



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: MagneTek National Electric Coil

File: B-249625

Date: December 4, 1992

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Lester Edelman, Esq., Department of the Army, for the
agency,
David Hasfurther, Esq., and Michael R. Golden, Esq., Office
of General Counsel, GAO, participated in the preparation of
the decision.

DIGEST

Award to a technically superior, higher priced offeror is proper where an award on that basis is consistent with the solicitation evaluation criteria--technical factors were more important than price for the purposes of proposal evaluation--and the agency reasonably determined that the superior technical merit of the successful proposal was sufficiently significant to justify an award at a higher price.

DECISION

MagneTek National Electric Coil protests the award made to ABB Power Generation, Inc. under request for proposals (RFP) No. DACW01-91-R-0080, issued by the Army Corps of Engineers (Mobile District) for the rehabilitation of two electric generators in the Allatoona Power Plant (Cartersville, Georgia), including testing. MagneTek basically contends that an award to the higher priced awardee, who was offering products of foreign manufacture (Switzerland), is not in the best interests of the government. The protester argues that the award decision is unreasonable because the government's socio-economic and Buy American contracting policies would be better served by an award to MagneTek, a firm offering domestic products.

We deny the protest.

The RFP, issued on July 5, 1991, required offerors to submit firm, fixed prices for 32 items which comprised the rehabilitation work. Offerors also were required to submit technical and management proposals. Evaluation of offers

was to be made in accordance with three major evaluation factors and their subfactors. The first of these factors, and the one accorded the greatest weight, dealt with an offeror's technical capabilities and experience. The factor had three subfactors (product quality including the refurbished product design and manufacture, scheduling, and technical experience), which were weighted in descending order of importance. The second most important evaluation factor dealt with an offeror's management. This had three subfactors (organization, key personnel, and quality control), each being of equal importance. The least important of the evaluation factors was price. Only the first two factors were to be scored numerically. Price was to be evaluated solely on the basis of a price analysis. Award was to be made to the offeror determined to be able to satisfy the objectives and requirements set out in the RFP "in a manner most advantageous to the government." The RFP also provided that although the technical and management factors were more important than price, the importance of price could increase as proposals became more equal under other evaluation factors.

The agency received five proposals by the September 17, 1991, closing date for the submission of initial proposals. The technical and management portions of these were evaluated by the source selection evaluation board (SSEB). The SSEB documented the results of its evaluations, noting the advantages, disadvantages and deficiencies of each proposal and discussing the effect of any deficiencies on performance. A single combined score based on technical/management factors was established for each proposal from this information. By letters of November 13, the agency advised each offeror of the deficiencies in the technical and management portions of its proposal and requested the submission of revised offers. All offerors presented revised proposals to the agency on November 27. The SSEB evaluated these revisions and established single combined score for each offeror. By letters of January 9, 1992, the agency advised each offeror of the remaining deficiencies in their responses. Best and final offers (BAFOs) were submitted by all five offerors on January 24. The BAFOs were evaluated, and two offers were rejected as unacceptable. Of the remaining offerors, ABB's proposal received the highest combined technical/management score. MagneTek's combined technical/management score was slightly lower (1.42 points out of 100 possible points). The difference in technical scores between ABB and MagneTek was more significant. ABB scored 7 points (out of a possible 50 points) higher than MagneTek. MagneTek's score on

management factors was higher than ABB's which resulted in the small difference in combined scores. ABB's price was \$5,405,965.10 and MagneTek's was \$4,701,075.

Notwithstanding the fact that the difference between the combined scores for the ABB and MagneTek proposals was extremely small and the fact that MagneTek's price was 15 percent lower than ABB's, the SSEB recommended that the award be made to ABB because the SSEB considered ABB's proposal to be the most advantageous to the government.

The SSEB noted ABB's superior scores under some of the most important technical subfactors, including design and manufacture and technical experience. Under design and manufacture, the SSEB emphasized ABB's guaranteed output of 47,000 kilovolt amperes (KVA) (versus MagneTek's 45,000 KVA which could mean up to \$83,700 extra revenue to the government per year during the rehabilitated generators' design life of 35 years. Further, the SSEB found noteworthy ABB's guarantees of reduction in load losses by 24 kilovolt (KW). In contrast, MagneTek did not offer any loss guarantees. Also, the SSEB found that MagneTek's design for its generator winding bars presented risk of damage to the bars during installation. In contrast, the envelope system approach offered by ABB eliminated the risk. The SSEB concluded that ABB's generator design would provide higher efficiency and greater output which would result in more revenue for the government and would also better meet the critical peak demands of the commercial users of the power generated. Further, the SSEB concluded that since ABB's proposed design was more reliable, it would result in less maintenance and downtime costs to the government. Because of the advantages of ABB's technical approach documented by the SSEB, the source selection authority (SSA) determined that the combined point scores did not reflect the significant technical differences between the proposals and that award to ABB at its higher price was justified.

In negotiated procurements, an agency has broad discretion in determining the manner and extent to which it will make use of the results of its technical and cost evaluations. There is no requirement that award be made on the basis of lowest cost unless the RFP so specifies. Spectra Technology, Inc.; Westinghouse Elec. Corp., B-232565; B-232565.2; Jan. 10, 1989, 89-1 CPD ¶ 23. Technical/cost 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 by consistency with stated evaluation factors. Aumann, Inc., B-245898.3; B-245898.4, July 22, 1992, 92-2 CPD ¶ 35. The award to a higher rated, higher

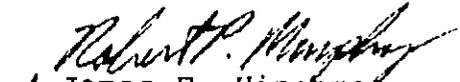
priced offeror is appropriate where the agency reasonably determines that the cost premium is justified considering the technical superiority of the awardee's proposal and the result is consistent with the evaluation criteria. Technical Evaluation Research, Inc., B-247200, May 1, 1992, 92-1 CPD ¶ 411. We will examine an agency's evaluations for the purposes of award to ensure that they are reasonable and consistent with the evaluation criteria. Aumann, Inc., supra.

We find that the agency's decision to award to ABB was reasonable and in conformance with the evaluation scheme as set forth in the RFP. As previously stated, technical was the most important evaluation factor. It was in areas encompassed by this factor that the SSA determined that significant differences existed between the MagneTek and ABB proposals. The evaluators scored ABB substantially higher than MagneTek under technical because the evaluators found, based on ABB's design, that the generators rehabilitated by ABB would provide higher efficiency and greater output, which could mean as much a \$83,700 higher revenue per year over a 35-year period. The evaluators also found that ABB's approach would result in less maintenance and downtime costs than MagneTek's approach. Since technical was the most important factor and price the least important factor for award purposes, the SSA could reasonably conclude that an award to ABB was most advantageous to the government.

MagneTek argues that acceptance of its proposal would have been more advantageous to the government since it could have better fulfilled the government's socio-economic policies favoring awards to domestic small businesses and surplus labor area concerns. This solicitation was not set aside for small businesses concerns and, as relevant here, contained no preference for labor area surplus concerns. Evaluation of proposals and award decisions on the basis of factors not set forth in the solicitation would be contrary to the statutes governing federal procurement. See 10 U.S.C. § 2305 (Supp. III 1991). Since the socio-economic factors listed by MagneTek were not evaluation factors, they could not be considered by the contracting officials in the evaluation and award decision. See Kilgore Corp., B-235813, June 19, 1989, 89-1 CPD ¶ 576. While the RFP did contain the Buy American Act clause required by Defense Federal

Acquisition Regulation Supplement S 251.225-7001, the record shows that the agency sought and received a waiver of the Act's application to the foreign-made products that ABB would provide.

The protest is denied.¹


James F. Hinchman
General Counsel

¹In its comments, filed on September 30, 1992, the protester argues that it is not clear from the agency report that the awardee acknowledged amendment No. 3. This issue is not timely filed. Our Bid Protest Regulations, as is relevant here, require that protests must be filed within 10 working days when the protester knew, or should have known, its basis of protest. 4 C.F.R. § 21.2(a)(2) (1992). The protester received the agency report on September 10, but did not raise this protest issue until its comments, filed 14 working days later. Our grant of an extension of time to file comments does not waive our requirements for filing a protest. CH2M Hill Southeast, Inc., B-244707; B-244707.2, Oct. 31, 1991, 91-2 CPD ¶ 413.