

Protest of )  
 ) Date: March 21, 1988  
MORRISON-KNUDSEN SERVICES, INC. )  
 )  
Solicitation No. 059990-88-A-0006 ) P.S. Protest No. 88-02

### DECISION

Morrison-Knudsen Services, Inc. (Morrison-Knudsen), protests the award of a contract to National Distribution Agency (National) for commercial warehousing services for mail transport equipment in the San Francisco and Oakland, CA, areas, under Solicitation No. 059990-88-A-0006. The protester contends that it was not given points merited for certain evaluation factors.<sup>1/</sup>

The Invitation for Bids (IFB) was issued by the Procurement Branch, Western Service Center, San Bruno, CA on November 16, 1987, with an offer due date of December 1, 1987. This advertised procurement, at Section B.2, provided that offers will be evaluated "on the basis of responsiveness, responsibility, lowest cost to the Postal Service, and other factors as specified." Section B.3 of the solicitation stated various evaluation factors, including cost, facilities, working environment, ADP capability, full services features, security, warehouse experience, and materiel handling capability. Cost accounted for 20% of the total evaluation; the other factors compose the remaining 80%.

<sup>1/</sup>Award was made to National on December 23, 1987; the precise date on which Morrison-Knudsen was notified of the award cannot be determined. Morrison-Knudsen protested the award in a January 11, 1988 letter addressed to "U.S. Postal Service, Western Service Center, Associate General Counsel, 850 Cherry Street, San Bruno, California, Attention: L.T. Johnston". The protest was received by the contracting officer on January 13, 1988, who treated it as a protest directed to him. The contracting officer informed the protester that he was unable to conclude that the protest was obviously meritorious and was forwarding the protest to this office for resolution, where it was received on January 27.

The solicitation did not request written proposals. Instead, it provided for evaluation based upon an on-site visit by a technical committee to the offered facilities. A five-member technical committee was formed to evaluate each offeror. This committee was not told of the prices offered at the time of its site visits and evaluation.<sup>1/</sup> The committee evaluated Morrison-Knudsen and National as follows. (Two Morrison-Knudsen sites were evaluated.)

|                          | <u>Morrison-Knudsen</u> |               | <u>National</u> |
|--------------------------|-------------------------|---------------|-----------------|
|                          | <u>Site A</u>           | <u>Site B</u> |                 |
| FACILITIES               | 17.40                   | 10.60         | 20              |
| WORKING ENVIRONMENT      | 3.40                    | 1.60          | 5               |
| MIS/ADP CAPABILITY       | 13.20                   | 13.20         | 15              |
| FULL SERVICE FEATURES    | 11.40                   | 11.00         | 15              |
| WAREHOUSE EXPERIENCE     | 8.40                    | 8.40          | 9.20            |
| MAT.HAND. CAPABILITY     | 7.60                    | 7.00          | 10              |
| SECURITY                 | 4.20                    | 3.20          | 5               |
| TECHNICAL SCORE          | 65.60                   | 55.00         | 79.20           |
| COST SCORE <sup>1/</sup> | <u>20.00</u>            | <u>20.00</u>  | <u>16.30</u>    |
| OVERALL TOTAL EVALUATION | 85.60                   | 75.00         | 95.50           |

In its protest, Morrison-Knudsen contends that its offer was not appropriately evaluated, in light of its seventy-five years of warehousing and material management experience, the strength and stability of its status as a "Fortune 500" corporation, its demonstrated ability to establish satisfactory working environments at diverse locations, and its data processing capability. Moreover, the protester notes the significant cost benefits offered by it. In addition, in comments submitted in response to the contracting officer's report, Morrison-Knudsen claims that the technical evaluation was flawed because the evaluation committee was not provided with its written proposal.

In his report to this office, the contracting officer asserts that, premised upon the technical committee's observations, Morrison-Knudsen's proposal was found to be

<sup>2/</sup>We note, however, that, as this was an IFB, there was a public bid opening at which all bidders prices were disclosed.

<sup>3/</sup>Bids were submitted for hourly labor rates and for square foot rental charges in 1000 square foot increments. Based upon estimated monthly usage, cost was evaluated at \$44,529.40 for Morrison-Knudsen (composed of \$9,798.40 for monthly labor charges and \$34,741.00 for monthly storage rates) and \$54,600.00 for National (\$9,600.00 for labor charges and \$45,000.00 for storage rates).

deficient in the following areas: (1) the ceiling heights in some areas at both sites did not meet the minimum requirement; (2) immediate occupancy would have been delayed since Morrison-Knudsen did not have complete control over the entire Site "B" facility, necessitating the construction of a wall to separate the area intended for Postal Service use; (3) no data processing equipment was installed at either site, although Morrison-Knudsen gave a presentation of their MIS/ADP capability at their San Francisco office; (4) no determination could be made concerning full service features and material handling equipment, since neither of the Morrison-Knudsen's sites were operational; and (5) immediate operational availability, as stated at Item C.4 (g) of the solicitation, according to the technical committee, could not be accomplished with respect to either of Morrison-Knudsen's facilities at the time of contract award. The contracting officer asks that the protest be denied.<sup>4/</sup> Morrison-Knudsen replies that the evaluation team was not given its proposal, which resulted in an erroneously lower evaluated score.

Here, the solicitation sought to combine features of both advertised and negotiated procurements. The use of evaluation factors, other than cost, in an advertised procurement is improper.<sup>4/</sup> Continental Pacific Enterprises, P.S. Protest No. 75-80, December 17, 1975. Under Postal Contracting Manual (PCM) 2-103, award of an advertised solicitation may only be made to the responsible bidder whose bid is responsive and is most advantageous to the Postal Service, "price and other factors considered." The expression "other factors considered" has been repeatedly held not to allow a contracting agency to award on any basis other than low cost. See, e.g., Strobe Data, Inc., Comp. Gen. Dec. B-220612, January 28, 1986, 86-1 CPD & 97; American Hydrotherm Corporation, 37 Comp. Gen. 550 (1958). The evaluation scheme used in an advertised procurement must be "designed to give reasonable assurance that award to the lowest evaluated bidder will result in the lowest cost to the government during contract performance." R. P. Densen Contractors, Inc., Comp. Gen. Dec. B-222627, October 7, 1986, 86-2 CPD & 401. If the evaluation scheme is not so structured, "the IFB is defective per se and no bid can be evaluated properly." Exclusive Temporaries of Georgia, Inc., Comp. Gen. Decs. B-220331.2, et al., March 10, 1986, 86-1 CPD & 232. See also 64 Comp. Gen. 848 (1985); 56 Comp. Gen. 668 (1977). Thus, award by the contracting officer to any firm would be improper here. Accordingly, the protest against such award must be sustained. However, we decline to direct award of the contract to Morrison-Knudsen, since no determination as to its responsibility has been made. See TPI International Airways, Inc., P.S. Protest No. 87-40, October 30, 1987.

<sup>4/</sup>The technical committee graded Morrison-Knudsen lower than National in its technical evaluation. That finding cannot be equated to a determination that Morrison-Knudsen is non-responsive.

<sup>5/</sup>That this procurement was intended to be an advertised procurement is clear from the P.S. Form 7333, which checked the box for advertised procurements and used a solicitation number which indicated that the solicitation was advertised, as well as the lack of a request for technical proposals and public disclosure of the prices.

We remand to the contracting officer to terminate the contract according to its terms and to resolicit the requirement. If it is determined that greater weight should be given to technical prowess, the procurement may be negotiated pursuant to PCM 3-100et seq. On the other hand, if price is the determining element, evaluation criteria, such as those included in the protested solicitation, should not be used. The contracting officer must determine how best to satisfy the needs of the requiring activity in resoliciting the requirement.

Considering the fact that work on this contract has commenced and that the General Manager, Mail Transport Equipment Division, has expressed the view that service must not be interrupted, we find that, although the existing contract should be terminated, that the contract may continue until the time that the requirement is resolicited, a new contract is awarded, and work under the new contract is set to commence.

The protest is sustained to the extent indicated.

William J. Jones  
Associate General Counsel  
Office of Contracts and Property Law

**[checked against original JLS 2/23/93]**