



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Astro Pak Corporation

File: B-256345

Date: June 6, 1994

Carl W. Verheyen, Jr., for the protester.
Ann L. Giddings, Esq., and Paul M. Fisher, Esq., Department
of the Navy, for the agency.
Peter A. Iannicelli, Esq., and Michael R. Golden, Esq.,
Office of the General Counsel, GAO, participated in the
preparation of the decision.

DIGEST

1. Protest that evaluation of proposals was improper is denied where the record shows that proposals were reasonably evaluated on each factor/subfactor set forth in the request for proposals and adjectival ratings given each proposal are amply documented in individual evaluators' narrative comments; protester's mere disagreement with agency evaluation is not sufficient to establish that the evaluation was unreasonable.

2. Where request for proposals stated that technical factors and price were considered to be equally important, and evaluators reasonably rated protester's and awardee's proposals technically equal, contracting officer properly made award to awardee based upon its low-priced offer.

3. Detailed cost analysis is not required in procurement of a fixed-price contract.

DECISION

Astro Pak Corporation protests the Department of the Navy's award of a contract to C. H. Hyperbaric, Inc. (CHH) pursuant to request for proposals (RFP) No. N62477-93-R-6617. The protester contends that the Navy should not have requested a best and final offer (BAFO) of it, that the Navy deviated

from the RFP's evaluation scheme and improperly selected CHH on the basis of its low price alone, and that the Navy's cost analysis was inadequate. We deny the protest.'

Issued on August 26, 1993, the RFP solicited offers for a firm, fixed-price contract for design, fabrication, assembly, and installation of a combat swimmer trainer hyperbaric facility at the Special Forces Training Facility, Key West, Florida. The RFP stated that the contract would be awarded to the offeror whose proposal represented the best value and which was most advantageous to the government, price and other non-price related factors considered. The RFP stated that price and technical factors were of equal importance. The RFP listed technical factors, in descending order of importance, as: (1) project plan, (2) management plan, and (3) quality assurance. Price proposals were to be evaluated for reasonableness and realism.

Three offers were received by the November 5 date set for submission of initial proposals. Discussions were held and BAFOs received. On January 14, 1994, the contracting officer awarded the contract to CHH for a total price of \$650,933.79. Astro Pak was notified of the award on January 24 and filed its protest in our Office shortly thereafter.

Astro Pak states that the price it proposed in its initial offer and that of the third offeror were roughly \$300,000 more than CHH's initial proposed price. In view of the large difference in proposed prices, Astro Pak contends that the contracting officer should not have included the Astro Pak and the third offeror's proposal in the competitive range because neither of them had a reasonable chance of being selected for the contract. The protester asserts that, in asking for BAFOs, the contracting officer was conducting an illegal auction in an attempt to get offerors to lower their prices.

Prohibited auction techniques include: (1) indicating to an offeror a price it must meet to obtain further consideration, (2) advising an offeror of its relative standing, and (3) furnishing information about other offerors' prices. Federal Acquisition Regulation (FAR)

'As the protester is not represented by legal counsel, and because neither the agency nor the protester requested that we issue a protective order, we did not issue one in this case. Therefore, while we have examined all pertinent evaluation materials, our discussion necessarily will be limited to prevent disclosure of proprietary and source selection sensitive information.

§ 15.610(d)(3). Astro Pak has provided no evidence and there is nothing in the record to support Astro Pak's bald assertion that the contracting officer engaged in a prohibited auction. See Alpha Bldg. Corp., B-255178; B-255178.2, Feb. 14, 1994, 94-1 CPD ¶ 102.

Contracting officers have discretion to determine which proposals have a reasonable chance of being selected for award and which therefore are to be included in the competitive range. See FAR § 15.609(a). Where there is doubt, proposals should be included. Id. Once discussions are opened, offerors generally are free to revise their proposals, including their proposed costs. See Milcom Sys. Corp., B-255448.2, May 3, 1994, 94-1 CPD ¶ _____. That being so, and since the protester's proposal was rated excellent by the evaluators, the contracting officer could reasonably decide to include the proposal in the competitive range. See Perez Housing Maintenance, B-249309, Nov. 12, 1992, 92-2 CPD ¶ 341.

Astro Pak initially asserted only that the Navy did not follow the evaluation scheme set forth in the RFP because the Navy awarded the contract to CHH on the basis of its lowest-priced proposal alone without considering Astro Pak's superior technical merit. In its comments on the agency's protest report, Astro Pak stated that it generally disagrees with the agency's technical evaluation. According to Astro Pak, it has better personnel and substantially more experience than CHH in doing the type of work required and, therefore, should have received a superior technical rating. The protester also alleges that the Navy's procurement personnel had inadequate experience concerning the required work and, consequently, were unable to properly evaluate technical proposals, prepare a government estimate, or conduct a cost analysis.

The selection of individuals to serve as proposal evaluators is a matter within the discretion of the agency; our Office will decline to appraise the qualifications of such individuals absent a showing of possible fraud, conflict of interest, or actual bias on the part of the evaluators. AmerInd, Inc., B-253751, Oct. 19, 1993, 93-2 CPD ¶ 240; CH2M Hill Southeast, Inc., B-244707; B-244707.2, Oct. 31, 1991, 91-2 CPD ¶ 413. No such showing has been made here.

Evaluating the relative merits of competing proposals is a matter within the discretion of the contracting agency since the agency is responsible for defining its needs and the best method of accommodating them. Simms Indus., Inc., B-252827.2, Oct. 4, 1993, 93-2 CPD ¶ 206. In reviewing an agency's evaluation, we will not reevaluate proposals but instead will examine the agency's evaluation to ensure that

it was reasonable and consistent with the stated evaluation criteria. Id.

The evaluation documents, including the individual evaluators' score sheets, show that each proposal was evaluated on each of the technical evaluation factors and subfactors as set out in the RFP. Moreover, the adjectival ratings given each proposal for each factor/subfactor are amply supported by the individual evaluators' narrative comments. Compare DN/ Properties, Inc. et al., B-253614.2 et al., Oct. 12, 1993, 93-2 CPD ¶ 301, wherein we sustained a protest because the agency's evaluation and selection decision were not adequately supported by individual evaluators' narrative comments or otherwise.

Here, the evaluators specifically examined proposals for the quality of the personnel available and the firms' previous related experience. Among other things, the evaluators determined that CHH's experience, as exemplified by a number of projects (including recent Navy projects) listed in the firm's proposal, was directly applicable to the type of work required under the present RFP. The evaluators also found that CHH proposed an exceptional number of personnel with experience that was directly applicable to the project. Thus, the evaluation panel rated CHH very high on both its experience and proposed personnel. The evaluators also found that CHH had an excellent technical project plan and quality assurance plan with a detailed and thorough schedule for completing the project. We have no basis to conclude that the evaluation was unreasonable. Astro Pak's mere disagreement with the Navy's evaluation is not sufficient to establish that the evaluation was unreasonable. CH2M Hill Southeast, Inc., supra.

Where selection officials reasonably regard proposals as being essentially technically equal, price may properly become the determining factor in making award even if cost or price is accorded less importance than technical merit. See The Parks Co., B-249473, Nov. 17, 1992, 92-2 CPD ¶ 354; N W Aver Inc., B-248654, Sept. 3, 1992, 92-2 CPD ¶ 154. Here, the RFP stated that technical factors and price were considered to be equal in importance. The record shows that Astro Pak's and CHH's proposal received similar qualitative ratings from the evaluation panel on each evaluation factor and that the proposals were both rated as excellent overall. In view of the evaluation team's rating Astro Pak's and CHH's proposals virtually even on technical merit, the contracting officer reasonably and logically determined that award to CHH represented the best value to the government in light of its lower cost.

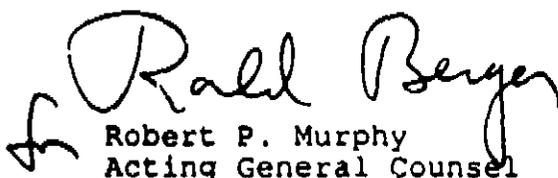
Astro Pak also argues that the Navy did not conduct a detailed cost analysis, or alternatively, that the Navy's

cost analysis was deficient. The protester asserts that a proper cost analysis would have revealed that CHH's proposed price is too low.

Where, as here, the RFP contemplates award of a fixed-price contract, the contracting agency is not required to conduct a detailed cost or cost realism analysis. See PHP Healthcare Corp; Sisters of Charity of the Incarnate Word, B-251799 et al., May 4, 1993, 93-1 CPD ¶ 366; see also Milcom Sys. Corp., supra. The agency did, however, conduct a price analysis as required in FAR §§ 15.805-1(b) and 15.805-2.

The agency compared CHH's prices to the independent government estimate and the prices submitted by the other offerors. The agency also compared some of the cost components of CHH's and Astro Pak's proposals to determine why Astro Pak's proposed price was so much higher than CHH's. The Navy found, for example, that much of the price differential was attributable to the fact that Astro Pak's overhead and general and administrative expenses were considerably higher than CHH's, due in large measure to Astro Pak's maintaining a corporate office in California as well as an office in Virginia. The Navy also found that Astro Pak's approach to the required trenching effort and its proposed schedule for that work greatly increased its costs relative to CHH's and the government's estimate. Based upon these comparisons, the Navy concluded that CHH's prices were realistic and reasonable. We have no reason to question the Navy's determination. In this regard, we have held that an agency may properly make a determination on the reasonableness of prices based solely upon comparison with the government's estimate. See Bay Cities Refuse Serv., Inc., B-250807, Feb. 17, 1993, 93-1 CPD ¶ 151.

The protest is denied.


Robert P. Murphy
Acting General Counsel