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United States Government Accountability Office
Washington, DC 20548

Comptroller General
of the United States

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Decision

Matter of: DIT-MCO International Corporation

File: B-311403

Date: June 18, 2008

Drew W. Marrocco, Esq., Sonnenschein Nath & Rosenthal LLP, for the protester.
James H. Roberts, III, Esq., and Carrol H. Kinsey, Jr., Esq., Van Scoyoc Kelly PLLC,
for the intervenor.

Howard B. Rein, Esq., Department of the Navy, for the agency.

Scott H. Riback, Esq., and David A. Ashen, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Protest that agency failed to conduct an adequate best value analysis is denied where award was made to the lower priced of two technically equal proposals and the protester does not timely challenge either the underlying technical or price evaluations; in a negotiated procurement with a best value evaluation award methodology, where selection officials reasonably regard proposals as being essentially equal technically, price properly may become the determining factor in making award, notwithstanding that the solicitation assigned price less importance than technical factor.

DECISION

DIT-MCO International Corporation protests the Department of the Navy's award of a contract to Eclipse International Corporation, under request for proposals (RFP) No. N68335-06-R-0133, for automatic wire test sets (AWTS). DIT-MCO asserts that the agency failed to conduct an adequate best value analysis in connection with its award decision.

We deny the protest.

The solicitation provided for award of an indefinite-delivery/indefinite-quantity contract, with an ordering period of 5 years, to the offeror whose proposal was determined to represent the "best value" when evaluated under four factors: technical, past performance, experience and price. Technical was slightly more important than past performance, which was slightly more important than experience; technical, past performance and experience together were "significantly

more important than price.” RFP at 60. However, the RFP further advised that the importance of price “will increase with the degree of equality of the proposals in relation to the other factors on which selection is based.” Id.

Four timely proposals were received in response to the RFP, including those of the protester and the awardee. After conducting discussions with the offerors and obtaining final proposal revisions, the Navy determined that Eclipse’s proposal represented the best value. In this regard, while the agency evaluated Eclipse’s and DIT-MCO’s proposals as essentially equal under the non-price factors, with both proposals receiving overall technical ratings of satisfactory/low risk, as well as very low risk ratings for past performance and experience, the agency initially calculated the price of DIT-MCO’s proposal as \$29,605,110, nearly \$6 million higher than the \$23,668,807 evaluated price of Eclipse’s proposal. Agency Report (AR) exh. 4, Source Selection Evaluation Board Memorandum; AR exh. 5, Source Selection Advisory Council Memorandum; AR exh. 6, Source Selection Authority Memorandum, Feb. 6, 2007; AR exh. 8, Source Selection Authority Memorandum, Mar. 12, 2008. Consistent with the best value determination, the Navy made award to Eclipse.

Subsequently, during the Navy’s February 12, 2008 post-award debriefing of DIT-MCO, the protester questioned the agency’s price evaluation. When the agency then reexamined the proposed prices, it determined that the evaluated price of Eclipse’s proposal in fact should have been \$21,402,727, while that of DIT-MCO’s proposal should have been \$22,050,300. Since, however, the Navy continued to view both proposals as essentially equal under the non-price factors, and the evaluated price of Eclipse’s proposal remained low even after the recalculation of prices, the agency determined that Eclipse’s proposal continued to represent the best value. AR exhs. 4, 5, 6.

On February 19, DIT-MCO filed an agency-level protest with the Navy, maintaining that the agency’s best value source selection decision was arbitrary because the initial decision had been based on an inaccurate, much larger price difference, and the agency had failed to perform an adequate best value determination after recalculating the evaluated prices. In connection with its review of the protest, the agency prepared another source selection document that affirmed its award to Eclipse. AR exh. 8. After its agency-level protest was denied on March 12, DIT-MCO filed this protest with our Office on March 20.

DIT-MCO asserts that the Navy improperly failed to perform an adequate source selection analysis using the recalculated evaluated prices. Noting that the agency’s original source selection decision was based on the mistaken understanding that Eclipse’s price was approximately 25 percent lower than DIT-MCO’s, when in fact the actual price difference was only approximately 3 percent in favor of Eclipse, the protester maintains that the agency then improperly failed to make “a best value analysis that weighed, compared and assessed the technical, past performance and

experience benefits and weaknesses of each offer against the price” as correctly recalculated. Protester Comments, Apr. 28, 2008, at 1. DIT-MCO asserts that the agency’s actions had the effect of giving disproportionate weight to price—the least important evaluation factor—in the award decision.

We find the protester’s position to be without merit. Again, the record reflects that the Navy determined Eclipse’s and DIT-MCO’s proposals to be essentially equal under the non-price factors, with “[t]he technical evaluation team [finding] nothing during their review of the proposals that would distinguish between DIT-MCO and Eclipse based on the [AWTS] unit that they are offering.” AR exh. 4, at 2.

Although the record indicates that DIT-MCO was advised by the Navy during the February 12 postaward debriefing that both its proposal and Eclipse’s had received the same ratings under the non-price factors, with no discernible technical differences in the proposed equipment, Agency Report, Apr. 17, 2008, at 4, the protester did not challenge the technical evaluation results in its initial, agency-level protest. Rather, DIT-MCO first challenged the technical evaluation in its March 20 protest to our Office, when it asserted that the awardee’s proposed product failed to meet the RFP requirements relating to size and weight, and that the evaluation improperly failed to account for DIT-MCO’s advantages in this area and with respect to AC dielectric testing. Under our Bid Protest Regulations, however, protests other than those based on alleged solicitation improprieties generally must be filed no later than 10 calendar days after the protester knew, or should have known, of the basis for protest, whichever is earlier. 4 C.F.R. 21.2(a)(2) (2008). Since DIT-MCO has made no showing that its challenge to the technical evaluation was based on new information learned after the debriefing and thus could not have been raised in its agency-level protest, its failure to raise this protest ground within 10 days of the debriefing in its agency-level protest renders untimely the subsequent assertion of this protest ground in its protest to our Office. Foundation Eng’g Scis., Inc., B-292834, B-292834.2, Dec. 12, 2003, 2003 CPD ¶ 229 at 3 n.2.

While the protester is correct that agencies must adequately document cost/technical tradeoff decisions, detailing the relative strengths and weaknesses of the various proposals and explaining the reasons underlying a cost/technical tradeoff, Johnson Controls World Servs., Inc., B-289942, B-289942.2, May 24, 2002, 2002 CPD ¶ 88 at 6-7, no cost/technical tradeoff was required here, since the proposals were determined to be technically equal and the agency made award to the offeror submitting the lowest priced proposal. Further, the award was consistent with the terms of the solicitation. Although the RFP provided that the non-price evaluation factors were significantly more important than price, it also provided that, as proposals became more equal under the non-price factors, the importance of price would increase. RFP at 60. In this regard, in a negotiated procurement with a best value evaluation methodology, where selection officials reasonably regard proposals as being essentially equal technically, price properly may become the determining factor in making award, notwithstanding that the solicitation assigned price less importance

than technical factors. Synergetics, Inc., B-299904, Sept. 14, 2007, 2007 CPD ¶ 168 at 7. In these circumstances, in the absence of a timely challenge to either the technical or cost evaluation results, we find the award to Eclipse on the basis of its lowest priced, technically equal proposal to be unobjectionable.

The protest is denied.

Gary L. Kepplinger
General Counsel