



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Michael C. Avino, Inc.

File: B-250689

Date: February 17, 1993

Norman A. Steiger, Esq., for the protester.
Leonard A. Sacks, Esq., for The Driggs Corporation, an interested party.
Stephen T. Orsino, Esq., Garrett Rensing, Esq., and Cynthia Guill, Esq., Department of the Navy, for the agency.
Mary G. Curcio, Esq., and John G. Brosnan, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Contract award to other than the low offeror is not objectionable where the award is consistent with the solicitation evaluation criteria and the agency reasonably determined that awardee's higher rated technical proposal was worth the additional cost.

DECISION

Michael C. Avino, Inc. protests the award of a contract to the Driggs Corporation under request for proposals (RFP) No. N62477-92-R-3078, issued by the Department of the Navy for the repair and restoration of runways at the Naval Air Station, Patuxent River, Maryland. Avino asserts that the Navy unreasonably awarded the contract to Driggs at a price higher than that proposed by Avino.

We deny the protest.

The RFP was issued on May 12, 1992, and was subsequently amended six times. As amended, the RFP provided for the evaluation of price and four technical factors which were listed in descending order of importance: (1) schedule, (2) design, (3) construction, and (4) experience and prior performance. Technical and price factors were to be considered equal in reaching the award decision.

Four proposals were submitted to the Navy by the June 12 due date. After the Navy evaluated the proposals, held two rounds of discussions, and requested and received revised proposals and best and final offers (BAFO), Driggs was ranked second and Avino was ranked third technically. Both

Driggs and Avino were rated acceptable for schedule and design, and both were considered to represent a moderate risk under experience and prior performance. For the other technical evaluation factor, construction, Avino was rated acceptable and Driggs was rated exceptional. Driggs submitted the second lowest price and Avino submitted the low price.

The Source Selection Advisory Board (SSAB) reviewed the evaluation, concluded that an award to the highest technically ranked offeror was not worth the substantially higher price proposed by that offeror, and recommended award to Driggs. In reaching this decision, the SSAB noted that Driggs's evaluated price was 3 percent greater than Avino's, but concluded that Driggs's proposal was worth the additional cost based on the firm's exceptional rating under the construction factor. In this regard, the SSAB considered that the exceptional rating was based on Driggs's proposed use of superior equipment that would result in a better runway with a longer life span and less maintenance. Specifically, the SSAB considered that: (1) Driggs's equipment could pave wider lanes; (2) Driggs's asphalt spreading equipment had a computerized grade control while Avino's had only a mechanical grade control; (3) Driggs offered greater storage capacity for asphalt than Avino; (4) Driggs's asphalt plant would produce a more uniform asphalt mix than that provided by Avino; and (5) Driggs proposed 13 asphalt rollers while Avino proposed only three.

Subsequently, the contract was awarded to Driggs, and Avino protested, arguing that the agency's conclusion that the proposal submitted by Driggs was worth the additional cost was unreasonable and inconsistent with the RFP evaluation criteria.

We will examine an agency's evaluation of technical proposals to ensure that it is reasonable and consistent with the evaluation criteria. The fact that the protester disagrees with the agency does not itself render the evaluation unreasonable. Further, in a negotiated procurement, there is no requirement that award be made on the basis of lowest price unless the RFP so specifies. Rather, price/technical 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 consistency with the established evaluation factors. An award to an offeror with a higher technical ranking and higher price is proper so long as the result is consistent with the evaluation criteria and the procuring agency has reasonably determined that the technical difference is sufficiently significant to outweigh the price difference. Henry H. Hackett & Sons, B-237181, Feb. 1, 1990, 90-1 CPD ¶ 136.

Here, as noted above, in determining that the Driggs proposal was worth the additional cost, the SSAB considered that Driggs offered superior equipment. First, the SSAB concluded that Driggs's asphalt paving equipment, which was capable of paving 27-foot lanes, provided an advantage over Avino's equipment which was capable of paving lanes between 10 and 16 feet wide. The SSAB pointed out that the wider lanes created with Driggs's machinery would result in fewer cold joints in the runways and less maintenance. The SSAB estimated \$1.5 million as the savings to the government from the reduced maintenance.

Avino argues that the solicitation only required that the lanes be placed in consecutive adjacent strips with a minimum width of 10 feet. Avino therefore asserts that the Navy's evaluation of Driggs's proposal as exceptional was unreasonable because the solicitation did not specify that the ability to exceed the minimum lane width would result in extra evaluation credit. In this regard, Avino argues that it has paving equipment which is capable of paving wider lanes and that it could have offered this equipment to the Navy at no additional cost if it had been aware that the agency desired wider lanes. Avino argues that in any case, it offered to provide 2 pavers each with a capacity to pave 16-foot lanes and that by using these pavers in tandem, it can pave lanes which are 32 feet wide, without cold joints between them. Avino also complains that to the extent it considered the cost savings attributed to the wider lanes that would be paved with Driggs's equipment, the SSAB used an unstated evaluation factor.

We conclude that the Navy's evaluation of Driggs's asphalt paving equipment as superior was reasonable. The solicitation required offerors to pave lanes that were no less than 10 feet wide. Avino offered a paver that would pave lanes between 10 and 16 feet wide and Driggs offered paving equipment that could pave 27-foot lanes. As discussed below, there was nothing improper in the Navy's concluding that Driggs's paver was superior based on the agency's conclusion, which Avino does not dispute, that the wider lanes would result in a better runway.

With regard to Avino's statement that it planned to use its two pavers in tandem, the Navy reports that the firm's proposal did not state that it would use this approach and, in the Navy's experience, when pavers are used in tandem cold joints form which require annual maintenance with joint sealant. In response, the protester contends that the Navy should not have assumed that one paver would remain idle as a backup, but the protester did not address the agency's contention that cold joints will result even with simultaneous use of two pavers. Consequently, we have no reason to conclude that the Navy is in error.

Further, there was nothing improper in the Navy's decision to give Driggs evaluation credit for equipment that exceeded the minimum requirements of the solicitation and would result in a better runway surface. The solicitation did not contemplate an award to the low priced technically acceptable offeror--it provided for the possibility of an award to an offeror with a technically superior proposal. Under such circumstances, agencies properly may give evaluation credit for superior proposals that will better satisfy their needs, and we think that the protester should have been aware that the Navy could do so here. See Astrophysics Research Corp., B-228718.3, Feb. 18, 1988, 38-1 CPD ¶ 167; Computer Sciences Corp., B-189223, Mar. 7, 1978, 78-1 CPD ¶ 234.

Second, the SSAB found that the asphalt spreading equipment proposed by Driggs was superior to the equipment proposed by Avino because Driggs's equipment had a computerized grade control which would result in the finished pavement meeting the close tolerance of +/- 1/8 inch in 10 feet. This is a benefit, according to the Navy, because it would ensure good drainage and therefore eliminate water damage to aircraft. The Navy states that in contrast, Avino's proposal merely offered a mechanical grade control. Avino has not responded to the Navy's position and we otherwise have no basis to question the agency's judgment.

Third, the Navy concluded that Driggs's asphalt plant, with a storage bin that had the capacity to store 400 tons of asphalt, was superior to Avino's which had a storage bin which could store only 75 tons. The Navy pointed out that Driggs's greater storage capacity would yield 5 hours longer operation in case of plant equipment failure. The Navy found that this provided a significant advantage to the agency, especially in light of critical intersection work which had to be completed within 72 hours after start of the work.

Avino argues that the solicitation does not require a significant amount of storage capacity and in fact only permits the temporary storage of asphalt under limited conditions. Avino also states that it is unlikely that the agency could realize a meaningful advantage from the larger storage capacity offered by Driggs because an asphalt plant cannot be fixed in 5 hours. Avino therefore concludes that it was improper for the Navy to find Driggs's proposal superior based on Driggs's greater capacity storage bins.

We find no merit to Avino's position. While Avino argues that 5 hours would not be sufficient to fix the plant, the increased storage capacity will permit the job to continue for an additional 5 hours in the event of plant failure; further, it is also possible that the plant could be fixed

in that period of time. Accordingly, we think the Navy could consider this aspect of Driggs's proposal in determining its superiority.

Fourth, the Navy found that Driggs's asphalt plant with a computerized failsafe device would produce a more uniform asphalt mix than would that offered by Avino. According to Avino, however, its mixing plant creates an asphalt mixture within the prescribed tolerances. Avino argues that its plant is no different from Driggs's as it is also computerized with failsafe devices to assure uniformity.

In response, the Navy asserts that in its initial proposal Avino failed to provide the information required by the RFP concerning the asphalt plant. Specifically, Avino failed to provide the make and model, date of manufacture, and description of control features. As a result, Avino was asked to provide this information during the first round of discussions. The Navy states that Avino then identified its control feature as the AD500 Selectron System. Avino, however, did not provide any information on a computerized failsafe device to assure uniformity.

Avino does not dispute that it did not provide this information and, in fact, we find no such information in the proposal. Accordingly, we think that the Navy reasonably concluded that Driggs's plant with the computerized failsafe device was superior to Avino's.

Finally, the Navy concluded that the asphalt rollers proposed by Driggs were superior because they were heavier than those offered by Avino and would thus produce a more compact, longer-lasting pavement. Further, the Navy states that Driggs proposed 13 asphalt rollers while Avino proposed only 3. The Navy concluded that Driggs's approach provided an advantage because it would ensure continuous operations if equipment failures occurred.

Avino argues that the Navy is factually incorrect because the Avino equipment is actually heavier than that proposed by Driggs. Subsequent to receiving Avino's protest, the Navy agreed that it had misevaluated Avino's proposal in this regard and now admits that in fact Avino's proposed rolling equipment is heavier. However, Avino has not disputed that Driggs offered a greater number of asphalt rollers or that this provides an advantage to the Navy in that if the equipment breaks down performance can continue. Accordingly, we conclude that even with the error in evaluation the Navy could reasonably determine that Driggs's asphalt rolling equipment provided an advantage not provided by Avino.

In view of the above, we think that the Navy could reasonably have concluded that Driggs's proposal was "exceptional" under the construction factor and that Driggs's proposal was worth the additional price. In this regard, we note that Avino argues that the Navy could not reasonably reach this result given that the proposals were otherwise rated equally in the two most important technical factors and in the least important technical factor. However, when proposals are equivalent in several evaluation areas, including the most important ones, a proposal that is superior in a different area, albeit a less important one, nonetheless may be considered to be superior to the competing proposal and may be judged to be worth a higher price. See Avtec, Inc., B-238024, June 22, 1990, 90-1 CPD ¶ 581.

The protest is denied.


for James F. Hinchman
General Counsel