



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Contratos y Mantenimientos, S.A.

File: B-266353

Date: February 9, 1996

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DIGEST

1. Downgrading of proposal for lack of similar experience was reasonable where, although proposal showed experience painting in confined spaces, experience was not with marine floating equipment, and record shows that safety procedures previously used by protester actually would create dangerous working conditions in a marine environment.

2. Allegation that the letter rating of the awardee's proposal was too high and that of the protester's was too low is not a basis for sustaining protest where contracting officer did not rely on letter ratings but, rather, based award decision on his own assessment of the relative merits of the proposals.

DECISION

Contratos y Mantenimientos, S.A. (COMASA) protests the award of a contract to Formal Management Systems (FMS) under request for proposals (RFP) No. CNP-906-95-AG-28, issued by the Panama Canal Commission for the removal of all debris, scale, blast, and paint in selected areas of a barge. The protester primarily argues that the evaluation of the proposals was improper.

We deny the protest.¹

The evaluation contemplated the award of a fixed-price contract on a best value basis, with consideration of two factors, technical and price. The technical factor consisted of four subfactors: quality of work and quality of control; experience; equipment and safety procedures; and past performance. With regard to past

¹COMASA raises a number of arguments in challenging the evaluation. We find all to be without merit. We discuss several of the arguments below.

performance, offerors were to list at least four references and an explanation of the type of work performed.

Five proposals were received. COMASA's proposal received an initial evaluation score of 275 (of the 1,000 available) points, while FMS's received a perfect score of 1,000 points. COMASA's best and final offer (BAFO), priced at \$139,927, received 475 points, and FMS's, priced at \$236,000, received 1,000 points. The contracting officer then assigned the proposals combined technical/price letter ratings, C+ for COMASA and B+ for FMS. In reviewing the BAFOs, the contracting officer found that, although COMASA's price was low, its proposal was weak under each of the technical subfactors, and that it was unlikely that COMASA could perform the contract at its offered price. After finding FMS's BAFO technically superior to COMASA's and that its price was realistic, the contracting officer determined that FMS's BAFO was most advantageous to the government and awarded the contract to FMS.

EXPERIENCE

COMASA argues that its technical proposal improperly was downgraded for a lack of sufficient experience in confined space industrial coating application works; COMASA claims its proposal demonstrated that the firm had a great deal of such experience. Technical evaluations must be reasonable and consistent with the evaluation criteria. Comarco, Inc., B-249697.2, Jan. 26, 1993, 93-1 CPD ¶ 65. Here, we find that the evaluation of COMASA's technical proposal was proper.

While COMASA's proposal showed experience performing confined space work, with the exception of one prior contract with the Commission (contract No. CC-3-088) the experience of the firm and its proposed personnel consisted of painting in confined spaces on tanks rather than on marine floating equipment, as required under the RFP here. The agency reports that there are substantial differences between the two types of work, including the fact that COMASA's proposed safety plans and procedures, which are used for confined space work on tanks, actually create dangerous working conditions for workers on marine floating equipment, as they do not allow for proper oversight procedures of the ventilation system inside the confined space and do not provide for any persons to be stationed inside the confined space to monitor personnel working there, as required by the solicitation. Further, while COMASA's contract No. CC-3-088 did involve similar work, the Commission reports that it found COMASA's work to be unsatisfactory due to poor surface preparation, contamination, and insufficient use of extraction blowers, which caused the internal coating to fall off in large sheets. COMASA thus was required to return to the work site to perform major repairs.

COMASA maintains that the firm and its personnel in fact had significant experience in painting in confined spaces on marine floating equipment, and has

submitted as part of its comments on the agency report a list of numerous prior contracts (different from those listed in its proposal) which allegedly involved this type of work. However, an offeror must establish the merits of its proposal in the proposal itself. See Power Dynatec Corp., B-251501.3, Aug. 3, 1993, 93-2 CPD ¶ 73. Thus, these additional contracts, even if they involved similar work as COMASA maintains, cannot be used to establish COMASA's experience, or to show that the evaluation, which was based on the contents of COMASA's proposal, was unreasonable.

COMASA also disputes the agency's finding that its performance under contract No. CC-3-088 was unsatisfactory, arguing that the Commission's own performance report, which was signed and dated after COMASA had performed the repair work, rated its performance "satisfactory." However, the Commission explains that the problems arose only after initial acceptance of the work, and COMASA does not dispute the need for the repairs. The problems that necessitated the repairs provided a reasonable basis for discounting the firm's experience under that contract; the agency was not precluded from ultimately determining that COMASA's work was not satisfactory just because it initially accepted the work. The agency therefore reasonably downgraded COMASA's proposal in this area.

QUALITY OF WORK AND QUALITY OF CONTROL SUBFACTOR

COMASA maintains that its proposal improperly was downgraded for failing "to designate a quality control [QC] representative which is the key person on this project," since this was not a solicitation requirement.² However, this allegation is not supported by the record. While the record shows that COMASA's initial proposal was downgraded under this subfactor in part due to its failure to designate a QC representative, the evaluation documentation for COMASA's BAFO did not list this as a deficiency, and COMASA's score in this area increased. The evaluation documentation also shows that the contracting officer did not take any QC representative deficiency into account in the ultimate award decision. Since this was not a factor in the award decision, it is not a basis for disturbing that decision.

²COMASA also maintains the information in the RFP with respect to the quality control procedures was inadequate to allow offerors to prepare proposals. Our Bid Protest Regulations require protests based on alleged RFP improprieties to be filed prior to the initial closing time. 4 C.F.R. § 21.2(a)(1) (1995). This allegation therefore is untimely and will not be considered.

PRICE

COMASA takes issue with the letter scoring by the contracting officer. COMASA believes FMS's price (about \$96,000 higher than COMASA's) warranted a C, rather than a B rating; this, combined with its proposal's A technical rating, would result in an overall B, rather than a B+ rating. COMASA believes its own proposal's technical rating should have been C rather than D which, combined with its A price rating, also would give its proposal an overall B rating. COMASA concludes it would have been entitled to award based on its lower price.

COMASA's argument is based on the incorrect assumption that a higher score would have entitled it to the award. In fact, scores themselves are not controlling as to the significance of actual proposal differences; point scores are useful only as guides to intelligent decisionmaking. See Earle Palmer Brown Cos., Inc., B-243544; B-243544.2, Aug. 7, 1991, 91-2 CPD ¶ 134. Here, the record shows that the point and letter scores were not the basis for the award decision. Rather, the contracting officer determined the specific merits of each proposal, and relied on this determination, rather than the point and letter scores, in deciding to make award to FMS. More specifically, as discussed above, he determined that COMASA's proposal contained weaknesses under each technical subfactor—in contrast to the lack of any deficiencies in FMS's proposal—and that COMASA would not be able to perform at its low price. This being the case, even if COMASA's and FMS's letter ratings were changed, it is clear that the reasons for selecting FMS for award would remain. This argument therefore is without merit.

BIAS

COMASA argues that its proposal's low rating was the result of agency bias, and cites several prior solicitations under which the Commission failed to make award to COMASA as evidence of a pattern of bias. The record must clearly establish that an agency intended to injure a party before we will find bias. Miller Bldg. Corp., B-245488, Jan. 3, 1992, 92-1 CPD ¶ 21. The mere fact that COMASA previously has failed to receive contracts from the Commission is not evidence of such an intent. In any case, bias aside, there is no basis for questioning the award here, since we have found that the evaluation was reasonable.

The protest is denied.

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