



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Pro Construction, Inc.

File: B-272458

Date: October 10, 1996

Joel S. Rubinstein, Esq., and Andrew N. Cook, Esq., Bell, Boyd & Lloyd, for the protester.

Scott R. Schoenfeld, Esq., Leonard, Hurt & Parvin, for Texas-Capital Contractors, Inc., an intervenor.

George Brezna, Esq., Diane D. Hayden, Esq., and Billie Spencer, Esq., Department of the Navy, for the agency.

Jacqueline Maeder, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Solicitation evaluation scheme which states that technical merit is to be evaluated on the basis of four factors, three of equal importance and one of lesser importance, that technical merit and cost are to be weighed equally, and that award will not necessarily be made to low-priced offeror cannot plausibly be construed to require that award be made to the low-priced, technically acceptable offeror.

DECISION

Pro Construction, Inc. protests the award of a contract to Texas-Capital Contractors, Inc. under request for proposals (RFP) No. N62470-94-R-4701, issued by the Department of the Navy, Naval Facilities Engineering Command for house repairs and improvements to Capehart Housing at the Marine Corps Air Station Cherry Point, North Carolina. Pro Construction argues that the award determination was inconsistent with the RFP evaluation criteria.

We deny the protest.

The solicitation, issued March 6, 1996, contemplated the award of a firm, fixed-price/indefinite quantity contract for housing repairs and improvements. The solicitation stated that award would be made to the responsible offeror whose offer, conforming to the solicitation, would be the most advantageous to the government, price and other factors specified in the solicitation considered, and that the government may accept other than the lowest offer. Section 00160 of the RFP set forth the evaluation scheme, specifying that price and technical factors would be weighted equally, and that among the listed technical factors, corporate experience,

timely completion and management team would be of equal importance, while a fourth factor would be of less importance. Finally, the same section of the RFP provided that:

"PROPOSAL EVALUATION CRITERIA: The required proposal submittals shall address all requirements of the RFP. Each proposal will be reviewed and evaluated on its own merits by qualified personnel to ensure its acceptability. The evaluation will be based strictly on the content of the proposal and any subsequent communications, if necessary, to clarify the proposals. The proposals shall be determined acceptable or not acceptable by the [c]ontracting [o]fficer based upon evaluation of the proposals."

Six proposals were received by the April 6 closing date, including those of Pro Construction and Texas-Capital. The technical evaluation board reviewed the initial proposals using the following adjectival rating scheme: (1) superior; (2) acceptable; (3) unacceptable but susceptible to correction; and (4) unacceptable. After discussions and the eventual submission of best and final offers (BAFO), Pro Construction's BAFO received an overall "acceptable" rating and Texas-Capital's BAFO received a "superior" rating. The evaluation board determined that the proposal offered by Texas-Capital was a better value for the government and worth the approximately \$272,000 additional cost based on Texas-Capital's excellent and extensive corporate experience and its early completion schedule. Award was made to Texas-Capital on June 25 and this protest followed.

Pro Construction contends that the RFP evaluation scheme requires that the award be made to the low-priced technically acceptable offeror. Pro Construction relies on the above-quoted sentence that the proposals shall be determined acceptable or not acceptable by the contracting officer. The protester argues that this sentence requires a "go/no go" technical evaluation, and that the agency improperly evaluated the proposals on the basis of relative technical merit under the four criteria listed above, instead of simply determining whether the proposal was "acceptable" or "unacceptable".¹

¹In its initial protest submission, Pro Construction posited without any reasoning that its proposal was technically equal or superior to Texas-Capital's proposal. The agency provided explanation and support for its relative technical assessment in its report. Since the protester did not address the issue in its comments, if we assume for the sake of argument that the issue was actually raised initially, we consider it abandoned. GS Edwards, B-255202, Jan. 31, 1994, 94-1 CPD ¶ 54.

Evaluation and award in negotiated procurements are required to be made in accordance with the terms of the RFP. Industrial Data Link Corp., B-248477.2, Sept. 14, 1992, 92-2 CPD ¶ 176. Where a dispute exists as to the meaning of solicitation language, we will resolve the matter by reading the solicitation as a whole and in a manner that gives effect to all provisions of the solicitation. See Lithos Restoration, Ltd., 71 Comp. Gen. 367 (1992), 92-1 CPD ¶ 379. To be reasonable, an interpretation must be consistent with the solicitation when read as a whole and in a reasonable manner. Id. Applying this standard here, we conclude that the evaluation conducted by the Navy--which involved a relative scoring of the evaluation factors set forth in the solicitation and the weighing of price and technical scores--is consistent with the only reasonable reading of the RFP evaluation scheme.

Notwithstanding the sentence relied on by the protester, which merely calls for the contracting officer to ascertain the technical acceptability of the proposals, by listing the evaluation factors, assigning weights to the evaluation factors and providing that cost and technical factors were of equal importance, the RFP evaluation scheme clearly and explicitly provided for a comparative technical evaluation balanced against price to determine the most advantageous proposal. See State Technical Institute at Memphis, B-250195.2; B-250195.3, Jan. 15, 1993, 93-1 CPD ¶ 47; Lithos Restoration, Ltd., supra. Further, contrary to Pro Construction's assertion that price must be the determinative award consideration, the RFP specifically stated that award would not be made on the basis of lowest price. Accordingly, offerors reasonably should have expected their technical proposals to be evaluated and ranked to reflect relative technical superiority, and for award selection to be based on an appropriate tradeoff between technical and price considerations.

The protest is denied.

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