



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Ameriko Maintenance Co.

File: B-250786

Date: February 16, 1993

Chase C. Rhee for the protester,
Monica Allison Cerutti, Esq., and Timothy A. Beyland,
Department of the Air Force, for the agency.
John Formica, Esq., and James A. Spangenberg, Esq., Office
of the General Counsel, GAO, participated in the preparation
of the decision.

DIGEST

Award to a higher rated, higher priced offeror was proper under a solicitation in which price was less important than technical merit and the agency reasonably concluded that the technical advantages associated with the awardee's proposal outweighed the higher price.

DECISION

Ameriko Maintenance Co. protests the award of a contract to HLJ Management Group, Inc., under request for proposals (RFP) No. F41689-92-R-0001, issued by the Department of the Air Force as a total small disadvantaged business set-aside for caretaker operation services at George Air Force Base (AFB), California. Ameriko argues that HLJ is ineligible for award, that the evaluations of its offer and that of the awardee were unreasonable, and that the selection of HLJ for award was unreasonable in view of HLJ's higher price.

We deny the protest.

The RFP, issued on March 26, 1992, contemplated the award of a firm, fixed-price contract for a base period with four 1-year options. The work encompassed in the RFP included caretaker tasks related to the maintenance of George AFB after base closure, including, for example, facilities maintenance, utilities systems operations, resource protection, grounds and pavement maintenance, and environmental compliance. The successful contractor is required to furnish the personnel, plant, equipment, tools, materials, supervision, and other services necessary to provide the services in accordance with the RFP's detailed statement of work. The solicitation identified Standard Industrial Classification (SIC) Code 8744 as applicable to the procurement for

the purpose of establishing the small business size standard.¹

The RFP provided that award would be made to the offeror whose offer, conforming to the solicitation, was determined most advantageous to the government. The RFP listed the following evaluation factors and subfactors, each listed in descending order of importance:

- (1) Technical
 - (a) Caretaker Operations
 - (b) Organization and Management
 - (c) Transition (Start-up) Plans
 - (d) Past Experience
- (2) Cost/Price

The RFP stated that each specific evaluation factor, except cost/price, would receive a color rating depicting how well the offerors' proposals met the evaluation standards and have a narrative evaluation reflecting the strengths, weaknesses, and risks of the proposals.² The solicitation also informed offerors that "technical capability is more important than price. The lowest price will not necessarily receive the award." [Emphasis deleted.]

¹The SIC Code determines what size firms will qualify as small businesses for a particular requirement.

²Proposals were evaluated under the streamlined source selection procedures of Air Force Regulation (AFR) 70-30. In accordance with AFR 70-30, proposals were evaluated as being either "blue-exceptional," which was defined as exceeding the specified performance with a high probability of success and no significant weakness; "green-acceptable," which was defined as meeting the specified performance standards with good probability of success and no significant weaknesses; "yellow-marginal," which was defined as failing to meet the performance standards but with deficiencies that were correctable without major revision; or "red-unacceptable," which was defined as where a proposal failed to meet the specified performance standards or where correction of the deficiencies would require major revision. Risk assessments were defined according to the potential risk of disruption of schedule, increase in cost, or degradation of performance. "High" risk was defined as being "likely" to cause "significant serious risk." "Moderate" risk was defined as "potentially" causing "some" risk. "Low" risk was defined as having "little potential" for causing risk.

Nine offerors submitted proposals by the RFP's May 15 closing date. Eight offers, including those of HLJ and Ameriko, were included in the competitive range. Discussions were conducted and best and final offers (BAFO) received and evaluated. HLJ's proposal received an overall rating of "green-acceptable" with a "moderate" risk assessment at a total evaluated cost of \$6,570,903. Ameriko's proposal was rated as "yellow-marginal" with a "moderate" risk at a total evaluated cost of \$4,114,490.¹ The agency determined that HLJ's proposal offered the best overall value to the government based on technical and price considerations, and made award to that firm.

Ameriko first argues that HLJ is not a small business concern eligible for award under this solicitation because a Dun and Bradstreet report provided on HLJ does not state that the firm is eligible for award under solicitations to which SIC Code 8744 is applicable. The Small Business Act, 15 U.S.C. § 637(b) (1988), gives the Small Business Administration (SBA), not our Office, the conclusive authority to determine matters of small business size status for federal procurements. 4 C.F.R. § 21.3(m)(2) (1992); Survive Eng'g Co., B-235958, July 20, 1989, 89-2 CPD ¶ 71. Thus, we will not review Ameriko's challenge to HLJ's size status. Id. In any event, included in the agency report is a notice from SBA providing that HLJ is approved as a small business for the award of contracts under solicitations identifying SIC Code 8744 as applicable.

The protester generally argues that the evaluation of Ameriko's and HLJ's proposals under the past experience evaluation factor was unreasonable because "HLJ . . . does not possess corporate technical experience, whereas Ameriko has many years of experience at several sites." The evaluators rated both HLJ's and Ameriko's proposals as "green-acceptable" with moderate risk under the past experience evaluation factors. The evaluators found that HLJ was one of two offerors--the other offeror not being Ameriko--which had experience in the performance of services comparable to those required by the RFP. In this regard, HLJ's past experience included a janitorial and facility maintenance contract, a maintenance and support service contract with a federal housing complex, and a custodial services and maintenance contract. The evaluators found with regard to Ameriko that while it had extensive custodial contract experience, it had only one previous operations and maintenance contract. The agency points out that although the

¹The six other offerors' BAFOs received ratings ranging from "yellow-marginal" to "green-acceptable," with risk assessments of "low" to "high" at prices ranging from Ameriko's low priced offer of \$4,114,490 to a high of \$13,570,888.

proposals of HLJ and Ameriko received the same rating under the past experience evaluation factor, the agency concluded during its evaluation of the proposals that HLJ was more experienced than Ameriko in performing the type of services contemplated by the RFP. Based on our review of the record, and the fact that the protester has not responded to the agency's explanation of its evaluation, we have no basis on which to conclude that the agency acted unreasonably in its evaluation of HLJ's and Ameriko's proposals under the past performance evaluation factor. Premier Cleaning Sys., Inc., B-249179.2, Nov. 2, 1992, 92-2 CPD ¶ 298.

Ameriko argues generally that the agency unreasonably selected HLJ for award in light of that firm's higher price. 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. Network Sys. Solutions, Inc., B-246555, Mar. 19, 1992, 92-1 CPD ¶ 294. As noted previously, the RFP here stated that "technical capability is more important than price. The lowest price will not necessarily receive the award." [Emphasis deleted.] Under such circumstances, agency officials have broad discretion in determining the manner in which they will make use of the technical and cost evaluation results. Institute of Modern Proc., Inc., B-236964, Jan. 23, 1990, 90-1 CPD ¶ 93. Award to a higher rated, higher cost offeror is proper where the selection official reasonably determines that the cost premium involved is justified, considering the technical superiority of the selected offeror's proposal. Stewart-Warner Elecs. Corp., B-235774.3, Dec. 27, 1989, 89-2 CPD ¶ 598.

The agency found that HLJ's proposal was technically superior to the protester's with HLJ's proposal receiving a rating of "green-acceptable" with a "moderate" risk and Ameriko's proposal receiving a rating of "yellow-marginal" with a "moderate" risk. The agency found that the awardee's proposal offered "adequate procedures, supervision, staff, subcontractors, and material resources to accomplish the primary caretaker responsibilities; i.e., maintain the intrinsic value of the facilities at George AFB until disposition can be made." In contrast, the agency determined that Ameriko's proposal was "nonviable" because it offered a minimal level of manning which left no room for flexibility in the performance of the contract and because it proposed the lowest per man-year labor cost that would make it impossible for Ameriko to attract and retain the type of highly skilled personnel needed to successfully perform with such a small work force. The agency also found that Ameriko's transition plans were inadequate as they lacked sufficient time for the training of Ameriko's personnel.

As discussed above, the protester has not shown that HLJ's proposal was improperly overrated or that Ameriko's proposal was underrated with regard to past experience. Also, Ameriko has not challenged the balance of the technical evaluation. Given the technical disparity between HLJ's and Ameriko's proposals, including the significant difference in the manning levels and training procedures proposed by these offerors, we find that the selection official's determination that HLJ's technically superior proposal was worth the higher cost was reasonable. Network Sys. Solutions, Inc., supra.

The protest is denied.⁴


for James F. Hinchman
General Counsel

⁴Ameriko also suggests that HLJ is not a responsible contractor, citing certain outstanding tax liens. The Air Force reports that these liens have been released. In any case, our Office does not review affirmative determinations of responsibility absent circumstances not present here. 4 C.F.R. § 21.3(m)(5).