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DECISION



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

[Protest of Navy Contract Award]

FILE: B-197002

DATE: June 5, 1980

MATTER OF: Trilon Educational Corporation

DIGEST:

1. GAO does not make determinations as to acceptability or relative merits of technical proposals. Instead, GAO will examine procurement record to determine whether judgment of contracting agency was clearly without reasonable basis.
2. Agency selection officials are not bound by recommendations of technical evaluation and advisory groups. Even if technical evaluators unanimously recommend award to one offeror, it is still within discretion of selection officials to select another offeror for award provided such selection has reasonable basis and is consistent with evaluation criteria. Record shows that selection of awardee by contracting officer, despite recommendation of technical evaluators for protester, has rational basis and is consistent with solicitation evaluation criteria.
3. Where agency selection officials have determined proposals to be equal technically, cost can become determining factor in award process even though cost was designated relatively unimportant evaluation factor in solicitation.
4. Evaluated costs rather than proposed costs provide sounder basis for determining most advantageous proposal since Government is required in cost contracts to pay, within certain limits, contractor's actual, allowable and allocable costs. Further, conclusions reached in evaluating proposed costs are entitled to great weight by GAO and will not be challenged unless they are unsupported by reasonable basis.

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5. GAO finds that agency's cost realism analysis based on assumption that two equally qualified offerors would take same number of man-hours to perform contract work is reasonable. Record shows that agency used number of man-hours in Government estimate as common figure since protester and awardee varied equally in their difference from Government estimate figure.

Trilon Educational Corporation (Trilon) protests the award of a contract to Automation Industries, Vitro Laboratories Division (Vitro), under request for proposal (RFP) NOO140-79-R-0811 issued by the Naval Supply Systems Command, Naval Regional Procurement Office, Philadelphia, Pennsylvania. The RFP called for the development and production of a technical manual for improvement of the Navy's Gas Free Engineering Program.

We find no merit to the protest.

The Navy received seven proposals in response to the RFP. After performing a technical evaluation, the Naval Weapons Station (NWS), Earle, New Jersey, rated four of these proposals as unacceptable and eliminated them from the competitive range. Vitro, Trilon and J.J. Henry Company were determined to be in the competitive range with Vitro having the highest acceptable proposal. DL6047

By letters of July 9, 1979, the contracting officer advised the above three offerors of the deficiencies in their proposals and requested them to submit their best and final offers by August 2, 1979. All three offerors submitted revised proposals which were evaluated by NWS. NWS's concluded Trilon had improved its proposal so substantially that it had become the most acceptable offeror. Vitro's proposal was ranked second. NWS found no improvement in the proposal of the J.J. Henry Company.

Before making an award, the contracting officer examined Trilon's revised proposal to determine whether there was a basis for NWS' conclusion that the company had improved its position to the point that it had become the superior offeror. This examination was apparently

undertaken because of the fact that Vitro's proposal had originally been evaluated as highly qualified and thus clearly superior to Trilon's proposal which was originally evaluated as marginally acceptable. NWS's evaluation of the revised proposals stated that Trilon had made substantial changes in the number of hours for the contract work and also in the number of manual illustrations indicating a clearer understanding of the nature and scope of the task. Further, NWS stated that Trilon's revised proposal received a highly acceptable rating because of the company's clarification of its corporate experience and because of the addition of key personnel with Gas Free Engineering experience.

The contracting officer found that the letters describing proposal deficiencies specifically advised Trilon that its total labor proposal was considered "excessive," while Vitro was advised that its total labor proposal was considered only "slightly overstated." Consequently, the contracting officer believed that the significant reduction in man-hours by Trilon resulted from the advice regarding proposal deficiencies rather than some new insight or comprehension of the scope of work. In addition, NWS's labor estimate for the work was 2,500 man-hours. Trilon's estimate was 2,041 man-hours or 459 hours less than the Government estimate, while Vitro's estimate was 2,984 man-hours or 484 hours more than the Government estimate. Since the man-hour estimates of Trilon and Vitro were almost identical in the extent to which they differed from the Government estimate, the contracting officer concluded that no reasonable basis existed for believing either company's labor proposal was more realistic than the other's.

With respect to Trilon's clarification of corporate experience, the contracting officer noted that NWS's original evaluation of the proposals had indicated that Vitro had shown extensive experience in ship design, hulls and spaces useful to the proposed contract work and that Trilon was "without this corporate experience." Upon review of Trilon's revised proposal, the contracting officer determined that Trilon's clarification was basically a relisting of the information that Trilon

had provided in its original proposal. Moreover, the contracting officer found that the clarification did not demonstrate a significant amount of direct experience with Gas Free Engineering. Therefore, the contracting officer believed that there was no basis for concluding that Trilon had demonstrated corporate experience which was superior to Vitro's.

As to the addition of key personnel in Trilon's revised proposal, the contracting officer determined that Trilon had added only one additional personnel resume. This resume was of a retired civil service employee of the Navy who had broad experience involving technical publications for many types of equipment and systems. However, the contracting officer concluded that this individual had no degree in engineering or any other field and that he had no particular expertise or background in the field of Gas Free Engineering.

By letter dated September 28, 1979, the contracting officer advised NWS that its technical evaluation of the revised proposals failed to establish that Trilon was technically superior to Vitro. NWS was informed that it would be necessary to provide additional specific information to support a superior technical ranking for Trilon. No additional information relating to the technical evaluation of proposal was furnished by NWS. Thus, the contracting officer decided that Vitro should be considered as highly qualified based on NWS's initial technical evaluation since no reason had been expressed in the evaluation of the revised proposals for downgrading Vitro. The contracting officer considered Trilon to be technically equal to Vitro, but not superior. After consultation with the cognizant Defense Contract Audit Administration offices, the contracting officer determined that both offerors' cost proposals were realistic and, therefore, acceptable. Also, the estimated hours in each offeror's proposal were determined not to be excessively inconsistent with the Government estimate.

Because the contracting officer found the proposals of Trilon and Vitro essentially equal in technical merit, cost became the deciding factor in the selection for award. In the contracting officer's view, the difference in estimated cost between the two proposals was primarily due to the lower number of man-hours in

Trilon's proposal. However, in making the cost comparison between the proposals, the contracting officer applied the various cost elements listed by each offeror to a common figure for man-hours. In this regard, the Government estimate of 2,500 man-hours was used as the common figure. On this basis, the contracting officer concluded that the actual cost to the Government would be lower if a contract were awarded to Vitro. Therefore, the contracting officer decided that Vitro had submitted the most advantageous proposal and awarded the contract to that firm.

The Navy notified Trilon of its award to Vitro by letter dated October 15, 1979, which letter was received by Trilon on October 23, 1979. On October 25, 1979, Trilon made a written request pursuant to the Freedom of Information Act for all data relating to the award. On November 19, 1979, Trilon received a written response from the Navy to the request. By mailgram dated November 30, 1979, and received by us on December 3, 1979, Trilon protested the award to Vitro.

Trilon contends that the contracting officer's examination dealt primarily with a comparison of NWS's initial and final evaluations rather than directly with the RFP evaluation factors such as which company had more Gas Free Engineering experience, more qualified personnel and a better understanding of the effort as indicated by the proposed outline and technical approach. Trilon emphasizes that, based on its experience with Government contracts, it is highly unusual for the contracting agency to overrule the recommendation of the technical evaluators, especially when the offeror selected by the technical evaluators is the lowest priced. Trilon alleges that, following the RFP's evaluation guidelines, it made an analysis of its technical proposal and the portions of Vitro's proposal furnished by the Navy. According to Trilon, this analysis supported NWS's finding that, in all phases, its proposal was superior to Vitro's including the area of intended content and coverage for the manual.

Specifically, Trilon asserts that its review of all the resumes of the technical personnel listed in Vitro's proposal showed no marine chemists and no personnel with direct Gas Free Engineering experience,

confined space certification experience or direct experience working on prior Gas Free Engineering manuals. As to corporate experience in the area, Trilon alleges that Vitro's proposal showed no such corporate experience. With regard to technical approach, which the RFP stated would be primarily indicated by the manual outline submitted with the RFP, Trilon believes Vitro's outline was essentially identical to the manual the Navy currently uses. In Trilon's opinion, it had the same emphasis on subject matter and contained no major additions or new data.

Trilon, on the other hand, avers that its proposal listed six people with Gas Free Engineering experience including a certified marine chemist and the individual who assisted in the preparation of the current manual. Further, Trilon alleges with regard to corporate experience that its proposal revealed that it prepared engineering reports, safety procedures and test setups for Union Carbide covering toxic and hazardous gases. Trilon also alleges that it prepared the following two publications for NWS: (1) OP 1208 (4th Rev.) concerning the inactivation and maintenance of ordinance in vessels in inactive status; (2) OD 3000 (6th Rev.) covering the properties, characteristics and precautions to be observed in handling storing and working the total quantity of lubricants, antiseize compounds, cleaning compounds, greases, hydraulic fluids, oils and preservatives used in the Navy. Finally, in the area of technical approach, Trilon claims that its outline was completely new, having changed the emphasis from basic chemistry and chemical properties to what Gas Free Engineering personnel were required to do and how to go about doing it. According to Trilon, its outline included all the old manual material plus seven new chapters, five of which covered new material and two of which separated material formerly covered in other chapters in order to have greater emphasis and detailed discussion.

Turning to the contracting officer's cost analysis, Trilon points out that Vitro's proposal indicated 2,984 total hours, Trilon's 2,041 hours, and NWS estimated 2,500 hours. Trilon takes the position that the contracting

officer should have concluded that a company like Trilon with experience in the field, personnel with many years' experience, as well as an individual who worked on the current Gas Free Engineering manual, could perform the work in much less time than a company like Vitro with no experienced personnel. Moreover, Trilon asserts that its hours and NWS's hours were both based on producing a manual with 240 pages having 40 illustrations, but that Vitro's hours were based only on producing a manual with 195 pages and 5 illustrations. If Vitro were to produce the same book, Trilon argues that Vitro would have to increase its hours by 400 to 3,394. Trilon emphasizes that the foregoing is important since the contracting officer's cost analysis was, in its opinion, based on Vitro producing a smaller manual with fewer illustrations than that required by NWS.

Trilon also challenges the contracting officer's belief that its significant reduction in man-hours resulted from his advice regarding proposal deficiencies rather than some new insight or comprehension of the scope of work. The company states that, in its experience, it has found that a book or manual containing a fairly large number of carefully planned, clear illustrations directly related to the subject matter makes for much easier comprehension. Trilon, then, generally offers a fairly high illustration count. When the technical agency indicates a preference for less illustrations, as Trilon claims was the case here, the illustration count is carefully reexamined and reduced when possible without compromising the book or manual. Trilon avers that in its best and final offer, illustrations were substantially reduced which, in turn, not only reduces illustration hours but also production, typing and editing hours and the cost of materials. Trilon states that its reduction in man-hours was consistent with the company's clear, overall comprehension of the work involved.

It is not the function of our Office to make determinations as to the acceptability or relative merits of technical proposals. The contracting agency must bear the burden of any difficulties resulting from a defective evaluation. Macmillian Oil Company, B-189725, January 17,

1978, 78-1 CPD 37. We will examine the record of a procurement to determine whether the judgment of the contracting agency was clearly without a reasonable basis. See Joseph Legat Architects, B-187160, December 13, 1977, 77-2 CPD 458, and cases cited therein. Unless such a finding is made by us or there is an abuse of discretion or a violation of procurement statutes or regulations, the contracting agency's judgment will not be disturbed. Struthers Electronics Corporation, B-186002, September 10, 1976, 76-2 CPD 231.

Furthermore, a considerable range of judgment is vested in the agency's selection officials who have a very broad degree of discretion in determining the manner and extent to which they will make use of technical evaluation results. In Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 CPD 325, we stated:

"* * * while point scores, technical evaluation narratives, and adjective ratings may well be indicative of whether one proposal is technically superior to another and should therefore be considered by source selection officials, see EPSCO, Incorporated, B-183816, November 21, 1975, 75-2 CPD 338, we have recognized that selection officials are not bound by the recommendations made by evaluation and advisory groups. Bell Aerospace Company, 55 Comp. Gen. 244 (1975), 75-2 CPD 168; Tracor Jitco, Inc., *supra*; 51 Comp. Gen. 272 (1971); B-173137(1), *supra*. This is so even though it is the working level procurement officials and evaluation panel members who may normally be expected to have the technical expertise relevant to the technical evaluation of proposals * * *."

Thus, even if the technical evaluators unanimously recommend an award to an offeror, it is still within the discretion of the selection officials to select another offeror for award provided that their selection has a reasonable basis and is consistent with the evaluation criteria. The Ohio State University Research Foundation, B-190530, January 11, 1979, 79-1 CPD 15.

From our review of the record, we believe that the contracting officer's selection of Vitro for award had a rational basis. The RFP provided that proposals would be evaluated on the following factors in descending order of importance:

1. Personnel (Staffing)
2. Corporate Experience
3. Technical and Managerial Approach
4. Contractor Facilities
5. Cost (including cost realism)

In the area of Personnel, the record shows that the original technical evaluation specifically stated that J.J. Henry Company, Trilon and Vitro listed personnel with Gas Free Engineering knowledge and experience. The Navy states that one individual listed by Vitro was Director of Submarine Safety Programs at the U.S. Naval Safety Center, Norfolk, Virginia. Another of Vitro's personnel, according to the Navy, was a safety officer on various submarines who was responsible for preparing and implementing directives concerning the entering of tank voids and other potentially gas hazardous areas. Still another individual was Chairman of the Department of Defense Explosives Safety Board. Consequently, we cannot agree with Trilon's contention that Vitro's proposal shows no personnel with Gas Free Engineering experience.

Turning to Trilon's personnel, we note that Trilon does not dispute the contracting officer's conclusion that the company had added only one additional resume in its revised proposal. Nor does Trilon dispute the fact that the added individual does not possess an engineering degree. While it may be true, as Trilon emphasizes, that this individual possesses the "most desirable experience" since he was involved in the preparation of prior Gas Free Engineering manuals, we do not think that the contracting officer was unreasonable in

concluding that his qualifications failed to merit greater consideration than the qualifications of Vitro's personnel.

With respect to corporate experience, it appears that Trilon is correct in asserting that Vitro's proposal presented no corporate history specifically associated with Gas Free Engineering. However, Vitro did show extensive experience in ship design, hulls and spaces which NWS found would be useful to the accomplishment of the contract work. In this regard, the Navy states that the RFP also required the offerors to detail "overall experience" with particular emphasis on those areas dealing with working knowledge of shipboard confined spaces, ship hull configurations, ships electrical equipment and machinery, as well as those items applicable to shore activities. In our view, the issue before the contracting officer was whether the extensive, overall corporate experience possessed by Vitro was negated by Trilon's direct corporate experience in Gas Free Engineering.

The contracting officer found that Trilon's corporate experience in Gas Free Engineering was not significant. We are unable to disagree. The description in Trilon's revised proposal of the work performed for Union Carbide failed to state a dollar amount, the dates when Trilon performed the work, or a contact point at Union Carbide. As to OP 1208 and OD 3000 publications which Trilon had previously prepared for NWS, the record reveals that the total dollar value of the contracts for their preparation was only \$48,000.

In addition, the Navy regards Trilon's assertion in its revised proposal that OP 1208 and OD 3000 were related to Gas Free Engineering as a contradiction to the statement in its initial proposal that its publications were "not directly concerned" with Gas Free Engineering. Trilon contends that what it meant by the statement in its initial proposal was that the principal subject matter of OP 1208 and OD 3000 was not Gas Free Engineering, not that the two publications did not include a large amount of Gas Free Engineering information. However, we are unable to conclude that the Navy's position does not have a rational basis.

Trilon's claim of superiority with respect to Technical and Managerial Approach is also not supported by the record. NWS's initial technical evaluation indicated that all offerors had emphasized their quality-control abilities, a highly desirable characteristic. Trilon and Vitro, however, had presented the best prepared and well-planned approaches. NWS's final evaluation did not fault Vitro for its technical approach; rather, NWS rated Vitro's proposal lower than Trilon's solely on the basis of corporate experience, personnel experience and cost realism.

Once proposals have been determined to be essentially equal technically, cost can become the determining factor in the award process, notwithstanding the fact that cost was designated a relatively unimportant evaluation factor in the solicitation. Bunker Ramo Corporation, 56 Comp. Gen. 712 (1977), 77-1 CPD 427. Indeed, cost cannot be ignored by an agency in any contractor selection process. Bell Aerospace Company, 55 Comp. Gen. 244 (1975), 75-2 CPD 168.

In cost-reimbursement procurements, evaluated costs rather than proposed costs provide a sounder basis for determining the most advantageous proposal since the Government is required, within certain limits, to pay the contractor's actual, allowable and allocable costs. 52 Comp. Gen. 870, 874 (1973). Further, we have stated that the procurement agency's judgment as to the methods used in developing the Government's cost estimate and the conclusions reached in evaluating the proposed costs are entitled to great weight since the procurement agencies are in the best position to determine realism of costs and must bear the major criticism for cost overruns because of defective cost analyses. Dynatrend, Inc., B-192038, January 3, 1979, 79-1 CPD 4. Thus, we will not second-guess an agency's cost realism determination unless it is not supported by a reasonable basis. Grey Advertising, Inc., supra.

Although Trilon may have proposed producing a manual with more pages and more illustrations than Vitro in less time than Vitro, the contracting officer conducted his cost realism analysis of Trilon's and Vitro's proposals on the assumption that two equally qualified offerors would take the same number of man-hours to perform the contract work. The Government estimate of 2,500 man-hours

was used as the common figure. We have specifically approved the use of Government estimates in cost evaluation while cautioning against undue reliance on such estimates given the uncertainties associated with cost-reimbursement contracting. Vinnell Corporation, B-180557, October 8, 1974, 74-2 CPD 190. In light of the fact that Vitro and Trilon varied equally in their different man-hours from the Government estimate, we believe that the contracting officer's use of the Government estimated man-hour figure had a rational basis.

The record shows that on a total cost basis, the contracting officer's projected contract costs for Trilon were \$63,913, while Vitro's projected costs were \$59,418. Trilon disputes these figures by stating that based on the Navy's information to us that Vitro has expended \$27,533 in completing 40 percent of the contract work, Vitro will expend \$68,832.50 for the entire project. Trilon points out that Vitro's cost proposal was \$68,658. Trilon therefore asserts that NWS was correct in its determination that Vitro ranked below Trilon on the basis of cost realism.

We think that Trilon is arguing on the basis of hindsight. As we indicated above, the Government estimate of 2,500 man-hours represented a reasonable assessment of the necessary work effort at the time the contracting officer performed his cost analysis. Furthermore, there is no assurance that Trilon would have performed the work for its offered price of \$54,550 had it been awarded the contract instead of Vitro. As NWS cautioned in its initial technical evaluation, past experience had shown that a low man-hour estimate had resulted in either a poor product or a request for additional funds at a later date.

The protest is denied.



For the Comptroller General
of the United States