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Joseph Hotopoulos
Proc. II

DECISION



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

FILE. 3-187311

DATE: January 27, 1977

MATTER OF: Olin Corporation, Energy Systems Operations

DIGEST:

Determinations concerning technical merits of proposals are matters of agency discretion which will not be disturbed unless shown to be unreasonable or in violation of statute or regulation; therefore, agency selection of technically superior but higher priced offer for award of cost-plus-fixed-fee contract is not legally objectionable where record shows that technical evaluators could reasonably find awardee's proposal to be technically superior to other proposals.

Olin Corporation, Energy Systems Operations (Olin) protests the award by the Department of Transportation, National Highway Traffic Safety Administration (NHTSA) of a cost-plus-fixed-fee contract to Minicars, Incorporated (Minicars), for the development of a solid propellant inflation technique for the subcompact car passenger restraint system under request for proposals (RFP) NHTSA-6-B223.

The protester points out that its estimated cost was considerably lower than that of Minicars, and takes exception to NHTSA's offered justification for the award on the basis that the Minicars technical proposal was demonstrably superior. The protester contends that its review of the proposal discloses no evidentiary basis for such a conclusion. In addition, the protester alleges that it was told by NHTSA at a post-award debriefing that prior experience does not enter into NHTSA's evaluation and selection process but, nevertheless, the NHTSA report on the protest repeatedly emphasized Minicars' prior work on the Research Safety Vehicle (RSV) program as partial justification for the determination of technical superiority.

(RSV calls for the design, development and fabrication of a limited number of motor vehicles in the 3,000 pound class incorporating safety features deemed necessary for the mid-1980s. Minicars and Calspan Corporation were chosen to perform Phase II of RSV which calls for the development of a proposed vehicle detailed design.)

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The record shows that four proposals were determined to be technically acceptable and within the competitive range for this procurement, as follows:

<u>Offeror</u>	<u>Score</u>
Minicars, Inc.	91.6
Calspan Corporation	79.7
Olin Corporation	76.3
Pocket Research Corporation	73.9

Subsequent to the conduct of negotiations and the submission of best and final cost and technical proposals, Minicars' cost proposal was highest at \$336,909, while the protester's was second lowest at \$284,058.

NHTSA reports that the significant difference between the Minicars proposal and the others in the initial scoring was attributed to its overall comprehensiveness, clarity, depth of technical discussions, and overall superiority of technical approach in critical areas such as the problem of out-of-position occupants, particularly children. While all offerors successfully answered clarification questions during the ensuing discussions, and the scoring gap between technical proposals narrowed somewhat, NHTSA reports that Minicars' proposal remained substantially superior after the conduct of negotiations. It states that:

"1. Minicars' proposal is based upon using a dual bag system as compared to a single bag system proposed by all other offerors in the competitive range. While both approaches are technically acceptable, the dual bag approach is considered technically superior, since it is based upon inflation of the smaller lower bag first and then the larger upper bag. This presents a lesser inflation shock to the passenger and presents faster protection to the chest and lower torso, which is the portion of the body which first hits fixed objects in a typical crash. The upper bag then protects the head.

"2. The Minicars proposal provided extensive discussion on the problem of an out-of-position child, and presented a technical approach which was considered superior to that of the other offerors in the competitive range.

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Minicars proposed to mount the ACES and fold the lower bag in such a way that it would deploy in a downward fashion, which would protect a lesser inflation shock on an out-of-position child.

"3. The Request for Proposal contained Government estimate of approximately 55 sled tests using Government provided anthropomorphic dummies to prove the hardware design. This was an estimate based upon an assumption of an absence of hardware problems which may have required retesting after hardware change. All offerors based their proposals on this Government testing estimate. In their proposal, Minicars stated that they had completed approximately 10 sled tests under the RSV program and, by the time testing was to start on this program, they expected to complete an additional 30 to 40 tests under the RSV program. The results of these tests demonstrated the best performance ever attained by an air bag system in a small car. Since the anticipated hardware design for this program was very similar to that on the RSV program, there was reasonable certainty that much of the RSV test results could be used on this program to validate design features prior to initiation of testing on this program. In view of the validated performance data provided by Minicars in their proposal, the possibility of completing the testing within the Government estimate, therefore, was much greater with Minicars than with any other contractor who was being considered for award."

The protester has taken exception to the foregoing technical conclusions, contending that its own review of the Minicars proposal reveals no basis for the superior rating, and alleges that Minicars' proposed system differs very little from its own. Specifically, Olin states that it also proposed to evaluate a dual bag system, along with a single bag system, and that Olin has experience in using the dual bag under NHTSA Contract DOT-MS-345-3-691.

In response, NHTSA states that:

" * * * Olin proposed the use of a dual bag only as an alternate in the event the single bag approach did not prove successful. Because of this, the dual

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bag approach was not priced in their proposal. Olin's approach was to test the single bag and, if this concept did not prove feasible, then somewhere during the program, switch to a dual bag approach. The delay introduced by first working on the single bag lessened the likelihood of Olin being able to complete the sled testing within the estimated number of tests on which they based their pricing. Further, Olin's past experience on the cited NHTSA contract significantly differs from Minicars' past and current experience on the RSV program. The use of the dual bag on the previous contract cited by Olin was dictated primarily because the aspirator inflator would not perform satisfactorily in a single bag. A solid propellant inflator combined with an aspirator was therefore used. The aspirator inflator is based upon utilizing air in the vehicle compartment to inflate the bag. Most significantly, however, in addition to the technical differences in these approaches, the previous experience of Olin with dual bag is in a large car environment. As explained earlier * * * the engineering difficulty in installing a successful ACRS in a compact or subcompact vehicle is much greater than in a standard size vehicle. The experience of Minicars with the RSV program, which is in a subcompact vehicle class, is much more related than the past experience of Olin."

It is not the function of this Office to evaluate proposals in order to determine their relative technical merits. TGI Construction Corporation, et al., 54 Comp. Gen. 775 (1975), 75-1 CPD 167; Techplan Corporation, B-180795, September 16, 1974, 74-2 CPD 169; Decision Sciences Corporation, B-182558, March 24, 1975, 75-1 CPD 175. The contracting agency is responsible for determining which technical proposal best meets its needs, since it must bear the major burden for any difficulties incurred by reason of a defective evaluation. Training Corporation of America, B-181539, December 13, 1974, 74-2 CPD 337. Accordingly, we have consistently held that procuring officials enjoy "a reasonable range of discretion in the evaluation of proposals and in the determination of which offeror or proposal is to be accepted for award," and that such determinations are entitled to great

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weight, and must not be disturbed unless shown to be unreasonable or in violation of the procurement statutes or regulations. METIS Corporation, 34 Comp. Gen. 612, 614-5 (1975), 75-1 CPD 44; Riggins and Williamson Machine Company, Incorporated, et al., 34 Comp. Gen. 793 (1975), 75-1 CPD 168; B-178220, December 10, 1973.

In light of these principles, we have reviewed the report of NHTSA's technical proposal evaluation committee as well as the proposals themselves, and find that the technical evaluation had a reasonable basis. The report does indicate that Olin received acceptable scores in each evaluation category, and that its proposal was recognized as including a dual bag approach and reflecting a "good understanding" of the technical objectives. However, the report further indicates that in each category Minicars' proposal was rated higher, in some cases substantially so, and that where Olin was regarded as "good", Minicars was regarded as "excellent" with its chance for success denominated "extremely high." From our review of the proposals, it appears that the NHTSA evaluators, each of whom rated the Minicars proposal higher overall than any other proposal, could rationally evaluate the proposals as they did. (For example, while both offerors were recognized for their dual bag approaches, as explained above by NHTSA, Minicars' dual bag experience was regarded as more meaningful for this procurement than Olin's experience.) The fact that the protester does not agree with that evaluation and would not have regarded the Minicars proposal as superior does not render the evaluation unreasonable. Honeywell, Inc., B-181170, August 8, 1974, 74-2 C&D 87; METIS Corporation, supra.

Accordingly, and since a cost-type contract was to be awarded and the evaluation criteria did not otherwise preclude the selection for award of Minicars' higher rated technical proposal, notwithstanding the higher estimated cost associated therewith, is not legally objectionable. See, e.g., Riggins and Williamson Machine Company, Incorporated, et al., supra.

With regard to NHTSA's consideration of prior experience and what the protester was told at the debriefing, NHTSA informs us that it did not advise the protester that prior experience was not considered. Rather, the protester was advised that it was prior performance that was not considered in proposal evaluation (since past performance was addressed by NHTSA only with regard to determining the offeror's responsibility). NHTSA advises that prior experience was considered in the selection process, in accordance with evaluation factor number 3 in the RFP entitled "Prior Experience and Related Work."

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The protest is denied.

Paul B. Stuchling
For the Comptroller General
of the United States