Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Barnard Construction Company, Inc.

File: B-271644

Date: July 15, 1996

Gary Wilson for the protester.
Donald A. Tobin, Esq., Bastianelli, Brown, Touhey & Kelley, for Twin Buttes Constructors, an intervenor.
Sherry Kinland Kaswell, Esq., and Justin P. Patterson, Esq., Department of the Interior, for the agency.
C. Douglas McArthur, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Decision to award to higher-priced, higher technically rated offeror was proper where the solicitation award criteria did not state that price was the determinative factor and the agency reasonably concluded that the higher total point score of the awardee's proposal, resulting from its technical superiority, established that it was worth the price premium.

DECISION

Barnard Construction Company, Inc. protests the award of a contract to Twin Buttes Constructors (TBC) under request for proposals (RFP) No. 1425-5-SP-60-07610, issued by the Department of the Interior, Bureau of Reclamation, for modification of the Twin Buttes dam in Texas. Barnard contends that the selection decision was unreasonable and inconsistent with the stated evaluation factors.

We deny the protest.

On September 1, 1995, the agency issued the RFP for a firm, fixed-price contract for construction of a 1.4 million square-foot slurry cutoff wall and 2,600-foot cutoff trench, to reduce foundation seepage. The base effort required construction of a test section to evaluate constructability of the cutoff wall, and the contract would contain an option for construction of the remainder of the wall, an abatement cutoff trench, upstream blanket, and geomembrane/geotextile installation.

The solicitation provided for award to the offeror submitting the proposal most advantageous to the government, considering technical, price, and other factors, with technical and price factors of equal weight. Paragraph B.13 of the RFP advised offerors that the technical evaluators would consider experience, construction methodology, and construction schedule.

Experience, the most heavily weighted technical factor, was worth 50 points. Methodology and schedule were worth 30 points and 20 points respectively, for a total of 100 points. For the purpose of evaluating experience, the RFP instructed offerors to provide information on any past contracts for slurry cutoff wall construction, particularly contracts of a nature similar to the effort involved here. The RFP also provided for separate evaluation of the experience of key job site personnel and specifically stated that the Bureau would not consider the experience of subcontractors in its evaluation.

The agency received seven offers by the due date of November 21. The agency evaluated the proposals and conducted discussions. The agency then requested and received best and final offers on March 1, 1996. TBC's proposal received a technical score of 86.8. Barnard's proposal received a technical score of 72.5 points and was lowest in price. Barnard's proposal's combined score--price was also scored--was therefore 172.5, including 100 points for price. TBC's proposal, with a slightly higher price, earned a price score of 89.1, for a combined score of 176. On March 26, 1996, the Bureau awarded a contract to TBC, and this protest followed.

Barnard contends that TBC's 3.5-point advantage in the total scoring does not override the protester's lower price--$34,186,500 versus TBC's price of $38,352,544. Barnard argues that it is improper to make award to a higher-priced offeror where another, lower-priced offeror's proposal presents an acceptable level of competence. Barnard asserts that it is inconsistent with the solicitation, which stated that the agency would select the proposal most advantageous to the government, to make award at a higher price merely because one offeror's proposal scores more highly in a subjective technical evaluation.

As a preliminary matter, in a negotiated procurement, there is no requirement that the government make award to the lowest-priced, technically competent offeror unless the RFP specifies that price will be determinative. Hornet Joint Venture, B-258430.2, Jan. 27, 1995, 95-1 CPD ¶ 55. Price/technical tradeoffs may be made, and the extent to which one may be sacrificed for the other is governed only by the test of rationality and consistency with the established evaluation factors. Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 CPD ¶ 325. Accordingly, since the RFP did not state that price was the determinative factor, the premise of

Barnard's argument--that the agency could not, consistent with the RFP, select a higher-rated, higher-priced proposal--is incorrect.[1]

Similarly, to the extent Barnard challenges the agency's tradeoff decision on the ground that the point difference between its and TBC's proposals does not warrant the price premium, the protest is without merit. The formula stated in the RFP already accounted for both technical merit and price. Our Office has specifically recognized the propriety of using such a formula in selecting an offeror. See Stone & Webster Eng'g Corp., B-255286.2, Apr. 12, 1994, 94-1 CPD ¶ 306; Management Sys. Designers, Inc., B-244383.3, Sept. 30, 1991, 91-2 CPD ¶ 310. Because the awardee's proposal earned the highest combined price/technical score under the specified formula, the agency was not required to perform any further price/technical tradeoff analysis to justify the selection decision. Id. Nevertheless, as discussed below, the record supports the agency's assertion that it did in fact examine the difference in scoring, identified the factors that resulted in TBC's higher overall score, and reasonably concluded that, in accordance with the stated evaluation factors, TBC's proposal presented a real superiority that was worth the additional cost.

Under the most heavily weighted evaluation factor, experience, TBC's proposal received nearly twice the number of points as did Barnard's. TBC presented evidence of 55 concrete, slurry cutoff wall construction projects completed since 1984; 10 of these involved concrete backfilled, slurry cutoff walls similar to the project here. TBC provided detailed information on these projects with its proposal, which demonstrated experience with projects of similar difficulty and complexity to the instant effort. By contrast, Barnard provided evidence of only two slurry cutoff wall projects, neither of which appeared similar to the instant effort in complexity. In selecting a contractor, the contracting officer considered the advice of evaluators that TBC's proposal demonstrated extensive experience in the excavation methods (both primary and contingency methods) and backfilling techniques proposed.

In contrast, the evaluators advised the contracting officer that Barnard had no demonstrated experience with its proposed equipment and techniques for either the primary or contingency method. Rather, the projects cited in Barnard's proposal involved much easier excavation materials and shallower excavation depths than Barnard would encounter at the Twin Buttes site. Specifically, as TBC points out, Barnard claims no experience in digging slurry wall trenches with vertically

---

[1]To the extent that Barnard argues that the agency should have given more weight to price in selecting an offeror, its protest constitutes an untimely challenge to the evaluation scheme that appeared in the solicitation. See 4 C.F.R. § 21.2(a)(1) (1996); Minigraph, Inc., B-237873.2, May 14, 1990, 90-1 CPD ¶ 470.

operated equipment in individual sections or panels; has no experience in going through hard soils and keying the excavation into a minimum of 30" of rock; and no experience in placing concrete backfill through tremie pipes[2] with the requirement of watertight joints between panels. Barnard's proposal received the lowest number of points for experience of any offeror's.[3]

Neither in its proposal nor in its submissions does Barnard claim or present specific evidence of experience with similar projects. Barnard argues, instead, that it has a demonstrated history of completing projects for which it had no previous experience by subcontracting with experts within the relevant field. The solicitation, however, specifically stated that the agency would consider only the experience of the offeror, not the experience of its proposed subcontractors. Barnard takes no issue with the specifics of the technical evaluation, or the points cited by the agency and TBC in support of the asserted superiority of TBC's proposal, and we have no basis to question the agency's conclusion that TBC submitted a proposal substantially superior to Barnard's. While Barnard argues that overall the evaluators found Barnard competent and its proposal acceptable, the RFP specifically advised offerors that the agency was seeking more than competence and acceptability and might pay a price premium for a superior proposal, particularly one that, like TBC's, demonstrated greater experience with slurry cutoff wall construction and specifically with projects of a similar nature. Under these circumstances, we see no basis to object to the agency's decision to make award to TBC.

The protest is denied.

Comptroller General
of the United States

---

[2]A tremie pipe is one through which concrete may be placed under water.

[3]Under the other two evaluation factors, methodology and schedule, TBC's proposal received more points for methodology and Barnard's proposal received more points for schedule, which was the least important technical factor.