



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Chem-Services of Indiana, Inc.

File: B-253305

Date: October 28, 1993

Dennis J. Riley, Esq., and Jared H. Silberman, Esq., Elliott, Vanaskie & Riley, for the protester. Matthew Pausch, Esq., Defense Logistics Agency, for the agency.

Catherine E. Pollack, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Where solicitation provided for evaluation of offerors' past performance under similarly large and complex contracts, agency reasonably considered proposal that established such past experience to be superior to one that demonstrated experience only on smaller, less complex contracts.

2. Where solicitation provided for award to the technically acceptable offeror considering price and past performance, where price was the most important factor, and low-priced proposal did not demonstrate performance on similar contracts, agency reasonably concluded that proposal demonstrating superior past experience was worth a 13.4 percent price premium.

DECISION

Chem-Services of Indiana, Inc. protests the award of a contract to Associated Environmental Services, Inc. under request for proposals (RFP) No. DLA200-93-R-0009, issued by the Defense Reutilization and Marketing Service for the removal and disposal of hazardous waste at various military facilities. Chem-Services alleges that the agency improperly selected Associated's higher-priced proposal for award.

We deny the protest..

The RFP contemplated the award of a fixed-price requirements contract for removal of approximately 1.8 million pounds of hazardous waste per year from a total of 50 different

pick-up sites in Alabama, Louisiana, Mississippi, and northern Florida. The anticipated waste stream was comprised of 84 different contract line items (CLIN); the value of the contract was estimated at approximately \$1.5 million for the 18-month base period and \$1 million for the 1-year option period.

The solicitation provided for award based on the technically acceptable proposal offering the best value to the government in terms of price and past performance. Price was to be the most important evaluation factor; past performance was described as less important but significant. With respect to the past performance evaluation, the RFP provided that proposals would be evaluated in a subjective manner relative to each other; thus, for example, an offeror with a performance record that the agency considered to be acceptable would receive a lower rating than an offeror with a performance record that the agency considered to be exceptional. For purposes of this evaluation, the RFP required each offeror to provide detailed information about its performance on contracts for the same or similar services during the past 2 years. Information to be considered included the quantity of waste disposed of, the turnaround time between the request for removal and the pick-up, and the variety of pick-up locations and waste streams.

Ten offerors submitted proposals in response to the RFP; all 10 proposals were considered to be technically acceptable. Following discussions and submission of best and final offers, the contracting officer performed a past performance evaluation; he rated Chem-Services' past performance "acceptable" and Associated's "good." The contracting officer then recommended to the source selection authority (SSA) that the award go to Chem-Services based on its low price and acceptable past performance rating. The SSA determined, however, that Chem-Services' past performance actually was only marginal, and concluded that Associated's better past performance rating was worth its 13.4 percent price premium--it represented the best value to the government. Award therefore was made to Associated on June 11, 1993.

Upon learning of the award to Associated, Chem-Services requested and was given a debriefing. Chem-Services then filed this protest, alleging that the debriefing revealed no reasonable basis for the decision to award to Associated at a higher price. Chem-Services asserts that the agency completely disregarded the firm's vast experience in disposing of large volumes of hazardous waste and complex waste streams.

The evaluation of technical proposals and the determination of their relative merits is primarily the responsibility of

the contracting agency, since the agency is responsible for defining its needs and the best method of accommodating them, and must bear the burden of any difficulties resulting from a defective evaluation. Litton Sys., Inc., B-237596.3, Aug. 8, 1990, 90-2 CPD ¶ 115. In reviewing protests against allegedly improper evaluations, therefore, we examine the record only to determine whether the agency's judgment was reasonable and in accord with the evaluation criteria listed in the RFP. Taft Broadcasting Corp., B-222818, July 29, 1986, 86-2 CPD ¶ 125. A protester's mere disagreement with the agency's conclusions does not render them unreasonable. ESCO, Inc., 66 Comp. Gen. 404 (1987), 87-1 CPD ¶ 450.

We find that the record here supports the SSA's conclusions that Associated's proposal was superior to Chem-Services' proposal in terms of past performance, and that this superiority warranted payment of a 13.4 percent price premium.

As noted above, the RFP informed offerors that past performance would be evaluated based on the agency's review of information each offeror provided about contracts for the same or similar services that had been performed during the last 2 years. The agency report shows that the contracting officer thoroughly reviewed and evaluated the information provided by Chem-Services and Associated, particularly with regard to the similarity of the firms' current and prior contracts to the requirement here. For example, the contracting officer found that Chem-Services had experience with many smaller contracts involving a variety of hazardous waste products, but did not have any experience with contracts as large as the one contemplated here. In contrast, the contracting officer noted that Associated had experience with several contracts of similar or greater magnitude. While the contracting officer did not find Chem-Services' lack of experience with large contracts to be a problem in view of its cumulative experience with smaller contracts, the SSA disagreed. In particular, the SSA noted that a variety of small contracts did not necessarily entail the level of complexity present in a large and diverse contract. Chem-Services' largest contract to date involved only a single site and was valued at \$146,000, compared to the instant contract with 50 locations and a base period price of more than \$1.5 million. Since Associated established that it had experience with several complex contracts requiring removal of large quantities of various types of hazardous waste from numerous pick-up locations, and Chem-Services did not demonstrate experience on any similar contracts, the SSA concluded that Associated's probability of success in performing the contract was much better than Chem Services' and that this superiority was worth Associated's 13.4 percent higher price.

There is nothing unreasonable in the SSA's conclusion. Performance on several relatively small contracts, we agree, is not as valid an indicator of a firm's ability to perform larger-scale contracts as prior performance on larger-scale contracts. We thus see no reason why the agency could not reasonably find, consistent with the RFP provisions regarding past performance, that Associated's experience performing larger contracts similar to the effort called for here was superior to Chem-Services' experience on much smaller contracts. By the same token, we see nothing inherently unreasonable in the SSA's determination that Associated's proposals' superiority in the past performance area was sufficient to offset Chem-Services' lower price. There certainly was nothing in the RFP which precluded such a price/past performance tradeoff. Chem-Services has not challenged the agency's position in a timely response to the agency's report.

The protest is denied.


for James F. Hinchman
General Counsel

While Chem-Services did not file comments on the report within the timeframe required by our Bid Protest Regulations, it did submit a timely expression of interest in receiving a decision on the merits of the protest before the comments were due. We therefore consider the protest on the merits, notwithstanding the absence of timely filed comments.