



Decision

Matter of: Faison Office Products Company
File: B-260259; B-260259.2
Date: June 2, 1995

Katherine S. Nucci, Esq., and Timothy Sullivan, Esq., Dykema Gossett, for the protester.
William L. Osteen, Esq., Tennessee Valley Authority, for the agency.
Paul E. Jordan, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Award based on initial proposals, without conducting discussions, is proper where the solicitation advises offerors of that possibility, no discussions are held, and the competition demonstrates that the award will result in the lowest overall cost to the government.
2. Protest that agency held discussions with the awardee but improperly failed to do so with the protester is denied where the agency's communication with the awardee concerned the correction of an obvious clerical error in a single line item and in no event was prejudicial to the protester.

DECISION

Faison Office Products Company protests the award of a contract to the Ivan Allen Company under request for proposals (RFP) No. QM-111668, issued by the Tennessee Valley Authority (TVA). Faison's primary contention is that the agency improperly made award on the basis of initial proposals without conducting discussions with the offerors.

We deny the protest.

The RFP, issued September 1, 1994, and amended five times, contemplated award of a fixed-price, indefinite quantity contract for a period of 3 years. The successful offeror is required to acquire, warehouse, and distribute more than 500 office supplies to TVA customers upon receipt of authorized orders or releases. This contract covers the supply needs of two of three TVA regions. The third region is covered by a separate contract currently being performed

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by the protester.¹ Offerors were to submit proposals demonstrating their ability to satisfy the agency's requirements and providing pricing for the more than 500 items. In furnishing prices, offerors were required to submit unit prices and total prices (calculated by multiplying the unit price by the 3-year estimated quantities provided in the RFP). In addition, offerors were required to propose a price to purchase TVA's current supply inventory and to furnish certain alternative pricing based upon the use of recycled products.

Proposals were to be evaluated on the basis of eight criteria: capability submittals; computer interfacing; price for products/services; satellite storeroom; catalogs; value added services; bid for remaining TVA supply inventory; and safety record. The RFP did not identify the relative weights of these criteria. The RFP did advise offerors that award could be made on the basis of initial proposals; thus, offerors were advised to submit their offers on the most favorable terms from a price and technical standpoint.

Five offerors, including Faison and Ivan Allen, submitted proposals by the October 17 closing time for receipt of proposals. One offeror withdrew its proposal and two others were rejected as unacceptable because they omitted prices for various line items. The agency found Ivan Allen's proposal to be fully acceptable on its face. In reviewing Faison's proposal, the agency found a number of deficiencies, but determined that Faison was acceptable in spite of them.² Overall, the agency concluded that both proposals were technically equal.

With regard to pricing, the agency found a number of discrepancies between Faison's unit and total prices and found that Faison had omitted one price page containing six prices.³ In general Faison's total prices were higher than the actual product of its unit prices and the estimated

¹Faison earlier had performed a single section 8(a) set-aside contract covering all three regions.

²For example, Faison failed to furnish safety information, but the agency considered Faison acceptable because it was not aware of any safety problems on its current or past contract performance.

³The agency distinguished this omission from that of the two rejected offerors since it appeared that they had deliberately declined to propose certain specific prices, while Faison apparently had inadvertently left the one price page out.

quantities in the RFP. Thus, for evaluation purposes, the agency recomputed Faison's total prices downward to accurately reflect the unit prices. Faison's offered grand total, moreover, was several hundred thousand dollars higher than the sum of the individual total prices both as originally calculated by Faison and as recomputed by TVA. Faison also failed to propose a price for TVA's current remaining inventory. Instead, it offered to assist TVA in depleting the inventory. Ivan Allen submitted unit and properly computed total prices for all line items and proposed the highest price to purchase TVA's current supply inventory.

In making its award determination, the agency determined that Ivan Allen's proposal was clearly more advantageous than Faison's proposal. While both proposals were considered acceptable and technically equivalent, Ivan Allen's overall pricing package was lower than Faison's for both recycled and nonrecycled products. The agency found that Ivan Allen's proposed cost was fair and reasonable and that the agency would not gain any substantial net benefit by conducting discussions with the offerors. Accordingly, on the basis of initial proposals, TVA selected Ivan Allen for award of a \$9.5 million contract. Upon learning of the selection, Faison filed this protest. After reviewing the agency report, Faison filed a supplemental protest.

As a preliminary matter, we consider Faison's allegations that the solicitation was defective because it failed to identify the relative weights among the evaluation criteria and because the RFP did not provide minimum quantities for the various line items. Both of these issues are untimely. Our Bid Protest Regulations specifically require that protests based upon alleged improprieties in a solicitation which are apparent prior to the closing date for receipt of initial proposals must be filed prior to the closing time. 4 C.F.R. § 21.2(a)(1) (1995); Engelhard Corp., B-237824, Mar. 23, 1990, 90-1 CPD ¶ 324. These timeliness rules reflect the dual requirements of giving parties a fair opportunity to present their cases and resolving protests expeditiously without unduly disrupting or delaying the

procurement process. Air Inc.--Recon., B-238220.2, Jan. 29, 1990, 90-1 CPD ¶ 129. In order to prevent these rules from becoming meaningless, exceptions are strictly construed and rarely used. Id.⁴

Faison also contends that the agency improperly failed to conduct discussions with the offerors before making the award to Ivan Allen. We disagree. A civilian contracting agency may make an award on the basis of initial proposals, and not conduct discussions or allow offerors to revise their proposals, where the solicitation advises offerors of that possibility and the competition or prior cost experience clearly demonstrates that acceptance of the initial proposal will result in the lowest overall cost to the government. Federal Acquisition Regulation (FAR) § 15.610(a)(3); Professional Safety Consultants Co., Inc., B-247331, Apr. 29, 1992, 92-1 CPD ¶ 404; American President Lines, Ltd., B-236834.8; B-236834.9, May 15, 1991, 91-1 CPD ¶ 470.⁵

Here, the RFP specifically advised offerors to submit, in their initial proposals, the most favorable technical and price terms since award could be made on the basis of initial proposals without conducting discussions. The record shows that after evaluating initial proposals, the agency did not conduct discussions with any offeror. The record also shows that adequate competition existed and that the award to Ivan Allen resulted in the lowest overall cost to the government.

Five offerors submitted proposals, including both incumbent contractors. Of these, Ivan Allen was the only offeror submitting a proposal which complied with all of the solicitation requirements, including an offer to purchase the current TVA office supply inventory. Faison's overall evaluated price for supplies without recycled paper exceeds

⁴Faison argues that we should waive the timeliness requirements because it raises significant issues. The significant issue exception will be invoked only where the protest involves issues of first impression that would be of widespread interest to the procurement community as a whole. Neither issue is one of first impression. See Southwest Lab. of Oklahoma, Inc., B-251778, May 5, 1993, 93-1 CPD ¶ 368 (indefinite quantity contracts); Meridian Corp., B-246330.3, July 19, 1993, 93-2 CPD ¶ 29 (evaluation criteria).

⁵The TVA argues that it is not bound by the FAR in this procurement. We need not address this issue since we find that regardless of the application of the FAR, the agency's actions were consistent with the FAR's provisions.

Ivan Allen's comparable price by more than \$125,000. Faison's overall price under the recycled paper alternative is approximately \$650,000 more than Ivan Allen's comparable price. Thus, from the competition, it is clear that the award to Ivan Allen will result in the lowest overall cost to the government.

Faison, however, contends that the agency's conclusion that Ivan Allen proposed the lowest price is open to question because the agency did not consider complete pricing for Faison and other offerors. This argument is without merit. With regard to the two rejected offerors, it was apparent from their proposals that they deliberately omitted prices for certain line items. One of them left 36 line items blank, and the other left 1 item blank which was estimated to be worth approximately \$240,000. There is no basis to expect that discussions with these offerors would have resulted in lower prices than those proposed by Ivan Allen. Similarly, with regard to the proposal submitted by Faison (whose pricing had been reduced by the agency's recalculation), prices for six line items (worth more than \$34,000 in the awardee's proposal) had been omitted. Thus, it is apparent that a revised proposal from the protester would have resulted in a higher overall price. Accordingly, the agency had no reason to believe that it would obtain better pricing through discussions.⁶

Faison also argues that the agency improperly conducted discussions only with the awardee. Faison bases this argument on the fact that the contracting officer allowed Ivan Allen to correct one of its proposed prices. Conducting discussions with one offeror generally requires that discussions be held with all competitive range offerors. Motorola, Inc., 66 Comp. Gen. 519 (1987), 87-1 CPD ¶ 604. Discussions occur when an offeror is given the opportunity to revise or modify its proposal. Pauli & Griffin, B-234191, May 17, 1989, 89-1 CPD ¶ 473. Discussions are distinguishable from correction of clerical mistakes. See FAR § 15.607(a). Communication with offerors to resolve clerical mistakes is clarification and not discussion within the meaning of FAR § 15.610, so long as it does not prejudice the interests of the other offerors. Id.

Here, Ivan Allen misplaced a decimal point which resulted in an understatement of its unit price and total estimated price for one line item by a factor of 10. The mistake is clear from the record: Ivan Allen proposed the same price

⁶Since the agency properly awarded the contract without conducting discussions, the protester's various arguments concerning matters it could have resolved in discussions are without merit.

for a single package of paper as it did on another line item for a box containing 10 packages of the same paper. Based on Ivan Allen's pricing for comparable nonrecycled paper packages and boxes of packages, it was clear to the contracting officer that the one price entered reflected the unit price for a single package of paper. Accordingly, the contracting officer permitted correction of the obvious clerical error for the price of boxes of packages. Moreover, since the value of the mistake was less than \$15,000, and Ivan Allen's prices were lower than Faison's by significantly more than \$15,000, it is clear that Faison was not prejudiced. Thus, the agency properly allowed Ivan Allen to correct this minor clerical error. FAR § 15.607(a).

Faison finally contends that the agency placed too much emphasis on price in its award selection. We disagree. Where, as here, the RFP does not indicate the relative weights to be given cost and technical factors, the cost and technical factors are considered to be of approximately equal weight. Meridian Corp., supra. Here, the evaluator concluded that Faison's and Ivan Allen's proposals were technically acceptable and technically equivalent. Irrespective of the relative weights of price and technical factors, where proposals are reasonably considered technically equivalent, price may become the determining factor in making an award decision. See Prospect Assocs. Ltd., B-249047, Oct. 20, 1992, 92-2 CPD ¶ 258. Ivan Allen's proposal met all RFP requirements and, in spite of Faison's proposal discrepancies, the agency considered Faison's proposal acceptable. It is plain that Faison's proposal was not technically superior to Ivan Allen's proposal. Accordingly, we have no basis to object to the agency's determinations both that the proposals were equivalent and that award to Ivan Allen, as the offeror with the lowest-priced proposal, was most advantageous to the government.

The protest is denied.

\s\ Ronald Berger
for Robert P. Murphy
General Counsel