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Decision

Matter of: Hubbell Electric Heater Company

File: B-289098

Date: December 27, 2001

Robert Allen Evers, Esq. , and George M. Coburn, Esq., Robert Allen Evers Law Office, for the protester.

James J. Regan, Esq., Daniel R. Forman, Esq., and Amy E. Laderberg, Esq., Crowell & Moring, for SFA, Inc., Frederick Manufacturing Division, an intervenor.

Joshua Kranzberg, Esq., and Peter G. Tuttle, Esq., U.S. Army Materiel Command, for the agency.

Linda C. Glass, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Selection of other than the lowest-priced proposal was reasonable where source selection authority determined that the offeror's failure to adequately address how it would establish compliance with quality assurance standards at the time of production represented a risk that outweighed the one percent price advantage of its proposal.

DECISION

Hubbell Electric Heater Company protests the award of a contract to SFA, Inc., Frederick Manufacturing Division under request for proposals (RFP) No. DAAD16-01-R-0016, issued by the United States Army Natick Soldier Center for the development and production of the Advanced Food Sanitation Center (AFSC), which essentially is a field dishwashing system. The protester contends that the source selection decision lacked a reasonable basis.

We deny the protest.

The RFP, issued June 1, 2001, provided for award of a fixed-price requirements contract for a 2-year base with three 2-year options. The RFP specified that "[t]he

contractor shall comply with the specification titled either ISO 9000/9001/9002 Model quality assurance in production and installation.”¹ RFP § E1.e.

The RFP provided that the source selection decision would be based on the conduct of a tradeoff among the areas and factors identified, and award to be made to the offeror whose proposal offered the best overall value to the government. The RFP identified the following evaluation areas and factors:

Area I Technical. Factor (a) is more important than Factor (b).

- a. Overall Design
- b. Integrated Water Heating System and Spray Washer Design

Area II Management and Experience. Factors (a) and (b) are equal in importance and are more important than Factor (c) which is more important than Factor (d).

- a. Facilities and Equipment
- b. Quality Assurance Program
- c. Experience
- d. Warranty

Area III Contract/Price Proposal

Area IV Past Performance

RFP § M3.

The RFP stated that the technical area was the most important, and that the management and experience area was more important than the contract/price proposal area, which was more important than the past performance area. Technical, management, and past performance, when combined, were significantly more important than cost. The RFP provided that proposals would be assigned an adjectival rating and would be evaluated for proposal and performance risk. Under the quality assurance evaluation factor, the RFP stated that “status of compliance with ISO 9000/9001/9002” would be examined. RFP § M4, Area II, Factor b.

Two offerors, Hubbell and SFA, submitted proposals. The source selection evaluation board (SSEB) evaluated both proposals, and found that both contained

¹ ISO-9000 standards are a series of internationally recognized quality assurance standards established by the International Standards Organization (ISO). LBM Inc., B-286271, Dec. 1, 2000, 2000 CPD ¶ 194 at 2 n.2. The RFP here required conformance with the ISO standards, as opposed to registration with, or certification by, an independently accredited registrar.

significant weaknesses and some deficiencies. Agency Report (AR), Enclosure I, Initial Evaluation Report. However, the SSEB determined that all weaknesses and deficiencies could be resolved through discussions and included both offerors' proposals in the competitive range. Id. As relevant here, the SSEB identified Hubbell's quality assurance program as a deficiency. More specifically, the SSEB determined that:

Hubbell proposes to use a Quality Program that conforms to MIL-I-45208A. There is no mention of their compliance with or transitioning to the ISO 9000/9001/9002 Quality Standards as required by . . . the RFP.

AR, Tab I, SSEB Initial Evaluation Report.

Written discussions were held with both offerors. Among other things, Hubbell was requested to "[p]ropose how [it] would conform to the ISO 9000/9001/9002 Quality Standard as required by . . . [the] RFP."² AR, Enclosure J, Hubbell Discussion Items. Hubbell responded as follows:

The U.S. Navy has always required that manufacturers of critical components conform to the quality control requirements of MIL-I-45208A which is a comprehensive and thorough quality control system. MIL-I-45208A incorporates the same components as required in the more recent commercial ISO9000. MIL-I-45208A is in no way an inferior quality control system to ISO9000, it just happens to be the quality control system written for certain government purchases. Both MIL-I-45208A and ISO9000 use essentially the same structure to ensure the quality of the end product. Therefore, Hubbell's current quality control system, which is in conformance to MIL-I-45208A, meets all of the essential components of ISO9000. However, given the current use of ISO9000 as a benchmark for QC operations across a wide range of business types, it is Hubbell's intent to seek ISO9000 approval in the very near future. It is estimated that the approval process will take six

² During discussions, Hubbell was also requested to submit information, required by Section L of the RFP, regarding any past experience of Hubbell and its subcontractors with regard to development of technical manuals and training curricula. Hubbell was also requested to provide information regarding any experience in integrating components other than water heating systems. AR, Enclosure J, Hubbell Discussion Items. In response, Hubbell identified a number of contracts for which it and its subcontractor had prepared technical manuals but did not specifically address its experience in the development of training curricula and also did not respond to the discussion item relating to system integration experience.

months to complete. Hubbell will commit to having ISO9000 certification in place by the time full production of the AFSC begins.

Id.

After discussions, both offerors were asked to submit final proposal revisions. The final SSEB evaluation ratings were:

Evaluation Area/Factor	Hubbell	SFA
Area I: Technical	Acceptable/Low Risk	Acceptable/Low Risk
Factor a: Overall Design	Acceptable/Low Risk	Acceptable/Low Risk
Factor b: Integrated Water Heating System Design	Excellent/Low Risk	Acceptable/Low Risk
Area II: Management and Experience	Acceptable/ Moderate Risk	Acceptable/Low Risk
Factor a: Facilities and Equipment	Acceptable/Low Risk	Acceptable/Low Risk
Factor b: Quality Assurance Program	Acceptable/ Moderate Risk	Excellent/Low Risk
Factor c: Experience	Acceptable/ Moderate Risk	Excellent/Low Risk
Factor d: Warranty	Acceptable/Low Risk	Acceptable/Low Risk
Area III: Contract Price	\$84,051,320	\$84,912,667
Area IV: Past Performance	Low Risk	Low Risk

After the final proposal evaluation, the SSEB determined that, while both offers were rated “Acceptable/Low Risk” in Area I (Technical), the most important evaluation area, Hubbell’s offer was considered slightly stronger because of the excellent rating it received for its water heating system design. Additionally, while both proposals were rated “Acceptable” in Area II (Management and Experience), which was less important than the technical area, SFA’s offer was considered somewhat stronger due to its “Excellent” ratings in factor (b) (Quality) and factor (c) (Experience). SFA was rated as a low risk under the management and experience area, while Hubbell was rated as a moderate risk due to its current weaknesses in compliance with ISO quality standards. The SSEB recommended award to Hubbell because, in the SSEB’s view, Hubbell’s proposal offered the better value to the government based on Hubbell’s lower-priced proposal, which was slightly stronger in the most important evaluation area, technical. The SSEB noted that Hubbell presented a moderate risk in the management and experience area due to ISO quality issues, but that “the potential for additional Government monitoring of the ISO Quality issue does not warrant paying the additional cost to SFA.” AR, Enclosure L, SSEB Final Evaluation Report.

The source selection authority (SSA) reviewed the SSEB’s evaluation and recommendation, but disagreed with it: he concluded that award should be made to SFA. In his decision document, the SSA concluded that the cost savings associated with an award to Hubbell did not outweigh its moderate risk rating in the

management and experience area due to the potential risk involved with Hubbell “attaining ISO900/9001/9002 compliance prior to production of deliverables.” AR, Enclosure N, SSA Decision Document. The SSA expressed concern that Hubbell’s commitment to comply with ISO 9000 lacked “any actual assurance of attainment.” Moreover, the SSA was concerned that Hubbell’s response to the discussion item regarding its conformance to the ISO standard indicated that Hubbell did not understand what was required for it to become ISO compliant or the differences between Hubbell’s current quality system and the ISO standard. The SSA concluded that, since “the only non-price related discriminator, at the Area level, was the moderate risk rating given to Hubbell in the Area of Management and Experience,” it was his judgment that SFA, with its low risk rating under the management and experience area, offered the better overall value. Accordingly, award was made to SFA on September 18, 2001. After receiving a debriefing from the agency, Hubbell filed this protest with our Office.

Hubbell primarily challenges the SSA’s decision to reject the SSEB’s recommendation to award to Hubbell.³ Since the SSA agreed with the SSEB’s underlying evaluation, the protester maintains that it should have received the award based on its slightly stronger rating under the technical area and its lower price without any need for a tradeoff, and that the SSA, in his tradeoff decision, made the management and experience area equal to or more important than the technical area, which is inconsistent with the solicitation’s evaluation criteria.⁴ Hubbell contends that the SSA’s misplaced emphasis on compliance with the ISO standard effectively reversed the importance of the technical area and the management and experience area.

Where consistent with a solicitation’s terms, price/technical tradeoffs may be made, and the extent to which one may be sacrificed for the other is governed only by the tests of rationality and consistency with the established evaluation criteria. TRW, Inc., B-234558, June 21, 1989, 89-1 CPD ¶ 584 at 4. In deciding between competing proposals, the propriety of such a tradeoff turns not on the difference in technical scores or ratings per se, but on whether the selection official’s judgment concerning the significance of that difference was reasonable and adequately justified in light of

³ In its initial protest, Hubbell also objected to the cost evaluation. By letter dated November 16, 2001, the protester withdrew this protest basis.

⁴ The protester also maintains that the SSA’s tradeoff decision was a clear violation of the explicit parameters of permissible tradeoffs set forth in the agency’s acquisition plan. As far as alleged deviations from the agency’s acquisition plan are concerned, they do not themselves provide a basis for questioning the validity of the award selection. Acquisition plans are internal agency instructions and as such do not give outside parties any rights. See Motorola, Inc., B-247937.2, Sept. 9, 1992, 92-2 CPD ¶ 334 at 5.

the RFP evaluation scheme. DynCorp, B-245289, B-245289.2, Dec. 23, 1991, 91-2 CPD ¶ 575 at 6. Source selection officials in negotiated procurements have broad discretion in determining the manner and extent to which they will make use of the technical and price evaluation results, and the selection officials are not bound by the recommendation of lower-level evaluators.. See DynCorp, *supra*. Accordingly, in considering a protest of an award decision, we are reviewing the ultimate decision of the source selection authority. LTR Training Sys., Inc., B-274996, B-274996.2, Jan. 16, 1997, 97-1 CPD ¶ 71 at 4; Burnside-Ott Aviation Training Center, Inc.; Reflectone Training Sys., Inc., B-233113, B-233113.2, Feb. 15, 1989, 89-1 CPD ¶ 158.

As explained above, the SSA disagreed here with the SSEB's assessment of the importance of the ISO issue in choosing between two proposals with similar ratings and prices. The SSA concluded that the one-percent savings associated with award to Hubbell did not outweigh its moderate risk for management and experience, based on the potential risk involved with Hubbell transitioning to ISO 9000 quality standards prior to production of deliverables.⁵ The SSA determined that Hubbell's blanket promise to conform to ISO 9000 standards prior to production did not substitute for evidence that Hubbell "fully [understood] what is required for them to be ISO compliant." In our view, the SSA's decision that the ISO issue justified award to SFA in this very close competition was a reasonable exercise of his discretion, and was consistent with the evaluation criteria in the RFP.

In this connection, the record contains an agency quality assurance specialist's assessment of Hubbell's discussion response that was submitted to the SSEB chairman during the SSEB final evaluation process. (The SSA is the immediate supervisor of the quality assurance specialist.) The specialist points out, among other things, that the military specification identified by Hubbell in its proposal does not meet the intent of the ISO standards in a number of areas, such as management review, quality planning, contract review and preventive action. The specialist further notes that the military specification reflects an obsolete inspection system that is reactive, compared to the ISO standards, which call for a "proactive" management program. He also points out that the transition from the military specification to an ISO quality program would require a "major revision" to Hubbell's existing quality manual. AR, Tab M, E-Mail from Quality Assurance Specialist to SSEB Chair; Contracting Officer's Statement at 8-9. Based on this analysis, which is

⁵ Hubbell argues that in reaching his decision, the SSA failed to consider its excellent rating for its water heating system design under factor (b), and improperly made management and experience more important than technical in contradiction of the solicitation. We do not agree. The record shows that the SSA specifically recognized Hubbell's "excellent" rating for factor (b), but he also recognized that for the technical area overall, Hubbell, like SFA, was rated acceptable/low risk. AR, Enclosure D, SSA Decision Document at 1. (Hubbell does not challenge its overall technical rating of acceptable.)

not meaningfully rebutted by the protester, we think that Hubbell's response to the discussion item raised legitimate concerns about Hubbell's ability to timely transition to the ISO quality assurance standards, and that the SSA reasonably could consider these concerns in his selection decision.

In sum, based on our review of the record, we find the selection of SFA to be consistent with the stated evaluation criteria and reasonable.⁶

The protest is denied.

Anthony H. Gamboa
General Counsel

⁶ Throughout its comments to the agency report, the protester contends that the SSA was a member of the SSEB, which unanimously recommended award to Hubbell and that it was improper for him to later reject that recommendation. The protester reached this conclusion because the SSA signed the SSEB reports. The agency has provided an affidavit from the SSA, which states that, in accordance with agency policy, he (together with the contracting officer and legal advisor) signed the SSEB reports to indicate that the reports were prepared in accordance with the source selection plan and could be used by the SSA to assist in the final evaluation. The SSA states that he did not participate in the SSEB deliberations. Moreover, notwithstanding any alleged participation in the SSEB deliberations, the SSA provided a detailed explanation for not following the SSEB's recommendation.