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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**

WASHINGTON, D. C. 20548

[Protest of NASA Contract Award]

FILE:B-197003

DATE: June 5, 1980

MATTER OF: Hayes International Corporation

DIGEST:

Although debriefing by Source Evaluation Board (SEB), after Source Selection Official (SSO) made selection for award, advised offeror of different basis for selection, this does not establish that SSO changed basis after debriefing, since debriefing was to advise offeror of judgment made by SEB and reported to SSO and SSO is not bound to follow SEB recommendation.

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Hayes International Corporation (Hayes) protests the award of a contract to Kentron International, Inc. DL60 (Kentron), under request for proposals (RFP) No. 8-3-9-AS-00057 for the performance of institutional support services at Marshall Space Flight Center (MSFC), National Aeronautics and Space Administration (NASA). DL603

Even though Hayes, the incumbent contractor, was evaluated higher technically, Kentron, according to NASA, was selected for award of this cost-plus-award fee contract because its proposal was satisfactory and its cost was lower.

Hayes contends that the selection was contrary to the Source Evaluation Board (SEB) evaluation. Hayes states that at the debriefing on the selection of Kentron it was told that Hayes had a higher technically rated proposal, but that the selection was based upon an SEB evaluation that, after a substantial adjustment in the staffing made to the Kentron low proposal, Kentron remained lower than Hayes by

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about \$1 million. Hayes contends that, because it indicated subsequent to the debriefing that negotiations with Kentron for the additional staffing would be improper under the terms of the RFP, the Source Selection Official (SSO) created documentation after the fact to justify a determination that Kentron could satisfactorily perform the contract with its proposed manning. In this regard, Hayes points out that the SSO's selection statement and subsequent amplification were prepared after the SEB debriefing and Hayes' pointing out the limitation on negotiation with Kentron.

The protest does not have merit.

Hayes was debriefed after the SSO made its selection and before the SSO prepared its selection statement. However, the NASA memorandum of the debriefing, dated the day of the debriefing, states that Hayes was informed that the purpose of the debriefing was to advise Hayes of the judgments made "by the SEB and reported to the SSO." Thus, the debriefing was not reporting on the results of the SSO determination, but rather on the results of the SEB determination. Although the selection statement and the amplification by the SSO were prepared after the debriefing, we find nothing in the record to indicate that they were prepared as a result of Hayes' objection or that they are contrary to the decision reached by the SSO before the debriefing, and Hayes has furnished no evidence to establish its contention. Hayes' contention is pure speculation.

The selection statement states it was evident to the SSO that "the score received by Kentron reflected that it could perform the proposed institutional support services in a satisfactory manner" and that there was an "overwhelming cost advantage presented by Kentron based on proposed costs prior to SEB adjustments." In the later amplification, the SSO stated, "my selection was based on the judgment that Kentron would perform the institutional support service work on the basis of its proposed manning as opposed to manning as assessed

by the SEB" and "My decision was influenced in large measure by the judgment that MSFC would realize economy of operation by Kentron's proposed approach as opposed to what was offered by Hayes." In addition, we note that the SSO, after the SEB presentation, polled the Chairman of the SEB and the two other voting members as to whether Kentron could satisfactorily perform the work on the basis of its proposal as originally submitted. They all answered in the affirmative. Further, even though the SEB had a preference for additional staffing and in this respect disagreed with the SSO, the SEB report supports the conclusion that Kentron could satisfactorily perform on the basis proposed. The determination of the SSO that Kentron could perform on the basis proposed is borne out by the fact that there has been only one price modification to the Kentron contract and that has been for support effort not provided for in the RFP.

Furthermore, we point out that the SSO did consider that even if the Kentron proposal were revised to provide for additional staffing, the Kentron proposal would remain low. From the standpoint of cost realism, if Kentron would be low on the evaluated basis, it would certainly be low on the more limited basis proposed. In that regard, the purpose of a cost realism study in a cost reimbursement procurement is to determine whether what appears to be the most advantageous cost proposal is that in fact. Dynatrend, Inc., B-192038, January 3, 1979, 79-1 CPD 4.

Moreover, while Hayes was scored high technically, the SSO was not precluded from making an award on the basis of Kentron's lower-cost, lower-scored technical proposal. 52 Comp. Gen. 686 (1973). Specifically, the RFP provided:

"The importance of cost factors in the selection will depend on such considerations as the magnitude of the cost differentials between the proposers, the credibility of such differentials, the competition in Mission Suitability Factors, and the impact of Experience and Past Performance and Other Factors."

Under this provision, the cost factor could be overriding. As noted above, the RFP provides for "the magnitude of the cost differentials between the proposers" as being a possible discriminator. The SSO selection statement shows how the various factors in the RFP were considered in arriving at a decision to award to Kentron and how cost became the ultimate discriminator for the award.

We find nothing in the record indicating that the SSO selection statement and amplification were concocted to meet Hayes' objection against allowing Kentron to better its proposal.

Accordingly, the protest is denied.

A handwritten signature in dark ink, appearing to read "Milton J. Fowler". The signature is written in a cursive, flowing style with a large initial "M".

For the Comptroller General
of the United States