

DECISION



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

FILE: B-185558

DATE: August 26, 1976

613.96

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MATTER OF: DOT Systems, Inc.

DIGEST:

1. Award of cost reimbursement contract to offeror submitting superior technical proposal is proper even though another offeror proposed a lower estimated cost, since the solicitation stated that technical factors would be paramount in the award selection.
2. Agency improperly evaluated cost proposals for cost reimbursement contract by assigning most points to lowest proposed estimated cost without conducting evaluation of realism of estimated cost. Since protester received highest score for cost evaluation, deficiency was not prejudicial to protester.
3. Agency is not required to refer proposal to Small Business Administration for Certificate of Competency when it did not determine that protester lacked capacity or credit but rather that another offeror's proposal was more suitable for award.

By letter dated December 15, 1975, DOT Systems, Inc. (DOT), protested its elimination from "contention for award" under RFP No. 263-76-P(66)-0056 issued by the National Institutes of Health (NIH), Bethesda, Maryland. The RFP requests proposals for support activities related to National Heart and Lung Institute research programs. It was stated that cost-reimbursement contract(s) were contemplated and that proposals would be evaluated on the basis of the following weighted criteria.

<u>Technical</u>	1) Understanding	15 points
	2) Plan of Operation	50 points
	3) Personnel	25 points
	4) Clarity, style and format of proposal	5 points
	5) Unique qualification	5 points
<u>Cost</u>	6) Cost estimate	50 points

In this regard, the RFP stated that "Technical considerations will be paramount" in the evaluation of proposals.

Proposals were received on the November 13, 1975 closing date for receipt of proposals. As a result of the initial evaluation six firms including DOT were considered within the competitive range. At this point DOT had the highest total score. On November 24 and 25, negotiations were conducted with all six firms, and best and final offers were requested by December 2.

The final proposals were evaluated resulting in SysMetrics, Inc., receiving the highest score for both areas. DOT's rating fell because the agency felt that serious problems with DOT's proposal were revealed during the negotiations. For example, the evaluators felt that DOT lacked understanding of all the work to be performed. DOT then protested to this Office. Apparently as a result of the DOT protest, offerors submitting best and final offers were requested to extend their offers while their proposals were reevaluated by NIH. The reevaluation, which was completed on March 4, resulted in minor changes in the scoring which did not affect the overall ranking.

By letter of June 17, 1976, the agency report was received. We were informed that NIH intended to award the contract to SysMetrics notwithstanding the protest because of program urgency.

DOT contends that it was entitled to the award because it was technically qualified and offered the lowest estimated cost. However, it was clear from the RFP that technical considerations were considered to be twice as important as estimated cost. Based on technical criteria, SysMetrics received a point score of 95 for both Area 1 and Area 2 work (as specified in the RFP) while the protester was rated 61 and 63, respectively. In the cost category, the protester received the maximum number of points (50 for each area), while the successful offeror received 41 and 34. Nevertheless SysMetrics total scores of 136 and 129 (as compared to 111 and 113 for the protester) qualified it for the award.


Where, as here, a cost-reimbursement type contract is to be awarded, proposed costs should not be considered controlling since they are merely estimates. Federal Procurement Regulations (FPR), Section 1-3.805-2 (1964 ed.). Moreover, offerors were made aware by the RFP that technical considerations would be paramount. If the protester felt that cost was not being afforded sufficient

weight, it should have made its objection known prior to the submission of its proposal. Accordingly, we do not agree with the protester's contention that it should have received the award because it submitted the lowest estimated cost.

In this connection, we note that NIH evaluated cost proposals by merely awarding the highest score to the lowest estimated cost. There is no indication that the Government used an independent estimate of the cost or that cost realism was considered in any way. We have recognized that a low estimated cost proposal by an offeror should not be accepted at face value and that under FPR 1-3.807-2 (1964 ed., amend. 103, March 1972) an agency should make an independent projection of the offeror's estimated costs in order to determine the realism and reasonableness of those costs. PRC Computer Center, Inc.; On-Line Systems, Inc.; Remote Computing Corporation; Optimum Systems, Inc., B-178205, July 15, 1975; 75-2 CPD 35. Although the cost evaluation was deficient DOT was not prejudiced thereby, as it received the highest possible score on its cost proposal.

Finally, DOT contends that the agency acted improperly by failing to apply to the Small Business Administration (SBA) for a Certificate of Competency prior to rejecting DOT's offer. We do not agree. At no time did NIH conclude that DOT lacked the capacity or credit to perform the instant contract. NIH did conclude that SysMetric's offered the most suitable proposal, technical and price factors considered. Under these circumstances, there was no requirement for NIH to refer DOT's proposal to the SBA. 53 Comp. Gen. 388 (1973).

The protest is denied.


Acting Comptroller General
of the United States