Comptroller General
of the United States

Washington, D.C. 20548

89-2 CPD 512

Decision

Matter of: F.A.S. Systems Corp.

File: B-236344

Date: December 4, 1989

DIGEST

1. Where solicitation states that proposed price is most important evaluation factor for source selection purposes, but clearly provides that technical, management and logistics, although of less importance, also will be evaluated, there is nothing improper in the selection of a higher priced offeror when the agency reasonably determines that the selected firm's evidenced technical/management/ logistics superiority offsets the price premium associated with its offer.

2. Allegation that cost improperly was evaluated on life cycle basis is untimely, and will not be considered, where cost evaluation method was detailed in request for proposals, and allegation was not raised until after closing date for receipt of proposals.

3. Allegation that contracting agency performed portion of life cycle cost evaluation improperly is denied where calculations provided by agency to General Accounting Office provide no basis for objection.

DECISION

F.A.S. Systems Corp. protests the proposed award of a contract to S-TRON Corporation, under request for proposals (RFP) No. F33657-89-R-0017, issued by the Department of the Air Force for the manufacture of automatic life preservers and spare components. The protester essentially contends that the agency failed to justify rejection of its lower priced, technically acceptable proposal.

We deny the protest in part and dismiss it in part.

BACKGROUND

The RFP contemplated award of a firm, fixed-price contract for a total best estimated quantity of 4,000 units (including an option quantity). It advised offerors that award would be made on the basis of an integrated assessment of the overall merits of each proposal judged in terms of the potential to best satisfy the needs of the government. The RFP listed the evaluation criteria, in descending order of importance, as follows: (1) cost, (2) technical, (3) management, and (4) logistics. Each evaluation criterion included several subcriteria, which were equally weighted under each criterion. The solicitation also provided for an assessment of past performance and risk associated with each proposal; stated that cost would be evaluated on the basis of reasonableness, realism, and completeness; and specifically provided that the most probable life cycle cost (MPLCC) would be evaluated. The MPLCC was defined as the total of contract costs, priced options, noncontract costs (i.e., the cost of 10,000 units of future production not included in the contract here), and operating and support costs, as outlined in an MPLCC model provided for offerors' calculation of a 20-year life cycle cost. The RFP advised that the government reserved the right to award to other than the low offeror based on the evaluation of factors other than cost.

Six proposals were received and the source selection evaluation team included five in the competitive range. A color rating and risk assessment scheme for evaluating best and final technical/management/logistics proposals was employed, under which blue indicated that a proposal exceeded requirements, green that requirements had been met, yellow that some but not all requirements had been met, and red that the proposal failed to meet the requirements. On risk, high indicated that significant doubt existed that the offeror could perform the proposed effort, moderate that some doubt existed, and low that little doubt existed that an offeror could perform the effort.

Three proposals, including that from S-TRON, received green ratings with low risk on all of the evaluation criteria, other than cost. (The remaining offer, rated below F.A.S.'s, is not relevant here). F.A.S.'s proposal, however, was evaluated at a lower level, receiving green ratings with low risk under the technical and logistics criteria, but a green rating with moderate risk on management. The specific evaluated weaknesses found in F.A.S.'s proposal included limited production experience, current management procedures that were in place for only 2 months, a very small work force (10 to 15 people), and multiple start-up tasks (hiring additional personnel, building or renovating facilities, and installing a computer tracking system) that would have to be performed simultaneously for successful contract performance. In contrast to the evaluated weaknesses of F.A.S.'s proposal, the only evaluated weaknesses in S-TRON's proposal were that complete management systems were not yet in effect, and the firm was young and could require some surveillance support. F.A.S. evaluated MPLCC was $17,062,000, while S-TRON's was $18,143,000. The other three offerors had evaluated costs exceeding $20 million. All five offerors were considered acceptable for award by the source selection evaluation team and pre-award surveys were completed for all.

After a briefing on the relative strengths, weaknesses, and risks of the offers, the source selection authority selected S-TRON for award. While the selection authority considered all five proposals in the competitive range acceptable, he determined that S-TRON's proposal offered the best overall value to the Air Force and a better overall combination of technical, management, and logistical expertise. Specifically, the selection authority determined that S-TRON had a very clear and detailed technical approach, an aggressive subcontractor evaluation and surveillance program, and an excellent configuration management system, as well as the logistics, personnel, and expertise to achieve the program objectives.

The selection authority considered the advantages of S-TRON's proposal in light of the weaknesses in F.A.S.'s proposal, as well as F.A.S.'s higher risk evaluation under the management and technical criteria, and concluded that S-TRON's advantages and the relatively greater risk associated with the F.A.S. proposal could not be offset by F.A.S.'s lower evaluated price. Hence, the selection authority determined that F.A.S.'s $1.1 million lower evaluated cost was outweighed by the superiority of S-TRON's proposal, particularly the firm's management and organizational strengths, as well as quality past performance.

F.A.S. argues that the evaluation of its proposal was arbitrary and unreasonable because it was inconsistent with the stated evaluation criteria and because the evaluated weaknesses in its proposal were inconsistent with the pre-award survey findings. F.A.S. further protests that, in light of the RFP's identification of cost as the most important evaluation factor, the Air Force failed to adequately justify the rejection of its lower priced, technically acceptable offer, and also failed to determine that S-TRON's allegedly superior offer was worth a

$1.1 million cost premium. Finally, the protester questions the agency's use of a life cycle cost analysis in evaluating proposed costs, and specifically contends that a portion of its proposed cost was miscalculated by the agency.

ANALYSIS

Evaluation

Based on our review of the record, we have no reason to question the evaluation of the firm's proposal or the selection authority's decision. While F.A.S. and S-TRON both were rated green under the three non-cost evaluation criteria, a review of the detailed narrative evaluation analyses reveals that in fact F.A.S.'s proposal was perceived to be of a lower quality than S-TRON's, as reflected by the greater number of evaluated weaknesses and risks. For example, in the summary narrative for the technical subcriterion "statement of work compliance," which included understanding the objective of the program, both proposals were rated green; however, the evaluation narratives indicate a qualitative difference between the proposals. The narrative for F.A.S. states that the proposal "presents a minimum, but acceptable level of detail which satisfies this requirement," while the narrative for S-TRON's proposal in this area was that "the offeror demonstrates complete understanding of this requirement." This type of evaluated qualitative superiority is evident throughout the narrative comments.

Similarly, although the logistics portion of F.A.S.'s proposal was rated in the evaluation summary as overall low-risk, the narrative comments indicate a perception of moderate risk for the individual subcriterion "logistics management;" the evaluators believed there were too many activities and areas to expand for start-up, and that the offeror might need close surveillance in order to perform successfully. F.A.S. discounts these conclusions, arguing that the evaluation team improperly failed to consider the start-up time the RFP provided, i.e., 210 days after contract award for completion of first article testing, with delivery commencing 300 days thereafter. However, the evaluation record indicates that the evaluation team did consider start-up time; the evaluators concluded that the risk of difficulties in initial performance was great, even given the start-up time provided in the RFP. The evaluation narrative in this area states that F.A.S. should be able to perform, but that with its limited resources the firm would have trouble reacting to major difficulties, and that difficulties in delivery of the full quantity during the first months of production could be expected.

F.A.S.'s proposal received a moderate risk rating in the management area, based on limited production experience and limited resources. The evaluation narrative states that the firm was perceived as small in size, noting that the contemplated contract would be a breakthrough effort for them, being approximately 10 times larger in dollar amount than any contract the firm had performed to date. F.A.S. takes issue with this finding, contending that it had more production experience than the agency gave it credit for, and citing past contracts ranging in dollar amounts from $342,000 to $370,000, under which it supplied various lifesaving equipment, other than life preservers. However, we find no basis for objecting to the agency's judgment that the relatively small dollar amounts of these contracts are not comparable to the effort here (estimated by the agency at a total value of $4.15 million, inclusive of options, and for which F.A.S. unevaluated offered price was $7 million), at least for evaluation purposes.

F.A.S. further challenges the evaluation on the basis that the agency improperly failed to evaluate its proposal under the logistics evaluation criterion and under the management subcriterion for "configuration and data management plans," as required by the RFP. However, the record indicates the agency did evaluate F.A.S.'s proposal in these areas. As discussed, the protester's proposal received a green rating with low risk under the logistics criterion. The narrative comment under weaknesses indicates that "many different areas have to grow at the same time for start-up of contract award." Under the management subcriterion at issue, F.A.S.'s proposal received a green rating with a low risk with the narrative evaluation comment that the proposal met all requirements of the RFP. Although rated in these areas, F.A.S. was not rated as highly as S-TRON. S-TRON also received a green rating with low risk and no evaluated weaknesses under the management subcriterion for "configuration and data management plans," and in contrast to F.A.S.'s proposal, the narrative in this area stated that S-TRON's proposal contained an "outstanding configuration management plan," and that the contractor had an "excellent configuration management system in place."

We conclude that the greater number of weaknesses and somewhat higher risks in F.A.S.'s proposal, as revealed by the evaluation narratives, provided sufficient support for the source selection authority's conclusion that S-TRON's proposal could better satisfy the agency's needs.

Cost/Technical Tradeoff

It is well settled that in a negotiated procurement the government is not required to make award to the firm offering the lowest price unless the RFP specifies that price will be the determinative factor. Frequency Eng'g Laboratories Corp., B-225606, Apr. 9, 1987, 87-1 CPD ¶ 392. In the absence of such an express provision, the procuring agency retains the discretion to select a higher priced, more highly rated proposal if doing so is in the government's best interest and is consistent with the solicitation's stated evaluation and source selection scheme. Id.

Here, the RFP made no representation that price alone would be the basis for award; instead, it merely advised that the MPLCC would be the most important of the four evaluation criteria, and specifically stated that the government reserved the right to make award to other than the lowest priced offeror based on consideration of the other evaluation factors set forth in the solicitation. Although each of these other factors was less important than cost, they all were to be used, along with cost, in determining the comparative merits of the proposals. Hence, there was nothing improper in the Navy's making a cost/technical tradeoff for purposes of selecting the successful offeror.

The source selection authority's selection decision did not specifically refer to a cost/technical tradeoff, but it is clear from his written decision that he considered S-TRON's technical/management superiority worth the additional cost. The source selection document specifically notes the difference in S-TRON's evaluated price, states that S-TRON's proposal had less evaluated risk in the technical and management areas, and concludes that award to S-TRON offers the best overall value to the government. We find nothing in the record that would lead us to question this judgment. Systems & Processes Eng'g Corp., B-234142, May 10, 1989, 89-1 CPD ¶ 441.

Pre-award Survey

F.A.S.'s argument that the evaluation results are inconsistent with the pre-award survey results is without merit. The pre-award survey, conducted for the purpose of evaluating F.A.S.'s capability to perform the contract in the event it received the award contract, is not a substitute for the evaluation of the firm's proposal, which served the different purpose of determining the relative merits of F.A.S.'s proposal in light of the specific RFP requirements and evaluation criteria. In any event, we find no inconsistencies between the survey and the evaluation. The protester cites statements in the survey--such as "the prospective contractor has the resources necessary to perform the proposed solicitation requirements" and "has produced life support equipment systems for both government and commercial applications"--that do no more than take note that F.A.S. is capable of performing the contract. The purpose of the evaluation, however, was not to determine merely whether offerors could perform, but which offeror could perform best; while the pre-award survey indicated F.A.S. could perform, the evaluation indicated S-TRON could perform best.

Cost Evaluation

F.A.S. argues that the agency in performing the cost evaluation, overstated the firm's cost for spare components to be purchased during the production phase of the contract. We disagree. The protester's cost calculation, as submitted in its proposal, did not include spare component costs for the option portion of the contemplated contract, which were requested during discussions. The agency thus calculated the protester's total evaluated spares cost by adding the extended price for the option spares to the extended total price as calculated by F.A.S. The protester maintains that the agency instead should have calculated an average unit cost for initial spares and multiplied that figure by the total number of preservers to be procured, 4,000. However, the total number of spare components to be procured, 5,850, was greater than the 4,000 preserver units to be procured and, additionally, F.A.S.'s unit prices for the spares varied on each of the seven line items. For these reasons, the methodology the protester suggests would not reflect the true offered price. Accordingly, we have no basis to question the agency's calculation in this regard.

F.A.S. also contends that cost should not have been evaluated on a life cycle cost basis at all but, rather, should have been evaluated solely on the basis of acquisition cost. We will not consider this basis of protest. Our Bid Protest Regulations require that protests based upon alleged improprieties in a solicitation that are apparent prior to the closing date for receipt of initial proposals be filed prior to that date. 4 C.F.R. § 21.2(a)(1) (1989). Here, the solicitation clearly provided under the evaluation and model cost calculation provisions for development of an MPLCC using a life cycle cost analysis. As the protester first raised this allegation after the initial closing date, in its comments on the agency's administrative report, this basis of protest is dismissed as untimely.

The protest is denied in part and dismissed in part.

for Seymour Efros

James F. Hinchman
General Counsel