



Comptroller General
of the United States

318245

Washington, D.C. 20548

Decision

Matter of: Lone Star Fleischwaren Im-Export GmbH

File: E-259588.2

Date: May 25, 1995

Michael J. Murphy, Esq., von Maur & Partners, for the protester.
Russell P. Wright, Esq. for IBP, Inc., an interested party.
Steve B. Hilkowitz, Esq., and Michael Trovarelli, Esq., Defense Logistics Agency, Defense Personnel Support Center, for the agency.
Susan K. McAuliffe, Esq., and John Van Schaik, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Given the reasonableness of the agency's determination that the awardee's proposal was technically superior to and presented less performance risk than the protester's proposal, the agency's award selection, based on its determination that the technical advantages associated with the awardee's proposal outweighed its higher price, was reasonable and consistent with the solicitation's evaluation criteria that accorded more weight to technical merit than price.
2. Discussions were proper where protester was directed to the solicitation's requirements under which its proposal was deficient.

DECISION

Lone Star Fleischwaren Im-Export GmbH protests the award of a contract to IBP, Inc. under request for proposals (RFP) No. SPO300-94-R-1993, issued by the Defense Logistics Agency, Defense Personnel Support Center (DPSC), for fresh chilled beef. Lone Star contends that the proposals were not evaluated in accordance with the terms of the RFP, and that the selection of IBP for award was unreasonable in view of IBP's higher price.

We deny the protest.

The RFP contemplated the award of an indefinite delivery/ indefinite quantity type contract for fresh chilled beef (for a base year and 2 option years) for United States Commissaries in Europe. The RFP provided for award to the responsible offeror whose offer was determined most advantageous to the government, with technical considerations being more important than price--the importance of price was to increase with the degree of equality among proposals. The RFP listed, in descending order of importance, the following technical evaluation factors: product; quality; transportation; experience/past performance; socioeconomic considerations; and electronic commerce/electronic data interchange. The RFP described in detail each of these factors, and required the submission of specific, detailed proposal information in response to the listed areas of consideration under each factor. Offerors were advised that their proposals should be in "sufficient detail to ensure an understanding of the proposal by the evaluators" and that proposals which fail to provide "information as requested for all technical factors . . . may be withheld from evaluation and consideration for award."

The RFP contained instructions for specific information required in response to each technical evaluation factor. For example, regarding the product factor, offerors (whether providing product adhering to the DPSC Technical Data Sheet specifications included in the RFP or otherwise) were instructed to "describe open production capacity or product commitment in terms of the proposed quantities."¹ For the quality factor, each offeror was to describe in detail its and its subcontractors' quality control procedures as related to all facets of production and sales, including the proposed system for identification and correction of performance deficiencies, number and placement of quality control personnel and a quality assurance plan specifically addressing procedures to ensure compliance with or improvement to stated requirements. Under the transportation factor, offerors were to furnish a detailed explanation of their proposed traffic management system

¹To the extent Lone Star contends that the RFP instructed offerors submitting product complying with the DPSC Technical Data Sheet specifications that no further narrative was required, a reasonable reading of that RFP paragraph's complete instructions does not support the protester's interpretation. No further narrative was required of such offerors only regarding product descriptions showing compliance with the DPSC specifications. Those offerors were still required to provide substantiation of proposed open production capacity or product commitment.

including, among other things, the rationale used in carrier selection, mode of transportation and inspection procedures, method of assuring carrier responsiveness and temperature maintenance, and procedures for handling carrier equipment failures.

The agency received and evaluated proposals from four offerors. Lone Star was informed that, based upon an "integrated assessment" of its technical and price proposals, its proposal was not included in the competitive range. In response to Lone Star's challenge to the exclusion of its proposal, Lone Star's proposal was readmitted into the competitive range.

The agency conducted discussions with the three competitive range offerors. Once Lone Star's proposal was readmitted into the competitive range, the agency conducted telephone discussions with the firm² and the protester was issued a written discussions letter dated August 15. That letter stated that the firm's initial technical proposal was found to have deficiencies under each of the six technical evaluation factors. Specifically, Lone Star was told that it submitted a technical proposal "that either marginally addressed the issues or that did not address the issues." Lone Star was told to direct its attention "to pages 8 through 11 of amendment 0001, as amended in amendment 0002 page 2" (i.e., the specific technical information sought by the RFP for evaluation of each of the technical evaluation factors), to review all items contained in the RFP, and to submit a revised offer containing the requested information.

Revised offers and best and final offers (BAFO) were received and evaluated. IBP's BAFO (which was found to offer the third lowest price at \$66,075,405.78 for the 3-year period) was rated as "exceeds stated requirements" and Lone Star's BAFO (which was found to offer the lowest price at \$55,827,926.04) was rated as "fails to meet stated requirements" due to the proposal's omission of required technical information and substantiation.³ The agency determined that IBP's proposal offered the best overall value to the government of the proposals received based on

²The record is unclear as to the scope of the telephone discussions--while the agency contends that each of the protester's technical deficiencies was discussed, the protester contends that only price issues were discussed.

³The following evaluation ratings were used: exceeds stated requirements, meets stated requirements, or fails to meet stated requirements.

technical and price considerations and made award to that firm. Lone Star filed an agency-level protest of the award and, after receiving the agency's November 22 denial of that protest, filed its protest with our Office.

Lone Star contends that its proposal provided the information requested by the RFP. Lone Star further contends that the agency did not evaluate the proposals on an equal basis--the protester states that the awardee's proposal was rated higher than the protester's proposal despite similarities in the degree of detail in both proposals.⁴

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, and it must bear the burden resulting from a defective evaluation. Advanced Technology and Research Corp., B-257451.2, Dec. 9, 1994, 94-2 CPD ¶ 230; Marine Animal Prods. Int'l, Inc., B-247150.2, July 13, 1992, 92-2 CPD ¶ 16. Consequently, we will not reevaluate technical proposals but instead will examine the agency's evaluation to ensure that it was reasonable and consistent with the solicitation's stated evaluation factors. MAR Inc., B-246889, Apr. 14, 1992, 92-1 CPD ¶ 367. An offeror's mere disagreement with the agency does not render the evaluation unreasonable. Medland Controls, Inc., B-255204; B-255204.3, Feb. 17, 1994, 94-1 CPD ¶ 260.

The agency considered IBP's technical proposal superior because it was more detailed than Lone Star's. Specifically, the agency found that the protester's proposal failed to provide required supporting information for evaluation; consequently, the proposal was assigned a rating of "fails to meet stated requirements" under the four most important evaluation factors. The agency reports that it had to make extensive assumptions about how Lone Star would actually perform if awarded the contract and that the lack of required information, and the many assumptions which had to be made, increased the risk of unsatisfactory performance. Lone Star has urged our Office to compare the

⁴Although the protester also challenges the agency's evaluation of its initial proposal's price, we see no reason to resolve that challenge since its BAFO price, not its initial proposal price evaluation, was considered by the agency in making its award determination.

offerors' proposals in resolving its challenge to the evaluation, on the basis of claimed similarities in detail in the presentations. We have reviewed the record and conclude that the agency's evaluation was reasonable.

The agency found Lone Star's proposal vague and lower in technical merit than IBP's proposal under the four most important technical evaluation factors. For example, although the RFP required details regarding each offeror's open production capacity or product commitment in terms of the proposed quantities, Lone Star's proposal provided minimal information and a statement of the protester's and its subcontractors' claimed ability and guarantee to meet the agency's quantity requirements. Unlike IBP's proposal, the protester's proposal did not substantiate its claims of production capability by providing in-depth information demonstrating such capacity, such as the number of cattle processed on a daily and weekly basis and the number and types of vendor contracts that will ensure production capacity.⁵ IBP's proposal further supported its 45-day shelf-life warranty by explaining its method of temperature control and packaging exceeding the agency's minimum requirements. Although Lone Star proposed a 45-day shelf-life warranty under the quality factor, the protester's proposal did not sufficiently support its capability to comply with the warranty since, for example, it omitted detailed information regarding the proposed temperature maintenance and quality control methods at every stage of beef production and delivery.

The RFP also required a description of the firm's and its subcontractors' proposed quality control procedures--Lone Star, however, failed to adequately explain its quality assurance plan and procedures to ensure compliance with the RFP's specifications. Rather, Lone Star generally proposed certification of its meat by USDA personnel without elaboration and explanation of its own role in overall quality assurance. Lone Star argues that since its proposal states that the firm guarantees compliance with the RFP requirements, its proposed quality assurance plan should be interpreted by the agency and our Office as incorporating the relevant DPSC Technical Data Sheet specifications describing product and quality requirements applicable to the contract; however, as the agency points out, Lone Star's

⁵Lone Star contends that its beef is of high quality and should have been rated higher under the product factor. The record shows, however, that the beef which Lone Star would supply was not downgraded by the evaluators, but that the proposal failed to provide the specific production information required by the RFP, resulting in the lower rating under the product factor.

proposal--even if it guaranteed compliance--did not adequately elaborate, as required, how the protester proposed to meet the stated requirements. IBP's proposal detailed each aspect of its proposed temperature and quality control, as well as audit reviews, under every stage of the beef preparation, as required, and, as a result, the proposal was reasonably rated higher than Lone Star's proposal.

Under the transportation evaluation factor, Lone Star's proposal was rated "fails to meet stated requirements" because the proposal only generally stated how the firm would transport the beef and guaranteed timely transport of its product based upon its proposed use of carriers that have successfully transported its product in the past. The agency was concerned, and we believe reasonably so, about the proposal's omission of a comprehensive transportation plan that fully described, among other things, the mode of transportation of the cattle and beef product prior to and after slaughter, detailed information about the basis for carrier selection (and the identification of carriers), movement of ocean containers to port, methods of temperature control, and the adequacy of any proposed contingency plans in the event of transportation breakdowns or interruptions. IBP's proposal described its rationale for carrier selection, carrier capacity in excess of the agency's current needs, and a contingency transportation plan which established a low risk of delivery problems.

Similar omissions of detail in Lone Star's proposal were noted by the evaluators under the remaining technical evaluation factors. In sum, while the record shows that Lone Star was credited for compliance with some of the specifications and information requirements listed in the RFP under each technical evaluation factor, the agency found significant omissions of required technical information which reasonably resulted in a determination that Lone Star's proposal was substantially inferior to IBP's proposal. Although the protester states that its proposal should have been rated higher technically since the proposal repeatedly stated that the firm would comply with all specifications, such statements, without elaboration, are not an adequate substitute for detailed and complete technical information in a proposal. Whittaker Elec. Sys., B-246732.2, Sept. 10, 1992, 92-2 CPD ¶ 161. In our view, the agency reasonably found IBP's proposal to be substantially technically superior.

Lone Star also protests that the agency failed to conduct equal and meaningful discussions with the firm. Specifically, the firm contends that, in effect, it was

asked to resubmit its proposal, without specific guidance as to what deficiencies needed to be cured, while the other offerors were given more specific discussion questions.

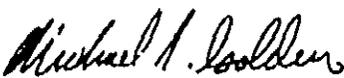
In order for discussions to be meaningful, agencies must generally point out weaknesses, excesses, or deficiencies in proposals, unless doing so would result in disclosure of one offeror's technical approach to another offeror or technical leveling. Marine Animal Prods. Int'l, Inc., supra. Agencies, however, are not required to conduct all-encompassing discussions; rather, agencies are only required to reasonably lead offerors into areas of their proposals which require amplification or correction. Medland Controls, Inc., supra.

Based on our review of the record of discussions, and given the numerous omissions of required information in the protester's initial proposal, we believe the agency's discussions with the protester were proper. Despite the factual dispute concerning whether or not the technical deficiencies in Lone Star's proposal were discussed with the protester during the telephone discussions, the agency's August 15 discussion letter specifically informed the protester that it had not adequately responded to the technical information requirements of the RFP. That letter specifically directed Lone Star to the pages of the RFP that listed the information required for evaluation of the proposal. Moreover, the RFP expressly and repeatedly instructed offerors to submit detailed rationale and substantiation to support the proposal. Contrary to the protester's contention, the protester was notified by the discussion letter of its deficiencies and the agency was not obligated, through the use of more specific questions, to spoon-feed Lone Star as to each specific RFP technical consideration which required more detail in its proposal. See Medland Controls, Inc., supra.

The record also does not support the protester's contention that discussions were improper because other offerors were given more specific discussion questions. Discussions held with each firm were simply tailored to the type of deficiencies or weaknesses found in the particular proposals. For instance, IBP's proposal was found to have only a few individual weaknesses which were discussed with the firm. Lone Star's initial proposal failed to adequately address many RFP requirements, and the protester was told to review the RFP's specific requirements and to elaborate and substantiate its proposed approach to meeting the agency's requirements. We conclude that the discussions were entirely appropriate in view of the significant evaluated differences between the protester's and awardee's initial proposals.

Concerning the selection of IBP for award, the RFP gave greater importance to technical factors and the agency decided that award to IBP based upon the technical superiority and lower risk of its proposal was worth the cost premium. Given the substantial disparity in technical merit and associated risk between the offerors' proposals, which the protester has not successfully challenged, and the assignment of greater weight to technical factors than price, the agency's award to the higher technically rated, higher-priced offeror is unobjectionable.⁶

The protest is denied.


For Robert P. Murphy
General Counsel

⁶Lone Star has also made a number of related contentions against the agency's award to IBP. We have reviewed the contentions and find them without merit. For instance, while Lone Star argues that the agency was biased in favor of the awardee, Lone Star fails to support this allegation and the record contains no evidence of bias. As we conclude above, the evaluation of the competing offers was reasonable. See Avogadro Energy Sys., B-244106, Sept. 9, 1991, 91-2 CPD ¶ 229.