the opportunity to gain a clear understanding of the relative merit of proposals. Merdan Group, Inc., B-231880.3, Feb. 28, 1989, 89-1 CPD ¶ 210 (each of the only three proposals in competitive range was rated "superior" with accompanying narratives). Nothing in the record here suggests that the selection official did not gain a clear understanding of the relative merits of the proposals from the narratives in the evaluation documents.

AOR also contends that since the RFP listed "a) technical" first and "b) price" second, the agency improperly failed to give more weight to technical considerations than to price. Where, as here, an RFP indicates that price will be considered, without explicitly indicating the relative weight to be given to price versus technical factors, it must be presumed that price and technical considerations will be considered approximately equal in weight. See Transportation Research Corp., supra. Since the contracting officer reasonably found that proposals were technically equal, we have no objection to the contracting officer's determination to make award to BADELAG solely on the basis that the firm offered the lowest evaluated price. Merdan Group, Inc., supra (where proposals are found technically equal cost or price properly may become the determinative factor in making award).

AOR finally argues that the selection official was biased against AOR. The protester also suggests that the awardee learned of AOR's final price prior to submission of BAFOs. To show bad faith, however, a protester must submit convincing proof that the contracting agency directed its actions with the specific and malicious intent to injure the protester. WBM Maint., Inc., B-238049, Apr. 20, 1990, 90-1 CPD ¶ 405. While AOR argues that the contracting agency's response to its protest is "tinged with anti-American bias" which may have influenced the award decision, and questions

whether BADELAG "just reduced AOR's price a few dollars," nothing in the record supports its assertions. In fact, the evaluations of initial proposals and BAFOs were independently conducted for the contracting officer by different officials from the agency's Directorate of Engineering and Housing. While BADELAG's BAFO may reflect a more competitively priced proposal, the mere fact that BADELAG's BAFO was priced only 3 percent below AOR's BAFO is not, by itself, convincing proof that BADELAG improperly gained access to AOR's proposal.

The protest is denied.


James F. Hinchman
General Counsel