



Decision

Matter of: E. Huttenbauer & Son, Inc.

File: B-257778; B-257779

Date: November 8, 1994

Alan M. Grayson, Esq., and Hugh J. Hurwitz, Esq., Law Offices of Alan M. Grayson, for the protester. Aloysius Van Eekeen, Vanees Foods Company; and Alan Koerber, Star Food Processing, Inc., interested parties. Gwendolyn M. Hoover, Esq., Defense Logistics Agency, for the agency. Robert Arsenoff, Esq., and John Van Schaik, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protests against alleged failures of agency to perform a cost realism analysis and consider the maintenance of a mobilization base in making awards are denied where solicitations do not require that either action be taken.
2. Protests alleging that the awardee's prior experience was misevaluated are denied where record establishes that agency reasonably considered the firm's recent successful past performance record as described by the awardee and confirmed this description in a plant facilities survey.
3. Allegation that agency improperly downgraded protester's technical proposals because of failure to consider certain quality program effectiveness information included in the protester's initial technical proposals is without merit. Protester's later-submitted comprehensive revised technical proposals stated that the required information was not available, and the protester confirmed that this information was unavailable in its response to discussion questions on the issue in which the protester explained that the unavailability resulted from frequent turnover of the

"The decision issued on November 8, 1994, contained proprietary information and was subject to a General Accounting Office protective order. This version of the decision has been redacted. Deletions are indicated by "[deleted]."

responsible company personnel and a company work environment conducive to records misplacement.

DECISION

E. Huttenbauer & Son, Inc. protests the award of contracts to Vaneer Foods Company and Star Food Processing, Inc. under requests for proposal (RFP) No. DLA13H-92-R-9070 and DLA13H-92-R-9076. The two solicitations were issued by the Defense Logistics Agency (DLA) for "tray pack" meals to be used by Army field personnel. Huttenbauer alleges that the proposals were improperly evaluated.

The protests are denied.

BACKGROUND

Each solicitation provided that awards would be made to the offerors whose proposals represented the best value to the government considering technical factors and price, and that technical factors were more important than price. The technical factors, in order of importance, were: manufacturing plan; corporate plan; and quality assurance plan. The first factor is not at issue here. Under the corporate plan factor, among other things, offerors were asked to describe their production history for similar items and describe any performance problems they had encountered. The quality assurance plan factor included a subfactor called quality program effectiveness under which offerors, based on company records of the production of the same or similar products over the past 2 years, were to provide information concerning quality assurance matters such as defect and rejection rates. The solicitations also provided that the agency would evaluate proposals "to determine cost/price realism."

Initial technical proposals common to these solicitations and five other RFPs for tray pack items were submitted in 1993. Subsequently, discussions were held and offerors were requested to submit revised technical proposals in February 1994. The revised technical proposals were evaluated and the three offers relevant to these protests were rated as follows:

¹Technical Factor ratings were as follows:

"HA-Highly Acceptable. Meets mandatory requirements with features that clearly demonstrate the highest probability for successful performance.

(continued...)

	FACTORS	VANEE	STAR	HUTTENBAUER
1.0	Manufacturing Plan			
1.1	Material	HA	A	HA
1.2	Production Scheduling	HA	A	HA
1.3	Equipment	A	A	A
2.0	Corporate Plan			
2.1	Management/Plan Prior Experience	HA	A	A
3.0	Quality Assurance Plan			
3.1	Quality Policy & Plan	MA	A	A
3.2	Quality Program Effectiveness	MA	A	UA
3.3	Pest Management	HA	HA	A
3.4	Sanitation	HA	HA	A
	OVERALL QUALITY RATING ²	A	A	MA

Although further discussions were held and two rounds of best and final offers (BAFO) were requested and received, these ratings did not change.

¹(...continued)

"A-Acceptable. Meets mandatory requirements and indicates an acceptable probability of success with some minor weaknesses.

"MA-Marginally Acceptable. Meets mandatory requirements with some deficiencies which appear correctable. A rating of this magnitude indicates some risk to perform but appears correctable.

"UA-Unacceptable. Fails to meet the mandatory requirements."

²Although the manufacturing plan and corporate plan evaluation factors did not receive overall ratings, the evaluators did assign an overall rating to the quality assurance plan factor.

With respect to RFP No. 9070, which covered pork-based items, final unit prices were as follows:

	Sausage Links	Barbecued Pork
Vanee	\$12.13	[deleted]
Huttenbauer	[deleted]	[deleted]
Star	[deleted]	\$14.60

With respect to RFP No. 9076, which covered starch-based items, final unit prices were as follows:

	Spaghetti	Lasagna	Rice	Macaroni	Pork & Beans
Vanee	[deleted]	\$10.25	\$5.10	\$6.53	\$5.43
Star	\$11.50	No Bid	[deleted]	No Bid	[deleted]
Huttenbauer	[deleted]	[deleted]	[deleted]	[deleted]	[deleted]

Vanee, whose proposal was ranked above the other two offerors technically, was awarded contracts for the items for which it submitted low prices: under RFP No. 9070 sausage links; and under RFP No. 9076, lasagna, rice, macaroni, and pork and beans. Star, whose prices were low for barbecued pork (RFP No. 9070) and spaghetti (RFP No. 9076), was awarded contracts for those items. These protests followed.

Huttenbauer argues that it should have received at least some awards under the RFPs, advancing a number of objections to the award process: (1) a cost realism analysis would have shown that its prices were realistic while the other offerors' prices were too low; (2) the agency was obligated to consider the maintenance of the mobilization base for tray pack items in making awards; (3) a complete review of Star's past performance history would have disclosed major past performance problems not detailed in Star's proposal which should have served to disqualify the firm or lower its rating under the corporate plan factor; and (4) the protester's proposal was improperly rated unacceptable under the quality program effectiveness subfactor and meaningful discussions could have cured the problem.

PRELIMINARY ISSUES: REALISM AND MOBILIZATION BASE

The protester's first two issues are without merit. The solicitation was issued on a firm, fixed-price basis. Under such circumstances, the agency may, in its discretion, provide for a cost realism analysis but need not do so; all

that is required is a price analysis. Aumann, Inc., B-245898.3; B-245898.4, July 22, 1992, 92-2 CPD ¶ 35; PHP Healthcare Corp., B-251933, May 13, 1993, 93-1 CPD ¶ 381.

In the solicitations at issue, the agency provided that it would "evaluate the successful offeror's proposal to determine cost/price realism" and further defined cost/price realism as relating to an offeror's demonstration that "the proposed cost or price provides an adequate reflection of its understanding of the requirements of the solicitation." The RFP further provided that "[t]he government will evaluate cost or pricing data or limited pricing information, if requested, with initial proposals or during discussions."

Although the agency reserved the right to request cost information, it did not do so because it determined by an internal comparison of the prices submitted and a comparison to previous contracts that all prices were fair and reasonable. That is all that DLA was required to do. Id. Since no cost information was requested, no cost realism analysis could have been, or needed to be, performed notwithstanding the protester's allegation to the contrary.

Had Huttenbauer believed that cost information should have been solicited, it was required to advance this position during the course of the procurement. Moreover, we note that Huttenbauer had access to the awardees' proposals and presents no evidence that any particular prices were unreasonable.

Huttenbauer, a previous and current producer of tray pack items, also maintains that the RFPs required the agency to consider the need to maintain a mobilization base in evaluating proposals for award, and in doing so, make multiple awards for the food products solicited. Based on this premise, the protester asserts that it should have received awards, or partial awards, for some of the items in question.

As originally issued, the RFPs stated: "the government intends to make multiple awards for the purpose of maintaining an industrial base" and otherwise reserved the right to make more than one award "[i]n the interest of expanding the mobilization base." However, by amendment No. 0005 to RFP No. 9070 and amendment No. 0006 to RFP No. 9076, this language was deleted and replaced with the following provision:

"The government reserves the right to make more than one award, but is not committed to doing so. In the interest of expanding the mobilization base or maintaining properly balanced sources of

supply, one or more than one award may be made to other than the best-value offeror. If only one award is made, it will be made to the best-value offeror. If one, or more than one, award is made to other than the best-value offeror, the source-selection decision for such award(s) will be based on application of the evaluation criteria stated in this solicitation. If multiple awards are made, the government will, to the extent practicable in light of other considerations, award larger quantities to offerors whose proposals are higher rated according to the best-value criteria, and comparatively smaller awards to offerors whose proposals are lower rated."

This language does not, as the protester argues, commit the agency to multiple awards in order to maintain the mobilization base. Rather, it merely sets forth the basis for determining which offerors would be selected if the agency elected to make more than one award. The protester simply misconstrues the amended solicitation to require multiple awards; the solicitation contains no such requirement, and as a general matter in a mobilization base procurement the agency has the discretion to make the number of awards that it believes are warranted to retain an appropriate mobilization base. Magnavox Elec. Sys. Co.; Ferranti Technologies, Inc. B-247316.2; B-247316.3, May 28, 1992, 92-1 CPD ¶ 475.

Our resolution of these two issues resolves all aspects of Huttenbauer's protests against the awards to Vaneer under both RFPs. Huttenbauer has not challenged the technical evaluation of Vaneer's proposals, which were rated the same as the protester's on the most important factor (manufacturing plan) and higher than the protester's on the second most important factor (corporate plan); thus, even if Huttenbauer were correct in asserting that its technical ratings should be at least as high as Vaneer's on the third most important factor (quality assurance plan), Vaneer would still have higher technical ratings which, when combined with its lower prices on every item it was awarded, would have entitled the firm to the awards it received. Accordingly, our subsequent analysis is limited to the remaining issues with respect to the relative standing of Huttenbauer and Star.

EVALUATION OF STAR'S PAST PERFORMANCE

As indicated above, under the corporate plan evaluation factor, for which Star's proposal was rated acceptable, offerors were required to describe their prior production experience and outline problems they had experienced.

Star's technical proposal stated that the firm had "several years of successful production under the MRE [meals ready to eat] ration program." Huttenbauer views this as a material misrepresentation of Star's production experience since DLA terminated two 1986 contracts with Star because Star provided seriously defective pouched foods to the agency. Huttenbauer also criticizes DLA for relying exclusively on Star's own description of its past performance to rate the firm and, thus, concludes that the evaluation lacked a reasonable basis.

In response to the protest, the agency acknowledged that it was aware of the problems encountered on Star's 1986 contracts and maintained that the problems should be discounted because Star has since performed successfully. In response to Huttenbauer's amended document request for contract file information relating to Star's performance history, DLA provided protester's counsel with information from those files which the evaluators actually considered, including recent proposals submitted by Star indicating that the firm had successfully performed a number of MRE contracts since 1988, and a 1993 plant facilities report performed on Star after the submission of its protested technical proposals. The plant facilities report verified successful performance by Star on a number of MRE contracts. Huttenbauer, in its final comments, criticizes DLA for relying on Star's own MRE proposals. Nevertheless, although Huttenbauer was given a copy of the plant facilities report, the protester failed to take issue with that report, which reflects that DLA has verified the awardee's recent successful performance history.

While it is true that Star's proposals did not inform DLA of its performance problems on the 1986 contracts, we do not view Star's description of "several years of successful production" as a misrepresentation of the firm's recent performance history. When informed of Star's 1986 contract problems, DLA responded to Huttenbauer's concerns by discounting the problems as being outdated. Huttenbauer's mere disagreement with the agency's assessment does not render the agency's evaluation unreasonable, KMS Fusion, Inc., B-242529, May 8, 1991, 91-1 CPD ¶ 447, and in light of the fact that DLA confirmed Star's account of recent successful past performance in the plant facilities report, Star's performance problems under relatively stale contracts provides no basis for our Office to disturb the evaluation.

EVALUATION OF HUTTENBAUER'S QUALITY PROGRAM EFFECTIVENESS

Under the quality program effectiveness subfactor, the RFP required the submission of information regarding the efficacy of a firm's quality assurance program. Huttenbauer received an unacceptable rating on this subfactor because,

in DLA's view, as communicated to Huttenbauer during discussions:

"This response is incomplete and cannot be properly/fully evaluated. The response does not contain/cover all data from current and previous two (2) years production, i.e., Ham Slice Warranties contract number DLA13H-91-C-0580, and at least four (4) other items from contract DLA13H-92-C-Z160."³

Huttenbauer does not argue that its revised technical proposal submitted in February 1994 included the information requested by DLA. In fact, Huttenbauer stated in the relevant portion of this revised proposal that: "[t]he information contained within this section is designed to demonstrate the program to be implemented for 1994. Comprehensive past quality history information is not available at E. Huttenbauer & Son, Inc." In addition, the protester later informed DLA, in response to continuing discussions, that:

". . . this company is unable to produce the necessary historical data to fill this request.

"It is my understanding that DPSC Quality would like a written explanation as to why this data is not available. This explanation is requested in light of the fact that Mr. Darley indicated he has seen information of this type in the past during visits with Mr. [deleted] formerly of E. Huttenbauer & Son.

"The scenario behind the missing information is as follows:

"This company has been through a series of personnel changes in an effort to strengthen management. Upon the naming of [deleted] additional changes were made including Sales & Marketing, Plant Management, Research & Development, and my position, Quality Assurance.

"During this reorganization, not only have the individuals performing certain functions changed,

³Contrary to Huttenbauer's contention that meaningful discussions were not conducted concerning its rating under this subfactor, we think this inquiry was sufficient to communicate the agency's concerns. See Aerostat Servs. Partnership, B-244939.2, Jan. 15, 1992, 92-1 CPD ¶ 71.

some positions were created, combined or even eliminated.

"This shuffle of personnel, records, files, desks, offices, etc. has resulted in an environment where misplacement of information may have occurred.

"To exacerbate the matter, the Quality Assurance position (which is responsible for record maintenance) went unfilled for a period of time. During this time, the responsibility was shifted three times, ending with me upon my hiring. I have since been streamlining, updating and completing the QA/QC procedures necessary for capturing the information you would like."

Nevertheless, Huttenbauer asserts that a 37-page section of its initial proposal submitted in September 1993 provides the necessary information required by DLA. Huttenbauer argues that the agency unreasonably evaluated its proposal by failing to consider this initial information sufficient.⁴ The 37 pages in question consist of some quality assurance information regarding one or more contracts from 1992, but which is not specifically identified to particular contracts. This information was not included in Huttenbauer's revised technical proposal; instead the protester expressly stated that it did not have the required information available. Huttenbauer then went on to explain, as quoted above, that it could not comply with the specific requirements communicated through discussions because of a recent lack of management resources dedicated to quality assurance. In our view, the agency could reasonably discount the earlier-provided information concerning quality assurance effectiveness in light of the protester's subsequent disclaimer and explanation concerning its difficulties in collecting and maintaining the desired information. We, therefore, have no basis to question Huttenbauer's proposal relating in this area.

The protests are denied.

Robert P. Murphy
Acting General Counsel

⁴Huttenbauer did not refer to the 37 pages during discussions.