



**Comptroller General  
of the United States**

Washington, D.C. 20548

# Decision

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**Matter of:** R&A Technical Services

**File:** B-270988

**Date:** May 7, 1996

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J. William Bennett for the protester.

Matthew D. Thomason III, Esq., and Charles Frew, Esq., Department of the Army, for the agency.

Andrew T. Pogany, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## **DIGEST**

1. Where contracting agency reasonably rated protester's and awardee's proposals as technically equal, contracting officer properly made award of a fixed-price contract to the lower-priced offeror.
2. Agency performed appropriate price analysis under solicitation which contemplated award of a fixed-price contract where the agency determined that the awardee's price was reasonable on the basis of a comparison to the other prices offered and the independent government price estimate.

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## **DECISION**

R&A Technical Services protests the award of a contract to Mellor Engineering Corporation under request for proposals (RFP) No. DACA87-95-R-0101, issued as a competitive section 8(a) set-aside by the U.S. Army Engineering and Support Center, Huntsville, Alabama for general analysis, detection and monitoring services of a chemical stockpile located at Tooele Army Depot. The protester principally contends that the Army failed to make a proper price/technical tradeoff in selecting the lower priced, lower technically rated offeror for award.

We deny the protest.

The RFP stated the agency would award a contract that would represent the best value to the government, based on the evaluation of technical and price factors.<sup>1</sup> The RFP, contemplating the award of a fixed price contract for a base year and 4 option years, required the submission of technical and price proposals by each offeror. The RFP listed the following technical evaluation criteria: (1) experience; (2) personnel; (3) management; (4) past performance; and (5) technical approach. The RFP stated that technical approach was the most important factor, followed by, in descending order of importance, experience, personnel, management and past performance.<sup>2</sup> The RFP contained a list of 10 recommended staffing categories of skilled personnel, including, for example, chemist, gas chromatograph specialist, and technical editor. For each category, the RFP contained a description of staffing duties.

Concerning price, the RFP stated that price would not be a scored factor, but would be evaluated as to reasonableness and affordability.<sup>3</sup> The RFP advised offerors that the total price for the base and option years would be evaluated. The RFP also required offerors to submit a contract pricing proposal which showed the "rationale followed in development of direct labor, overhead, G&A and profit." The RFP contained a Service Contract Act (SCA) Wage Determination and cautioned offerors that their employee base rates had to conform with this wage determination.

Six firms submitted initial proposals by the closing date of November 16, 1995. The agency's Technical/Management Evaluation Board evaluated initial proposals. On December 6, the evaluators reported their findings to the contracting officer.<sup>4</sup> The numerical rankings and prices were as follows:

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<sup>1</sup>The agency states that while there was no statement in the RFP concerning the relative importance of technical and price considerations, offerors should have known that technical and price considerations would "be approximately equal in weight." The protester agrees with the agency's position. In any event, even if technical considerations were stated by the RFP to be more important than price, this would not affect in any way our decision here.

<sup>2</sup>The RFP advised offerors that an "ideal proposal" would achieve a maximum total score of 100 points. The RFP did not further break down the scoring weights among each technical evaluation factor.

<sup>3</sup>The RFP's schedule requested monthly unit prices for the services; equipment costs, operating supplies and travel were not separately priced.

<sup>4</sup>We limit our discussion to the top three firms as found by the evaluators.

<u>Offeror</u>	<u>Technical/Management Score</u>	<u>Price<sup>5</sup></u>
R&A	[DELETED]	[DELETED]
Offeror A	[DELETED]	[DELETED]
Mellor	[DELETED]	[DELETED]

The evaluators' narrative report noted as follows:

"[R&A's] proposal was complete and addressed [all] technical and management criteria required by the RFP [and was the best overall proposal]. [Mellor and Offeror A] were scored lower than R&A because they did not fully address or demonstrate their abilities to satisfy all the requirements of the RFP. . . . Recommendation: R&A has the highest Technical/Management score and is ranked first. [R&A] submitted a proposal with no deficiencies, or weaknesses/disadvantages. [Its] proposal was best overall because [it] provided more detailed information than the other offerors. [Offeror A] submitted an excellent proposal and had no deficiencies with a few weakness/disadvantages. . . . [Mellor] provided an excellent proposal [and] provided a proposal with no deficiencies and only a couple of weakness or disadvantages. The board felt that any one of these three highly qualified firms could satisfactorily perform all technical and management work required by this contract without further discussions, information or submission[s]."

Based upon the findings of the evaluators, the contracting officer included the offers of these three firms in the competitive range. The contracting officer requested best and final offers (BAFO) from these firms in a letter which also stated that "[t]here were no deficiencies or discrepancies noted in your technical or price proposal." BAFOs were received and evaluated. None of the offerors made changes in their technical proposals; prices proposed by the three offerors also remained the same except for a minimal price adjustment by Offeror A.

Based on the evaluation of BAFOs, the agency's evaluators found that all three firms were "highly qualified and technically acceptable to perform the work." Further, although R&A had provided "more detailed information," the evaluators found that Offeror A's and Mellor's proposals were "excellent with few weaknesses/disadvantages" and that all three firms were "technically equal." The

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<sup>5</sup>The independent government price estimate was approximately \$9.1 million.

evaluators also noted that all three firms proposed to use many of the same personnel. The evaluators concluded as follows:

"Mellor has perfect scores in personnel and management and a nearly perfect score in experience. Mellor scored excellent in the criteria for past performance. All sources stated they would hire [Mellor] for future projects if the occasion arose. [Mellor] is the most advantageous to the government [as the lowest priced offeror]."

Based on the evaluators' technical determination that the three firms were technically equal, the contracting officer proceeded to award the contract to Mellor, the low offeror. This protest followed.

The protester argues that it scored higher than Mellor and contends that, contrary to the agency's view, its higher scores reflect actual technical superiority and that the agency did not have a valid basis for its decision to make award to a lower rated offeror at an insignificant price savings. The protester also argues that the award decision is improper because the record does not adequately document the basis for the agency's evaluation and selection decision. Specifically, the protester notes that the evaluators found "specific and apparently quantifiable differences between the offerors" but concluded, without any detailed reasoned analysis, that the proposals were technically equal. According to the protester, there was "[n]o analysis of the actual point differential, or anything else pertinent to the solicitation requirements and the offers received." The protester concludes that the agency's finding of "technical equality" among the three proposals was defective.

A contracting agency properly may award a contract to a lower priced, lower technically scored offeror if it decides that the price premium involved in awarding to a higher rated, higher priced offeror is not justified given the acceptable level of technical competence available at the lower cost. Dayton T. Brown, Inc., B-229664, Mar. 30, 1988, 88-1 CPD ¶ 321. Evaluation scores are merely guides for the selection official, who must use his judgment to determine what the technical difference between competing proposals might mean to contract performance, and who must consider what it would cost to take advantage of it. Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 CPD ¶ 325. The relevant considerations in such a case are whether the award decision was reasonable in light of the RFP evaluation scheme, and whether the selection official adequately documented the basis for his selection. Dayton T. Brown, Inc., *supra*; DynCorp, 71 Comp. Gen. 129 (1991), 91-2 CPD ¶ 575.

Our review of the record shows that the agency reasonably found the proposals technically equal and selected the lower priced offeror. As shown by the technical point scores [DELETED], both Mellor's and the protester's proposals were

considered excellent with minor evaluated differences between them. The contracting officer states that the major difference between the protester's and Mellor's technical proposals was that in the technical approach area the protester "provided more detailed information concerning activities it would conduct within specific time frames." He further states that Mellor's technical proposal reflected similar activities but "tended to be more general in its approach." The contracting officer also states that both firms proposed to employ the same personnel in many positions; consequently, many of the same personnel would be performing the work regardless of which firm was awarded the contract. The contracting officer concludes that it was therefore reasonable for him to select the lower priced offeror.

The protester, in its comments on the agency report, notes only one allegedly superior feature of its technical approach which resulted in a "perfect" score under the technical approach factor--"this difference was because the contract activities were more specifically detailed and more specific performance time was set out in [the protester's proposal]." However, we think that the agency reasonably could decide that the protester's furnishing of more specifics and details under the technical approach factor did not necessarily reflect a superior technical advantage relative to Mellor's proposal which contained a similar approach. Further, the protester has failed to identify any deficiency or weakness in Mellor's proposal to show that Mellor's proposal was other than technically equal from a substantive standpoint. We have also confirmed the contracting officer's statement that both offerors proposed to use many of the same personnel to perform the work. Accordingly, we have no basis to object to the contracting officer's conclusion that the proposals were essentially equal technically.

The protester also argues that the contracting officer failed to make an adequate price reasonableness determination.<sup>6</sup> We find no merit to this argument. Where, as here, the RFP contemplates award of a fixed-price contract, the contracting agency is not required to conduct a detailed cost or cost realism

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<sup>6</sup>In this regard, the protester argues that the contracting officer failed to make an adequate analysis of Mellor's price proposal which allegedly did not contain sufficient information to show that Mellor's labor rates met SCA requirements. The protester's argument is not that Mellor took exception to any SCA wage rate in its BAFO; rather, the protester argues Mellor should have provided more cost information to substantiate its compliance with the SCA wage rate. In a fixed-price contract, we are unaware of any requirement to do so. There is nothing in Mellor's BAFO which would indicate any intent to modify its commitment to any SCA wage rates. See Carolina Stevedoring Co., B-260006, May 18, 1995, 95-2 CPD ¶ 3.

analysis. See PHP Healthcare Corp.; Sisters of Charity of the Incarnate Word, B-251799 et al., May 4, 1993, 93-1 CPD ¶ 366. An agency may properly make a determination on the reasonableness of prices based upon a comparison of such prices with the government estimate and other offered prices. See Astro Pak Corp., B-256345, June 6, 1994, 94-1 CPD ¶ 352. Here, the agency conducted a price analysis which consisted of a comparison of the awardee's price with the other prices proposed and a comparison of the awardee's price with the independent government estimate. Based on these comparisons, the agency concluded that Mellor's price was realistic and reasonable. We have no reason to question the agency's determination.

The protest is denied.

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