

DECISION



30224
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-216706

DATE: January 22, 1985

MATTER OF: Aurora Films

DIGEST:

1. GAO will question a determination concerning the technical merit of proposals only upon a clear showing of unreasonableness, abuse of discretion or violation of procurement statutes or regulations. Protester has failed to make such a showing with respect to agency's determination that proposals are technically equal.
2. GAO standard of review in bid protests is not to independently determine which proposal is most advantageous to the government, but to consider whether contracting agency's selection is legally objectionable.
3. Where agency determines that proposals are technically equal, agency properly awarded firm, fixed-price contract to lower priced offeror since, notwithstanding protester's contention that its proposal represented the "best buy" for the government, protester has not shown that agency determination that lower priced offer was more advantageous was unreasonable.

Aurora Films protests the award of a contract to Visuart Enterprises under request for proposals (RFP) No. R10-84-27, issued by the United States Forest Service, for the production of an information film for the Begich-Boggs Visitor Center, Portage Glacier, Chugach National Forest, Alaska. Aurora contends that its proposal was superior to Visuart's and that it should have been awarded the contract.

We deny the protest.

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The RFP was for a firm, fixed-price contract and advised offerors that, except for government-furnished property, the contractor would be responsible for all motion picture production services and materials. The RFP's technical requirements were divided into three major tasks--Preproduction Planning/Design, Production Shooting and Post Production. Each major task was further subdivided into several specific elements which offerors were requested to address in their proposals.

Technical proposals were evaluated and ranked by a Technical Evaluation Board. Under the RFP's evaluation scheme, the maximum rating was assigned to the established reputation and proven ability of the firm to produce this type of film. An example of a recent film and the qualifications of the Script Writer, Film Director, Cinematographer, Sound Editor-Mixer and Music Writer were accorded equal weight and also evaluated. The RFP stated that price was not controlling but that its importance would increase if proposals were otherwise rated equally. The RFP advised offerors that award would be made to the offeror whose proposal was creatively and technically acceptable and was the most advantageous to the government.

Nineteen firms submitted proposals. The Forest Service established a competitive range of the top eight firms. Written discussions were conducted with these firms by providing them a list of nine items for consideration in their best and final offers. The Forest Service indicates that Aurora and Visuart had nearly identical technical ratings initially and that neither firm submitted any information which would have materially added to its technical ratings. Both firms were judged to have the capability to produce a high quality film and both Aurora and Visuart were much less costly than the only other higher technically rated firm. The Forest Service states that the selection came down to a matter of price and, since Visuart's offered price was lower than Aurora's, the contract was awarded to Visuart.

Aurora argues that its proposal was more advantageous to the Forest Service since it contained many additional production services, not offered by Visuart, which would have contributed to a much better film for the government. For example, Aurora argues that additional film stock, beyond the 22,000 feet provided by the government, will be necessary to produce a quality film and that Aurora included in its budget the cost for an additional 23,000

feet of film stock. Aurora points out that had it not included this additional film, its price would have been lower than Visuart's. Similarly, Aurora indicates that it budgeted for a celebrity narrator, which it argues the RFP required, and that this also increased its costs. Aurora contends that Visuart's price was lower simply because it chose less expensive options which were not responsive to the RFP.

Aurora also questions the Forest Service's technical evaluation of Visuart's proposal. Aurora contends that Visuart's proposal was nonresponsive and should have been disqualified because it did not meet the RFP's minimum requirements for an acceptable offer. Aurora argues that the RFP required, and Visuart failed to provide, sufficient data on labor hours, an adequate description of the process it will go through to produce the film, an adequate description of the facilities and equipment which will be utilized and, also, did not provide the celebrity narrator required by the RFP. In addition, Aurora alleges that Visuart did not adequately budget for the required Dolby stereo sound and that it has no experience in editing Dolby stereo sound tracks. (Dolby is a method used to reduce background noise in sound recording.)

The Forest Service indicates that it found the information furnished by Visuart to be adequate. The Forest Service states that members of Visuart's team all had experience working in similar productions with award-winning success and that they clearly had an understanding of the scope of this project. The Forest Service indicates that Visuart's proposal contained definite time commitments from members of its production team, that Visuart recognized the specialized Dolby requirement and that the additional sound editing costs were reflected in Visuart's price proposal. With respect to the description of the facilities and equipment to be utilized, the Forest Service indicates that Visuart, as well as several other offerors, interpreted this requirement as merely requiring a listing of the intended facilities. The Forest Service states that since this requirement may have been ambiguous, no offerors were penalized on this basis.

Concerning the additional film stock provided by Aurora, the Forest Service indicates that offerors were requested in negotiations to submit a separate cost per foot for any additional film stock which might be utilized beyond that provided by the government. The Forest Service

states that Visuart submitted a separate price while Aurora decided to include additional film stock in its best and final offer. In addition, the Forest Service states that both Visuart and Aurora submitted acceptable narrator options which met the intent stated in the RFP. The Forest Service indicates that the proposals submitted by Aurora and Visuart were presented in different formats and each demonstrated strong abilities for producing the type of film requested. Visuart's proposal was judged most advantageous based on its lower cost and the Forest Service contends this determination was proper.

In considering Aurora's arguments concerning the Forest Service's evaluation of proposals, our standard of review is limited to considering whether the selection of Visuart is legally objectionable. In this regard, we point out that our Office does not independently review proposals to determine which offer is most advantageous to the government. The Jonathan Corporation, B-199407.2, Sept. 23, 1982, 82-2 C.P.D. ¶ 260. Rather, our review is limited to examining whether the agency's evaluation was fair, reasonable and consistent with the stated evaluation criteria. We will question a contracting official's determination concerning the technical merit of proposals only upon a clear showing of unreasonableness, abuse of discretion or violation of procurement statutes or regulations. Computer Sciences Corporation, B-210800, Apr. 17, 1984, 84-1 C.P.D. ¶ 422. Furthermore, we note that the concept of "responsiveness" generally does not apply to negotiated procurements as it does to advertised procurements. Xtek, Inc., B-213166, Mar. 5, 1984, 84-1 C.P.D. ¶ 264.

Based on the record, we cannot find that the Forest Service should have disqualified Visuart's proposal or that the technical evaluations conducted by the Forest Service were otherwise unreasonable. With respect to the alleged informational deficiencies in Visuart's proposal, we agree with the Forest Service that the information solicited by the RFP was either explicitly provided by Visuart or else easily discernible from its proposal. Although Aurora argues that Visuart should have been required to submit additional information, our review provides no basis to conclude that Visuart's proposal was so materially deficient that it should have been rejected.

In addition, our review indicates that the Forest Service did follow the evaluation scheme set forth in the RFP and Aurora has not shown that the Forest Service's determination that the proposals were technically equal was unreasonable. The evaluation criteria indicated that the firm's established reputation in producing this type of film was most important and also advised offerors that the qualifications of the production team would be considered. Although Aurora has questioned Visuart's ability to edit Dolby stereo sound tracks, Visuart did provide for significant costs for sound recording and editing, and Aurora has not established that the evaluation had no reasonable basis. Crown Point Coachworks and R&D Composite Structures; North American Racing Company, B-208694, B-208694.2, Sept. 29, 1983, 83-2 C.P.D. ¶ 386.

With respect to Aurora's contention that its offered price presented the best value to the government, we note that the contract awarded to Visuart is a firm, fixed-price contract. A firm, fixed-price contract is not subject to adjustment based on the contractor's cost experience during performance and places full responsibility, in terms of profits or losses for costs above or below the fixed price, directly upon the successful offeror. Litton Systems, Inc., Electron Tube Division, B-215106, Sept. 18, 1984, 84-2 C.P.D. ¶ 317. While Aurora argues that the Forest Service should have considered the fact that additional film stock was included in its offer, and thus accounted for its higher price, the agency's request for best and finals merely advised offerors that the cost for any additional film stock should be specified. Offerors were not required to include this in their proposals and, if Aurora offered to provide more than the solicitation required, it was not the result of arbitrary or capricious government action. Pikes Peak Water Company, B-211984, Mar. 16, 1984, 84-1 C.P.D. ¶ 315. Moreover, in the best and final offer, Aurora recommended a "shoot ratio" (the ratio of film used to that actually incorporated into the final product) two and one-half times the ratio specified in the RFP; it was not possible to ascertain from Aurora's offer whether, or to what extent, Aurora's additional film costs may have been attributable to this recommendation.

Finally, despite Aurora's assertions to the contrary, we do not find that the RFP required offerors to provide a "celebrity" narrator for the film. The RFP specified that record narration be performed with a "nontalent narrator" and also indicated that the narrator should be an

individual of repute known for his ability as a storyteller. In our view, these provisions permitted offerors to choose among several acceptable narrator alternatives in submitting their proposals. We note, for instance, that although Aurora chose the more expensive celebrity alternative, it also offered an unpriced--and, therefore, unevaluated--opportunity for a less expensive noncelebrity. In our view, there is nothing unreasonable about the Forest Service's conclusion that both Aurora and Visuart submitted acceptable narrator options which conformed to the RFP requirement. Weardco Construction Corp., B-210259, Sept. 2, 1983, 83-2 C.P.D. ¶ 296.

Accordingly, the protest is denied.

Supreme
for Comptroller General
of the United States