



GAO

Accountability * Integrity * Reliability

United States Government Accountability Office
Washington, DC 20548

Comptroller General
of the United States

DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

Decision

Matter of: HGS Engineering, Inc.; American Commercial Group, Inc.

File: B-412042; B-412402.2

Date: December 10, 2015

James F. Archibald, III, Esq., and John W. Hargrove, Esq., Bradley Arant Boult Cummings, LLP, for HGS Engineering, Inc.; Eric S. Galler, Esq., Galler Corporate Law Group, for American Commercial Group, Inc., the protesters.

Joseph H. Doyle, Esq., and Erik Claudio, Esq., Department of Homeland Security, Federal Emergency Management Agency, for the agency.

Noah B. Bleicher, Esq., and Nora K. Adkins, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protests challenging the agency's determination that a lower-priced, lower-rated proposal represented the best value to the agency are denied where the agency's cost/technical tradeoff and source-selection decision were reasonable, adequately documented, and consistent with the terms of the solicitation and applicable procurement regulations.

DECISION

HGS Engineering, Inc., a service-disabled, veteran-owned small business (SDVOSB) of Anniston, Alabama, and American Commercial Group, Inc. (ACG), a SDVOSB of Camden, New Jersey, protest the award of a contract to Aktarius LLC, a SDVOSB of Panama City, Florida, pursuant to request for proposals (RFP) No. HSFE20-15-R-0020, issued by the Department of Homeland Security, Federal Emergency Management Agency (FEMA), for facility operations and maintenance services at the Center for Domestic Preparedness (CDP) in Anniston, Alabama.

We deny the protests.

BACKGROUND

The RFP, issued on April 1, 2015, as a SDVOSB set-aside, sought proposals for facility operations and maintenance services at CDP's Chemical, Ordinance, Biological, and Radiological Training Facility. RFP at 1, B-1, L-5. The RFP was

issued under Federal Acquisition Regulation (FAR) part 15 and contemplated the award of a fixed-price contract with a 12-month base period (including a 1-month phase-in period) and four 12-month option periods. Id. at F-1, L-1. Pursuant to the solicitation, award would be made on a best-value basis, considering price and six technical factors: work plan, management plan, staffing plan/key personnel, quality control plan, experience, and past performance. Id. at M-1, M-2. The RFP provided that the work plan, management plan, and staffing plan/key personnel factors were of equal value and were more important than the other three technical factors, which were also of equal value. Id. at M-2. The RFP further advised that the technical factors were “approximately equal to price.” Id. at M-1.

The RFP defined best value as the “offer that results in the most advantageous acquisition decision for the Government as determined by an integrated assessment and trade-off analysis among non-price and price factors.” Id. The solicitation advised offerors that the agency would make its best-value assessment through the “development of trade-off analyses and other analytic studies that involve the assessment of benefits of superior performance capability features versus the added price.” Id. The RFP additionally provided that the agency “may award any resulting contract to other than the lowest[-]priced Offeror, or other than the Offeror with the highest non-price (technical) rating. However, price may become the ultimate determining factor for award of the contract as proposals become more equal in terms of technical merit.” Id.

The agency received six proposals prior to the submission deadline, including HGS’s, ACG’s, and Aktarius’. Contracting Officer’s (CO) Statements at 4. A FEMA technical evaluation team (TET) evaluated technical proposals and identified proposal strengths, weaknesses, significant weaknesses, and deficiencies. Id.; Agency Reports (ARs), Tab I, Initial TET Report, at 1-49. Following the initial evaluation of proposals, the agency established a competitive range of five offerors and entered into discussions with these firms. ARs, Tab J, Pre-Business Clearance Memorandum, at 53; Tab K, Request for Final Proposal Revisions, at 1. After the submission of final proposal revisions (FPRs), the TET members evaluated the FPRs and prepared a consensus report summarizing their findings. Specifically, the TET rated the FPRs submitted by HGS, ACG, and Aktarius as follows:

Technical Factor¹	HGS	ACG	Aktarius
Work Plan	Outstanding	Outstanding	Good
Management Plan	Outstanding	Outstanding	Good
Staffing Plan/Key Personnel	Outstanding	Good	Good
Quality Control Plan	Good	Outstanding	Outstanding
Experience	Outstanding	Outstanding	Good
Past Performance	Outstanding	Outstanding	Outstanding
Total Price²	\$12,831,307³	\$14,181,438	\$11,277,017

ARs, Tab M, Final TET Report, at 44; Tab M, Cost/Price Spreadsheet, at “Overall” worksheet. In assigning these ratings, the TET identified numerous proposal strengths across all technical factors for the three offerors. ARs, Tab M, Final TET Report, at 2-10 (ACG), 11-19 (Aktarius), and 36-43 (HGS). In addition, while HGS and ACG resolved all weaknesses during discussions, the evaluators retained a weakness for Aktarius’ proposal under the experience factor because the proposal “lacked hands-on experience similar in nature and complexity of critical PWS requirements (protective clothing and equipment).” Id. at 17.

Following the TET’s consensus review, the contract specialist and contracting officer prepared a post-business clearance memorandum (post-BCM) for the source selection official’s (SSO) approval. Included in the post-BCM was a recap of the TET’s detailed, final evaluation of proposals, as well as a discussion of the agency’s price analysis. ARs, Tab O, Post-BCM, at 17-53. The post-BCM also contained a tradeoff analysis in which Aktarius’ proposal--the lowest-priced of the competitive range offerors--separately was compared to the other four proposals. Id. at 54-64. This section included a discussion of the TET’s findings under each factor and a comparative analysis to determine which proposal should be considered for award. Id. Based upon the comparative analysis of the offerors’ proposals, the post-BCM

¹ The TET assigned proposals adjectival ratings of outstanding, good, satisfactory, and unsatisfactory. ARs, Tab F, Source Selection Plan, attach. 2, at 2. Under the past performance factor only, proposals were assigned ratings of outstanding, satisfactory, unsatisfactory, and neutral. Id. at 2-3.

² Total prices include the phase-in period.

³ HGS’s proposal was the second highest-priced and ACG’s proposal was the highest-priced of the offers included in the competitive range. ARs, Tab M, Cost/Price Spreadsheet, at “Overall” worksheet. Aktarius’ proposal was the lowest-priced. Id.

recommended Aktarius for award as the best-value offeror. The SSO reviewed the evaluation documents and the post-BCM, and approved the recommendation to award the facility operations and maintenance services contract to Aktarius. Id. at 65.

FEMA awarded the contract to Aktarius on August 13. CO Statements at 5. Following post-award debriefings, HGS and ACG protested to our Office.

DISCUSSION

HGS and ACG object to the SSO's determination that Aktarius' proposal represented the best value. The protesters contend that the agency improperly converted the best-value procurement to one where award was made to the offeror that submitted the lowest-priced, technically acceptable proposal. Each protester asserts that its higher-rated, higher-priced proposal offered the best value and warranted contract award. We have considered all of the protesters' various objections to the award decision and find that they provide no basis to sustain the protests.

Generally, in a negotiated procurement, an agency may properly select a lower-rated, lower-priced proposal where it reasonably concludes that the price premium involved in selecting a higher-rated proposal is not justified in light of the acceptable level of technical competence available at a lower price. E.g., Delaware Res. Group of Oklahoma, LLC, B-408962.3, B-408962.4, Mar. 24, 2014, 2014 CPD ¶ 111 at 12, citing Bella Vista Landscaping, Inc., B-291310, Dec. 16, 2002, 2002 CPD ¶ 217 at 4. The extent of such tradeoffs is governed only by the test of rationality and consistency with the evaluation criteria. Best Temporaries, Inc., B-255677.3, May 13, 1994, 94-1 CPD ¶ 308 at 3. A protester's disagreement with the agency's determinations as to the relative merits of competing proposals, or disagreement with its judgment as to which proposal offers the best value to the agency, does not establish that the source selection decision was unreasonable. General Dynamics-Ordnance & Tactical Sys., B-401658, B-401658.2, Oct. 26, 2009, 2009 CPD ¶ 217 at 8.

Here, we find unobjectionable the agency's determination that Aktarius' proposal represented the best value to the agency. In this regard, the agency's post-BCM, which memorializes the SSO's cost/technical tradeoff, reflects a reasonable source-selection decision that is adequately-documented and consistent with the solicitation. The post-BCM included a comprehensive discussion of the TET's evaluation findings; the voluminous section detailed all proposal features, strengths, and weaknesses, as well as TET concerns resolved through discussions. The document also contained a tradeoff section in which the agency separately compared Aktarius' lowest-priced proposal against the other four proposals. In each instance, the agency concluded that Aktarius' proposal represented a better

value and documented the basis for this conclusion. ARs, Tab O, Post-BCM, at 57, 59, 61-62, and 64.

For example, with respect to the comparison between HGS's and Aktarius' proposals, the agency concluded that both Aktarius and HGS proposed technical strengths in all six technical factors. Id. at 61. Under the work plan factor, the agency noted that "HGS's outstanding proposal was technically superior to Aktarius'[] technically rated good proposal," but the agency ultimately concluded that "[w]hile technically superior, HGS's [DELETED] [was] generally offset by Aktarius' [DELETED]." Id.

Under the management plan factor, the agency determined that HGS's proposal was again superior to Aktarius' proposal but concluded that while technically superior, "HGS's emphasis on [DELETED] [was] generally offset by Aktarius' [DELETED]." Id. Similarly, with regard to the staffing plan/key personnel factor, the agency concluded that "[w]hile technically superior, HGS's utilization of [DELETED] [was] generally offset by Aktarius' [DELETED]." Id.

With regard to quality control factor, the agency found that "Aktarius' technically rated outstanding proposal was superior to HGS's technically rated good proposal." Id. Under the experience factor, the agency determined that "[w]hile technically superior, HGS's experience with contracts similar in nature and complexity to the requirements [was] generally offset by Aktarius' own experience with contract [sic] similar in nature and complexity to the requirements." Id. Finally, under the past performance factor, the agency evaluated Aktarius and HGS as technically equal with outstanding ratings. Id.

Based upon this analysis the agency ultimately concluded that Aktarius offered the best value and documented its conclusion as follows:

[T]he proposed price from Aktarius[] offers potential savings compared to HGS's proposed price that outweighs any potential technical benefit from HGS's technical proposal.^[4] Those savings would be approximately \$1.5M over the life of the contract or \$300K per contract year. The noted benefits of HGS's technical proposal, while exceptionally thorough and comprehensive in some technical factors, do not justify the additional price of HGS's business proposal. The Aktarius proposal shows an acceptable level of technical competence

⁴ The agency also noted that while Aktarius did have one remaining technical weakness that represented a potential risk if not corrected, that risk was "very low as the weakness [was] not significant and the technical factor was still rated as good, which is considered a very low risk by definition (even with the noted weakness)." ARs, Tab O, Post-BCM, at 61.

given that they were rated as good for work plan, management plan, staffing plan & key personnel, and experience, outstanding for quality control plan and past performance, and this technical competence is available at a lower price (savings of approximately \$1.5M). It is recommended that HGS Engineering be eliminated from further award consideration.

Id. at 61-62. The post-BCM included similar analysis and conclusions with respect to Aktarius' proposal as compared to ACG's (as well as the proposals of the two other offerors in the competitive range).⁵ Id. at 54-59, 62-64.

In our view, the tradeoff and source selection here were reasonable. Contrary to the protesters' suggestions, the award was not driven solely by price; rather, as discussed above, the record demonstrates that FEMA performed a meaningful analysis of the differentiating features of the proposals and reached a reasonable conclusion that any technical superiority of the protesters' proposals was simply not worth the higher price. In this regard, the record shows that the agency acknowledged and extensively documented the advantages of the higher-priced, higher-rated proposals and, as part of its tradeoff analysis, explained in detail why they were not worth the price premium.⁶ Such a tradeoff between price and non-price factors and the ultimate determination to award to the lower-priced, lower-rated offeror was in accord with the solicitation's terms and applicable regulations. See RFP at M-1; FAR § 15.308. Indeed, the award here is particularly unobjectionable where price was weighed approximately equal to the technical criterion and where the RFP plainly contemplated that price could become the "ultimate determining factor for award" as technical proposals became more equal. See RFP at M-1.

We also reject HGS' argument that the agency should have assigned a dollar value to specific technical findings so that FEMA could quantify technical superiority. In this regard, the RFP (and the source selection plan that governed the procurement) contained no such requirement that the agency conduct this type of analysis. See also FAR § 15.308 (requiring that the rationale for the selection decision be documented, but that "documentation need not quantify the tradeoffs that led to the

⁵ With respect to ACG, the agency concluded that "the proposed price from Aktarius[] offers potential savings compared to ACG's proposed price that outweighs any potential technical benefit from ACG's technical proposal. Those savings would be approximately \$2.8M over the life of the contract or \$560K per contract year." ARs, Tab O, Post-BCM, at 64.

⁶ In addition, notwithstanding the protesters' assertions otherwise, the record reflects that the agency also took into account the sole weakness assigned to Aktarius' proposal and concluded that it was not significant and of very low risk.

decision"). Ultimately, the protesters' objections to the source selection decision reflect their disagreement with the agency's assessments but do not demonstrate an unreasonable or otherwise improper award determination.

The protests are denied.

Susan A. Poling
General Counsel