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Decision

Matter of: Hospital Klean of Texas, Inc.

File: B-295836; B-295836.2

Date: April 18, 2005

Johnathan M. Bailey, Esq., and Theodore M. Bailey, Esq., Bailey & Bailey, for the protester.

Katherine S. Nucci, Esq., Thompson Coburn, for Integrity Management Services, Inc., the intervenor.

Lt. Col. Joseph C. Fetterman and Maj. Frank A. March, Department of the Army, for the agency.

Henry J. Gorczycki, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency properly considered late proposal revision because agency action was paramount cause of late delivery of the revision and acceptance would not compromise the integrity of the competitive process, where agency extended the closing date for receipt of proposals to Saturday (not a business day of agency) from Friday after issuing a material amendment on Thursday; a commercial carrier unsuccessfully attempted delivery of the proposal revision on Saturday, but the agency's doors were locked and the agency had not posted delivery instructions for that day to advise that agency personnel were on-site to accept deliveries; and the proposal revision was delivered to agency by commercial carrier on Monday, the next business day.

2. Agency's decision in a "best value" negotiated procurement selecting for award a higher-priced proposal that offered a superior quality control program was reasonable and consistent with the solicitation.

DECISION

Hospital Klean of Texas, Inc. protests the award of a contract to Integrity Management Services, Inc. under request for proposals (RFP) No. W81K04-04-R-0009, issued by the Department of the Army for hospital housekeeping services at Fort Polk, Louisiana. The RFP contemplated the award of an indefinite-delivery, indefinite-quantity, fixed unit-price contract for a base period with 4 option years.

We deny the protest.

The due date and time for submission of written proposals was originally stated to be May 14 at 1 p.m. The agency issued five amendments prior to the scheduled closing, none of which changed the closing time. Amendment No. 0005, issued on Thursday, May 13, included revisions in the quantity of work under several contract line items numbers. On Friday, May 14, following several requests from potential offerors, the agency extended the closing date to Saturday, May 15, at 1 p.m. Supplemental Agency Report, Tab 19, E-mail Message to Potential Offerors.

The agency's office was closed on May 15, although agency personnel were there to assist in completing a move within the building that had begun on May 13. The contracting officer states that although the agency's doors were locked on May 15, "someone was supposed to be listening for the expected FedEx deliveries, but never heard the knock"; one proposal was delivered on that date, however. Contracting Officer's Supplemental Statement at 2. The contracting officer states that when agency personnel exited the building on Saturday, a note was found stating that Federal Express had attempted delivery that morning.¹ Id.

On May 14, Integrity had submitted to Federal Express for delivery on Saturday, May 15, a proposal revision that acknowledged amendment No. 0005 and amended the terms of its proposal.² The agency received Integrity's proposal revision (and submissions from two other offerors) from Federal Express at 8:28 a.m. on Monday, May 17. The agency determined that, given the circumstances that occurred at the agency's office on May 15, all of the submissions received on May 17 would be considered as timely proposals or proposal revisions. Contracting Officer's Supplemental Statement at 2.

The RFP provided for award on a "best value" basis considering four technical factors and past performance and price. The technical factors--on-site work execution, quality control, business experience, and technical management transition--were of equal in importance to each other. The on-site work execution and quality control factors each contained three equally weighted subfactors. The technical factors, when combined, were slightly more important than past performance; the technical factors and past performance, when combined, were significantly more important than price. Written proposals were to include material related to the on-site work execution factor, past performance, and price. Oral

¹ The agency states that the note was not retained.

² Integrity initially submitted a proposal prior to receiving amendment No. 0005 (although it was received by the agency on May 14, after the amendment was issued).

presentations addressing the remaining technical factors were to be held following submission of written proposals.

The agency evaluated six proposals. The ratings for the proposals of Hospital Klean and Integrity were as follows:

Factor/Subfactor	Hospital Klean	Integrity
1. On-site Work Execution	Good	Satisfactory
a. Work Execution (management, staffing, task and frequency chart)	Good	Satisfactory
b. Supply Management (supply and equipment provisioning)	Good	Marginal
c. Procedures Manual	Good	Good
2. Quality Control	Satisfactory	Good
a. Inspection Techniques/Control Documents	Satisfactory	Good
b. Corrective Action Program	Satisfactory	Good
c. Safety, Security and Training Plan(s)	Satisfactory	Good
3. Business Experience	Satisfactory	Satisfactory
4. Technical and Management Transition	Satisfactory	Good
Overall Technical Rating	Good	Good
Past Performance	Low Risk	Low Risk
Price	\$3,923,943.83	\$4,010,557.24

Agency Report, Tab 11, Price Negotiation Memorandum, at 4.

Based on the foregoing evaluation, the source selection authority found:

After reviewing the technical factor ratings assigned to these two offerors it is determined that Integrity's technical proposal illustrated more detail and strengths than Hospital Klean's, especially on Factor 2 (Quality Control). Although Hospital Klean and Integrity both received an overall Good technical rating, the technical proposals were not determined to be equal. Under Subfactor 1B Integrity received a marginal rating due to it submitting a list of supplies where the quantities appeared to be short, and the equipment exceeded the requirement. However, the shortage in supplies and the excess equipment were determined not to be significant issues as this would be rectified once the offeror commenced performance. Hospital Klean provided a list of supplies and equipment, with no quantities. Being this offeror is the

incumbent, it was determined a complete list could have been provided. The rating of Good was a result of its good Contingency Plan.

Integrity presented a more comprehensive, innovative Quality Control program. This will benefit the government by implementing new innovative methods to provide better services with less performance issues and these benefits are worth the additional \$86,613.41. This trade off benefits the government as it results in better standard of services and less time spent on re-works. The proposal submitted by Integrity presents the best value in meeting the requirements, with an acceptable risk, at a realistic, fair and reasonable price based on adequate price competition, the [independent government estimate] and comparison of its pricing with the other offerors. It is clear that Integrity's proposal offers the best value to the government in terms of technical quality offered for the price.

Id. at 9.

On December 22, the agency awarded the contract to Integrity. Following a debriefing provided by the agency by letter of January 26, 2005, Hospital Klean filed this protest.

Hospital Klean first alleges that Integrity's offer should have been rejected as late because it failed to acknowledge amendment No. 0005 by May 15 as required by the solicitation.³ We disagree.

It is an offeror's responsibility to deliver its proposal to the proper place at the proper time, and late delivery generally requires rejection of the proposal. Federal Acquisition Regulation (FAR) § 15.208; O.S. Sys., Inc., B-292827, Nov. 17, 2003, 2003 CPD ¶ 211 at 3. However, a hand-carried proposal that arrives late may be considered if improper government action was the paramount cause for the late submission, and where consideration of the proposal would not compromise the

³ The protester also alleged that Integrity's offer was extended after it had expired and was thus not a valid offer on which to make an award, given that Hospital Klean's proposal had not expired. In response, the agency, citing relevant case law and regulations, demonstrated that the extension was neither prohibited nor prejudicial to Hospital Klean, since Integrity initially offered the minimum acceptance period required by the RFP. Rentfrow, Inc., B-243215, July 5, 1991, 91-2 CPD ¶ 25 at 4. In response, the protester conceded that Integrity's offer had not expired prior to award, and did not provide any argument showing that the agency's actions were improper. Protester's Supplemental Comments at 9-10.

integrity of the competitive procurement process; improper government action in this context is affirmative action that makes it impossible for the offeror to deliver the proposal on time. O.S. Sys., Inc., *supra*.

Integrity's proposal revision acknowledging amendment No. 0005 was received on May 17, and therefore was late. However, the note on the locked door left by Federal Express, which was noticed later that day by the agency, evidences that delivery of the revised proposal was attempted on May 15, but could not be achieved. Moreover, Integrity has submitted a letter from Federal Express stating that its courier attempted delivery to the agency "on May 15, 2004 at 8:47 a.m., but nobody was in to accept delivery." Integrity's Supplemental Submission (Mar. 31, 2005), encl., Letter from Federal Express. While, as noted by the protester, we have held that records of private commercial carriers cannot be the sole evidence that a submission was timely received by the proper contracting office prior to closing, Hausted, Inc., B-257087, July 28, 1994, 94-2 CPD ¶ 49 at 3; Stewart & Stevenson Servs., Inc., B-219618, Nov. 8, 1985, 85-2 CPD ¶ 531 at 4-5; Qualimetrics, Inc., B-213162, Mar. 20, 1984, 84-1 CPD ¶ 332 at 3-4, here the private commercial carrier records are not being offered to show when delivery was actually made.⁴

We find the agency's action was the paramount cause for the late delivery of the proposal revision on Monday, May 17. In this regard, the agency extended closing to Saturday, May 15, but failed to establish adequate procedures to ensure that reasonable attempts to deliver hand-carried proposals prior to closing would be received at the place designated for delivery. Specifically, Saturday was not a normal business day for the agency and the doors to the agency were locked. The agency did not post instructions outside the locked door stating that agency personnel would be present to receive deliveries, or how to contact them. Therefore, when a courier attempted to enter the locked doors and received no response from within, it was reasonable for the courier to assume that delivery at that address on Saturday was not possible. While the record shows that Saturday delivery was possible at other times on that day (as evidenced by the single proposal that the agency did receive on that day), delivery was impossible at the time Federal Express attempted to deliver Integrity's proposal revision (as evidenced by the note left on the locked door by Federal Express), and the circumstances of the locked door and lack of posted instructions regarding delivery of proposals did not create a reasonable basis upon which the courier should have concluded that delivery would be possible later that day. But for the agency's action here, Integrity's hand-carried proposal revision would have been delivered prior to the required closing date, and we therefore conclude that the agency's action was the paramount cause of the late delivery. See Palomar Grading & Paving, Inc., B-274885, Jan. 10, 1997, 97-1 CPD ¶ 16

⁴ The cited cases involve situations where the commercial carrier evidence was offered to show that the government timely received a bid or offer, whereas in this case timely delivery was clearly not accomplished.

at 3-4 (agency's incorrect delivery instructions was the reason for a failed timely hand-carried delivery of bid and the paramount cause of late delivery); Richards Painting Co., B-232678, Jan. 25, 1989, 89-1 CPD ¶ 76 at 2-4 (agency failure to staff room designated for receipt of bids up to the exact time specified for bid opening was the paramount cause of late delivery); Sun Int'l, B-208146, Jan. 24, 1983, 83-1 CPD ¶ 78 at 2-4 (agency failure to apply reasonable procedure for accepting delivery of bids on weekends was the paramount cause of late bid delivery); cf. Bergen Expo Sys., Inc.; Techniarts Eng'g, B-236970, B-236970.2, Dec. 11, 1989, 89-2 CPD ¶ 540 at 2-3 (where courier failed to wait a reasonable time for agency personnel to respond to security guard's call and courier did not attempt re-delivery later that same business day, agency's action--restricting access and delay in responding to call--was not the paramount cause of late delivery).

We also find that consideration of the late proposal revision did not compromise the integrity of the competitive procurement process. The proposals were not publicly opened and Integrity's proposal remained in the possession of Federal Express during the time between the attempted delivery on Saturday and the actual delivery by that carrier the following Monday; therefore, there is no evidence that Integrity had an opportunity to alter its submission after closing. See Palomar Grading & Paving, Inc., *supra*, at 4; Sun Int'l, *supra*, at 4.

The protester also alleges that the agency's evaluation of proposals and best-value tradeoff decision supporting the award selection were unreasonable. In reviewing protests challenging an agency's evaluation, we will not substitute our judgment for that of the agency regarding the merits of proposals; we will review the evaluation only to determine whether it was reasonable and consistent with the stated evaluation criteria, and with applicable procurement laws and regulations. A protester's disagreement with the agency does not render the evaluation unreasonable. Mechanical Equip. Co., Inc. et al., B-292789.2 *et al.*, Dec. 15, 2003, 2004 CPD ¶ 192 at 5.

Here, the source selection decision examined the bases for the ratings for both Integrity's and Hospital Klean's proposals under each factor and subfactor before determining that Integrity's proposal, particularly the benefit attributed to its more comprehensive and innovative quality control program, offered greater value to the government that was worth the small price premium. Agency Report, Tab 11, Price Negotiation Memorandum, at 5-9. While the protester complains that the agency never quantified the value of the evaluated superiority of Integrity's quality control program and that the agency could not show that any added value would result in savings sufficient to offset the protester's lower price, there is no requirement that the agency's selection decision quantify the best-value tradeoff. See FAR § 15.308; TeKONTROL, Inc., B-290270, June 10, 2002, 2002 CPD ¶ 97 at 14. Indeed, the judgments made in tradeoff decision are by their nature subjective; the agency tradeoff determination need only be reasonable and bear a rational relationship to the stated evaluation criteria, as the source selection decision did here. See ACS

State Healthcare, LLC et al., B-292981 et al., Jan. 9, 2004, 2004 CPD ¶ 57 at 44;
Preferred Sys. Solutions, Inc., B-292322 et al., Aug. 25, 2003, 2003 CPD ¶ 166 at 11.

Hospital Klean also alleges that the agency's evaluated superiority of Integrity's quality control program was not reasonable because, although Integrity proposed [DELETED] and Hospital Klean did not, the agency did not identify any benefits that the government would receive as a result of this difference. This is not correct. The source selection decision stated that the benefit of [DELETED] was that the contractor could more easily track trends and resolve potential hazards. Agency Report, Tab 11, Price Negotiation Memorandum, at 7. Moreover, the benefit of [DELETED] was not the only benefit identified under the quality control factor. For example, Integrity proposed [DELETED] reports and tracking of deficiencies, which the agency determined ensured identification and correction of deficient work and avoidance of re-work, and the agency identified [DELETED] that employees had to accomplish in training before Integrity would permit them to begin work under the contract. *Id.* While Hospital Klean contends that Integrity did not address some details in its quality control program, we find, based on our review, that the agency reasonably determined Integrity's quality control plan was superior to Hospital Klean's.

The protester also argues that the evaluation of the supply management (supply and equipment provisioning) subfactor of the on-site work execution factor was unreasonable and not properly considered in the award selection. The proposal preparation instructions for this subfactor stated that written proposals were to describe the supplies and materials to be acquired and used under the contract. The description did "not need to be all exhaustive," but it was to be in "sufficient detail to demonstrate a firm understanding of the types and quantities of supplies and materials required." RFP at 58. As observed by the agency, Integrity's technical proposal identified types and quantities of supplies and equipment, and Hospital Klean's technical proposal only identified types of supplies and equipment, but did not identify quantities. Integrity's Proposal, vol. V, at 42; Hospital Klean's Proposal, vol. V, Subfactor 1B, at 7, 24. The technical evaluators determined that Integrity's description understated supplies and overstated equipment, resulting in a "marginal" rating for the subfactor; however, the overall evaluation concluded that this would not create either a degradation of service or disruption of schedule, and that Integrity's proposal demonstrated an acceptable understanding of the requirements applicable to the on-site work execution factor. Agency Report, Tab 9, Evaluation Worksheets for Integrity's Proposal, at 2-4, 6, 13, 21. Although Hospital Klean's technical proposal did not identify any quantities, the technical evaluation did not identify this as a consideration in Hospital Klean's rating,⁵ but rather gave Hospital

⁵ Only one evaluator noted this omission in Hospital Klean's technical proposal and initially assigned a "marginal" rating. Following consensus review with the other evaluators, this evaluator increased his rating to good. Agency Report, Tab 9,

(continued...)

Klean a “good” rating based on its contingency plan. Agency Report, Tab 9, Evaluation Worksheets for Hospital Klean’s Proposal, at 2-3, 5, 13, 21. The source selection decision identified this aspect of both proposals and essentially determined that this was not a significant issue for either offeror. Agency Report, Tab 11, Price Negotiation Memorandum, at 9.

The protester alleges that it was unreasonable to make award to Integrity at a higher price when Integrity had a marginal rating under this subfactor and Hospital Klean did not. We find the agency could reasonably determine that this issue was not a discriminator between the proposals because it was an issue that did not affect either offeror’s commitment to provide whatever supplies and equipment would ultimately be required to perform the contract and Integrity’s proposal otherwise provided detailed information sufficient to show the evaluators that it understood the requirements. Moreover, while Integrity’s proposal was downgraded under this subfactor because the agency was concerned about the quantities proposed, the agency could not evaluate the realism of Hospital Klean’s unstated quantities.

The protester also alleges that the selection of Integrity’s proposal at a higher price is unreasonable because Integrity proposed a lower level of service than Hospital Klean. This, too, is incorrect. Integrity did propose fewer personnel than Hospital Klean, which the technical evaluators duly noted. Agency Report, Tab 9, Evaluation Worksheets for Integrity’s Proposal, at 5, 12. However, Integrity actually proposed more labor hours than Hospital Klean. Compare Integrity’s Written Proposal, vol. V, at 7, with Hospital Klean’s Proposal, vol. V, Subfactor 1A, at 10. Thus, the protester’s contention that Integrity proposed less work at a higher price is not supported by the record.

In sum, the agency’s source selection decision showed that the agency reasonably considered all significant aspects of the protester’s and the awardee’s proposals, and made award at a slightly higher price for a superior quality control plan, which was consistent with the stated evaluation plan. The protester’s allegations do not rise above mere disagreement with the agency’s judgment.

The protest is denied.

Anthony H. Gamboa
General Counsel

(...continued)

Evaluation Worksheets for Hospital Klean’s Proposal, at 13. The other evaluators did not identify the omission, nor did the overall evaluation. Id. at 2, 5, 21.