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Comptroller General
of the United States

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Decision

Matter of: Eastco Building Services, Inc.

File: B-283972.2

Date: February 10, 2000

Steven Brown for the protester.

Edward K. Wilson for Wilson 5 Service Company, Inc., an intervenor.

Scarlett D. Grose, Esq., General Services Administration, for the agency.

Sylvia Schatz, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Allegation that evaluation of protester's proposal under past performance factor was improper is without merit where agency conducted past performance evaluation in accordance with solicitation evaluation scheme and, contrary to protester's allegation, there is no evidence of involvement in the evaluation or award decision by agency employee protester believes is biased against it.

2. Where contemporaneous source selection documentation does not reference tradeoff between awardee's technically superior proposal and protester's lower-priced proposal, but debriefing letter from agency to protester shows agency selected awardee's proposal as the best value based on its technical superiority, despite its higher price, record supports conclusion that agency conducted tradeoff.

DECISION

Eastco Building Services, Inc. protests the award of a contract to Wilson 5 Service Company, Inc. under request for proposals (RFP) No. GS-04P-99-LCC-0030, issued by the General Services Administration (GSA) for janitorial services in four government buildings in Tampa, Florida. The protester primarily argues that GSA improperly evaluated its proposal due to bias, and that the price/technical tradeoff was improper.

We deny the protest.

The RFP contemplated the award of a fixed-price contract for custodial and related services for a 1-year base period, with four 1-year options. RFP at 6, amend. 1 at 1, amend. 4 at 7-9. Award was to be made to the responsible offeror whose offer conforms to the solicitation and is most advantageous to the government, based on three factors: (1) price, (2) past performance, and (3) management plan and approach; the technical factors, which were of equal importance, were significantly more important than price. RFP at 114. Price was to be evaluated based on the offeror's base and option year prices for all four buildings. Id.

Twenty proposals were received. Eastco's proposal, priced at \$2,637,100, received ratings of 2 (above standard/very good) under all three factors, and was the seventh-highest rated proposal; Wilson 5's proposal, priced at \$2,834,400, received ratings of 1 (exceptional/very good) under all factors, and was the highest-rated proposal.¹ Agency Report (AR), Tab 9, Consensus Ratings, at 1. Based on the results of the evaluation, the contracting officer determined that Wilson 5's proposal was most advantageous to the government and made award to the firm. AR, Tab 10, Summary of Evaluation, at 16. This protest followed.

PAST PERFORMANCE

Eastco challenges the evaluation of its proposal under the past performance factor on the basis that its rating was unduly influenced by a GSA employee. While the alleged facts are not entirely clear from its submissions, Eastco seems to assert that a GSA contracting officer's representative (COR) involved in administering Eastco's incumbent contract is biased against Eastco, as evidenced by his derogatory comments about Eastco in connection with a prior solicitation. Eastco maintains that the COR had an undue influence on its past performance rating here because, in contacting Eastco's references, the agency contacted only GSA employees who, Eastco apparently believes, would more likely be influenced by the COR's biased views than non-GSA employees. Eastco believes that, had non-GSA references been contacted, they would have provided more favorable responses and its proposal would have received a past performance rating of exceptional/very good, rather than above standard/very good. Protest at 4; Comments at 1, 2, 4-6.

In reviewing an agency's evaluation of proposals and source selection decision, our review is confined to a determination of whether the agency acted reasonably and in a way consistent with the stated evaluation factors. NAHB Research Center, Inc., B-278876.2, May 4, 1998, 98-1 CPD ¶ 150 at 3.

¹The proposals were assigned ratings under each of the three factors as follows: 1 (exceptional/very good), 2 (above standard/very good), 3 (standard/fair), 4 (below standard/poor), and 5 (extremely poor). AR, Tab 10, Summary of Evaluation, at 9.

On its face, the evaluation of Eastco's proposal under the past performance factor was reasonable and consistent with the RFP. The RFP stated that the "government will check at least three references" and can consider "sources of information other than those listed." RFP § B, at 111. Since the RFP provided neither that GSA would contact certain references, nor that it would not contact others, GSA was free to contact its own personnel. The record shows that GSA contacted three GSA employees regarding Eastco's performance on prior janitorial contracts. These individuals provided both favorable and unfavorable responses--one concluded that she would recommend Eastco to the government, one cited supervision and staffing problems in stating that he would not recommend Eastco, and the third, citing the issuance of a cure notice, stated that "yes & no. I need more of a track record to decide." AR, Tab 4, Eastco's Reference Checks, at 1-9. These references resulted in Eastco's consensus rating of standard/very good. AR, Tab 9, Consensus Ratings, at 1. (In contrast, Wilson 5's references--two GSA references, one non-GSA--all unqualifiedly indicated that they would recommend the firm. AR, Tab 5, Wilson 5's Reference Checks, at 1-9.) Since it is undisputed that these references were directly involved in the administration of Eastco's prior janitorial contracts--one of which was for services at a building covered by the current RFP--the agency reasonably determined that they were in a position to provide meaningful information regarding Eastco's performance, and reasonably relied on their input in rating Eastco's past performance.

In order to show bias, the record must clearly establish that agency personnel intended to injure the protester. Miller Bldg. Corp., B-245488, Jan. 3, 1992, 92-1 CPD ¶ 21 at 5. We will not attribute unfair or prejudicial motives to procurement officials on the basis of inference or supposition. ASI Personnel Serv., Inc., B-258537.7, June 14, 1995, 95-2 CPD ¶ 44 at 7.

There is no showing of bias here. The COR not only was not involved in the evaluation or award decision, but the record contains no evidence (aside from the protester's general assertions) that the COR ever made untrue negative statements regarding Eastco, or that he had any influence--negative or otherwise--on the evaluation of Eastco's proposal. Eastco asserts that "since the filing of the Protest, the GSA/COR has unleashed a barrage of unwarranted and unfounded harassments and allegations, to disrupt, and create havoc with the operation," and "is on a personal vendetta campaign" to undermine Eastco's performance of its current contract with the agency. Comments at 5. Again, however, Eastco has provided no specifics or supporting evidence regarding the COR's alleged behavior. There thus is no basis on this record for finding that the COR is biased against Eastco, or that bias played any part in the evaluation or award decision.

PRICE/TECHNICAL TRADEOFF

Eastco does not challenge the evaluation of Wilson 5's proposal as technically superior, but claims that the agency improperly failed to weigh Wilson 5's technical

advantages against Eastco's lower price and the fact that Eastco's proposal did not contain any deficiencies. Protest at 3; Comments at 4-5.

In a best value procurement such as the one here, a procuring agency has the discretion to select a higher-rated, higher-priced technical proposal if doing so is reasonable and consistent with the evaluation scheme set forth in the RFP. Israel Aircraft Indus., Ltd., MATA Helicopters Div., B-274389 et al., Dec 6, 1996, 97-1 CPD ¶ 41 at 10. Although Federal Acquisition Regulation 15-308 requires that the source selection decision include the rationale for any business judgments and tradeoffs made or relied on by the source selection authority, including benefits associated with additional costs, the decision here documents only a comparison between Wilson 5's proposal and the next-highest-rated proposal. AR, Tab 10, Summary of Evaluations, at 1-6, 9, 16.

The source selection decision does not compare Wilson 5's proposal and Eastco's lowest price proposal, since Eastco's proposal was rated only seventh in line for award. However, the record as a whole shows that the agency did compare Wilson 5's technical advantages to Eastco's lower price. Specifically, in a November 3, 1999 letter to Eastco setting forth debriefing information, GSA advised Eastco, in part, that

Page 114 of the solicitation states: Management Plan and Approach and past performance, when combined, are significantly more important than price. Wilson 5 easily had the most highly rated technical proposal and was a close second to [Eastco's] lowest price offer. Therefore, Wilson 5's offer was accepted as the best value to the government.

Protest, Encl. 1, Letter from GSA to Eastco 3 (Nov. 3, 1999). The conclusions stated in this letter are repeated in the agency's report, in which the contracting officer states that

In the cost technical tradeoff, Wilson 5's offer prevailed because technical considerations were significantly more important than price and because the extra technical benefits of Wilson 5's offer were worth the extra price. Wilson 5's management plan and approach demonstrated clearly that Wilson 5 understood the contract work and would thus perform the contract work at a very high level without problems.

Contracting Officer's Statement of Position at 3. While neither of these documents sets forth a detailed analysis of the relative merits of the proposals, both clearly show that competing technical and price advantages were considered, as was the fact that the technical factors were significantly more important than price under the evaluation scheme, and that the agency considered Wilson 5's technical advantages

more important than the potential cost savings. This constitutes an adequate tradeoff and, since the agency's conclusion was consistent with the importance assigned the technical factors in the RFP, we find that it was reasonable.

The protest is denied.

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