



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Olin Corporation

File: B-258113.2; B-258113.3

Date: November 13, 1995

Bradford C. Vassey for the protester.

Deborah M. Moeschl, Esq., for Alliant Techsystems, Inc., an interested party.

Richard C. Dale II, Esq., Department of the Navy, for the agency.

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

DIGEST

1. Where solicitation evaluation scheme gave greater weight to technical merit than price and protester's proposal contained technical deficiencies which were not resolved in revised proposal, agency reasonably concluded that protester's proposal was marginal and awarded contract to offeror which submitted higher-priced, higher technically rated proposal.
 2. Allegation of bias is denied where the record contains no credible evidence that agency acted with specific intent to injure the protester.
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DECISION

Olin Corporation protests the award of a contract to Alliant Techsystems, Inc. under request for proposals (RFP) No. N68936-94-R-0238, issued by the Department of the Navy for 25 millimeter (mm) tracer ammunition. Olin contends that the agency's evaluation was flawed and reflected the agency's bias against the protester.

We deny the protest.

The RFP contemplated award of a firm, fixed-price contract for production of one million plus rounds of 25mm PGU-32/U ammunition. Proposals were to be evaluated on the basis of price and six equally weighted technical/management factors: understanding the requirement; manufacturing approach; total quality management; production schedule; organizational structure; and facilities. The combined technical/management factors were slightly more important than price. Award was to be made to the offeror whose proposal was most advantageous to the government.

Olin and Alliant were the only offerors who submitted proposals by the May 19 closing time.¹ The agency evaluated both proposals, conducted discussions with both offerors, and amended the RFP to change certain specifications. Both offerors submitted best and final offers (BAFO).

The agency evaluated Alliant's proposal as excellent overall based upon its rating of excellent under three evaluation factors and acceptable under the other three. Olin's proposal was rated marginal overall, based upon marginal scores under four of the technical factors and ratings of acceptable under the other two. Alliant's BAFO price was \$17,900,415, while Olin's was \$17,772,028.

In his source selection determination, the contracting officer noted that Alliant had received an overall excellent rating on its technical proposal and that the proposal had demonstrated the best understanding of the contract requirements. The contracting officer determined that Alliant's approach to achieving a quality product and managing the manufacturing process would yield the highest quality ammunition. In view of Olin's overall BAFO rating of marginal, and the relatively insignificant price difference (\$128,387) between the two proposals, the contracting officer awarded Alliant the contract. Upon learning of the award, Olin filed a protest with our Office, supplementing it after receiving a debriefing. Primarily, Olin argues that the evaluation was flawed.

Where an evaluation is challenged, we will examine the evaluation to ensure that it was reasonable and consistent with the evaluation criteria and applicable statutes and regulations, since the relative merit of competing proposals is primarily a matter of administrative discretion. Information Sys. & Networks Corp., 69 Comp. Gen. 284 (1990), 90-1 CPD ¶ 203. Mere disagreement with the agency's evaluation does not itself render the evaluation unreasonable. Litton Sys., Inc., B-237596.3, Aug. 8, 1990, 90-2 CPD ¶ 115.

Olin contends that the agency's technical evaluation failed to give proper weight to Olin's technical superiority and expertise in the production of PGU-32/U ammunition. Olin had been awarded a low rate initial production (LRIP) contract in 1992 to produce the same 25mm ammunition. Olin notes that its experience with that contract resulted in the government's changing certain key specification

¹Subsequently, Olin filed a protest with the agency, challenging certain specifications in the technical data package (TDP). After the agency denied the protest, Olin filed a protest with our Office. Since Olin's protest was not filed with the agency or our Office within 10 working days of when it knew, or should have known, of the alleged defects in the TDP, we dismissed its protest as untimely. (B-258113) on Sept. 12, 1994.

parameters. Thus, it concludes that its expertise cannot be duplicated by Alliant and that the agency necessarily failed to give Olin's proposal appropriate credit.

In evaluating Olin's current proposal, the agency found that Olin had not demonstrated its technical superiority. Notwithstanding Olin's views on its experience and ability to perform, based on Olin's proposal and record of past performance, the agency anticipated that Olin's performance difficulties under the LRIP contract would continue under a new contract. In this regard, the government observes that while Olin's first lot of ammunition was accepted with a 100-percent pass rate, its second lot was unacceptable; only 13 of 20 rounds were successful. After expending virtually all of the LRIP funding, Olin had only produced 2,500 rounds for the first article and 25,000 rounds of the 300,000 plus rounds called for under the contract. In addition, despite the agency's identification of various deficiencies in discussions, Olin's BAFO failed to resolve them. For example, Olin's initial proposal and its BAFO failed to resolve issues concerning tracer burn time, projectile hardness, use of statistical process control (SPC), production capacity, and nose-to-body pressing operations. Olin's proposal also referred to methods of action Olin had employed on the LRIP contract, without detailing or incorporating those methods in its proposal. Accordingly, we find nothing objectionable in the agency's evaluation of Olin's proposal.

Olin also argues that the agency improperly downgraded its proposal in the technical evaluation. Olin argues that its proposal was penalized in a number of areas without adequate justification. Based on our review of the record, we disagree. For example, the RFP required offerors to provide a plan for control and validation of product quality during the production phase, using SPC techniques as defined in specifically identified industry standards or other government-approved documents. Olin asserts that its proposal fully addressed this requirement. However, for certain production machines, Olin only proposed to conduct studies to determine whether they were capable of supporting SPC and proposed to use 100-percent inspection to compensate for quality control. Based on the quality control problems observed in the LRIP contract and the inadequacy of inspection alone, the agency pointed out this deficiency during discussions. Olin's BAFO then failed to address the matter.

Another example, Olin argues that its proposal unfairly was downgraded for failing to provide solutions to problems Olin identified in the specifications concerning projectile hardness and tracer burn time, while Alliant's, was not downgraded, despite Alliant's lack of sufficient expertise to even identify the problems. The record provides no evidence of unfair treatment in this regard. The agency advised Olin and Alliant that the specifications for these two areas were changed during the evaluation process. Alliant responded that it could make the adjustments without difficulty and satisfactorily explained its position during discussions. In contrast, Olin maintained in discussions that both changes would significantly impact

production, but in its BAFO did not address either. Instead, it merely stated that it would produce the rounds in accordance with the TDP and meet the revised specifications. Under these circumstances, we find nothing objectionable or unreasonable in the agency's evaluation. Olin's arguments to the contrary simply reflect its disagreement with the agency's assessment, which does not establish that the evaluation was unreasonable. Litton Sys., Inc., supra.

Olin alleges that the agency was biased against it as a result of its earlier specification protest, as evidenced by the results of the technical evaluation and a reference to the protest in a pre-award survey statement.

There must be very strong proof that an agency has a specific intent to injure a protester before we may find bias. Hill's Capitol Sec., Inc., B-250983, Mar. 2, 1993, 93-1 CPD ¶ 190. The protester must produce credible evidence that any bias translated into agency action which unfairly affected the protester's competitive position. Id.

Here, the record contains no such evidence. As discussed above, the technical evaluation was unobjectionable. The evaluators identified various deficiencies which resulted in a rating of marginal for four of the six technical management factors. The fact that many of these deficiencies stemmed from Olin's performance difficulties under the LRIP contract and were the subject of Olin's protest does not show that the agency was biased. Rather it is apparent that the evaluators simply took into account Olin's problem performance in evaluating its ability to perform the instant contract.

With regard to the pre-award survey, reference to the protest, the technical survey stated that "[b]ased on current contractual issues at [one of Olin's facilities] and Olin's protest to the current solicitation, the technical capability of the offeror to control the place of performance, specifically the [facility in question] and [its] ability to perform to the technical requirements of this solicitation are unsatisfactory." The survey indicates that Olin attributed its performance problems to alleged deficiencies in the TDP, which it had raised in the referenced protest. Since Olin maintained that it could not perform until the TDP deficiencies were corrected, and the agency did not agree, the mention of the pending protest was simply a reference to the source of the disagreement. In any event, the agency explains that the technical evaluators neither had access to, nor based their evaluation of Olin's proposal on, the survey. Similarly, the contracting officer did not rely on that statement in evaluating Olin's proposal. In short, the simple reference to Olin's prior protest in a pre-award survey does not provide any credible evidence of bias.

Finally, Olin argues that the agency's cost/technical tradeoff was flawed because it failed to take into consideration certain "hidden costs" associated with the Alliant

proposal. Olin argues that the agency should have considered the start-up learning curve costs associated with Alliant's inexperience in producing the PGU-32/U ammunition. In Olin's view, the agency also should have considered the cost of an agreement between the agency and Raufoss A/S, the holder of the patent on this ammunition, to provide technical assistance in production of the rounds. The cost would not be applicable under an Olin contract because Olin has its own agreement with Raufoss.

We find no merit to these arguments. First, since this is a fixed-price contract, the agency was not required to conduct a detailed cost or cost realism analysis. See PHP Healthcare Corp; Sisters of Charity of the Incarnate Word, B-251799 et al., May 4, 1993, 93-1 CPD ¶ 366. While the "best buy" clause in the RFP stated that the award decision would be based on "the probable costs to the government as compared with the evaluated rating of the proposal," it is clear that the agency intended this to refer to a comparison of prices, and not to a detailed cost realism analysis under this firm, fixed-price requirement. In this regard, the agency amended the RFP to replace language referring to an emphasis on "realism and reasonableness" with language referring to an emphasis on the "reasonableness of the proposed price."

Second, the costs about which Olin complains are not "hidden" in any case. Alliant's proposal included its start-up and learning curve costs and its proposed price was less than \$200,000 higher than Olin's. Further, the agency observes that once these one-time costs are paid, Alliant's proposed unit price is lower than Olin's. With regard to technical assistance from Raufoss, the agency explains that its pending agreement for such assistance played no part in this procurement; the Navy has an independent need for the broad technical assistance/ technical transfer agreement and would have negotiated it with or without this procurement. In addition, it appears that the cost of such assistance is insignificant. During discussions, the agency advised both offerors that it planned to make technical assistance from a couple of Raufoss engineers available to them for a "few months." The protester alleges that the agreement would cost \$350,000 per year. However, since the agreement in question is not limited to this ammunition contract and the assistance appears very limited in time and scope, the record provides no basis to conclude that the cost would be significant. Accordingly, the agency reasonably did not evaluate these allegedly "hidden costs" in making its tradeoff.

The protest is denied.

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