Comptroller General
of the United States

Washington, D.C. 20548

Decision

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Matter of: Doss Aviation, Inc.; Dominion Aviation, Inc.

File: B-275419; B-275419.2; B-275419.3

Date: February 20, 1997

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Col. Nicholas P. Retson, and Maj. Michael J. O'Farrell, Department of the Army, for the agency.
Harvey G. Sherzer, Esq., William A. Roberts, Esq., Lee P. Curtis, Esq., and Terry M. Petrie, Esq., Howrey & Simon, for UNC Aviation Services, an intervenor.
David A. Ashen, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that agency mechanically applied an undisclosed staffing estimate in evaluating proposals is denied where the solicitation put offerors on notice that staffing was a critical area of the evaluation, offerors were required to describe the number of personnel that would perform the work and show how the agency's stated flight training requirements would be met, offerors were advised during discussions as to whether their proposals included fewer instructor pilots than were considered necessary under the agency estimate, and there is no indication in the record that the agency unreasonably overlooked or rejected specific elements of offerors' proposed staffing approaches which were likely to result in the need for fewer instructor pilots than the agency estimate.

2. Protest that in best value procurement agency improperly awarded additional evaluation credit based on aspects of awardee's proposal that exceeded the solicitation's minimum requirements is denied; where detailed technical proposals are sought and technical evaluation criteria are used to enable the agency to make comparative judgments about the relative merits of competing proposals, offerors are on notice that qualitative distinctions among the technical proposals will be made under the various evaluation factors, and there is no basis to object to the

award of extra credit for advantageous elements of a proposal when the additional credit is related to the stated evaluation factors.

DECISION

Doss Aviation, Inc. and Dominion Aviation, Inc. protest the Department of the Army's award of a contract to UNC Aviation Services, under request for proposals (RFP) No. DABT01-96-R-0001, for rotary wing (helicopter) flight training services at Fort Rucker. Doss and Dominion primarily challenge the agency's evaluation of technical proposals.

We deny the protests.

BACKGROUND

The solicitation contemplated award of a fixed-price contract, for a base year with 4 option years, to furnish academic training classes, flight simulator training, and aircraft flight training for rotary wing aircraft at Fort Rucker. Although the statement of work (SOW) established minimum manning totals for specified key personnel, including flight commanders, offerors were required to calculate and propose the average number of flight instructors required for each fiscal year based on (1) projected student inputs into the training program and class schedules set forth in the solicitation and (2) a requirement to maintain a minimum flight instructor-to-student ratio of one instructor to two students in all flight training courses. Award was to be made based on the proposal offering the "best overall value to the Government" under the following four criteria (listed in descending order of importance): (1) "technical," comprised of three subfactors, the most important of which was number and qualifications of personnel; (2) performance history; (3) cost/price realism; and (4) price. The solicitation stated that price, although listed as the least important evaluation factor, would "become the determinative factor with respect to offerors that are essentially equal in technical acceptability, performance history, and cost/price realism."

Nine proposals were received by the closing time on July 8, 1996. Seven proposals--including UNC's, Doss's, and Dominion's--were included in the competitive range. Following discussions with offerors, the Army requested best and final offers (BAFO). Based upon the evaluation of BAFOs, the source selection evaluation board (SSEB) reported to the source selection authority (SSA) that UNC had submitted the technically superior proposal and that "[t]he technical advantages presented by UNC are worth the price difference in this mission essential, labor intensive, and fixed price contract." The results of the evaluation were as follows:

	UNC	Doss	Dominion
Technical	248,999 points/ no performance risk	226,670 points/ moderate performance risk	228,945 points/ moderate performance risk
Performance History	low risk	low risk	moderate risk
Cost/Price Realism	realistic	realistic	realistic
Price	$101,633,570	$95,167,182	$96,696,210

The SSEB found that the proposed staffing levels of both Dominion and Doss posed a performance risk. The SSEB noted with respect to Dominion that it had proposed five fewer instructor pilots ([DELETED]) than the [DELETED] considered necessary in the independent government estimate (IGE). Although the SSEB found this proposed staffing level to be acceptable, it noted that it was essential for student pilot production and quality of training that the required two student/one instructor pilot ratio be maintained, and determined that Dominion would need to increase its proposed labor force at the expense of its profit and general and administrative expenses (G&A) in order to maintain the required ratio. [DELETED]; the SSEB believed this created the potential that Dominion would be required to absorb additional costs (because of rising insurance premiums). Given that Dominion's low profit ([DELETED] percent) and G&A ([DELETED] percent) rates left it with only a "very small margin for error," the SSEB concluded that in the event that the contractor encountered additional costs beyond those on which it based its fixed price, the contractor would be at financial risk in performing the contract, and that this in turn could pose a risk to accomplishment of the training mission. According to the SSEB, "[t[he potential exists for Dominion to reduce quality in training and/or timeliness of service or to not clearly meet the technical requirements of the RFP to absorb the increased costs." In addition, the SSEB reported that on the only prior contract on which the agency had received reports with respect to the performance of Dominion itself (rather than its employees), Dominion had encountered significant performance problems. Although Dominion's performance on this contract had improved such that it was now marginal, but satisfactory, the SSEB concluded that this level of past performance itself created a moderate risk.

The SSEB's conclusions for Doss were similar to those for Dominion. It noted that Doss had proposed four fewer instructor pilots ([DELETED]) than the [DELETED] considered necessary in the IGE; although the SSEB found the proposed staffing level to be acceptable, it determined that Doss, like Dominion, would need to increase its proposed labor force at the expense of low proposed profit ([DELETED] percent) and G&A ([DELETED] percent). Given the fact that Doss's low profit and G&A rates left it with only a "very small margin for error," and the additional fact that, as reported by the Defense Contract Audit Agency, Doss had experienced an actual [DELETED] percent G&A rate in the first quarter of 1996, the SSEB concluded that encountering additional costs would put Doss at financial risk, which in turn could pose a risk to accomplishment of the training mission. According to the SSEB, "[t[he potential exists that Doss would reduce quality in training and/or timeliness of service or . . . not clearly meet the technical requirements of the RFP to absorb increased costs."

In contrast, the SSEB found UNC's proposal to be technically superior, offering minimum performance and financial risk. The SSEB noted that UNC had proposed [DELETED] instructor pilots, two more than considered necessary in the IGE. Further, UNC's proposal was evaluated as offering other significant advantages, including experienced personnel, [DELETED], a comprehensive and innovative safety program that provided excellent lines of communication, a detailed mobilization plan, and detailed management and organization charts that indicated excellent planning and [DELETED]. In addition, the SSEB noted that UNC had an excellent performance record as the incumbent flight training contractor at Fort Rucker and that its price proposal was based on the actual costs it was experiencing in performing that contract; according to the SSEB, UNC had demonstrated the ability to perform successfully at its stated fixed price. The SSEB concluded that UNC's proposed price was "reasonable for the superior technical services offered."

The SSA concurred in the SSEB's determination that UNC's proposal was most advantageous to the government. Although recognizing that Doss and Dominion had offered lower prices, the SSA determined that their proposals presented a risk to accomplishing the training mission as a result of their inadequate staffing, limited ability within the contract price--because of low profit and G&A rates--to cover cost increases that were likely as a result of the need to hire more instructor pilots or increases in [DELETED] insurance rates, and marginal performance history (Dominion). The SSA noted that, in contrast, UNC's performance history was evaluated as low risk, and that UNC was

> "clearly superior technically to other offerors . . . with no potential performance risk. Recognizing that the performance of this contract impacts significantly on various flight training programs and contracts that support those programs and the possibility of loss of human life during this flight training, it is imperative that the offeror presenting the best technical proposal with the least amount of risk receive contract award."

The SSA concluded that the technical advantages of UNC's proposal were worth the higher price of the proposal (as stated in the post business clearance memorandum) and that UNC's proposal therefore represented "the best value to the Government in accordance with the RFP evaluation criteria."

Upon learning of the resulting award to UNC, Doss and Dominion filed these protests with our Office. We discuss below the most significant of their arguments.

APPLICATION OF IGE

Doss

Both Doss and Dominion challenge the Army's application of the IGE to their proposals. In its protest, Doss primarily argues that the Army improperly mechanically applied the IGE to its proposal, without regard to the specifics of Doss's proposed approach.

An agency properly may evaluate technical or price proposals for adequacy against an undisclosed reasonable estimate of appropriate manning where the RFP notifies offerors that staffing is an area of evaluation. DynCorp et al., B-257037.2 et al., Dec. 15, 1994, 95-1 CPD ¶ 34. Here, the RFP specifically put offerors on notice that staffing was a critical area of the evaluation, indicating that staffing was the most important subfactor of the most important evaluation factor. Offerors were required to describe the number of personnel that would perform the work and show how the production schedule and quantities set forth in the solicitation--that is, the projected student inputs into the training program and class schedules--would be met. Moreover, during discussions, offerors were specifically advised as to whether their proposals included fewer instructor pilots than were considered necessary under the IGE.[1]

On the other hand, since absolute reliance on estimates can have the effect of arbitrarily and unfairly penalizing an innovative or unusually efficient offeror, KCA Corp., B-255115, Feb. 9, 1994, 94-1 CPD ¶ 94, it is inappropriate to determine the acceptability of proposals by the mechanical application of an undisclosed estimate. Allied Cleaning Servs., Inc., 69 Comp. Gen. 248 (1990), 90-1 CPD ¶ 275 (mechanical application of a staff-hour estimate found unreasonable). Rather, the evaluation must also take into consideration whether an offeror's proposed work force is particularly skilled and efficient, or whether, because of a unique approach, a firm

[1]Thus, Doss, which initially proposed 17 instructor pilots fewer than the original IGE--subsequently revised downward as a result of amendments to the RFP--was advised during discussions that it had proposed “significantly fewer” instructor pilots than the number considered necessary in the IGE.

could satisfactorily perform the work with staffing different from that estimated by the agency. Kinton, Inc., 67 Comp. Gen. 226 (1988), 88-1 CPD ¶ 112.

We find no improper mechanical application of the IGE. The Army reports that it did use the IGE as a starting point or "guide" in evaluating proposed staffing. However, according to the Army, it did not mechanically apply the IGE. Rather, explains the agency, "[i]f the method proposed by the offeror did not furnish the required number of personnel according to the IGE, and did not have a reliable and workable method to assure continuation of the training, the proposal was adjudged to offer some risk to the Government." The agency found nothing in Doss's staffing approach that indicated that Doss was likely to be able to perform satisfactorily with fewer instructor pilots than the IGE.

Although Doss questions the Army's account of the evaluation process, maintaining that the contemporaneous evaluation documentation does not show that anything more than a mechanical application of the IGE occurred, Doss has not shown what specific elements of its proposed staffing approach were acceptable approaches that were likely to result in the need for fewer instructor pilots.[2] Furthermore, Doss specifically acknowledges that it "has not challenged in this protest the reasonableness of the agency's IGE." We thus find no basis to question the agency's evaluation in this area.

Dominion

Dominion argues that had the agency accepted its lower estimated setback rates--that is, the percentage of student pilots held back for additional training--the evaluated 5-instructor pilot deficit relative to the IGE would have been reduced to a 1-instructor deficit. Specifically, Dominion proposed a reduction in the setback rates relative to the historical setback rates for the past 12 months, which were set forth in the RFP. However, Dominion offered no detailed explanation in its

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[2]It is not apparent from the record what specific elements of Doss's BAFO proposed staffing approach were reasonable approaches that were likely to result in the need for fewer instructor pilots than the IGE. For example, although Doss proposed to transfer instructor pilots from one type of training to a second type in order to accommodate the expected reduction in the agency's requirement for the first type, and also proposed [DELETED], Doss does not explain, nor is it otherwise apparent, how these elements of its approach would reduce the required number of instructor pilots on staff at any one time. Further, although Doss initially also proposed to use flight commanders and supervisors as instructor pilots, the agency questioned that approach during discussions, and Doss informed the agency in its BAFO that "[s]ince using a supervisor or [quality control personnel] is limited to 'unusual and temporary workload' [--according to the SOW--] we have not included them in our Instructor staffing calculations."

proposal as to how it would accomplish a reduction in the historical setback rates, and we find no basis to question the agency's position that Dominion's essentially unsupported claim that it would be able to reduce the historical rates would not justify evaluating its staffing based on this hope.[3]

UNC'S STRENGTHS

Dominion

Both Dominion and Doss challenge the agency's assignment of strengths to UNC's proposal. In its protest, Dominion asserts that "[t]he Solicitation and the Prebid Conference [were] a clear instruction to provide the Agency with the lowest cost technically acceptable" approach.

Dominion's interpretation is without merit. In a negotiated procurement, unless the RFP so specifies, there is no requirement that award be based on lowest cost. Lloyd-Lamont Design, Inc., B-270090.3, Feb. 13, 1996, 96-1 CPD ¶ 71. As noted by Dominion, the solicitation did state that "[p]rice will become the determinative factor with respect to offerors that are essentially equal in technical acceptability, performance history, and cost/price realism." (Emphasis added.)[4] However, the use of the term "acceptability" in this context clearly did not indicate that award

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[3]Although Dominion also questions the Army's failure to accept its alternate proposal to combine flight classes and thereby reduce the number of flight commanders, who supervise instructor pilots, we note that this would not have reduced the required number of flight instructors. Moreover, Dominion's approach was inconsistent with the provisions of the RFP, which specified the required number of flight commanders. Furthermore, the agency maintains that Dominion's proposal would result in the diversion of instructor pilots to duties--required to be performed under Army regulations--otherwise performed by flight commanders, thereby exacerbating the instructor pilot shortage in Dominion's proposed organization, causing some student pilots to forgo flight instruction each day, and forcing the combination of flight classes at different levels of flight training. According to the agency, Dominion's plan would compromise student production, quality of training, and potentially endanger safety. Dominion has not shown that the agency's concerns in this regard were unreasonable.

[4]Dominion's argument is also based to some extent on statements made during the preproposal conference. However, the minutes of the preproposal conference indicate that the contracting officer advised potential offerors that "the WRITTEN answers to questions raised would be the official answers." In any case, under the solicitation and the applicable provisions of the Federal Acquisition Regulation (FAR) §§ 15.410 (FAC 90-32) and 52.215-14, solicitation amendments were to be in writing. Occu-Health, Inc.; Analytical Sciences, Inc., B-258598.2 et al., Feb. 9, 1995, 95-1 CPD ¶ 59.

would be made on the basis of the low, technically acceptable offer; indeed, the import of the language is that the agency would be performing a comparative evaluation of technical proposals, and that price would become determinative only if proposals were otherwise equal. The solicitation also made clear elsewhere that award would be made to the offeror whose proposal offered the "best overall value to the Government" based on consideration of the four listed evaluation criteria of varying weight, only one of which was price and the most important of which was "technical" (not "technical acceptability").

Doss

Doss asserts that the Army improperly awarded UNC's proposal additional evaluation credit "based on aspects of UNC's proposal that exceeded or were outside the RFP requirements and evaluation criteria," such as offering quality assurance instructor training at no cost to the government and crediting UNC under the technical factor for its prior safety record while the incumbent contractor at Fort Rucker.

Doss's position is without merit. Where, as here, detailed technical proposals are sought and technical evaluation criteria are used to enable the agency to make comparative judgments about the relative merits of competing proposals, offerors are on notice that qualitative distinctions among the technical proposals will be made under the various evaluation factors. Main Bldg. Maintenance, Inc., B-260945.4, Sept. 29, 1995, 95-2 CPD ¶ 214. Evaluation credit properly may be given, under these circumstances, where a proposal includes enhancements or features not required by the solicitation. Id.

Further, the credit given UNC's proposal fell within the stated evaluation criteria. The SOW required the contractor to "establish a complete Quality Control Program to assure the requirements of the contract are provided as specified" and provided for government quality assurance evaluators (QAE) to monitor the contractor's performance, while the statement of evaluation criteria specifically provided for evaluation of the offeror's approach to quality control. In our view, the Army could reasonably consider UNC's proposal for UNC quality control instructors to furnish training to "Government QAE/Instructor Pilot" personnel at no cost to the government to be an advantageous part of UNC's overall quality control program and as such to merit credit under the quality control evaluation subfactor. As for the recognition in the SSEB report of UNC's prior safety record as the incumbent contractor at Fort Rucker, this consideration appears related to both (1) the evaluation element for safety, one of the seven elements under the policies and procedures subfactor, which was one of the two subfactors under the technical factor, and (2) the performance history evaluation factor. We see no basis to object to consideration of UNC's prior safety record under the safety element rather than the performance history factor. Since offerors here were on notice of a comparative evaluation, and the additional credit which UNC received in the tradeoff for offering to exceed a minimum requirement was related to the stated evaluation factors, such credit was entirely proper.

COST/TECHNICAL TRADEOFF

Both Dominion and Doss challenge the Army's cost/technical tradeoff. Dominion generally questions whether the additional staff offered by UNC was worth the higher price of its proposal. Doss argues that the Army failed to meaningfully consider whether the technical advantages offered by UNC's proposal were worth the higher price of the proposal, and instead focused only on the technical superiority of its proposal and on whether prices were realistic and reasonable.

In a negotiated procurement, unless the RFP so specifies, there is no requirement that award be based on lowest cost. A procuring agency has the discretion to select a more highly-rated technical proposal if doing so is reasonable and is consistent with the evaluation scheme set forth in the RFP. Lloyd-Lamont Design, Inc., supra; Management Sys. Designers, Inc., B-244383.3, Sept. 30, 1991, 91-2 CPD ¶ 310. We will uphold an award to a higher-rated offeror with higher proposed costs where the agency reasonably determines that the cost premium was justified considering the technical superiority of the selected offeror's proposal. United Telecontrol Elecs., Inc., B-235774.2, Nov. 7, 1989, 89-2 CPD ¶ 433. Even where a source selection official does not specifically discuss the technical/cost tradeoff in the selection decision document, we will not object if the tradeoff is supported by the record. Lloyd-Lamont Design, Inc., supra; Maytag Aircraft Corp., B-237068.3, Apr. 26, 1990, 90-1 CPD ¶ 430.

Here, the Army maintains that the agency in fact performed a cost/technical tradeoff and concluded that the technical superiority/lower risk of UNC's proposal justified its higher price. Although the record includes some indication that the Army focused on selecting the technically superior/low risk proposal so long as its cost/price was realistic and reasonable, the contemporaneous evaluation record also includes documentation of the advantages offered by UNC's proposal and determinations by the SSEB and the SSA that the resulting technical superiority/low risk of UNC's proposal was worth its higher price.

The Army has determined that the protesters' proposals offered significant performance risk as a result of inadequate staffing, a limited ability to absorb within their proposed contract prices the likely cost increases they would encounter in performing the contract and, with respect to Dominion, a marginal past performance record. The agency has further determined that UNC submitted a technically superior proposal which was based on adequate staffing with experienced personnel and offered advantages in a number of areas, including quality control and management, and that UNC had an excellent performance record as the incumbent contractor, demonstrating its ability to successfully perform the required work at its stated fixed price, such that UNC's proposal overall offered the agency a significantly higher likelihood of the successful performance of vital, safety-related services. Again, the Army has concluded that the resulting technical superiority/low risk of UNC's proposal was worth its higher price. Given the superiority of UNC's proposal under the most important evaluation factor (technical), its excellent performance record as the incumbent contractor, the greater realism of its proposed cost/price, the fact that price was the least important of four evaluation factors, and the fact that UNC's price was only 5.1 and 6.8 percent higher than Dominion's and Doss's prices, respectively, we find no basis to question the agency's position that UNC's proposal offered the best value under the stated evaluation criteria.

The protests are denied.

Comptroller General
of the United States