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DECISION



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

10,033

FILE: B-192930

DATE: May 7, 1979

MATTER OF: Gould Inc.

[Protest of Air Force Contract Award]

DIGEST:

1. Based on review of record, protester was reasonably informed that its proposal was only considered in competitive range for procurement; information did not suggest, however, that proposal was first-ranked or that adequately explained changes in proposal would not be accepted in final offer stage.
2. Procuring agency is not required under 10 U.S.C. § 2304(g) to discuss all inadequate areas of proposal which is scored acceptable, albeit less than first-ranked proposal, to extent "technical transfusion" or "technical levelling" would take place.
3. Rational support is found for selection of first-ranked, slightly higher price and cost proposal over third-ranked, slightly lower price and cost proposal in that difference in technical ranking justifies cost and pricing premium involved in award to first-ranked concern.

was justified by

*Air Force
ACC 00035*

DLG 01498

CNG-00068

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Gould Inc. has protested the award of a contract to GTE Sylvania, Inc., (GTE), under solicitation F19628-78-R-0083 which was issued on March 24, 1978, for design, development, fabrication, test and delivery of two development models of the "System Trainer Exercise Module" (STEM). The RFP also described a "production option" for the items. For the reasons set forth below, we deny the protest.

P 577

Background.

The "Executive Summary Letter" attached to the RFP explained that the required work was to be done under a "combined preproduction [cost plus incentive fee] contract [containing] * * * [a] production option [negotiated on a] fixed-price incentive [basis]." The letter further stated that contract award would be based on the "technical aspects of the proposed design, the offeror's

005166

management ability, the most probable cost to the Government, and the offeror's approach to the STEM procurement in that order of importance." These evaluation factors were further detailed in the RFP along with a statement that technical/schedule risk, cost realism, and cost risk evidenced in proposals would be evaluated.

Five offerors--including Gould Inc. (Gould),--responded to the RFP on May 18, 1978. Each proposal was then evaluated by a source selection evaluation board (board). The board found that all offerors were technically acceptable but had deficiencies requiring resolution and other aspects requiring clarification. Thereafter all offerors were afforded the opportunity to submit written submissions based on these findings; after the written submissions were received, offerors were also given the opportunity to participate in oral discussions followed by the submission of best and final offers. The Air Force reports all offerors took advantage of these opportunities.

The report of the board's findings with respect to the perceived merits of the proposals submitted by Gould and GTE may be summarized, as follows:

Gould	GTE
Technical/Operational acceptable-to-good (The report also noted that Gould inadequately defined management responsibilities for certain software management work.)	Technical/Operational excellent
Management satisfactory-but weak (The report noted that management was defined in general terms and was sometimes lacking in organization of materials.)	Management excellent

Logistics

acceptable
 (Here the report noted
 that the material presented
 was often general.)

Logistics

excellent

Risk Assessment

Overall, low-to-moderate
 technical risk and moderate-
 to-high schedule risk.
 Moderate management risk and
 low-to-moderate logistics risk.

Risk Assessment

Overall, low risk in
 technical and schedule
 areas. Low management
 and logistics risk.

Proposals were then evaluated by a source selection advisory council (council). As to Gould, the council rated the company's proposal as third overall and assessed the proposal as having moderate-to-high technical and schedule risks. Specifically, the council found that Gould's proposal substantially underestimated the scope of overall software effort. In the management area, Gould was felt to have a good understanding of the requirements; however, the company was considered to be subject to difficulty in the software development area because of the complex approach proposed. Gould's logistics approach was considered acceptable.

By contrast, the council rated GTE first overall with low technical and schedule risks. The council ratings of GTE under the noncost evaluation factors were equivalent to the "excellent" ratings assigned GTE's proposal by the board.

The board's and council's observations were then made known to the source selection authority for the procurement. The authority selected GTE for the award "based on the assessment that [GTE was] the best offeror in its response to the major elements of the solicitation requirements * * *." The selection rationale was as follows:

"Extensive [GTE] preproposal planning was evident. The offeror presented a very detailed proposal which addressed all key areas of the STEM. The computer selection tradeoff and the risk analysis were conducted in a thorough manner and fully documented in the proposal. A complete understanding of all facets of the hardware and software required for STEM was demonstrated in the proposal.

"The offeror presented the best proposal in each of the Technical/Operations, Management/Production, and Logistics areas.

"Due to extensive preproposal planning and the demonstrated knowledge and good preliminary design shown in the proposal, it is anticipated that the offeror has the best potential to accelerate the preproduction schedule and deliver the production units sooner than the contract schedule.

"In the management area, the offeror demonstrated thorough planning for all aspects of the program as well as excellent comprehension of all management functions and responsibilities. The offeror has a full understanding of the STEM requirements.

"The offeror provided the best overall logistics proposal, tailored specifically to STEM requirements and reflecting a superior understanding of Integrated Logistics Support (ILS) and Logistics Support Analysis (LSA) requirements.

"The offeror proposed the second lowest assessed combined preproduction and production costs.

"The offeror's proposal was rated as the lowest in risk.

"The proposal was fully compliant with RFP requirements.

"The Contracting Officer has determined GTE-Sylvania, Inc. to be responsible within the meaning of ASPR 1-904.

"GTE/Sylvania, Inc. is in compliance with Equal Employment Opportunity requirements as confirmed by the DCASR, Boston Contract Compliance Office on 14 August 1978."

Thereafter award was made to GTE.

Gould's initial grounds of protest may be summarized, as follows:

(1) Since Gould was a qualified offeror and submitted the lowest cost proposal to the Government, Gould should have received award; moreover, the Air Force indicated in the call for best and final offers that it had accepted and was completely satisfied with Gould's proposed technical approach.

(2) The Air Force did not point out any serious deficiencies either as to technical or cost matters in Gould's proposal during competitive discussions.

(3) Since part of the contract was awarded on a fixed-price basis and technical risk for the project was minimal, the Air Force should have realized that Gould--a very experienced contractor--would bear the greatest risk for performance under its low price;

(4) The Air Force had little appreciation for the scope and complexity of the contract since it seriously overestimated program costs.

In reply to these initial grounds of protest the Air Force responded, as follows (keyed to the above-numbered paragraphs of the protest):

(1) The RFP clearly indicated that cost, while a consideration, did not possess the importance of technical/operational and management/production/logistics areas in which Gould ranked third; while cost was not disregarded in the award to GTE (which ranked first in noncost areas), low cost was not the controlling award factor. The assumption by Gould that the Air Force was completely satisfied with its proposal is entirely gratuitous in that neither the Air Force's negotiations with Gould nor its call for best and final offers could have reasonably bestowed any specific degree of qualification on the Gould proposal other than that the proposal was considered to be in the competitive range--that is, it had a reasonable chance for award without any indication as to how great or small that chance really was.

(2) The Air Force was required to and did apprise offerors in the competitive range of their deficiencies, conduct discussions with them, and provide them a reasonable opportunity to revise their proposals.

(3) Contrary to Gould's statement, there is both cost and technical risk associated with software development--which has historically proved to be a risky venture--under the pre-production as well as in the production phase since this will be the initial production run for these items. As to Gould's claim that its prior experience should minimize any perceived risk, the Air Force notes that based on Gould's experienced underruns, overruns, and requests for deviations and waivers it is not possible to say that Gould offers less risk than any other concern.

(4) The Air Force rejects Gould's suggestion that the funds estimated for the contract show the Air Force's lack of understanding of the scope of the contract since the funds estimated also include management reserves, unpriced items (spares, for example), the Economic Price Adjustment provision of the contract as well as

other normal contingencies employed in the estimating process; moreover, the Government employs highly skilled, highly educated individuals for procurement and evaluation work.

In reply to the Air Force position, Gould argues:

(5) There was little or no software development risk contrary to the stated Air Force position.

(6) In any event, the Air Force was remiss in failing to inform Gould of possible software shortcomings during negotiations especially since the Air Force deleted a "demonstration" test during which Gould could have demonstrated the absence of development risk.

(7) The Air Force has delayed in giving information as to alleged shortcomings in management and logistics.

As to the alleged shortcomings in Gould's management and logistics proposal, the Air Force has furnished us with a copy of a January 29, 1979, letter to Gould which refers to the management and logistics areas of Gould's proposal as follows:

"In the area of management the following detracted from your proposal:

"Your approach to software management was not clearly defined and did not adequately address several key areas of risk associated with the software development.

"Your proposed approach to meeting preproduction and production schedules was assessed as only minimally acceptable.

"Your manpower proposed for the software effort was assessed as inadequate.

"You underestimated the schedule risk. Treatment of this area in the proposal was very casual.

"The detracting aspects of the proposal in the logistics area were:

"Your proposal contained only a minimally acceptable discussion of techniques for the integration of the engineering and logistic disciplines.

"Your proposal contained a general approach to Technical Order development which was considered marginally acceptable."

Analysis

(keyed to the above-numbered paragraphs of Gould's protest)

(1) Based on our review of the record, we agree with the Air Force's position that its dealings with Gould conveyed no more than that the company's proposal was considered in the competitive range for the contract award but did not in any way convey that the proposal was first ranked in noncost evaluation factors such that Gould should reasonably have assumed it would be entitled to award if its costs as proposed and as Air Force evaluated were low. For example, the Air Force statement in the call for best and final offers that a "complete understanding" of technical terms existed between Gould and the Air Force should not reasonably have been interpreted as an indication of excellent quality in the Gould proposal since it is obvious that relative inferior quality in technical matters can also be "clearly understood." Moreover, the Air Force statement in the best and final call that changes in a final offer which were not "adequately explained * * * may become a minus" should not have reasonably been interpreted as precluding final, adequately explained changes or indicating the degree of merit already assigned to the proposal. Further, it is clear the RFP reasonably informed offerors that cost was of lesser importance than noncost evaluation factors such that a higher ranked technical proposal might be properly selected over a lower ranked, albeit lower cost proposal.

(2)(6) 10 U.S.C. § 2304(g) (1976) requires that oral or written discussions be held with all offerors in a competitive range, and we have recognized that this mandate can be satisfied only by discussions that are meaningful. Union Carbide Corporation, 55 Comp. Gen. 803, 806, (1976) 76-1 CPD 134. At the same time we have also recognized in the cited case that the statutory provision:

"* * * should not be interpreted in a manner which discriminates against or gives preferential treatment to any competitor. * * * Obviously, disclosure to other proposers of one proposer's innovative or ingenious solution to a problem is unfair. We agree that such 'transfusion' should be avoided. It is also unfair, we think, to help one proposer through successive rounds of discussion to bring his original inadequate proposal up to the level of other adequate proposals by pointing out those weaknesses which were the result of his own lack of diligence, competence, or inventiveness in preparing his proposal. 51 Comp. Gen. 621, 622 (1972)."

Further, the content and extent of discussions is a matter of judgment primarily for decision by the agency and not subject to question by our Office unless the judgment is clearly arbitrary. Washington School of Psychiatry, B-189702, March 7, 1978, 78-1 CPD 176; Systems Engineering Associates Corporation, B-187601, February 24, 1977, 77-1 CPD 137.

Gould essentially claims that the Air Force should have discussed all inadequacies perceived in its proposal. These "inadequacies," however, related to areas which were considered inadequate mainly in comparison with the superior scores attained by the two higher ranked proposals and, as such, were apparently not considered by the Air Force to be "deficiencies." Moreover, we have specifically rejected the notion that agencies are obligated under the cited statute to afford offerors these all-encompassing negotiations. As we stated in Washington School of Psychiatry, supra.

"It is the position of WSP that the agency should have provided it with an opportunity to respond to all questions raised by the evaluators so that it could have improved its competitive standing. In effect, the protester believes that the agency should have discussed each area of the WSP proposal receiving less than maximum points. However, there is no requirement to discuss all inferior aspects of an otherwise technically acceptable proposal. * * *

"In this case, competition was assured by two acceptable proposals within the competitive range and the danger of technical levelling through detailed discussions was real. Under these circumstances, we think the agency was justified in limiting its discussions to those areas in which it needed clarifications."

Similarly, we think the Air Force was justified in apparently limiting its discussions here because the proposal inadequacies arguably seem to relate to matters which would lead--recognizing the technically complex nature of the procurement--to "technical trans- fusion" or to "technical levelling." Consequently, and recognizing that the Air Force did have negotiations with Gould concerning its proposal, we cannot fault the manner or the scope of the Air Force--Gould negotiations. Thus, the Air Force's decision not to discuss software development risk with Gould does not in any way excuse Gould's failure to have protested the deletion of a software demonstration test in a timely fashion to our Office. See 4 C.F.R. § 20.2(b)(1) (1978).

(3)(5) It must be remembered that Gould did not propose the lowest cost--the lowest cost was proposed by AAI Corporation. Although Gould's proposed costs were approximately 9 percent lower than GTE's proposed costs and 6 percent lower than GTE on an Air Force evaluated basis, the

record of evaluation shows the Air Force considered the merit in GTE's first-ranked proposal to be worth the additional cost premium involved which is also consistent with the RFP's instructions that technical considerations were more important than cost considerations.

The issue joined here--whether the perceived technical superiority found in GTE's proposal was worth the additional cost premium involved--is one which is repeatedly raised in protests of negotiated, cost-reimbursement contracts--a contract type which is partially involved in the STEM effort. As we stated in Tracor Jitco, Inc., 54 Comp. Gen. 896/898 (1975), 75-1 CPD 253:

"Tractor asserts that it should have received award because its higher-rated technical proposal represented greater value than Southwest's offer. Similar complaints, questioning agency decisions in weighing cost/technical 'trade-offs,' have been considered by our Office in recent years. * * * Uniformly, we have agreed with the exercise of the administrative discretion involved--in the absence of a clear showing that the exercised discretion was not rationally founded--as to whether a given technical point spread between competitive-range offerors showed that the higher-scored proposal was technically superior. On a finding that technical superiority was shown by the point spread and accompanying technical narrative, we have upheld awards to concerns submitting superior proposals, although the awards were made at costs higher than those proposed in technically inferior proposals. Similarly, on a finding that the point score and technical narrative did not indicate superiority in the higher-ranked proposal, we have upheld awards to offerors submitting less costly, albeit lower-scored technical proposals. * * * This reflects our view that the procuring agency's evaluation of proposed costs and technical approaches are entitled to great weight since the

agencies are in the best position to determine realism of costs and corresponding technical approaches. * * * Our practice of deferring to the agency involved in cost/technical trade-off judgments has been followed even when the agency official ultimately responsible for selecting the successful contractor disagreed with an assessment of technical superiority made by a working-level evaluation committee. Our review of the subject award, therefore, is limited to deciding whether the record reasonably supports a conclusion that the award was rationally founded. * * *

Based on our review of the record, we find rational support for the selection of GTE's first-ranked, slightly higher cost proposal over Gould's third-ranked, slightly lower cost proposal. Moreover, to the extent that the contract is partially awarded on a fixed-price basis, we view the record as adequately supporting award to the higher-scored, higher-priced offeror. As to the selection of a higher fixed-price, higher-score technical offer instead of a lower fixed-price, albeit technically acceptable, offer see Automated Systems Corporation, B-184835, February 23, 1976, 76-1 CPD 124, where we approved this procedure to the extent the evaluation record, as here, supports the price premium involved.

Finally, we cannot question the Air Force's technical judgment--involving admittedly complex matters--as to the degree of technical and cost risk involved in the program or the Air Force's judgment that Gould's performance on Government contracts does not indicate less risk of "cost growth" under prospective contracts compared with other offerors.

(4) We see no basis to question the Air Force response to this aspect of Gould's protest.

(7) Although the information in question--which was requested by Gould independently of our protest process--was not supplied by the Air Force to Gould until early February 1979, it is our view that this information, together with the record of evaluation, reasonably supports the GTE award.

Protest denied.

R. F. Keller
Deputy Comptroller General
of the United States