



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Roxco, Ltd.

File: B-277545

Date: October 27, 1997

William R. Purdy, Esq., Lynn H. Patton, Esq., and Christopher Solop, Esq., Ott & Purdy, for the protester.

Thomas F. Gardner, Esq., and David C. Clement, Esq., Gardner & Kewley, for Spartan Building Corporation, an intervenor.

George N. Brezna, Esq., and Vicki E. O'Keefe, Esq., Department of the Navy, for the agency.

Christine Davis, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency reasonably decided to reopen discussions and amend the solicitation's evaluation criteria after making award, where the agency found that the unamended evaluation criteria may not have allowed for selection of the most advantageous offer.

DECISION

Roxco, Ltd. protests the agency's decision to reopen discussions and reevaluate proposals after making award to Roxco under request for proposals (RFP) No. N62467-95-R-1156, issued by the Department of the Navy, Naval Facilities Engineering Command (NAVFAC), to design and build Bachelor Enlisted Quarters (BEQ) at the Naval Support Activity, New Orleans, Louisiana. Roxco argues that this is unwarranted and will result in an improper auction.

We deny the protest.

The RFP required the design and construction of a BEQ to include individual living units, common areas (e.g., lobbies, laundry rooms, and administration spaces), and landscape work. Each individual BEQ unit was to include two living/sleeping rooms, a kitchenette, a bathroom, and storage space. The RFP, as amended, did not require a specific number of BEQ units, but invited offerors to propose between 60 and 80 units, with an option reserved by the agency to order 12 units more than the basic quantity proposed by the offeror.

The RFP solicited price and technical proposals for evaluation on a best value basis. Price and technical factors were of equal importance. There were five technical

evaluation factors: (1) Project Organization, Quality Control and Safety, (2) Square Footage, (3) Roof, (4) Energy Considerations, and (5) Quality of Life. Square Footage was to be significantly more important than any of the other factors.

The RFP requested lump-sum, firm, fixed prices for the basic and optional work; these lump-sum prices, as adjusted by a completion schedule price factor and the offeror's change order markup prices, were to yield the offeror's total evaluated price. Unit pricing was neither solicited nor considered in determining an offeror's total evaluated price.

The agency received three proposals, including Spartan's and Roxco's, on March 10, 1997. The agency included Spartan's and Roxco's proposals in the competitive range, conducted two rounds of discussions, and requested best and final offers (BAFO). Spartan proposed a basic quantity of 76 BEQ units, plus the 12 option units, for a total evaluated price of \$6,565,049; Roxco proposed a basic quantity of 62 BEQ units, plus the 12 option units, for a total evaluated price of \$6,481,512.

Spartan's proposal received four acceptable ratings and an exceptional rating under the most important Square Footage factor based upon its offer of 76 BEQ units. Roxco's proposal received two exceptional ratings and three acceptable ratings, including an acceptable Square Footage rating based upon its offer of 62 BEQ units. In evaluating proposals under the Square Footage factor, the technical evaluation board (TEB) estimated the life-cycle savings represented by the additional units in each proposal.¹ Regarding Spartan's proposal, the TEB stated:

The offeror has proposed 76 modules. This exceeds the minimum requirements in the RFP by 16 modules. This is a tremendous increase over the minimum requirements. . . . the life cycle savings of these additional 16 modules is \$1,158,336. [Emphasis in original.]

In contrast, the TEB estimated the life-cycle savings represented by Roxco's proposal, which offered 2 units more than the minimally required 60 units, to be \$144,792.

On May 2, the source selection board (SSB) and source selection authority (SSA), having reviewed the TEB's findings, recommended award based upon Roxco's proposal, which was considered technically superior and low priced under the RFP evaluation scheme. In this regard, the SSA considered Roxco's technical proposal "slightly better" than Spartan's because it received two exceptional ratings, whereas Spartan's proposal received one exceptional rating, albeit in the most important Square Footage factor. The SSA also found Roxco to have submitted the low-priced

¹The TEB estimated life-cycle costs based upon a government estimate, not upon information in offerors' price proposals.

proposal, applying the RFP price evaluation formula which disregarded unit pricing. Although the SSB and SSA recognized that Spartan offered more BEQ units than Roxco at a much lower unit cost, and at significantly greater life-cycle savings, the SSA stated that "Roxco's total evaluated price, the price that the RFP states will be the determining factor in evaluating price information, is lower than Spartan's by \$83,537." Award was made to Roxco on May 9.

Spartan received a debriefing on May 15, at which time the Navy disclosed Roxco's price, proposed number of BEQ units, and technical proposal ratings. On May 19, Spartan filed an agency-level protest of Roxco's award. Spartan alleged that its proposal should have been found the technically superior, low-priced offer in view of the fact that Spartan offered 14 more BEQ units than Roxco at a much lower unit price.

In the face of Spartan's protest, the SSA asked the TEB to reevaluate Spartan's and Roxco's proposals and to decide which proposal represented the best value. The SSA instructed that, in performing this cost/technical tradeoff, the TEB was "not tied to the RFP definition of 'value,'" but should instead consider whether "the Roxco proposal is worth the approximate \$1,000,000 difference . . . for an equal number of modules" as proposed by Spartan. The SSA described this \$1 million price premium--which was based upon unit, rather than lump-sum pricing--as "the real cost difference" between the two proposals.

On June 24, the TEB rendered its opinion that the \$1 million savings represented by the additional BEQ units in Spartan's proposal made it the best value (regardless of the RFP evaluation criteria). While the TEB considered Roxco's proposal technically superior, it concluded that it could not "value the features of the Roxco proposal higher than the additional modules in the Spartan proposal."²

Following the TEB's recommendation, the agency decided that award may not have been made on the basis of the most advantageous proposal because the RFP evaluation scheme distorted a meaningful price comparison between the two proposals. By letter dated July 9, the agency advised Roxco as follows:

²The TEB's statement that it could not "value the features of the Roxco proposal higher than the additional modules in the Spartan proposal" belies the protester's contention that the TEB was unable to decide which proposal represented the best value. Furthermore, it is irrelevant that the source selection plan charged the SSB, not the TEB, with responsibility for performing cost/technical tradeoffs between proposals. Allegations of deviation from a source selection plan do not constitute a basis for protest, see EG&G Team, B-259917.2, July 5, 1995, 95-2 ¶ 138 at 5 n.2, and, in any event, the TEB did not perform a cost/technical tradeoff to select a proposal for award, but to assist the agency in determining whether corrective action was warranted.

We believe that the criteria for selecting the successful proposal described in the RFP were flawed because the total evaluated price, which represented half of the overall consideration, was disproportionately affected by the proposed number of units (square footage), which was evaluated as only one of five technical factors.

The agency stated that it planned to reopen discussions and to reevaluate revised proposals based upon an amended price evaluation formula, under which unit pricing, rather than lump-sum pricing, would determine each offeror's total evaluated price. This protest followed.

Contracting officials in negotiated procurements have broad discretion to take corrective action where the agency determines that such action is necessary to ensure a fair and impartial competition. Aquidneck Sys. Int'l. Inc., B-257170.2, Sept. 30, 1994, 94-2 CPD ¶ 122 at 4; Oshkosh Truck Corp.; Idaho Norland Corp., B-237058.2, B-237058.3, Feb. 14, 1990, 90-1 CPD ¶ 274 at 4. An agency may conduct a new evaluation where the record shows that the agency made the decision in good faith, without the specific intent of changing a particular offeror's technical ranking or avoiding an award to a particular offeror. PRC, Inc., 71 Comp. Gen. 530, 532 (1992), 92-2 CPD ¶ 215 at 3; Burns & Roe Servs. Corp., B-248394, Aug. 25, 1992, 92-2 CPD ¶ 124 at 5. We will not object to an agency's proposed corrective action where the agency concludes that award was not necessarily made on a basis most advantageous to the government, so long as the corrective action taken is appropriate to remedy the impropriety. See Oshkosh Truck Corp.; Idaho Norland Corp., supra.

The record reflects that the Navy reevaluated proposals in light of an agency-level protest and concluded that the award may not have been made on a basis most advantageous to the government because the RFP price evaluation formula did not consider unit prices. While Roxco was found to have submitted the technically superior, low-priced proposal by virtue of the fact that the price evaluation formula did not account for unit pricing, the Navy, upon reevaluating proposals in light of Spartan's protest, realized that the price evaluation formula did not reveal "the real cost difference" between the two proposals, and it now says the price evaluation should have been based upon unit, not lump-sum, pricing. Had that evaluation scheme been used, the Navy concluded, Spartan's proposal might well have enjoyed a decisive price advantage over Roxco's technically superior proposal, such that the Roxco award selection may not have truly represented the best value to the government. Accordingly, the Navy decided to solicit and evaluate revised proposals based upon an evaluation scheme amended to account for unit pricing, which, in the Navy's view, was necessary to ensure an award made on a basis most advantageous to the government.

Roxco protests that there is no need to amend the price evaluation formula because the SSA, in his selection decision, actually considered unit price differences

between Spartan's and Roxco's proposals and nevertheless deemed Roxco's proposal to represent the best value. In the source selection, however, the price evaluation formula was not based upon offerors' unit prices. The record shows that when, following Spartan's agency-level protest, the Navy reevaluated proposals using a unit price comparison, it determined that Spartan's proposal may have represented the best value to the government.

Roxco argues that an agency may not amend an evaluation scheme after making award and revealing the awardee's price and technical scores unless the procurement suffered from a prejudicial impropriety, which Roxco claims is not the case here. In particular, Roxco notes that its proposal satisfied the agency's minimum needs for a BEQ containing at least 60 units and was found the technically superior, low-priced proposal pursuant to an unambiguous evaluation scheme.

While we agree that the evaluation scheme in this case was unambiguous and that the agency still needs a BEQ containing at least 60 units, the protester is incorrect that an agency lacks discretion to amend an evaluation scheme which inhibited the government from making award on the basis of the most advantageous proposal. See ACS Sys. & Eng'g, Inc., B-275439.3, Mar. 31, 1997, 97-1 CPD ¶ 126 at 3-4. Here, the Navy concluded that the evaluation scheme distorted what it now considers to be "the real cost difference" between the two proposals, such that an award to Roxco was indicated, even though Spartan's technical proposal was considered only slightly inferior to Roxco's, while its unit prices were significantly lower. Roxco has not shown that the proposed amended evaluation scheme, which gives more credit to proposals offering more units (up to 80 units) at competitive unit prices, does not represent a more reasonable statement of the agency's needs.

Where, as here, an agency has a reasonable basis to reopen negotiations, it may do so, despite having disclosed an offeror's price and ratings, because the possibility that an agency may have awarded a contract on a disadvantageous basis does more damage to the integrity of the competitive system than the disclosure of offerors' information. See id. at 4-5. Accordingly, we have no basis to object to the agency's decision to amend the price evaluation formula to provide for a comparison of unit prices and to solicit revised proposals on this basis.

The protest is denied.

Comptroller General
of the United States