



Comptroller General
of the United States

1223241

Washington, D.C. 20548

Decision

Matter of: ToxCo, Inc.
File: B-254912
Date: January 26, 1994

William J. McLaughlin for the protester.
Lucie-Anne Dionne Thomas, Esq., Department of the Navy, for the agency.
Robert C. Arsenoff, Esq., and John Van Schaik, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest is denied where agency reasonably determined that protester's proposed price, which was 73 percent higher than its competitor's price, precluded protester from a reasonable chance for award and, therefore, justified protester's elimination from the competitive range.

DECISION

ToxCo, Inc. protests the exclusion of its proposal from the competitive range under request for proposals (RFP) No. N66604-93-R-B088, issued by the Department of the Navy for processing hazardous waste contained in spent MK 50 torpedo boilers located at Keyport, Washington. The protester contends that the decision to exclude its proposal from the competitive range was unreasonable.

We deny the protest.

The RFP contemplated a fixed-price, indefinite quantity contract for processing hazardous waste from an estimated total of 1,200 boilers. In addition to line items representing preliminary work necessary to begin processing the hazardous waste, offerors were required to submit prices for processing 600 boilers and 1,200 boilers. The government reserved the right to make two separate awards for processing 600 boilers each or a single award for processing all 1,200 boilers.

Award was to be made to the responsible offeror whose proposal was determined most advantageous to the government considering technical capability and price. Technical capability was rated using four subfactors: technical approach/understanding, corporate experience, management

approach and facilities. Although price was the less important evaluation factor, offerors were cautioned that its importance would increase with the degree of technical equality among competing proposals. The RFP also provided that, following initial evaluations, discussions would be conducted only with those offerors determined to have a reasonable chance for award and that an award could be made on the basis of initial proposals without discussions.

Six proposals were received and evaluated as either acceptable, unacceptable but susceptible of being made acceptable, or unacceptable. One offer was found to be unacceptable and received no further consideration. The other five offers, including those of ToxCo and Alliant Techsystems, Inc., were found to be in need of further technical clarification and therefore ranked unacceptable but susceptible of being made acceptable. These five offers were then reviewed by a best value panel (BVP) which considered the technical evaluation together with prices. While Alliant's proposal was still found to be in need of clarification, it was regarded by the panel as being technically more advantageous than the other offers because the offeror's method of disposing of hazardous materials was more "environmentally friendly" since it did not generate a hazardous liquid waste stream as did the other proposed disposal approaches. ToxCo, by virtue of one alternative technical approach it proposed (the other being found to be completely unacceptable), was ranked on a technical par with two other offerors. Finally, the BVP concluded that one of the offers was in need of major revision and ranked it behind the other offers technically.

The BVP also compared the proposed prices submitted by the five remaining offerors and concluded that none of the offerors stood a reasonable chance of being selected for award over Alliant, which submitted a low price of \$1,937,500 for 1,200 boilers (approximately \$1,600 per unit). ToxCo's price was \$3,355,790 (approximately \$2,800 per unit). Thus, based primarily on price considerations, the BVP recommended that the competitive range be limited to Alliant. This recommendation was adopted by the contracting officer and ToxCo was notified of the decision to eliminate its proposal.

In its protest, ToxCo argued that its proposal had been improperly evaluated. ToxCo asserted that it: (1) had demonstrated an effective process for handling hazardous waste; (2) had obtained all necessary permits and facilities; (3) should have received extra evaluation credit for demonstrating an ability to process boilers more expeditiously than required by the RFP; (4) should have received additional credit for being the only offeror to propose a recycling approach rather than a disposal

approach; and (5) should have received credit for its subcontracted recycler being located near Keyport, Washington so as to minimize transportation problems for the agency. ToxCo asserts that had these factors been properly considered, its proposal should have remained in the competitive range despite any price differential.

The determination of the relative merits of proposals is primarily the responsibility of the contracting agency and we will not disturb its judgment unless it is unreasonable; a protester's mere disagreement with the agency's technical judgment does not itself establish that the judgment was unreasonable. C&W Equip. Co., B-251416, Apr. 1, 1993, 93-1 CPD ¶ 284; Radiation Sys., Inc., B-222585.7, Feb. 6, 1987, 87-1 CPD ¶ 129.

The evaluation record accompanying the agency report presents a persuasive rebuttal to each of the protester's contentions. For example, rather than demonstrating the efficacy of its proposed approach, ToxCo, in the evaluators' view, had failed to address adequately the risk mitigation associated with its proposed process and failed to demonstrate that it had enforceable, firm commitments from any of its proposed processing subcontractors. With respect to permits and facilities, the evaluators noted that one proposed recycling subcontractor had a permit that was about to expire and they questioned whether either of ToxCo's proposed subcontracted facilities would in fact be available to the offeror. With respect to ToxCo's claim that it possessed an ability to process boilers more expeditiously than required, they found the claim to be unsubstantiated. With respect to ToxCo's proposed approach to recycling boilers, the evaluators in fact found that this alternative approach was totally unacceptable because the firm had no commitment from a recycling subcontractor. Finally, the evaluators found any geographic advantage claimed by ToxCo to be illusory given that the RFP placed all transportation responsibility on the contractor.

In its comments on the agency report, ToxCo merely reiterated its initial objections concerning the technical evaluation without specifically rebutting the evaluators' findings. Accordingly, we find that, at best, the record reflects a disagreement with the agency's technical judgment which does not establish that the judgment was unreasonable. Radiation Sys., Inc., supra.

Nor does the record establish that the agency acted unreasonably in eliminating ToxCo's proposal from further consideration in light of the fact that the protester's proposed price was 73 percent higher than Alliant's.

A technically acceptable proposal may be excluded from the competitive range if, based on the array of technical rankings and the consideration of proposed prices, the proposal does not stand a real chance for award. Price is not only a proper factor for consideration but may emerge as the dominant factor in determining whether proposals fall within the competitive range. We will not disturb a determination to exclude a proposal from the competitive range unless the record indicates that it was unreasonable, even in circumstances where, as here, the competitive range is reduced to one offeror. Motorola, Inc., B-247937.2, Sept. 9, 1992, 92-2 CPD ¶ 334; Systems Integrated, B-225055, Feb. 4, 1987, 87-1 CPD ¶ 114.

While technical weaknesses may not themselves have justified the protester's exclusion from the competitive range in this case, the fact remains that the protester's proposed price exceeded Alliant's by 73 percent and nothing in the record suggests that ToxCo could have significantly reduced its price if given a chance to submit a best and final offer after discussions. ToxCo's only comment in this regard is that, given another opportunity, and its recently enhanced technical ability to process hazardous waste (which is not explained), the protester might be able to reduce its price to "below \$2,200" per unit--still considerably higher than Alliant's price of \$1,600 per unit. Under these circumstances, we have no objection to the agency's competitive range determination.

The protest is denied.

Robert P. Murphy
for Robert P. Murphy
Acting General Counsel