

12778

Cunningham
Protest

DECISION



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

FILE: B-195320

DATE: February 8, 1980

MATTER OF: Harbridge House, Inc. DLG-03869

DIGEST:

Since procurement was for contracting training courses only not technically complex in character, fears of technical transfusion and leveling should not have prevented posing of at least clarification questions to protester whose proposal was judged relatively weak in several areas, especially since "Personnel and Organization Qualifications" were equal in importance to "Technical Approach." Since requirement for meaningful discussions was not met, GAO recommends Navy consider feasibility of not exercising option for future years' courses.

Background

[Protest ->

This protest of Harbridge House, Inc. (HHI), against a fixed-price Navy contract for "contracting training courses" awarded to Sterling Institute primarily challenges the adequacy of discussions leading to the contract. We conclude that discussions were improperly limited to matters of price only. DLG-00431

There is no dispute as to the essential facts pertinent to the "discussion" issue. The Navy did not conduct any discussions of noncost proposals for the work with HHI, Sterling, or Don Sowle Associates, the three offerors in the competitive range for the contract to be awarded; the Navy did not conduct discussions because of wording in the Navy Procurement Directive § 3-805.2 (Revision 6, March 18, 1977) which provides: AGC00001

"(b) Applicability. [These] provisions * * * are applicable to cost type, research and development, and other complex contracts where factors other than price serve as the primary basis for award * * *."

~~008613~~ 111515

"(c) * * * Contract negotiations will be conducted in accordance with the following:

"Technical discussions are intended to ensure that the provisions of the solicitation are clearly understood by offerors and that the Government evaluators fully understand the proposals and their strengths and weaknesses * * *. Accordingly, those aspects of proposals which are unclear, improperly substantiated or fail to meet the requirements of the solicitation must be discussed with offerors. However, the strengths, weaknesses, or overall evaluation of any offeror's proposal with respect to other proposals must not be divulged either directly or indirectly. The conduct of discussions must avoid leveling proposals * * *."

It is the Navy's position that since it fully understood the strengths and weaknesses of competing offerors' proposals, discussion of the offerors' non-cost proposals would have been inappropriate in this procurement in which factors other than price served as the primary basis for award.

HHI insists that discussions of areas judged relatively weak in its noncost proposal--which was scored approximately 20 percent less than Sterling's noncost proposal--would have been appropriate under the cited Directive as well as under certain statements found in Dynalectron Corporation, 55 Comp. Gen. 859 (1976), 76-1 CPD 167 ("an agency cannot limit its duty to conduct meaningful discussions by labeling some areas 'weaknesses'"), and Portfolio Associates, Inc., B-192763, May 31, 1979, 79-1 CPD 384 ("Requests that an offeror amplify upon or qualify particular aspects of its proposal [constitute meaningful discussions when it would be unfair to other offerors to directly point out inadequate proposal areas]"). HHI argues that most of the scoring differential related to lack of documentation or explanation of proposed teaching staff, method of updating text and course materials, adequacy of proposed methods of instruction and program management. Therefore, HHI insists that the Directive mandate

for discussions concerning proposal areas which are improperly substantiated should have obliged the Navy to discuss these documentation deficiencies in its proposal; further, HHI argues that at a minimum the Navy should have requested HHI to amplify upon these aspects of its proposal.

In reply to this argument the Navy insists that the relatively weak areas in HHI's proposal "reflect[ed] on the innovation of HHI in presenting its proposal" and that "there is no indication that discussion on these points would have served any purpose other than to transfer better ideas from Sterling to HHI and result in the leveling of noncost proposals in violation of the Directive." In this connection, it is significant to note that HHI's proposal was considered "good" overall and only weak in certain areas in comparison to the highest rated proposal. Finally, in reply to HHI's assertion that it could have improved its noncost proposal by approximately 20 percent had discussions been pursued, the Navy asserts that there is no evidence HHI would have achieved perfect scores in the areas involved and that if HHI's argument were accepted the Government would be required to discuss every area in which a competitive offeror achieved less than a perfect score. The Navy asserts that this burden of discussion would be intolerable and greatly increase the time and cost of conducting competitive procurements.

Recently, in Gould Inc., B-192930, May 7, 1979, 79-1 CPD 311, we summarized several principles for application in resolving the "meaningful discussions" issue present here. As we said in the cited case:

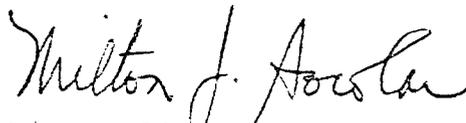
"* * * we think the Air Force was justified in apparently limiting its discussions here because the proposal inadequacies arguably seem to relate to matters which would lead-- recognizing the technically complex nature of the procurement--to 'technical transfusion' or to 'technical leveling.' Consequently, 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."

Although the procurement in the Gould case was technically complex in nature, the subject procurement was for training courses only and obviously cannot be considered ~~technically complex in character~~. In this circumstance ~~technical transfusion and leveling should not have been considered to have been major problems especially since "Personnel and Organization Qualifications" were equal in importance to "Technical Approach."~~ More fundamentally, we fail to see how the posing of clarification questions to HHI under the Portfolio Associates, Inc., decision, above, would have resulted ~~in technical transfusion or leveling as feared by the contracting officer.~~ We also note that while Sterling's noncost proposal was scored higher than HHI's (60 to 51), Sterling's initial proposal price was significantly higher (over \$650,000). As a result of limiting discussions to price, Sterling was able to reduce its price while HHI had no opportunity to improve its lower scored, lower priced proposal. Sterling's final price was only \$3,423 higher. Thus, we consider the Navy's reliance on the cited Procurement Directive to have been erroneous. We must, therefore, conclude that the mandate for meaningful discussions was not met in this case.

Since performance under the contract began early in the fiscal year and it would be impractical to consider changing contractors during the current year, we are recommending that the Navy consider the feasibility of not exercising the option for future years' services and issuing a new competitive procurement for its future year needs.

In light of our above conclusion on this issue and our recommendation for remedial action, we consider it unnecessary to consider the other issues raised by the protest.

Protest sustained.



FOR THE Comptroller General
of the United States