

**August 30, 1995**

**P.S. Protest No. 95-28**

**DAVCO CORPORATION**

**Solicitation No. 415046-94-A-0001**

**DIGEST**

Protest against award of mechanization contract is denied where contracting officer's determination that technical merit of higher-priced offer warranted award was not arbitrary and was consistent with solicitation's evaluation scheme.

**DECISION**

Davco Corporation protests its failure to receive award of a contract for the modification of fixed mechanization systems at numerous postal facilities.

Solicitation 415046-94-A-0001 was issued by the Philadelphia, PA, Facilities Service Office, seeking offers to convert trailer operations at sixty postal facilities from bed-loaded to pallet-loaded. Under the solicitation, extendable conveyors at twenty-one Bulk Mail Centers, two associated facilities, and thirty-seven Processing and Distribution Centers were to be replaced with devices known as Postal Pak Loaders and Unloaders.

As amended by solicitation amendment A04, Section M of the solicitation, Evaluation and Award Factors, provided in part as follows:

## 1. METHOD OF AWARD

(a) Award will be made to the responsible offeror whose proposal offers the best value to the Postal Service with price and other factors specified below considered.

(b) Award will be made to the offeror whose proposal contains the combination of those criteria offering the best overall value to the Postal Service. This will be determined by comparing differences in the value of technical and management features with differences in cost to the Postal Service. In making this comparison, the Postal Service is more concerned with obtaining superior technical or management features than with making an award at the lowest overall cost to the Postal Service. However, the Postal Service will not make an award at a significantly higher overall cost to the Postal Service to achieve slightly superior technical or management features.

(c) Proposals will be evaluated in accordance with the factors listed in Paragraph M.2.2. below. Factors 1 and 2 are of approximately equal importance and are more important than the remaining factors. Factors 3 through 6 are also of approximately equal importance, and are of somewhat lesser importance than the first two. . . .

## 2. EVALUATION FACTORS

The following non-price related factors will be considered in evaluating proposals.

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|----------|---|
| Factor 1 | Successful experience as a mechanization contractor primarily engaged in this line of work . . . .  |
| Factor 2 | Successful experience with simultaneous mechanization projects in conformance with strict deadlines in multiple, geographically diverse, fully occupied and operating facilities. |
| Factor 3 | Safety record; safety plan for this project.  |
| Factor 4 | Human resources allocated to perform this project. . . .  |
| Factor 5 | Preliminary hazardous material plan. . . .  |
| Factor 6 | Management plan. . . .  |

Three offers were received. The lowest-priced offer was found to be technically unacceptable. Davco's offer, the second lowest-priced, was found to be technically acceptable, as was the remaining offer, that of Mid-West Conveyor Company, Inc. Award was made to Mid-West in a total amount in excess of \$57 million.

Davco's timely protest contends that Davco has been recognized as a qualified fixed mechanization contractor, its proposal was "responsive and adequate for the requirements of the solicitation," its proposed price was lower than Mid-West's price, and the Postal Service is "obligated to award to the contractor whose proposal offers the best value to the Postal Service considering price and evaluation factors."

The contracting officer's report on the protest concedes that Davco is an experienced contractor whose proposal was technically acceptable and lower-priced than the awardee's proposal. However, citing the portion of provision M.1, *supra*, which favored superior technical or management features over price in the evaluation of offers, he contends that Mid-West's proposal was stronger technically and financially<sup>1</sup> than Davco's, and that those strengths justified the award.

The contracting officer notes that the project encompasses concurrent work at as many as 20 sites, and that matched facilities must be activated or brought on line simultaneously.<sup>2</sup> The contracting officer contends that "[t]he Mid-West management and technical team is more adept at managing higher value projects" than Davco, and that Davco's approach, which involved Davco's coordination of six separate construction firms, would be "at best . . . difficult." Further, he notes that one of the six subcontractors, responsible for a quarter of the work, had had material supply problems and performed poorly under previous contracts at Bulk Mail Centers.

Replying to the contracting officer's statement, the protester complains about its brevity and notes its failure to make reference to the technical scores given the two offers by the evaluators. The protester restates its contention that it is entitled to the award on the basis of its lower price.

In addition, the protester makes the following points:

- The contracting officer's preference for Mid-West's experience with higher value projects improperly extends the importance of that criteria beyond the increased weight given experience in Amendment A04. "If [the Postal Service] had wanted . . . [an experience] threshold [at the level reflected by Mid-West's experience], [it] should have stated so in [the] Solicitation and we could have saved a lot of time and expense."
- Since Davco was technically responsive, the low bidder, and submitted a bid bond, that "should override all other subjective or political decisions."
- Davco should have received credit for managing more projects (albeit of lower value) than Mid-West.

<sup>1</sup> The contracting officer notes that Mid-West had recently completed fourteen projects with a total value of \$147 million, while Davco had recently completed eighteen projects with a total value of \$57 million.

<sup>2</sup> In the contracting officer's words, "[W]hen New Jersey activates Los Angeles, Los Angeles *must* activate New Jersey. Multiply this by 23 sites shipping to each other and the enormity of the scheduling problem becomes more apparent."

-- Davco, like Mid-West, offered a single strong management group; Davco is "managing subcontractors just as Mid-West is managing union employees." Coordinating the work of subcontractors is no more difficult than Mid-West's management of its personnel, and Davco regularly manages subcontractors on a daily basis.

-- With respect to the Davco subcontractor to which the contracting officer took exception, the contracting officer significantly overstates the extent of that contractor's participation; it is less than 6%, not 25%, of the effort. Davco could have performed that portion of the work itself if it had been informed of the contracting officer's concerns in discussions. Further, the contracting officer's concerns are inconsistent with the fact that the proposed subcontractor has just been awarded another Postal Service contract of a greater dollar value than its participation here.

The protester concludes by requesting that the Postal Service reimburse it a portion of its proposal preparation costs.

The contracting officer's report to this office had included the technical evaluators' numerical ratings of the Davco and Mid-West proposals, although they had not been included in the materials provided to the protester. Those ratings reflected higher scores for Mid-West than for Davco but did not appear to reflect significantly superior technical or management features in the Mid-West proposal given the difference in prices between the two offers. We afforded the contracting officer the opportunity to address the matter of the technical evaluation and to respond to the protester's comments. His supplemental statement included the following:

During the bid process, the evaluators determined that Mid-West Conveyor's bid was superior to that of Davco in the two factor categories that were considered the most important.

\* \* \*

I strongly agree with the evaluators in this regard, and may even feel more strongly. These were not generic factors relating to general experience, but were specifically created to address the requirements of the contract. While Davco expended great efforts to meet the requirements, Mid-West Conveyor, by nature of its past experience in projects of almost comparable value that included similar complexity at multiple occupied and operating facilities, had a substantial advantage in fostering confidence in me that it could successfully complete this unique project.

Similarly, I felt strongly that Mid-West Conveyor's plan was superior to Davco's. In the most simple terms, my experience tells me that managers who are employees of a company are easier to control and direct than managers hired under subcontracting agreements.

Finally, I thought these advantages in the Midwest Conveyor proposal were far more significant to the Postal Service than the . . . price differentiation. Davco was a strong competitor for the award, and there may have been

some higher level of savings at which their proposal would have been selected, but that situation did not exist in this selection.

## DISCUSSION

This office plays a limited role in reviewing the technical evaluation of prequalification or similar information submitted by a potential offeror. The technical determinations of a contracting officer will not be overturned unless they are arbitrary, capricious, or otherwise unsupported by substantial evidence. The protester bears the burden of overcoming the "presumption of correctness" which accompanies the statements of contracting officers. Accordingly, we must determine if [the protesters have] met this burden and shown that the contracting officer's decision was arbitrary or not supported by substantial evidence.

*Daniel J. Keating Construction Company*, P.S. Protest No. 89-92, March 1, 1990 (citations omitted).

Initially, we note that to the extent that the protester contends that the solicitation required award to the lowest-priced technically acceptable offeror,<sup>3</sup> it is incorrect.

Where, as here, the solicitation provides for the consideration of factors other than [cost], it is not inappropriate for award to be made to other than the lowest-[cost] offeror. When [cost] is not the sole award factor, the contracting officer is responsible for trade-off judgments involving cost and other evaluation factors.

*Marathon, Inc.*, *supra*; see also *Western Coach and Wheel Works*, P.S. Protest No. 90-70, November 29, 1990, and Procurement Manual 4.1.5 b.2.

Further,

where 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.

*Marathon, supra*, quoting *Litton Systems, Inc.*, Comp. Gen. Dec. B-239123, August 7, 1990, 90-2 CPD 114.

"[S]election officials are not bound by the recommendations made by evaluation and advisory groups. This is so even though it is the . . . evaluation panel members who may normally be expected to have the

<sup>3</sup> Despite the references in the course of the protest to "bids" and "bidders" by both the protester and the contracting officer, those terms are correctly used only to describe an offer made in formally advertised procurements, and not in the negotiated procurement process used here. Cf., *Marathon, Inc.*, P.S. Protest No. 91-14, March 28, 1991.

technical expertise relevant to the technical evaluation of proposals." *Grey Advertising, Inc.*, Comp. Gen. Dec. B-184825, May 14, 1976, 76-1 CPD 325 (citations omitted). However, although a contracting officer does not have to agree with the technical evaluation committee, when he doesn't, he must explain why. "Implicit in the requirement that the agency's judgment be reasonable is the requirement that these judgments be documented in sufficient detail to show they are not arbitrary." *S-Cubed, A Division of Maxwell Laboratories, Inc.*, Comp. Gen. Dec. B-242871, June 17, 1991, 91-1 CPD 571.

*AMR Distribution Systems*, P.S. Protest No. 92-36, October 2, 1992.

Here, we conclude that the contracting officer has adequately explained and justified the selection process. For example, it was consistent with the evaluation scheme to evaluate more favorably offerors who had had experience with larger-dollar projects of sizes consistent with the project being solicited. *Cf.*, *Morganti Incorporated; Giordano Construction Co., Inc.*, P.S. Protest Nos. 94-01;03, March 4, 1994.<sup>4</sup>

Similarly, it was permissible and consistent with the evaluation scheme to prefer work done in-house to a subcontracted effort. *Cf. Environmental Systems and Services, Inc.*, Comp. Gen. Dec. B-244213, October 2, 1991, 91-2 CPD 283. And it is not necessarily inconsistent for one contracting officer to evaluate the ability of a prospective contractor or subcontractor differently than another. *MCI Constructors, Inc.*, Comp. Gen. Dec. B-240655, November 27, 1990, 90-2 CPD 431.

The contracting officer has offered a reasonable basis for the relative significance of the technical and price factors of the evaluation. *Marathon, supra*.

The protest is denied.

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Contract Protests and Policies

<sup>4</sup> Contrary to the thrust of the protester's comments, the contracting officer did not adopt a high threshold requirement for experience. Instead, he afforded offerors with higher dollar-project experience more credit.