

Protest of) Date: March 28, 1991
MARATHON, INC.)
Solicitation No. 204788-91-A-0008) P.S. Protest No. 91-14

DECISION

Marathon, Inc., timely protests the award of a contract for water treatment equipment and services to Bluegrass Kesco Inc. ("Blue- grass"). Marathon claims that the criteria used in selecting the awardee were not valid and that its offer was treated unfairly work

Solicitation 204788-91-A-0008 was issued November 16, 1990, by the Louisville, KY, Support Services Office, with an offer due date of December 17. The solicitation requested firm two fixed-price offers to provide water treatment equipment and services, on a requirements basis, for a two year period, for postal facilities located in the Louisville and Bowling Green, KY areas. The contractor was to furnish and install all equipment and provide all chemicals, labor, travel and supervision necessary to service the heating and cooling systems and to inhibit corrosion, prevent scale and inhibit micro-organism growth at the specified locations.

Attachment E to the solicitation required offerors to submit the following three informational items as a separate attachment to their solicitation package: 1) a statement of the offeror's qualifications to do the including descriptions of similar projects accomplished and a demonstration that the offeror has a minimum of ten years' experience as a recognized specialist in the field of industrial water treatment; 2) details about the personnel who will do the work, including a requirement that "[a] minimum of two qualified technical services representatives . . . be demonstrated"; and 3) documentation about the chemicals the offeror intends to use. Offerors also had to supply two references to verify their qualifications and ability to perform the required services.

Attachment F stated that all offers would be evaluated by an evaluation committee and that award would be made to the responsible offeror whose proposal was the most advantageous to the Postal Service. The attachment listed these evaluation factors, listed in order of importance:

1. Technical - All chemical products provided must meet all technical and quality specifications as required by the terms of the solicitation.

2. Staff - Availability of experienced staff to perform testing and monitoring as required.
3. Facility - Offeror must have a regional water analysis laboratory and research and development facilities to facilitate the testing and analysis required.
4. Price - While not a controlling factor, price will be an important evaluation consideration. However, USPS may award to other than lowest priced acceptable proposal, if other factors justify the additional cost. The degree of importance of price will increase with the degree of equality of proposals with regard to other factors on which selection will be based.

Four companies submitted proposals, of which three were found to be within the competitive range. A two-person technical committee rated and scored the three proposals. Bluegrass received a technical score of 6; Marathon received a score of 1. The third and highest price offeror received a score of 8.^{1/} Although this offeror had the highest technical score, its price of \$49,987 was not in line with the other two offers or the estimated cost. Award was made to Bluegrass on February 8 for a price of \$35,625. The protester was notified, by letter dated February 8, of the award and timely protested to the contracting officer, by letter dated February 22. The contracting officer forwarded the protest to our office, where it was received on February 27.

In its protest, Marathon alleges that although its total price (\$30,676) was \$4,924 lower than the next lowest bid,^{1/} its price advantage was diminished because in evaluating prices, the Postal Service subtracted out the prices offered for equipment, relying solely on the prices offered for chemicals and services. Marathon claims that even as so computed, its price was \$1,200 lower than its nearest competitor.

Marathon also objects to its technical evaluation. Marathon disagrees with a comment, allegedly made after award by an unnamed postal employee in the contracting office, that its staff was not qualified. The protester contends that the Postal Service relied upon its technical capabilities heavily while putting the solicitation together, and that its staff assisted the Postal Service in writing and rewriting the specifications. Marathon notes that it currently services two other postal regions with the same requirements as this solicitation.

Responding to concerns expressed about its proposed contract staffing of three people, the protester contends it would have added additional personnel, if it was necessary, but that the Postal Service is not in a position to dictate staffing as long as the contract is adequately performed.

^{1/} It appears that the scores of the two technical evaluators were added instead of averaged. Since the technical ranking remained the same, with Marathon receiving the same relative score either way, the doubling of the scores amounted to harmless error.

^{2/} The protester incorrectly uses the term "bid" in its comments. That term is only applicable in formally advertised procurements where price is the sole determinant of award. The correct term of art in a negotiated procurement like this one is "offer". See Consultants & Designers Inc., P.S. Protest No. 90-11, May 18, 1990.

In his report replying to the protest, the contracting officer states that in analyzing prices, equipment costs were separated out so that the prices being charged for services could be determined, but all costs were considered in evaluating proposals for award. Concerning Marathon's input to the solicitation package, he notes that all prospective offerors were given opportunities to submit comments or recommendations at the pre-solicitation meeting. The contracting officer denies that anyone on his staff told Marathon that its staff was not qualified. He advises, instead, that Bluegrass received the award because its staff was better qualified and more numerous.

The contracting officer indicates that his concerns about the staff proposed by Marathon included its size, the relatively small amount of experience (years) of the primary technical representative, and the perceived inability of that representative to service twenty-five different locations. In contrast, Bluegrass committed nine staff members and four primary technical representatives to this project. The contracting officer notes that the solicitation listed staff as the second most important evaluation factor, with price last. Therefore, the need for an adequate staff clearly justifies the additional cost of the award to Bluegrass.

Marathon responds that it does not understand why the contracting officer separated out the equipment costs to determine the price being charged for services. It reiterates its belief that the prices were separated to justify the choice of a higher priced proposal. On the subject of staff, the protester points out that the solicitation did not indicate how many staff members were required. Marathon suggests that it, a company with over twenty years of experience in water treatment, and not the contracting officer, should be the judge of how much time and labor would be involved in servicing the various water treatment locations. It notes that it has three additional employees, besides the three listed in its proposal, who could be available to service this contract.

Discussion

The protester has two main points.^{1/} First, it alleges that the contracting officer improperly awarded the contract to a higher priced offeror. Marathon is incorrect in this respect. Where, as here, the solicitation provides for the consideration of factors other than price, it is not inappropriate for award to be made to other than the lowest-priced offeror. When price is not the sole award factor, the contracting officer is responsible for trade-off judgments involving cost and other evaluation factors. PM 4.1.5 b; see also Novadyne Computer Systems, Inc., P.S. Protest No. 90-49, November 9, 1990. "[W]here the agency must bear the additional expense for the proposal it views as superior, the relevant consideration is not whether we believe that the more expensive, higher rated proposal is worth the extra cost, but whether we can discern from the record a reasonable factual basis for the agency's choice." Litton Systems, Inc., Comp. Gen. Dec. B-239123, 90-2 CPD & 114, August 7, 1990; accord Novadyne Computer Systems, Inc., supra.

^{3/} Marathon's concern about the evaluation of prices may be briefly resolved. The record shows that equipment prices were separated from the total offered price for informational purposes only and that offers were evaluated on the basis of the total price. Accordingly, the protester has not been harmed.

Here, the solicitation explicitly advised offerors, in Attachment F, that the Postal Service could award to other than the lowest priced, acceptable offeror. The evaluation committee and the contracting officer determined that Bluegrass' staffing proposal was significantly superior to Marathon's. Disagreement with that conclusion is the second element of the protest. "It is . . . well settled that the evaluation or scoring of proposals is the procuring activity's responsibility and procuring officials have a reasonable degree of discretion in that regard. . . . Unsupported allegations or mere disagreement with the technical evaluators do not amount to evidence necessary to sustain a protest." APEC Technology Limited, P.S. Protest No. 88-23, June 30, 1988. (Citations omitted.) In addition, "this office will not substitute its judgment for that of the evaluators or disturb the evaluation unless it is shown to be arbitrary or in violation of procurement regulations." Id.

Our review of the record reveals that the contracting officer's decision that Bluegrass' staffing proposal was more satisfactory than Marathon's had a reasonable basis and was not in violation of the procurement regulations. Contrary to the protester's suggestion, it is well within the Postal Service's purview to reach its own conclusions about the adequacy of an offeror's proposed staffing, and to rank proposals on the basis of those conclusions. "The determination of the desirability of proposals is largely subjective, and not merely a question of comparing numerical scores." Novadyne Computer Systems, Inc, supra. Where, as here, the record establishes a reasonable basis for the contracting officer's ranking, we will not disturb it.

The protest is denied.

[Signed]

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

[Compared to original 5/16/95 WJJ]