

TITLE: Butt Construction Company, Inc., B-284270, March 20, 2000

BNUMBER: B-284270

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Decision

Matter of: Butt Construction Company, Inc.

File: B-284270

Date: March 20, 2000

Robert Martin, Esq., Simon, Turnbull & Martin, for the protester.

Thomas P. Butler, for Monarch Construction Company, an intervenor.

Carl Platt, Esq., Army Corps of Engineers, for the agency.

Jennifer D. Westfall-McGrail, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Under solicitation providing for **selection** of proposal offering the best value to the government, with price and technical factors being equal in weight, agency reasonably selected higher-rated, higher-priced proposal for award where it determined that strength of offeror's experience was significant enough to offset difference in price.
2. Agency's scoring of protester's proposal under similar projects subfactor in solicitation for design and construction work was reasonable where protester did not demonstrate experience with projects with comparable security requirements.

DECISION

The Butt Construction Company, Inc. protests the award of a contract to Monarch Construction Company under request for proposals (RFP) No. DACA27-99-R-0037, issued by the Army Corps of Engineers for design and construction of an addition to, and renovation of, the Avionics Research Laboratory at Wright-Patterson Air Force Base in Ohio. Butt argues that its proposal should have been selected because it represents the best value to the government.

We deny the protest.

The RFP, which was issued on September 9, 1999, contemplated the award of a fixed-price contract to the offeror whose proposal represented the best value to the government. RFP sect. 00110, at 4. Proposals were to be evaluated on the basis of price and the following factors, listed in order of importance: qualifications and experience, design and engineering, and project management. RFP sect. 00130, at 2-3. Price was equal in weight to the other evaluation factors combined. RFP sect. 00130,

at 1. The RFP provided for consideration of the following subfactors under the qualifications and experience factor: prime contractor experience, design firm experience, individual personnel experience, and mechanical and electrical subcontractor experience. [1] In addition, the RFP provided for consideration of the following elements under the prime contractor experience subfactor: similar projects, previous experience with mechanical and electrical subcontractors, original/final dates and costs, and points of contact (references). RFP sect. 00130, at 2.

Five offerors submitted proposals prior to the October 20 closing date. All five were included in the competitive range, and the agency conducted discussions with and requested revised proposals from all. Final technical scores and prices were as follows:

Offeror Technical Score Total Price

Quals./Exp. Des./Eng. Proj. Man. Overall

Total points 8000 3600 2000 13600

Butt 4500 2405 1100 8005 \$11,073,000

Monarch 5380 2120 1295 8795 \$11,312,000

Offeror A 5090 2060 1125 8275 \$11,496,857

Offeror B 4090 1825 1025 6940 \$12,115,000

Offeror C 5380 2475 1235 9090 \$12,768,889

Evaluation Scoring Sheets, Revised Oct. 22, 1999; Agency Report at 12. [2]

The technical evaluation panel determined that Monarch's combination of technical merit and price represented the best value to the government. In this regard, the evaluators concluded that Offeror C's top-rated technical

proposal "did not offer enough advantages" over Monarch's second-ranked one to justify paying a price premium of approximately \$1.5 million, but that the strengths of Monarch's proposal were "significant enough to offset the difference of \$239,000.00 in price" over Butt's lowest-priced one. Memorandum from the Evaluation Board to the Contracting Officer, Evaluation Results, at 15 (Nov. 29, 1999). In comparing Monarch's proposal with Butt's, the evaluators noted that Monarch had received a far better score than Butt under the most important evaluation criterion (qualifications and experience) because of recent projects of similar scope, size and complexity; they also noted that Monarch had demonstrated a significant amount of prior work experience with its proposed design team and subcontractors. *Id.* The evaluation panel concluded that "[b]ased on the strength of their experience, the Design Team experience and experience in working with the Mechanical and Electrical Subcontractor, Monarch represented the best value to the Government when compared to Butt Construction Company." *Id.* Accordingly, the evaluation panel recommended Monarch for award. The source **selection** authority concurred, and on December 2, the Corps awarded a contract to Monarch.

Butt challenges the agency's price/technical tradeoff, arguing that the Corps has not adequately justified its **selection** of a higher-priced offeror. The protester maintains that despite their references to Monarch's higher point scores, the evaluators (and concurring source **selection** authority) did not find that these scores were indicative of technical superiority; thus, the protester asserts, the agency **officials** had no basis upon which to conclude that the proposal was worth a price premium.

Source **selection officials** have **broad discretion** to determine the manner and extent to which they will make use of the technical and price evaluation results in negotiated procurements. *Stewart Title of Orange County, Inc.*, B-261164, Aug. 21, 1995, 95-2 CPD para. 75 at 7. In deciding between competing proposals, price/technical tradeoffs may be made; the propriety of such tradeoffs turns not on the difference in technical scores or ratings per se, but on whether the source **selection** official's judgment concerning the significance of that difference was reasonable and adequately justified in light of the RFP evaluation scheme. *DynCorp*, B-245289.3, July 30, 1992, 93-1 CPD para. 69 at 8. The **discretion** to determine whether the technical advantages associated with a higher-priced proposal are worth the price premium exists notwithstanding the fact that price is equal to or more important than other factors in the evaluation scheme. *Federal Bureau of Investigation; Mid-Atlantic Indus., Inc.--Recon.*, B-245551.2, B-245551.3, June 11, 1992, 92-1 CPD para. 507 at 9; *Shirley Constr. Corp.*, B-240357, Nov. 8, 1990, 90-2 CPD para. 380 at 6. In a best value procurement, an agency's **selection** of a higher-priced, higher-rated offer should be supported by a determination that the technical superiority of the higher-priced offer warrants the additional cost involved. *Miltope Corp.; Aydin Corp.*, B-258554.4 et al.,

June 6, 1995, 95-1 CPD para. 285 at 14.

Here, despite the fact that the evaluators did not specifically refer to Monarch's proposal as "technically superior" to Butt's, it is clear from the record that they regarded it as such. As explained above, the evaluators cited Monarch's higher score under the qualifications and experience factor and determined that the strength of Monarch's experience (as reflected in that score) was significant enough to offset its higher price. In our view, this was a determination that the technical superiority of Monarch's proposal was worth its higher price.

To the extent that the protester is arguing that to justify its **selection** of a higher-priced proposal, the agency was required to find not simply that the proposal was technically superior, but also that this superiority would translate into better performance, we disagree. We think that it is inherent in the agency decision to evaluate on the basis of specified criteria that an offeror whose proposal is determined to be technically superior on the basis of those criteria can be expected to render superior performance.

Butt also argues that the evaluators did not give its proposal proper credit for several previously performed construction projects (i.e., the Fuels and Lubricants Laboratory, the Materials Laboratory (Metals and Ceramics) and the Hydrazine Servicing and Storage Facility) because the evaluators considered these projects to be dissimilar in scope to the project here. The protester bases this allegation on the statement in the evaluation report that "[t]he majority of projects cited [by Butt] of similar dollar value were older than 5 years, had key personnel work on them, but were not similar in scope." [3] Memorandum from the Evaluation Board to the Contracting Officer, Evaluation Results, at 7 (Nov. 29, 1999). Butt contends that the projects in question were similar in scope to the project here because they were for comparable dollar amounts and required similar construction services. [4]

The agency responds that it did give the protester some credit for the aforementioned projects because they had some significant similarities to the project here, to wit, they used precast, steel frame construction and were for large dollar amounts. Agency Comments, Feb. 8, 2000, at 4. The agency advises that the projects were not considered similar in scope to the instant project, however, because they did not have comparable security requirements. Agency Response to GAO Questions, Feb. 23, 2000, at 2. The agency explains that the evaluators considered experience with projects with comparable security requirements important because the contractor here will be required to design some of the building's security features and develop installation procedures. Id. at 3; Statement of Contract Specialist, Feb. 23, 2000, at 2.

Although the record does not indicate how much credit Butt received for each of the particular projects in question, the protester's overall score under the similar projects subfactor (900 of a maximum possible of 1500) appears reasonable given the level of similarity of its projects. In this regard, Butt does not dispute that the projects cited in its proposal did not have the same security requirements as the project here or that these security requirements are a critical component of the work to be performed. To the extent that the protester now offers evidence that it has experience with projects requiring the same security features as required here, Protester's Comments, Feb. 15, 2000, at 6-7, Butt did not identify these projects in the section of its proposal addressing prime contractor experience, and thus could not reasonably have expected the agency to consider them in evaluating the proposal under the Prime Contractor Experience criterion. Further, to the extent that the protester argues that it was not clear from the solicitation that the agency would be focusing on security requirements in determining whether previous projects were similar in scope, the RFP stated, under the heading "General Scope of Work," that the contractor is to "provide a properly configured, equipped and sized facility to house the secure computer labs, secure work areas, loading dock, van storage, and command center." RFP sect. 01000, at 1. We think that this definition made clear that one of the major components of the work here would be addressing security requirements.

The protest is denied.

Comptroller General
of the United States

Notes

1. The RFP also set forth subfactors to be considered under the other evaluation factors; because they are not relevant to our discussion in this decision, we have not enumerated them here.
2. The evaluators were instructed to assign half the maximum number of points to proposal items meeting the minimum requirements of the RFP; additional points (up to the maximum) were to be given where proposal items exceeded the minimum requirements. Evaluation Manual, Revised Oct. 22, 1999, at 2.
3. For three of the four subfactors under the qualifications and experience factor (prime contractor experience; design firm experience; mechanical and electrical subcontractor experience), the RFP provided that "[experience prior to 5 years will not be given consideration unless key personnel proposed for this project played a significant role AND the project can be shown to be similar to this project considering changes in technology,

materials, equipment, codes, etc." RFP sect. 00130, at 3-4.

4. Butt also argues that the evaluators downgraded its score for its work on the Child Development Center at Wright-Patterson because the project was not complete. The protester bases this allegation on the statement in the evaluation report that "[o]f the 11 projects demonstrated [by Butt], 4 were within the last 5 years, and only 2 of these projects were similar in cost . . . with one of these still being under construction [i.e., the Child Development Center]" *Id.* The agency responds that the evaluators did in fact view the Child Development Center project favorably due to its similarity to the instant project in dollar amount and scope, but notes that the projects differed with regard to the level of security features required. Agency Comments, Feb. 8, 2000, at 4.