



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-175208

April 18, 1973

AVCO International Services Division
12011 Mosteller Road
Cincinnati, Ohio 45241

Attention: Mr. R. C. Schulz
Vice President-General Manager

Gentlemen:

Reference is made to your telefax of May 26, 1972, and subsequent correspondence, protesting against the elimination of your proposal from consideration for award of a contract under request for proposals No. F25607-72-R-0001, issued by Offutt Air Force Base, Nebraska.

The RFP was for the operation and maintenance of Glasgow Air Force Base, Montana, for one year starting on July 1, 1972, on a cost-plus-a-fixed-fee basis. Twenty offers were received and were technically evaluated by a Source Selection and Evaluation Board (SSEB) without regard to price. As a result of the numerical scores assigned to each proposal by the SSEB, 13 proposals, including AVCO's, were eliminated from the competitive range. Negotiations were then conducted with the remaining 7 offers, and award was made to the Tumpane Company, Incorporated, on June 13, 1972, notwithstanding the pendency of your protest.

Section D of the RFP contained the following provision:

1. CRITERIA TO BE USED IN THE EVALUATION OF PROPOSAL:

a. Based on the acceptability of other considerations herein after stated, this contract is to be awarded on the basis of the lowest proposal based on the Government's Staffing Plan (work force) and the proposer's management personnel that will assure the Government of satisfactory contract performance. In addition to the price, certain other criteria will be considered in making this award. These other criteria include, but are not limited to, the following in the order of their importance:

(1) The proposal shall be responsive to this solicitation and the proposer shall be determined responsible pursuant to ASPR Section 1, Part 9.

[Protest Against Elimination of Proposal
From Consideration]

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- (2) Organization and Management
- (3) Cost to the Government
- (4) Phase-in Planning
- (5) Prior Experience
- (6) Qualifications of Key individuals

b. For the purpose of technically evaluating the proposal, the following five criteria will be weighed, utilizing the percentages cited:

(1) Organization - 35% (Contractor must be organized so as to provide continual, uninterrupted support to insure that the USAF mission is not jeopardized. Proper placement and relationship of functions and personnel assigned are essential to orderly and satisfactory performance of the contract.)

(2) Management - 35% (Proposer must demonstrate good management practices and a management concept to achieve maximum efficiency from the work force.)

(3) Phase-in Planning - 15% (The proposer's management and organizational concepts must assure the continuity of mission requirements during phase-in period though a limited labor force may be available to the proposer to fill a portion of the positions required; e.g., the proposer must show planned hiring of personnel to fill positions currently manned by the on-board contractor personnel.)

(4) Prior Experience - 10% (Proposer must be able to rapidly undertake the awarded contract and perform effectively and satisfactorily.)

(5) Qualifications of Key Individuals - 5% (Essentially, certain key people must have the level of experience and technical expertise as required by the technical specifications.)

c. In establishing the weighed criteria of paragraph 1b(1) through (5) above, proposers are advised that the five criteria are NOT exclusive of those additional criteria cited in paragraphs 1a(1) through (6) above. Moreover, the five criteria are not mutually exclusive of one another and in many instances, are closely related and overlapping.

The five SSEB members were given evaluation worksheets along with instructions to rate each subfactor listed on the worksheets on a scale of 0 to 100, with 80 representing "the mean average of acceptability, determined * * * by the comparison of the individual proposal with all proposals received," according to the Air Force. The subfactors appearing on the worksheets, and the weights assigned to each, were as follows:

	EVALUATION FACTORS	WEIGHT
Part I	General Quality and Responsiveness of Proposal	
	a. Completeness and thoroughness	5
	b. Grasp of problem	10
	c. Responsiveness to terms, conditions, and time of performance	2
Part II	Organization, Personnel and Facilities	
	a. Evidence of Good Organization and Management Practice	20
	b. Qualifications of personnel	3
	c. Phase-in Planning	5
	d. Experience in similar or related fields	3
	e. Record of past performance	3
Part III	Final Technical Evaluation	
	a. (I) General Quality and Responsiveness of Proposal	1
	b. (II) Organization, Personnel and Facilities	3

To determine the numerical rating for each subfactor, the Board members used a list of "considerations" which consisted of some 34 questions concerning the proposals and offerors. For example, the Board considered

such questions as "Have all essential data required by the Request for Proposal been included?", "Does the proposal recognize and differentiate between the simpler and the more difficult performance requirements?", "Does the proposal evidence the breadth and depth of management capability appropriate to the project? Is there evidence of stability of job tenure in upper management echelons?", and "Is the quality of personnel as set forth in the proposal generally supported by the salary scales?"

On the basis of the worksheet computations, scores ranging from 91.06 to 61.41 were given to the proposals. The Air Force reports that each of the seven highest rated proposals were less than 2 points apart, while more than two points separated the 7th and 8th ranked proposals, and that this was the primary basis for determining that only the first seven proposals were in the competitive range. The 7th ranked proposal was scored at 87.83; the 11th ranked AVCO proposal had a score of 81.62.

In a memo dated May 31, 1972, the contracting officer stated:

AVCO was eliminated from the competitive range for the following reasons:

a. Evaluation of their management proposal revealed that their management staffing and concept was substantially inadequate.

b. In many areas their personnel would be used on both the C&M contract and the Army production contract. In the event the production contract is not renewed on 28 Feb 1973, it will be necessary that the Air Force assume considerable costs previously and presently being charged to the Army contract.

c. Notwithstanding the following would have precluded favorable consideration for award: AVCO has employed five individual general managers during their three year tenure. In the opinion of the Air Force staff at Glasgow, none of these individuals had the desired ability to fill such a position.

d. The controller could not or would not provide essential cost information to Air Force personnel and when provided, proved in most instances, to be incorrect and/or inadequate as evidenced by copy of DCAA Audit Letter (attached). After many complaints and much persuasion by

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the Air Force, he was replaced. However, very little improvement has resulted.

e. AVCO has proposed a phase-over cost which is unacceptable.

f. AVCO alleges a phase-over cost of \$665,550; AF estimates allowable costs of approximately \$176,550.

g. AVCO's proposal was underpriced due to applying 75% material to unburdened labor cost; amount of underpricing is \$324,258.

In subsequent correspondence to us, however, the Air Force indicates that this memo consists of "reflections" of the contracting officer which do not accurately represent the views of the SSEB members concerning AVCO's proposal. This correspondence states that neither phase-over costs nor AVCO's ability to provide required financial data was considered by the Board in the technical evaluation of proposals, and that the element of prior experience was evaluated solely on the basis of "face value representation" as contained in the proposals, thereby precluding the contracting officer's "judgment" from contributing to the SSEB evaluation. We have also been furnished a letter dated July 19, 1972, written by the Chairman of the SSEB, which indicates that the Board regarded the organization and management areas as the principal weakness of AVCO's proposal. In this regard, the letter states:

b) A review of AVCO's proposal strongly suggests that the AVCO organizational structure was developed for the intended purpose of removing key essential management personnel from the pricing base line in order to reduce the proposed total contract price. The organization was not established which would assure effective management and responsive utilization of personnel for the performance of the proposed contract. The company's proposal relegated many key functions within the management structure that cannot be responsive to other requirements. Some examples are:

1) AVCO proposes that the O&M Project Manager have complete administrative and operational control over the Glasgow AFB O&M operation. A very nebulous relationship is described in the proposal that links the General Manager to the Project Manager. It is therefore apparent that one or the other of the functions is not required on the O&M contract.

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2) The Contract Manager is omitted from the O&M functions except as advisor to the Project Manager.

3) AVCO proposes that the Controller function as advisor to the Project Manager. The general accounting function which should be the prime recipient of advice from the Controller is twice removed from the Controller. We believe that the proposed O&M accounting requirements dictate that the Controller supervise the general accounting function as part of his subordinate organization.

4) The Contract Administrator functions as staff advisor to the Project Manager with no apparent tie-in to the operational elements. The work order procedure indicates that Mountain Plains and Safeguard work orders flow through the Contract Manager; however, the Contract Manager function is not placed in the proposed organization in such a manner as to preclude operational bottlenecks.

AVCO's proposal states that these functions are intended to advise the O&M Project Manager and other Montana contract operations in their particular area of responsibility. We believed the contractor's proposal was weak in this regard because the proposed O&M contract performance requires a fulltime Contract Manager and Controller to administer the day-to-day activities that are expected to develop.

In addition, our file contains a "Contracting Officer's Statement of Facts" dated June 27, 1972, which identifies weaknesses and deficiencies in the AVCO proposal. The statement sets forth points similar to those made by the SSEB Chairman in the above-quoted letter, and also identifies problems in the areas of aircraft services, supply, civil engineering, and organization with respect to the functions of morale and recreation, safety and housing. It also indicates that AVCO's prior experience at Glasgow AFB was considered to be "only a part of the scope of this new procurement."

You claim that your proposal was improperly eliminated from competition. You state that the Air Force did not adhere to the evaluation factors set forth in the RFP in evaluating the proposals received with respect to cost. You assert that your cost proposal was significantly lower than Tumpane's and that this fact alone should have led to negotiations with you. In addition, you question how your proposal

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could have been so deficient so as to be outside the competitive range when you had been the incumbent contractor since June 2, 1969, and had never received notice of inadequate performance. You also assert that the contracting officer had a personal bias against AVCO, as indicated by comments regarding your past performance in his May 31, 1972 memo, and that this bias was reflected in the evaluation process and was responsible for the rejection of your proposal.

Paragraph 1a of section D of the RFP sets forth certain criteria "in the order of their importance." The third listed factor was cost to the Government. Paragraph 1b, however, provided for a technical evaluation based on four of the factors listed in paragraph 1a, excluding cost. The record reveals that the 13 proposals receiving the lowest scores on this evaluation were rejected, and you claim that this indicates that cost was not considered in accordance with the RFP provisions. While the RFP provisions regarding cost appear to be somewhat vague, we think they may be reasonably interpreted to mean that price was to be considered in making an award only if proposals were regarded as acceptable with respect to the other criteria listed. This is in accordance with ASFA 3-805.2, which states that the award of a cost-reimbursement type contract should be based primarily on a determination as to which contractor can perform the contract in a manner most advantageous to the Government, and not on the basis of lowest proposed cost or fee. See 50 Comp. Gen. 16 (1970); 50 *id.* 390 (1970). The Air Force has advised us that the SSEB recommendation that negotiations be conducted only with the three highest rated technical proposals was not adopted and that "the contracting officer * * * determined that proposals submitted by the seven highest technically ranked firms more clearly established a competitive range * * *." The Air Force further states:

In determining the competitive range, the SSA [contracting officer] in counsel with the SAC Procurement staff gave appropriate consideration to the elements of fixed, semi-fixed and proposed (estimated) cost items of all proposals. * * * Additionally, the SSA concluded that negotiations with those companies submitting technical proposals inferior to the selected seven companies would not result in a more favorable contract than could be negotiated with one of the seven companies determined to be within a competitive range, price and other factors considered.

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Our review also indicates that three of the seven firms selected for negotiation, including Tumpann, submitted initial price proposals that were lower than yours. Although you claim that phase-in costs (which you estimate at \$679,950 as opposed to the contracting officer's estimate of \$176,550) should have been considered if award to another firm was contemplated, we do not believe that either the RFP or general principles of Federal procurement law required such consideration for determining the competitive range in view of your relatively low technical score. Accordingly, it does not appear that the establishment of the competitive range was improper with respect to your arguments concerning cost considerations.

In addition, however, you claim that the method used to decide which firms were within the competitive range was "arbitrary and without merit" and caused 13 firms to be "summarily eliminated." You claim that such elimination was contrary to our decision B-174203, April 6, 1972, in which we quoted from 50 Comp. Gen. 670 (1971) the statement that "A proposal is to be considered within a competitive range unless it is so high in cost or so inferior technically that the possibility of meaningful negotiation is precluded." You point out that as the incumbent contractor you were well aware of the requirements to be met and that any questionable areas of your proposal could have been easily clarified during meaningful negotiations. We do not agree with these contentions. We have recognized that the use of a point rating system in evaluating pertinent factors is an appropriate method for determining which proposals are within a competitive range. 47 Comp. Gen. 252 (1967); B-174599, March 28, 1972; B-176077(1), January 26, 1973. While we have objected to the use of a predetermined score for selecting offers within a competitive range as being contrary to the flexibility inherent in negotiated procurements, 50 Comp. Gen. 59 (1970), we have stated that the competitive range must be decided on the basis of the actual array of scores achieved. B-171857(2), May 24, 1971. Thus, when several offers are received in response to a solicitation, it is for the contracting officer to determine the relative desirability and technical adequacy of the proposals received, and we will not question that determination in the absence of a clear showing that the determination was arbitrary. 48 Comp. Gen. 314 (1968); 51 Comp. Gen. 621 (1972). The quoted language from 50 Comp. Gen. 670, supra, stems from situations in which all but one or two offerors were eliminated from the competitive range for technical reasons notwithstanding the frequently higher prices of the remaining offeror(s). See 50 Comp. Gen. 670, supra; 47 Comp. Gen. 252 (1967); 45 Comp. Gen. 417 (1966). It does not require enlarging the competitive range to include proposals which are relatively inferior so as to be unacceptable when

there is adequate competition both with respect to price and technical considerations. See 47 Comp. Gen. 309 (1969). Therefore, although you were the incumbent contractor, your relatively low rating on the technical evaluation, with a numerical score more than 6 points lower than the lowest rated proposal found to be in the competitive range, provided a reasonable basis for the rejection of your proposal. B-171857, supra.

There remains for consideration, however, your claim that the evaluation itself was tainted by the allegedly biased attitude of the contracting officer. As indicated above, the contracting officer apparently did not have a very high opinion of AVCO's prior performance at Glasgow. The Air Force states that the contracting officer was entitled to his opinion, but maintains that his "knowledge of AVCO's past performance or the quality of such performance on the then current contract was not considered by or communicated to the SSEB." Instead, the Air Force claims that evaluation of past performance and prior experience was based on "the facts and information represented by the proposer's proposal (e.g., testimonial letters of performance)," and that the SSEB did not investigate or obtain information regarding past performance from any other source. We note, however, that included among the "considerations" used by the SSEB in evaluating proposals were the following questions, listed under "Record of Past Performance:"

- (1) Has the offeror held previous cost type contracts with the agency or other Government establishments?
- (2) Were schedule commitments generally met?
- (3) Did the contractor solve his own technical problems, or did he rely heavily upon the technical staff of the agency?
- (4) Was there an unusually high number of contractual problems which might be attributed to inflexibility, naivete, or lack of cooperation on the part of the contractor?
- (5) If there were significant cost over-runs, were they due to an incompetently low initial cost estimate, or to valid problems which could not have been anticipated?
- (6) Does the proposer have an acceptable business and financial rating by Dunn and Bradstreet?

The information upon which answers to these questions could be based was not required by the RFP to be included with proposals and in fact was not included in AVCO's proposal. Nevertheless, offerors, including AVCO, were evaluated on the basis of these "considerations." Such an evaluation clearly required either personal knowledge of AVCO's prior performance or documentation regarding it distinct from the proposal itself. We are advised that the SSEB consisted of the Glasgow Air Force Base Commander and personnel from Strategic Air Command deputes. While this record does not establish that the views of the contracting officer, who is stationed at Glasgow Air Force Base and thus is subordinate to the Base Commander, were related to or considered by the SSEB, it does suggest that the evaluation was at least partially based on information external to the proposals, despite the Air Force assertions to the contrary.

Although we do not accept the Air Force position with respect to how the evaluation of past performance or prior experience was accomplished, we are unable to conclude that the evaluation process was substantially prejudicial to you or that the elimination of your proposal was the result of bad faith on the part of the contracting officer or other Air Force personnel. We note that past performance counted for a relatively minor percentage of the total evaluation points awarded, and it appears that your proposal was not in the competitive range because of relatively low scores received in other areas of the evaluation. In this respect, the Air Force states that "AVCO's proposal lacked the degree of excellence to qualify as one of the companies within the competitive range for this procurement," and as noted above, the SSEB believed your proposal was weak in the important areas of management and organization. The record provides no basis for our taking exception to that statement. Accordingly, we must conclude that rejection of your proposal and the subsequent award to Tumpane were not illegal or improper.

In your letter of July 10, 1972, you question the award to Tumpane of a contract that deviated from the Government's staffing plan included as Appendix D to the RFP. That plan, which indicated "estimated personnel requirements" of 416, was "established as the 'level of effort' required for the performance of the proposed contract" by paragraph 3a(b) of section D of the RFP. The Air Force reports that initial proposals were to be prepared on that basis, but that it was anticipated that the staffing levels were subject to change during contract negotiations. The fact that such a change was negotiated with Tumpane has no bearing on the original evaluation and determination of what proposals were in the competitive range.

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You also question why the Air Force made award while your protest was pending, especially in view of your offer to continue providing operation and maintenance services beyond the June 30, 1972 expiration date of your contract for zero fee. ASPR 2-407.8(b)(3) provides that an award will not be made during the pendency of a protest unless the contracting officer determines that the items to be provided are urgently required, or that delivery or performance will be unduly delayed by failure to make award promptly, or that a prompt award will otherwise be advantageous to the Government. The Air Force has advised us that award had to be made without further delay to meet the planned starting date of the new contract, which called for an increased scope of operations and maintenance work, including the support of mission aircraft, and that a "prolonged contractor transition period would have increased the risk of encountering labor problems * * *." Notice of intent to award was furnished our Office on June 13, 1972, pursuant to ASPR 2-407.2(b)(2), and award was made on that date. Our Office cannot object to the award under these circumstances. 49 Comp. Gen. 369 (1969).

For the foregoing reasons, your protest is hereby denied.

Sincerely yours,

PAUL G. DEMBLING

(For the Comptroller General
of the United States