Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Day & Zimmermann/IMR L.L.C.

File: B-280568; B-280569

Date: October 19, 1998

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DIGEST

Award to offeror submitting higher-priced, technically superior proposal under a solicitation which stated that proposed price was more important than technical evaluation factors was unobjectionable where agency reasonably determined that the awardee's substantial technical advantage warranted payment of the price premium associated with its proposal.

DECISION

Day & Zimmermann/IMR L.L.C. (D&Z) protests the award of contracts to Royal Ordnance North America, Inc. (RONA) under request for proposals (RFP) Nos. DAAA09-97-R-0044 (RFP-0044) and DAAA09-98-0214 (RFP-0214), issued by the Department of the Army for explosives and a facility use contract for Holston Army Ammunition Plant (HSAAP), respectively. D&Z principally argues that the agency misevaluated the proposals, and made improper awards based on a defective price/technical tradeoff.

We deny the protest.

BACKGROUND

Both solicitations were issued as two-step negotiated procurements. RFP-0044 sought proposals to award a fixed-price contract for RDX/HMX explosives and other products for 5 years. RFP-0214 sought proposals to award a fixed-price facility use contract for HSAAP for a 25-year period. The solicitations were issued together,

contained, as amended, identical section M evaluation provisions, and provided that both contracts would be awarded to the same offeror. (For the sake of simplicity, we therefore will refer to the solicitations as a single RFP.)[1]

The RDX/HMX products are used by all Department of Defense (DOD) services. Because of the unique nature of RDX/HMX, such as requiring large amounts of acid production and recycling, and the commonality of the RDX/HMX in numerous end item applications, RDX/HMX has been procured as a bulk item. AR, Tab E, at 3. Due to the large quantity of RDX/HMX necessary in wartime, HSAAP was constructed in the 1940's for the sole purpose of manufacturing large quantities of explosives. HSAAP has been operated as a government-owned, contractor-operated (GOCO) facility since its completion. Due to declining peacetime requirements for the RDX/HMX products, the agency found that the cost of maintaining HSAAP with only these requirements in production had become cost prohibitive to the Army and its customers. The agency therefore decided to solicit industry's expertise in finding a solution to its problem, that is, to "compete the problem." AR, Tab 1, at 3.

On May 5, 1997, a pre-solicitation conference was held at which industry was provided with the definition of the "problem," a description of the proposed acquisition, a discussion of the requirements, both peacetime and replenishment,[2] a presentation on the availability of Armament Retooling and Manufacturing Support (ARMS) funding, and a description of the facility at HSAAP, among other things. The problem as defined at this conference remained the same throughout the final selection of the successful contractor. The problem had four parts: (1) peacetime requirements for RDX/HMX; (2) replenishment requirements for these items; (3) need for development of new formulations of explosives, defined as research and development (R&D); and (4) a plan for the HSAAP facility itself, comprised of approximately 6,000 acres of acid manufacturing and explosives finishing equipment and buildings. AR, Tab C. In response, contractors then furnished "concept papers," which were unique to each contractor. AR, Tab 1, at 3. Because of the uniqueness of the contractor approaches, the agency decided to "'cut' a competitive range," so the agency could logically handle unique performance-based contracts and still maintain a competitive basis. AR, Tab 1, at 4.

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[1]The contracting officer states that the requirements were split into two solicitations solely because of the different longevity of the resulting contracts and the differing contract types (fixed-price supply versus fixed-price services). Agency Report (AR), Tab 1, at 10. We note in passing that we know of no reason why the agency could not have issued a single solicitation combining the requirements.

[2]Replenishment refers to replenishing available stockpiled explosives depleted due to an armed conflict or war. The replenishment effort is of much greater magnitude than meeting peacetime requirements.

Consequently, on August 1, 1997, the agency issued the first-step solicitation for the purpose of establishing a competitive range of the "technically acceptable offerors that will move on to the second and final step." AR, Tab F, at 2. The first-step solicitation contained the technical criteria of experience, technical capability, financial capability and past performance. Selections were based on "best value," but price was not a factor at this stage. AR, Tab F, at 10. Written submissions were not solicited; rather, the determination of the competitive range was based on oral presentations by all offerors. On October 29, the agency established a competitive range which included the following contractors: D&Z, RONA, and a third offeror. AR, Tab H.

After the competitive range determination, and until the second-step solicitation was issued, the agency and the offerors engaged in ALPHA discussion,[3] visits to HSAAP, meetings, and informational exchanges to "flesh out" each offeror's plan, since each offeror would present a unique approach to the technical solutions of the peacetime, replenishment, facility use and R&D problems.[4] AR, Tab 1, at 6.

The agency issued the second-step solicitation on April 1, 1998. The RFP stated that the evaluation would consist of a best value determination, including cost/fund layout, which was more important than technical capability. Cost was defined to include cost proposed by the contractor, and any corresponding government cost, such as layaway (i.e., "mothballing") expense, maintenance expense, cleanup and/or disposal expense, minus certain contractor revenue offsets. The RFP contained the following technical criteria: (1) peacetime plan, including production capability (active and planned), critical skills; (2) replenishment plan, including type of activity at facility, critical skills maintained, location; (3) facility use plan; (4) R&D plan, including range of products, self-investment; and (5) flexibility. AR, Tab K, RFP-0044 at 33. The first three criteria were of equal weight and were a "much larger portion" of the technical area than the remaining elements. Id. The RFP also called for a risk assessment of each proposal, addressing the strengths and weaknesses of the proposals along with risk measurement and ranking of the

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[3]The definition of ALPHA discussions is the "active participation of the offerors in crafting the solicitation requirements." AR, Tab 1, at 6 n.5. An article previously published in an Army periodical was distributed to the offerors to describe this process. Also, before the second-step solicitation was issued, the contracting officer sent a letter to the offerors identifying the cost and technical criteria, discussed below, to be included in the solicitation. The evaluation scoring methodology was not revealed.

[4]The Army emphasizes that it did not attempt to influence any offeror into one plan or another. Rather, the entire acquisition assumed that industry was best equipped to determine how best to solve the Army's problem, and how to have this solution fit the industry's own strategic initiatives. AR, Tab 1.

proposals. Id. Technical proposals essentially were to consist of concept plans (2 pages for each plan) for peacetime production, replenishment, facility use, and R&D. Cost would be reflected in matrices covering the peacetime requirements and the facility use contract. AR, Tab K.

Offers were received on May 14. Discussions were conducted, and best and final offers (BAFO) were received on June 10 and evaluated by the agency. In its BAFO, D&Z proposed, in its peacetime plan, to layaway the explosives capability at HSAAP entirely, and to furnish the products of Expro, an explosives manufacturer in Canada. AR, Tab Q-4. The agency found that Expro was a "cold" facility which had not manufactured RDX for approximately 6 years, and that its manufacture of HMX could not be validated. AR, Tab Q-3. D&Z's replenishment plan was to use HSAAP, as laid away, mobilizing sufficient critical skills for replenishment by increasing employment at HSAAP by a total of 1,800 to 2,000 personnel. AR, Tab Q-4. The agency found that reactivation of a cold laidaway plant would take longer and cost more than expanding capability of a warm facility. AR, Tab R, at 4.

In contrast, RONA, a British firm, proposed to modernize and rehabilitate HSAAP to make it the single domestic source of peacetime explosives and the sole NATO capability for replenishment quantities. AR, Tab Q-4. RONA is a current explosives manufacturer at Bridgewater, United Kingdom, and already employs the critical skills necessary for both peacetime and replenishment. RONA also proposed to bring all United Kingdom explosives requirements (along with DOD offshore production and other facilities use activities that had previously moved to Bridgewater) to HSAAP after the firm completed its project to modernize and resize HSAAP. During the renovation period, RONA proposed to produce the explosives at Bridgewater. Since its plan would employ the same site for both peacetime and replenishment, the agency found that reactivation and "ramp-up" would present the lowest risk and offered the best solution. AR, Tab R, at 3. (Only 200 new employees would be needed for replenishment under RONA's plan.) The evaluation results were as follows (AR, Tab Q):

Offeror	Technical Score	Price	Risk
RONA	37.83	$163 million	Low
Offeror A	32.00	$167 million	Moderate
D&Z	25.17	$111 million	Moderate

The agency's source selection authority (SSA) followed the recommendation of the agency evaluators and selected RONA for award, stating as follows:

> The advantages of RONA's technically superior plan are significant, especially the element of Replenishment, Peacetime, Facility Use . . . [which] justify the additional cost . . . . RONA's offer is a low risk plan, and includes an investment in the Army's critical explosives capability. The Army gains a modernized, efficient, peacetime facility with active critical skills, that can be quickly ramped up to a replenishment capability.

AR, Tab R, at 4.

This protest followed a debriefing; performance has not been stayed because the protester did not file its protest with our Office within 5 days after the debriefing.

D&Z's principal argument is that the agency's price/technical tradeoff was unreasonable because of an allegedly excessive premium paid to RONA. D&Z also raises several evaluation issues which we discuss first.

We review an agency's evaluation of proposals to ensure that it is reasonable and consistent with the evaluation criteria stated in the solicitation. Wind Gap Knitwear, Inc., B-261045, June 20, 1995, 95-2 CPD ¶ 124 at 3.

PEACETIME PRODUCTION EVALUATION

D&Z argues that use of the HSAAP facility for peacetime production improperly was taken into account by the agency in evaluating proposals, since the technical portion of the evaluation was specifically addressed to the capability of the contractor, and nowhere did the solicitation indicate that preference would be given to offerors proposing to manufacture peacetime requirements at HSAAP, a factor that has nothing to do with a contractor's capability. D&Z states that, if the Army had a strong preference for having production occur at HSAAP, it should have advised all offerors of that fact.

This argument is based on a mischaracterization of the RFP's evaluation criteria. The criteria for peacetime production specifically included evaluation of active and planned production capability as well as critical skills. All offerors were free to choose any methodology for meeting the agency's peacetime production needs. RONA proposed to perform peacetime production from active production facilities, at the same site as its planned replenishment site. As the intervenor argues, the advantage of putting the two together--the use of an active facility for peacetime production and the synergistic efficiencies and risk mitigation benefits of relying upon the same warm base--should not have been difficult for any offeror to understand from the solicitation terms. In short, the record shows no unstated evaluation preference for peacetime production at HSAAP; rather, the record shows

that the agency, consistent with the evaluation criteria, credited RONA's proposal for an active peacetime production capability at a warm facility.[5]

Also concerning peacetime production, the protester argues that its proposal should have received the maximum points for this factor because, like RONA, it proposed to use an existing, operating RDX facility (Holston for D&Z; Bridgewater for RONA) to maintain interim production capacity until the plant intended for long-term peacetime requirements was operable. However, while the agency looked at interim production, and the evaluation criteria included consideration of whether the production facility was active, the focus of the evaluation was the needs of the agency over the life of the contract. The fact remains that Expro is a cold facility which has not produced RDX for 6 years, and that its production of HMX could not be validated. In contrast, RONA proposed continued long-term performance at HSAAP, a warm facility with many years of RDX/HMX production. We conclude that the agency reasonably downgraded D&Z's proposal on the basis that it had no plant active and capable of producing the required explosives.

REPLENISHMENT EVALUATION

D&Z asserts with respect to replenishment that its proposed plan envisioned as a first step increased production at Expro (which has a maximum production rate of 17,000 pounds of RDX per day), and then a reactivation of the RDX plants at HSAAP. According to the protester, one production line at HSAAP would be operating within 5 months, and a total of three lines would be operating 24 hours a day, 7 days a week, within 9 months, which would be sufficient to provide the maximum replenishment rate specified (160,000 pounds per day). Consequently, the

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[5]The protester also argues that RONA's plant at Bridgewater is incapable of producing Type II RDX, as specified, during the interim production at Bridgewater while the modernization of HSAAP is completed. The record shows that this allegation is simply factually erroneous. RONA, at Bridgewater, uses the Woolwich process to produce RDX, rather than the Bachman process used by D&Z to produce the explosive. Both processes yield the same product--Type II RDX that meets specifications. The protester also argues that the agency ignored the Canadian Commercial Corporation (CCC) guarantee of Expro's performance. The protester argues that CCC (an agency of the Canadian government) retains full responsibility to the purchaser for the performance of the contract. The protester has submitted literature which shows that the CCC, as prime contractor, could have the work completed by another contractor in the event of default by Expro, as well as provide financial guarantees. Protester's Comments, Exhibit A. We agree with the agency that the guarantee by CCC of performance is essentially a financial guarantee; it does not reduce the risk of unsuccessful, unsatisfactory, and untimely performance by Expro. The agency therefore reasonably declined to accord D&Z's proposal evaluation credit based on the guarantee.

protester believes its proposal should have received a higher technical score under the replenishment evaluation criterion.

The replenishment criterion encompassed the type of activity at the facility, the critical skills maintained and the location. The agency found during its evaluation that the protester's replenishment plan had a great deal of risk, especially since D&Z estimated its additional employment needs for replenishment to total 1,800 to 2,200 personnel (versus RONA's requirement for only 200 personnel), and itself recognized the difficulty associated with importing sufficient critical skills. The agency also noted that reactivation of a cold laidaway plant takes much longer and costs more to expand than it does to expand the capability of a warm facility. We have no basis to disagree with the agency's assessment of the time, effort and cost associated with a replenishment plan using a cold facility, compared to one using a warm facility. Accordingly, the evaluation in this area was reasonable.[6]

PRICE/TECHNICAL TRADEOFF

D&Z asserts that the cost premium associated with RONA's proposal simply was too great to be offset by the evaluated technical advantages. The protester notes in this regard that the three proposals included in the step-two evaluation had already been found technically acceptable; price was the most important factor in the step-two evaluation; the offer accepted by the Army was 48 percent, or $52 million, higher than the protester's; and that neither the source selection plan nor the source selection decision contains any criteria for assessing the value of any particular difference in technical scores. D&Z concludes that the tradeoff decision was irrational.

Even under a solicitation which states that proposed price is more important than technical evaluation factors, the contracting agency is not required to make award to the firm offering the lowest price; the agency retains the discretion to select a higher-priced, technically higher-rated proposal, if doing so is in the government's best interest and is consistent with the solicitation's stated evaluation and source selection scheme. See University of Kansas Medical Ctr., B-278400, Jan. 26, 1998, 98-1 CPD ¶ 120 at 6; Nomura Enter., Inc., B-277768, Nov. 19, 1997, 97-2 CPD ¶ 148 at 2-5. There is no requirement that the value of technical differences be quantified in dollar terms. University of Kansas Medical Ctr., supra.

The tradeoff here was reasonable. Simply put, and as stated by the SSA, the Army, in selecting RONA, gains a "modernized, efficient, peacetime facility with critical skills that can be quickly ramped up to a replenishment capability." AR, Tab R, at 4. The record shows that D&Z's offer, although lower in evaluated cost, includes

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[6]We have reviewed other evaluation issues raised by the protester and find them to be without merit.

maintenance of an inactive site with little or no investment towards capability. Further, the record shows that the SSA determined that D&Z's replenishment plan had significant disadvantages in the area of reactivation cost, risk, and number of personnel required to accomplish reactivation with a cold facility. Based on these considerations, the tradeoff was consistent with the RFP and therefore proper.

The protest is denied.

Comptroller General
of the United States