

148578
Seltzer



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Browning Construction Company
File: B-250788
Date: February 11, 1993

E. Manning Seltzer, Esq., and Mark E. Davis, Esq., Seltzer and Rosen, P.C., for the protester.
Joseph D. West, Esq., and Maureen T. Kelly, Esq., Jones, Day, Reavis & Pogue, for Blount/Universal City, an interested party.
Monica Allison Ceruti, Esq., and John A. Dodds, Esq., Department of the Air Force, for the agency.
Sylvia Schatz, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Awardee's failure to provide certain pricing information called for under section L of the solicitation did not preclude its consideration for award where the information was intended for use in agency's fixed price analysis (provided for under section M) and the information furnished was sufficient to permit adequate analysis.
2. Selection of awardee's technically acceptable proposal under price/technical tradeoff, despite protester's lower-priced technically acceptable proposal was proper where technical factors were more important than price, and despite same overall rating, protester's proposal contained several relative weaknesses that warranted paying 5 percent premium to awardee.

DECISION

Browning Construction Company protests the award of a contract to Blount/Universal City, Inc., a joint venture, under request for proposals (RFP) No. F41689-92-R-0015, issued by the Department of the Air Force for designing, constructing, and equipping a commissary at Fort Sam Houston, Texas. The protester primarily argues that Blount should not have received the award since it failed to furnish required cost information with its proposal, and the Air Force failed to conduct a proper price/technical tradeoff.

We deny the protest.

The RFP, as amended, solicited proposals for a firm-fixed-price contract. Offerors were required to submit separate technical and price proposals. Section M of the RFP provided that evaluation of the technical proposals would be based on the following six factors, in descending order of importance: (1) functional and architectural concepts; (2) building engineering systems; (3) commissary equipment; (4) site design and engineering; (5) design/build experience and performance schedule; and (6) contractor's quality control.

Section M also stated that cost proposals would be evaluated through the use of price analysis, but that prices would not be ranked or scored. This evaluation would take into account completeness, realism, and reasonableness. The price schedule required offerors to provide prices for five line items: building construction, site improvement, all equipment, design services, and building demolition. Offerors were to submit separate summary sheets and cost breakdowns for each of the line items, and construction cost estimates and unit pricing for 16 divisions of work. Award was to be based, not on low price, but on the combination of technical merit and price factors offering the best overall value to the government. Price was less important than the technical factors.

Seven offerors, including Blount and Browning, submitted proposals. The technical evaluation team (TET) evaluated each proposal on the technical factors using a color-coded rating system: blue/exceptional; green/acceptable; yellow/marginal; or red/unacceptable. The TET found that all proposals were in compliance with the requirements of the RFP. Blount received the second highest technical score with an overall rating of technically acceptable; Blount was evaluated as exceptional under the design/build experience and performance schedule--the fifth most important factor--and acceptable under the remaining factors. Browning received the third highest technical score with an overall rating of technically acceptable; Browning was evaluated as exceptional under contractor's quality control--the least important factor--and acceptable under the remaining factors.

The contracting officer conducted a separate price review. Blount's offered price was \$10,206,000 and Browning's \$9,717,000. In conducting the price analysis, the contracting officer used three techniques. First, the contracting officer compared the percentages of the total price that the fifth line item represented in each proposal, and then also compared these percentages to the government estimate. Second, the contracting officer compared the

construction prices for the 16 divisions of work to determine whether there were substantial cost differences among the proposals that would indicate that any offeror included items and/or methods that were substantially higher or lower in quality than those proposed by other offerors. Finally, the contracting officer compared all offerors' total price per square foot to each other, to the government estimate, and to prices under recent similar Air Force contracts. The contracting officer concluded that all proposed prices were reasonable, since they were all below the government estimate. The source selection evaluation team (SSET) then reviewed the contracting officer's price analysis and the TET's comparative technical analysis and prepared an independent report recommending that award be made to Blount on the basis that the firm's proposal represented the best value to the government.

The source selection authority (SSA) then conducted a price/technical tradeoff between the Browning and Blount proposals, since Browning's proposed prices were lower than Blount's. Although Browning's proposal had been rated overall technically acceptable, the SSA noted that there were relative weaknesses under several of the evaluation factors and thus determined that the proposal represented a higher risk to the government than Blount's. The SSA also considered Blount's proposal to be relatively advantageous due to the firm's prior experience. Noting that technical factors were more important than price under the RFP, the SSA agreed with the SSET that although Blount's price was higher than Browning's, the Blount proposal represented the best overall value to the government. Blount thus was awarded the contract. Following a debriefing from the agency, Browning filed an agency-level protest, which was denied; this protest followed.

COST INFORMATION

The protester claims that Blount's price proposal should have been found deficient for failure to include required summary sheets and cost breakdowns for each of the five line items listed in the proposal schedule, and back-up sheets indicating unit cost, by item of work, for each of the 16 divisions of work. The protester maintains that the absence of this cost information precluded the Air Force from performing a proper cost analysis of Blount's proposal, as required under section L.

Browning is correct that paragraph 13 of section L of the RFP, "Proposal Preparation Instructions," states that the agency will "perform a detailed cost analysis" of the proposed prices. On the other hand, paragraph 1 of section M, "Factors for Award," states that prices "will be evaluated through the use of price analysis," which would not require

a breakdown of an offeror's costs. See Federal Acquisition Regulation (FAR) §15.801. Thus, section L is inconsistent on its face with section M, making the solicitation ambiguous. To the extent the protester contends that the agency was required by section L to perform cost analyses using offerors' detailed cost information, the protest is untimely. Under our Bid Protest Regulations, protests of alleged solicitation improprieties (the ambiguity in this case) must be raised prior to the closing date for receipt of proposals. 4 C.F.R. § 21.2(a)(1) (1992). The conflicting solicitation provisions about cost and price analyses are apparent on the face of the RFP, and therefore had to be challenged prior to the closing date. Because Browning did not do so, any protest now that the Air Force was required to perform a cost analysis is untimely.¹

The question remains whether Blount's proposal should have been rejected for failure to provide some of the information required under section L. We find that there was no basis for rejecting the proposal. Although Blount did not furnish all of the required information, it did furnish enough information to establish Blount's ability to limit its cost of performance to a level below the government estimate, and to permit the agency to make the other comparisons discussed above. The agency was able to conclude from these comparisons that (1) Blount's offered price was reasonable; and (2) its line item prices and 16 work-division prices showed the firm understood the work requirements. We agree with the agency that this analysis was all that was necessary given the limited risk to the government under a fixed-price contract such as this. (The Air Force states that it required the separate summary sheets and cost breakdowns for the five line items in section L for internal reporting purposes only and not for the evaluation of proposals for purposes of contract award.) Since we find nothing unreasonable in the manner in which the agency conducted its analysis, or its conclusion that Blount's prices were realistic, complete and reasonable (and Browning does not argue otherwise), the absence of some of the required pricing information from Blount's proposal did not

¹Irrespective of the timeliness of this contention, we fail to see its relevance to the relative advantages of the two firms' proposals. The agency did not violate any statutory or regulatory requirement for a cost analysis, and there is no suggestion that the protester would have submitted a different and more competitive proposal if it had known that the Air Force intended to conduct a price analysis rather than a cost analysis.

preclude the award to Blount.² See generally Tri-Servs., Inc., B-245698, Jan. 15, 1992, 92-1 CPD ¶ 75 (bidder's failure to include required information with its bid did not render bid nonresponsive since the information was not relevant to bid evaluation and did not affect the bidder's performance obligation).

PRICE/TECHNICAL TRADEOFF

Browning maintains that award was improper since Browning's price was significantly lower than Blount's, while its technical proposal was rated only slightly lower. The protester concludes that the agency's price/technical tradeoff was improper.

Agencies have broad discretion in determining the manner and extent to which they will make use of technical and price evaluation results. In reaching an award decision, an agency may make price/technical tradeoffs, subject only to the test of rationality and consistency with the established evaluation factors. Shirley Constr. Corp., 70 Comp. Gen. 62 (1990), 90-2 CPD ¶ 380.

We find that the SSA's price/technical tradeoff here was rational and consistent with the evaluation factors. Although both Browning and Blount received overall acceptable ratings, in making the award decision the SSA reviewed the firms' ratings under each evaluation factor and concluded that Browning's proposal contained significant weaknesses not present in Blount's proposal, and that Blount's proposal was sufficiently superior to warrant paying its 5 percent price premium.

Specifically, the SSA noted two weaknesses in Browning's proposal under the functional and architectural concepts factor, the most important technical area: (1) the design of the commissary did not fully comply with the historical architectural requirements and thus would require some redesign; and (2) the interior of the commissary was bland and needed improvement on graphics and color. Further, under the second most important building engineering systems factor, the SSA considered that Browning's proposed layout of the commissary did not meet fire code egress requirements; under the commissary equipment factor, the SSA noted that Browning's proposed refrigeration system, which was considered essential to the success of the commissary, was marginal and would require major redesigning to bring

²Moreover, since the record shows that all proposals were evaluated on the same basis, Browning was not prejudiced by waiver of the informational omission for Blount. See Sytek, Inc., B-231789.2, Dec. 7, 1988, 88-2 CPD ¶ 568.

the system within acceptable standards; and under the design/build experience factor, Browning's previous experience was limited in that it consisted primarily of commercial rather than government construction projects and the firm had no experience in designing and building a military commissary. In contrast, Blount's previous government contract experience performing similar work was extensive as it had completed design services for 10 commissaries.

Browning does not challenge the evaluation results, and given that technical factors were more important than cost, we think the agency reasonably concluded that the relative strength of Blount's proposal under the most important evaluation factors warranted paying Blount's 5 percent higher price.

BIAS

Browning argues that the SSA was biased against Browning, based on the way the agency handled the price evaluation and the price/technical tradeoff. The record must clearly establish that an agency intended to injure a protester before we will find bias. Miller Bldg. Corp., B-245488, Jan. 3, 1992, 92-1 CPD ¶ 21. The record in this case provides no basis for finding agency bias against Browning.

INDEPENDENT EVALUATION

The protester argues that the TET failed to conduct an independent evaluation of the technical proposals, as required by the RFP, since officials with knowledge of the price proposals reviewed the TET's findings, and then returned the findings to the TET for corrections. This argument is unsupported by the record. As discussed above, the TET's technical evaluation findings were combined with the contracting officer's price analysis in a report by the SSET. There is nothing in the record indicating that any price information was presented to the TET during its technical evaluation deliberations.

The protest is denied.


for James F. Hinchman
General Counsel