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Decision

Matter of: Hedgecock Electric, Inc.

File: B-285655

Date: September 8, 2000

Terrance R. Ketchel, Esq., for the protester.
Richard D. Lieberman, Esq., McCarthy, Sweeney & Harkaway, for Webb Electric Company of North Florida, Inc., an intervenor.
Wilson J. Campbell, Esq., Naval Facilities Engineering Command, for the agency.
Mary G. Curcio, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency's downgrading of protester's proposal under technical requirements factor (safety control procedures subfactor) was reasonable where proposal did not demonstrate familiarity with safety manual listed in solicitation, and did not provide details of safety or quality control plans; downgrading of proposal under small business subcontracting effort factor was reasonable where solicitation specifically instructed offerors to state their subcontracting goals, and proposal contained only general statement that contracts performed by the offeror normally do not require the use of subcontractors.
2. Agency's decision to select higher-priced, higher technically rated proposal was reasonable where solicitation permitted selection of other than the lowest-priced proposal and agency specifically determined that, due to technical merit of awardee's proposal and weaknesses in protester's, awardee's higher-priced proposal provided the best value to the government.

DECISION

Hedgecock Electric, Inc. protests the award of a contract to Webb Electric Company of North Florida, Inc. under request for proposals (RFP) No. N68950-99-R-0199, issued by the Department of the Navy for the construction of primary and secondary duct banks, pad mounted transformers, pad mounted switchgear, primary and secondary cable, secondary switch boards and incidental related site work at the Naval Training Center in Great Lakes, Illinois. Hedgecock argues that the Navy

improperly evaluated its proposal and performed an irrational price/technical tradeoff.¹

We deny the protest.

The solicitation provided for a best-value analysis based on an evaluation of the following factors (and subfactors): past performance and relevant project experience; technical requirements (project organization and personnel, management control system, quality control system, and safety control procedures); small business subcontracting effort, and price. The solicitation further provided that the technical factors combined would be considered approximately equal to price in the award decision, and that the agency intended to make award on the basis of initial proposals.

Six offerors responded to the solicitation. A technical evaluation board (TEB) assigned the technical proposals a rating under each factor and subfactor, and an overall rating (highly acceptable, acceptable, marginal or unacceptable). Contracting Officer's Statement (COS) at 2. Hedgecock's proposal was lowest priced and received an overall rating of acceptable, with ratings of highly acceptable under past performance/relevant project experience, and marginal under technical requirements and small business subcontracting effort. TEB Report at 1. Webb's proposal was the second lowest priced (6.55 percent higher priced than Hedgecock's), and received an overall rating of highly acceptable, with ratings of highly acceptable for both past performance/relevant project experience and

¹ Hedgecock filed its protest in our Office on June 13, 2000, and the agency submitted its report in response to the protest on July 13. Hedgecock then submitted comments in response to the agency report on July 28, an extended due date established by our Office in response to Hedgecock's request. In these comments, Hedgecock for the first time challenged the evaluation of Webb's proposal under each evaluation factor, and the evaluation of its own proposal under the past performance/relevant project experience factor; it also argued that the agency should have asked the firm clarification questions with respect to the small business subcontracting effort portion of its proposal. Protest arguments such as these, which are not based on solicitation improprieties, must be raised no later than 10 days after the basis of protest is known or should have been known. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (2000). Since Hedgecock learned the bases of these additional protest grounds, at the latest, when it received the agency report on July 13, Hedgecock was required to raise these arguments no later than July 24 (the Monday following the tenth calendar day after receipt). Since Hedgecock did not raise the arguments until July 28, they are untimely. We note that an extension of time for filing comments on an agency report does not serve to extend the time for filing new protest grounds learned from the report. SDS Petroleum Prods., Inc., B-280430, Sept. 1, 1998, 98-2 CPD ¶ 59 at 3-4 n.3.

technical requirements, and acceptable for small business subcontracting effort. Id. Following the evaluation, the source selection board (SSB) performed a price/technical tradeoff and selected Webb for award. Source Selection (SS) Report at 3.

Hedgecock protests that the Navy improperly rated its proposal marginal under the technical requirements factor based on the safety control procedures subfactor. Specifically, Hedgecock asserts that, despite its experienced management team and good safety record, its proposal was downgraded because it did not demonstrate that Hedgecock was well versed with U.S. Army Corps of Engineers Safety Manual EM 385-1-1. Hedgecock asserts that this downgrading was unwarranted, since every experienced contractor in electrical distribution systems is well versed in this safety manual.

The evaluation of proposals is a matter within the discretion of the contracting agency; our Office will question an evaluation only where it lacks a reasonable basis or conflicts with the stated evaluation criteria for award. Stratus Sys., Inc., B-281645, Feb. 24, 1999, 99-1 CPD ¶ 67 at 3.

The evaluation of Hedgecock's proposal under the technical requirement factor was reasonable and consistent with the RFP. The RFP specifically advised with respect to the safety control procedures subfactor that offerors should focus on the steps that will promote safety during construction. RFP at 5. The RFP also specifically indicated that publication EM 385-1-1 formed part of the specification. Id., § 01450, at 1. This being the case, it was entirely reasonable for the Navy to consider whether an offeror demonstrated familiarity with this publication in assessing the offeror's proposal under the safety control procedures subfactor. The fact that Hedgecock claims it and other experienced electrical distribution contractors are familiar with this publication is not a basis for finding the evaluation unreasonable. It was Hedgecock's responsibility to provide all information necessary to evaluate its proposal; the Navy was not required to assume that Hedgecock had knowledge not demonstrated in the firm's proposal. Robotic Sys. Tech., B-278195.2, Jan. 7, 1998, 98-1 CPD ¶ 20 at 9. In any case, Hedgecock's proposal was not downgraded under the technical requirements factor based solely on safety control procedures or the firm's familiarity with EM 385-1-1. Rather, the TEB also downgraded the proposal because, while the RFP specifically advised offerors to focus on the steps that would be taken to control project quality, Hedgecock did not provide details with respect to the structure of its quality control plan. In addition, the Navy was concerned because Hedgecock's quality control manager reported directly to the project manager, bringing his independence into question, and because Hedgecock did not indicate how subcontractors would be managed.² TEB Report at 3.

² In contrast, Webb's quality control and safety programs were rated "outstanding." SS Report at 2.

Hedgecock also asserts that its proposal improperly was rated marginal under the small business subcontracting effort factor. The RFP provided with respect to this factor that proposals were to include information regarding the offeror's past efforts subcontracting with small businesses, RFP at 5, and were to set forth the proposed subcontracting effort for this contract. *Id.* at 6. Hedgecock's proposal was rated marginal under this factor because, while the TEB expected that the successful contractor would subcontract asbestos work, asphalt work and landscaping. SS Report at 2, Hedgecock did not propose subcontracting with any small businesses. Hedgecock Proposal, Factor C - Small Business Subcontracting Effort; TEB Small Business Evaluation Worksheet.

Hedgecock explains that it did not furnish a small business subcontracting effort, and that the downgrading of its proposal on this basis therefore was unreasonable, because it did not intend to subcontract any of the work. In this regard, Hedgecock's proposal stated that "[c]ontracts performed by Hedgecock normally do not require the use of subcontractors." Hedgecock Proposal, Factor C - Small Business Subcontracting Effort. Hedgecock believes this statement was sufficient to indicate to the Navy that it did not plan to subcontract. We do not agree. Given that the agency anticipated that subcontracting would be necessary and that the RFP specifically asked for proposed subcontracting, the agency reasonably could expect offerors to commit to a subcontracting approach in their proposals. If Hedgecock did not intend to subcontract any of the work, it should have unequivocally stated so in its proposal; the statement that it "normally" does not subcontract electrical contracts did not constitute a commitment by Hedgecock to perform this contract without subcontracting. Again, as stated above, it is the offeror's responsibility to submit a proposal that has all required information for evaluation purposes.

Finally, Hedgecock challenges the agency's price/technical tradeoff. Hedgecock asserts that, given that its past performance is equal to or better than Webb's, and that its management team is superior to Webb's, the agency's conclusion that Hedgecock is not capable of providing performance that is acceptable or superior to Webb's at a lower price was unreasonable.

In a best-value procurement such as this, a procuring agency properly may select for award a higher-rated technical proposal with a higher cost, where the agency determines that the cost premium is justified considering the technical superiority of the selected proposal. *Cobra Techs., Inc.*, B-280475 *et al.*, Oct. 6, 1998, 98-2 CPD ¶ 98 at 7-8. The Navy performed a price/technical tradeoff here, as required, and reasonably concluded that Webb's proposal offered the best value to the government.³

³ In its initial protest, Hedgecock also argued that the agency improperly failed to hold discussions with Hedgecock with respect to the technical requirements factor, (continued...)

The source selection report shows that the agency considered the ratings of the proposals and, more specifically, the strengths and weaknesses of each proposal under each factor, in making its award decision. The report noted that Webb had highly acceptable past performance, an outstanding management team, an outstanding quality control and safety program, and acceptable small business subcontracting goals. The only weakness identified was Webb's failure to propose to meet the agency's goals for subcontracting with HUBZone businesses. SS Report at 3. In contrast, while Hedgecock had highly acceptable past performance and a strong management team, its proposal was rated only marginal under the technical requirements and small business subcontracting effort factors for failure to demonstrate a strong quality control/safety plan and failure to propose any subcontracting effort. *Id.* at 2. Against the background of these evaluation findings, the agency recognized that Webb's price was 6.55 percent higher than Hedgecock's, and specifically concluded that the weaknesses in Hedgecock's proposal made Webb's proposal worth its additional cost. *Id.* at 3. Given that price and technical factors had equal weight in the award decision, there is no basis for objecting to this conclusion.

The protest is denied.

Robert P. Murphy
General Counsel

(...continued)

and questioned whether the Navy may have improperly favored Webb. The agency responded to these allegations in its protest report, and Hedgecock did not further address them in its comments. Accordingly, we consider these issues abandoned. Technical Support Servs., Inc., B-279665, B-279665.2, July 8, 1998, 98-2 CPD ¶ 26 at 1 n.1.