



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Martech USA, Inc.

File: B-250284.2

Date: February 8, 1993

William B. Nicholson for the protester.
Paul M. Fisher, Esq., and David M. Lowry, Esq., Department
of the Navy, for the agency.
Henry J. Gorczycki, Esq., and James A. Spangenberg, Esq.,
Office of the General Counsel, GAO, participated in the
preparation of the decision.

DIGEST

Agency's decision to award a contract to an offeror whose proposal is higher rated and higher priced than the protester's was reasonable where it reasonably determined that the awardee's technical superiority, based on excellent past performance in contrast to the protester's marginal past performance, outweighed the price differential.

DECISION

Martech USA, Inc. protests an award of a contract to Chemical Waste Management, Inc. under request for proposals (RFP) No. N62742-91-R-0504 issued by the Department of the Navy, Naval Facilities Engineering Command for the removal of 101 abandoned underground storage tanks on the island of Oahu, Hawaii. Martech asserts that Navy's evaluation of proposals was unreasonable.

We deny the protest.

The RFP provided detailed instructions for preparing technical proposals and advised prospective offerors that award would be made "to the responsive, responsible offeror whose proposal conforming to the RFP will be most advantageous to the government, with price and other factors considered." The announced evaluation scheme accorded equal weight to technical and price considerations. Three factors comprised the technical consideration: (a) corporate experience, (b) organization and management, and (c) method of operation. Corporate experience was most important and the remaining two factors, although accorded lesser weight than the first, were of equal importance in relation to each

other. The RFP listed subfactors for each technical factor but did not assign weights to these subfactors.¹

Under the corporate experience factor, the RFP listed three subfactors: (1) direct experience in tank removal, (2) handling and disposing of hazardous material, and (3) past performance. With regard to past performance, the RFP stated in some detail the manner in which the evaluation of past performance would be conducted and the overall importance it could play in the award decision. This portion of the RFP included the following statements:

"A record of marginal or unacceptable past performance may be considered an indication that the promises made by the offeror are less than reliable. Such an indication may be reflected in the [g]overnment's overall assessment of the offeror's proposal.

"The [g]overnment's conclusions about the overall quality of the offeror's past performance will be highly influential in determining the proposal that is considered most advantageous to the [g]overnment."

The Navy received 10 proposals by July 7, the date for receipt of initial proposals. After evaluating these proposals, the Navy determined that eight proposals were in the competitive range and conducted discussions with these offerors on August 20. Best and final offers (BAFO) were due on August 25.

The Navy received six BAFOs upon which it conducted final evaluations. The overall technical ratings for the BAFOs are presented below:

<u>Offeror</u>	<u>Rating</u>
A	Exceptional
Chemical Waste	Highly Acceptable
C	Highly Acceptable
D	Acceptable
E	Marginally Acceptable
Martech	Marginal

¹Since the RFP did not state the relative weights for these subfactors, the subfactors for each technical area are of equal importance in relation to each other. See Aurora Assocs., Inc., B-215565, Apr. 26, 1985, 85-1 CPD ¶ 470.

Prices ranged from Martech's low price of \$1,869,345 through the highest price of \$4,976,400; Chemical Waste submitted the third lowest price of \$2,194,312.

The Navy's source selection official determined that Chemical Waste's proposal, which had the second highest rated technical proposal and the third lowest price, was the most advantageous to the government. The Navy awarded a contract to that firm on September 4.

Martech essentially protests that the Navy's evaluation and resulting source selection determination were unreasonable. Since the relative merit of competing proposals is primarily a matter of agency discretion, we will examine the agency's evaluation to ensure that it was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations. Instrument Control Serv., Inc., B-247286, Apr. 30, 1992, 92-1 CPD ¶ 407. In a negotiated procurement, award may be made to a higher rated, higher priced offeror where the decision is consistent with the RFP's evaluation factors and the agency reasonably determines that the technical superiority of the higher cost offer outweighs the price difference. Id.

Here, although Martech offered the lowest price, its proposal was also rated lowest technically of all BAFOs submitted. The Navy's determination to rate Martech's proposal as technically marginal was primarily due to Martech's poor past performance history. The Navy received several negative reports of Martech's performance under prior contracts and gave Martech a rating of "marginal" for this evaluation factor. During this protest, Martech received from the Navy documents which specifically described the agency's concerns regarding Martech's past performance,² yet Martech has not challenged the agency's conclusions about Martech's past performance.³ For example, the agency documented that, on

²While the Navy redacted much information from the report provided to Martech, it disclosed to Martech its past performance and technical proposal ratings, as well as the Navy's evaluation documents on Martech's proposal. This documentation included a detailed description of the Navy's concerns about Martech's past performance.

³Our review of the record shows that the Navy did not raise during discussions its concerns about Martech's past performance, even though the RFP stated that offerors would be given an opportunity to respond to concerns in this area. However, Martech does not allege that its rating for this technical factor was erroneous or that it could have improved its past performance rating if had been given the

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a recent contract to remove underground storage tanks in Hawaii, Martech's crew's performance was "questionable" and "totally incongruent with" that which was required and, under another tank removal contract, Martech's performance demonstrated "poor management, poor quality of work, 3 months behind schedule, lot of rework . . ." Based on the record, we find reasonable the agency's marginal rating of Martech for past performance.

In light of the un rebutted poor past performance reports on Martech's prior contracts and the importance of past performance as announced in the RFP, the Navy reasonably rated Martech's proposal as marginal. In this regard, we note that the RFP not only listed past performance as a subfactor of corporate experience, the most important technical factor, it also stated that past performance would be used to evaluate the credibility of an offeror's technical proposal and would be "highly influential" in the source selection decision. In contrast to Martech, Chemical Waste had a far better past performance history; Chemical Waste's "excellent" past performance rating was highest among all offerors; Martech's was lowest. Since the disparity in past performance was extreme, the Navy's determination that Chemical Waste's higher price (approximately 15 percent above Martech's) was offset by its superior overall technical rating was reasonable and consistent with the evaluation plan announced in the RFP.

The protest is denied.⁴


James F. Hinchman
General Counsel

³(...continued)

opportunity during discussions. Given the total absence of any allegation of prejudice on this point, we have no basis to sustain Martech's protest.

⁴Our review of the record suggests that the Navy's evaluation of Martech's proposal as marginal with respect to emergency response procedures may have been unreasonable. However, the evaluation under this subfactor, which was only one of eight subfactors under the lowest weighted "method of operation" technical factor, had no significant affect on the reasonableness of the Navy's overall evaluation and source selection decision.