

BEFORE THE
MARYLAND STATE BOARD OF CONTRACT APPEALS

Appeal of
BEILERS CROP SERVICE

Under Department of Agriculture
Contract No. CSP-016-82

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Docket No. MSBCA 1066

September 16, 1982

Competitive Negotiation — The procurement officer's exercise of discretion in evaluating the relative desirability and adequacy of proposals will not be disturbed unless unreasonable, arbitrary, or a violation of law or regulations.

Competitive Negotiation — In evaluating price proposals, the procurement officer was required to consider all pricing factors set forth in the request for proposals. The offeror who submitted the lowest evaluated price was entitled to receive a proportionally higher price rating than his competitors.

Competitive Negotiation — Award of a contract is to be made, under competitive negotiation procedures, to the responsible offeror whose proposal offers the greatest advantage to the State, considering price and the other evaluation criteria set forth in the request for proposals.

APPEARANCE FOR APPELLANT:

John P. Stoltzfus
Massey, Maryland

APPEARANCE FOR RESPONDENT:

Craig A. Nielsen
Assistant Attorney General
Annapolis, Maryland

OPINION BY MR. KETCHEN

This appeal has been taken from a final decision issued by a Maryland Department of Agriculture (DA) procurement officer denying Appellant's protest concerning the evaluation of proposals under a negotiated procurement for aerial spraying for mosquito control and the award of a contract to Appellant's competitor. Appellant asserts that it was entitled to the contract award since its proposal was the most advantageous to the State.

Findings of Fact

1. On December 14, 1981 the DA Purchasing Bureau issued Request for Proposal (RFP) No. CSP-016-82 for the aerial spraying of insecticide to control mosquito adults and larvae. (Section II., Specifications, para. A).
2. The RFP contemplated that a requirements type contract would be

awarded. It further estimated that 40,000 acres would require spraying for adult mosquitoes (adulticiding) and 60,000 acres would require spraying for mosquito larvae (larviciding). The spraying area was indicated to be statewide but principally was to involve Dorchester, Somerset, Wicomico, and Worcester counties. Anticipated spraying was to occur from approximately April 1, 1982 through October 15, 1982. (Section II, Specifications, para. E., Locations and Scope of Work).

3. Section I, para. P of the RFP provided the following evaluation criteria for final ranking and selection of proposals:

Price -	1st	50,000 acres	25%
	2nd	50,000 acres	25%
	3rd	over 100,000 acres	10%
Work experience of a similar nature and scope			20%
Conditions and capability			10%
Business references			10%

A category was provided for spraying over 100,000 acres since DA did not know the exact amount of acreage required to be sprayed during the contract term.

4. Section I., Para. G., and Section II, para. C. of the RFP required that offerors submit pricing information on a per acre basis for a twin engine plane and a per hour basis for a single engine plane. Aircraft equipment descriptions for the two types of planes were mandated in order to assist the procurement officer in determining the ability of each offeror to perform.

5. K & K Aircraft, Inc. and Appellant submitted the following price proposals on a per acre basis for the twin engine plane:

	<u>K & K Aircraft</u>	<u>Appellant</u>
Larviciding 1-50,000 Acres	\$.75	\$.59
Larviciding 50,000-100,000 Acres	\$.35	\$.54
Larviciding Over 100,000 Acres	\$.20	\$.49
Adulticiding 1,-50,000 Acres	\$.75	\$.55
Adulticiding 50,000-100,000 Acres	\$.35	\$.50
Adulticiding Under 100,000 Acres	\$.20	\$.45

K & K Aircraft also quoted a price of \$269 per hour for each of the three categories of spraying listed in the RFP for a single engine plane. Appellant quoted \$295 per hour in each of the three categories for the single engine plane. Appellant also typed the following statement on the pricing sheet returned with its proposal:

"Minimum charge per call- \$.60 per acre up to 3200 acres" "Minimum acre per call- 3200 acres"

6. The DA procurement officer evaluated price proposals by computing a double weighted average cost per acre for spraying. This method of computation took into account the RFP evaluation criteria that price per initial 50,000 acres would be worth 25%, price per second 50,000 acres would be worth 25%, and price per excess of 100,000 acres would be worth 10% of the maximum points obtainable through the evaluation process. This method also distinguished cost differentials between aduclticing and larviciding. An example of this computation appears as follows:

Name of Bidder:	Beiler's Crop Service				
<u>Aduclticing (40%) - Bid Price</u>					
1st 50K	55	x	25	=	1,375
2nd 50K	50	x	25	=	1,250
Over 100K	45	x	10	=	450
			Total		3,075/60 = 51.25
<u>Larviciding (60%) - Bid Price</u>					
1st 50K	59	x	25	=	1,475
2nd 50K	54	x	25	=	1,350
Over 100K	49	x	10	=	490
			Total		3,315/60 = 55.25
	Aduclticing wt. avg. 51.25 x 40 =				2,050
	Larviciding wt. avg. 55.25 x 60 =				3,315
			Total		5,365/100
	Double weighted avg. cost = \$.5365/acre				

By the preceding method, the DA procurement officer determined that Appellant had bid a double weighted average cost of \$.5365 per acre and K & K Aircraft, Inc. had bid a double weighted average cost of \$.4965 per acre.

In order to assess the total cost to DA, the procurement officer next multiplied these figures by an estimated 250,000 acres of spraying and added 50 hours of anticipated single engine plane use. Neither the 250,000 acres nor the 50 hours of single engine plane usage, however, were mentioned in the RFP. Under this method, K & K was found to offer the lowest price at \$136,375. Appellant was next at \$148,875. Since Appellant's price was determined to be 9.2% higher, the procurement officer awarded Appellant 9.2 points less than the full 60 awarded to K & K.

The Board further finds that if the 250,000 acres and 50 hours of single engine plane use are not employed in the calculation of points, the results remain virtually the same. K & K's double weighted average cost per acre is still 8% lower than Appellant's. Assuming, therefore, that Appellant was entitled to 92% of the points awarded to K & K for price, Appellant would have received a maximum of 55.2 points for this factor.

In evaluating price, neither the DA procurement officer nor the Board considered the effect of Appellant's price qualification concerning minimum charge per call and minimum acre per call. These qualifications could only have increased Appellant's price.

7. K & K Aircraft's and Appellant's point scores in each evaluation category were determined by the procurement officer as follows:

	<u>Evaluation Category- Points</u>	<u>K & K Aircraft, Inc.</u>	<u>Appellant</u>
Item 1.	Price (60)	60	50.8
Item 2.	Work (20) Experience	15	20.0
Item 3.	Equipment (10)	10	8.0
Item 4.	Business (10) References	<u>10</u>	<u>10.0</u>
	Total Points	95	88.8

Since K & K Aircraft's proposal received the greatest number of points, it, therefore, was determined to be the most advantageous to the State and was accepted. Further, even if Appellant were given the 55.2 points for price determined in the preceding finding of fact, it still would have received fewer points than K & K Aircraft.

8. DA awarded the contract to K & K Aircraft, Inc., on February 18, 1982 without further discussion with the two offerors.

9. By letter (undated) received by DA on March 5, 1982 Appellant filed a protest with the DA procurement officer. Appellant contended that it offered the lower price per acre for the twin engine plane for the first 100,000 acres of spraying and felt that it should have received the highest point scores in the work experience, equipment, and business references evaluation categories.

10. The DA procurement officer issued his final decision denying Appellant's protest on March 16, 1982. He determined that K & K Aircraft, Inc., was entitled to a contract award because it had received the highest point score under the RFP evaluation factors. The DA procurement officer also found Appellant's "bid" to be "nonresponsive" and, therefore, ineligible for award since Appellant qualified its proposal by including a minimum charge per acre and a minimum number of acres per call.

11. By letter received by the Board on March 30, 1982, Appellant filed a timely appeal.¹

¹The parties waived their right to an evidentiary hearing and submitted the dispute for resolution on the written record.

DECISION

COMAR 21.05.03.02A and 21.05.03.03A require an RFP to set forth the factors to be considered by a procurement officer in evaluating a proposal and the relative importance of each. While numerical rating systems may be set forth in an RFP to indicate the relative importance of the evaluation factors, their use is not required. See MIS Support Group, Inc., MSBCA 1055 (May 7, 1982) at pp. 8-9. Numerical rating systems, in fact, are "simply an attempt to quantify what is essentially a subjective judgment for the purposes of realistic and fair proposal evaluation." Comp. Gen. Dec. B-175004, 52 Comp. Gen. 198, 209 (1972).

In evaluating the relative desirability and adequacy of proposals, a procurement officer is required to exercise business and technical judgment. This is a discretionary action which may not be disturbed or superseded in the absence of a clear showing of unreasonableness, an arbitrary abuse of discretion, or a violation of law or regulations. See Solon Automated Services, Inc., MSBCA 1046 (January 20, 1982) at p. 22; compare Riggins & Williamson Machine Co., Inc., Comp. Gen. Dec. B-182801, 75-1 CPD paragraph 168 at p. 10; Decision Sciences Corporation, Comp. Gen. Dec. B-182558, 75-1 CPD paragraph 175 at p.6.

In the instant appeal, Appellant argues that it submitted the lowest evaluated price for the first 100,000 acres of crop dusting and therefore should have received the highest evaluation for price. Assuming, arguendo, that Appellant's bare assertion is somehow supported by the evidence of record, this is insufficient to warrant a reversal of the procurement officer's determination. The RFP clearly provided that price also would be evaluated based on a weighted consideration of the price per acre for any excess over 100,000 acres of spraying. The evidence before this Board demonstrates that the procurement officer reasonably evaluated price by computing a double weighted average cost per acre for all spraying required by the RFP. In this regard, the procurement officer took into account any cost differential between larviciding and adulticiding and also the relative cost for spraying the first 50,000 acres, the second 50,000 acres, and any acreage required to be sprayed over 100,000 acres. On this basis, the procurement officer reasonably determined that K & K Aircraft, Inc. offered the lowest price per acre for all of the spraying required and was entitled to the full points allowed for that evaluation category. Accordingly, the decision of the procurement officer to award a contract for spraying services to K & K Aircraft must be sustained.

While it is not essential to the disposition of this appeal, we also feel compelled to comment briefly upon the procurement officer's secondary determination that Appellant was non-responsive. As this Board previously has stated, the concept of responsiveness is inapplicable to negotiated procurements. See The Tower Building Corp., MSBCA 1057 (April 6, 1982) at pp. 10-11. Accordingly, the DA procurement officer was entitled to consider Appellant's proposal and obtain clarification concerning the pricing qualification during negotiations. However, since the DA procurement officer did not consider Appellant's pricing qualification in evaluating price and since this qualification only could have increased the price per acre, Appellant was not prejudiced by the procurement officer's failure to seek clarification during negotiations.

For all of the above reasons, therefore, this appeal is denied.

MEMORANDUM

TO :

STAFF REPORT: A staff report was prepared by the... (The text is mirrored and largely illegible due to the bleed-through effect.)

The staff report... (The text is mirrored and largely illegible due to the bleed-through effect.)

It is recommended that... (The text is mirrored and largely illegible due to the bleed-through effect.)

The staff report... (The text is mirrored and largely illegible due to the bleed-through effect.)

Very truly yours,
[Signature]

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