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DECISION

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

FILE: B-220075; B-220075.2 **DATE:** December 18, 1985

MATTER OF: DDL Omni Engineering

DIGEST:

1. Procuring officials enjoy a reasonable degree of discretion in evaluating proposals and GAO will not disturb an evaluation where the record indicates that the conclusions reached in the evaluation were supported by information in the proposals and were consistent with the evaluation criteria set forth in the solicitation.

2. Contracting agency's failure to indicate in evaluation scheme all of the training programs that would be considered under a corporate experience evaluation factor is unobjectionable where the solicitation clearly indicated that such related experience would be considered; while a contracting agency must identify major evaluation areas in the solicitation, the agency need not identify the various aspects of each factor which may be taken into account.

3. Agency's determination that awardee's technical proposal was substantially equal to the protester's despite a 0.35 point (on scale of 10) difference is reasonable where the awardee's proposal was scored higher under the two most important evaluation factors comprising 60 percent of the evaluation; whether a given point spread between proposals indicates that the higher rated proposal is significantly superior is a matter largely within the contracting agency's discretion.

4. Agency's determination that awardee's proposed costs were realistic was proper where based on complete cost data and consideration of all proposed costs. Fact

that protester believes different approach in considering cost realism would have led to more accurate analysis is not sufficient to impugn the agency's determination since the extent to which costs will be examined generally is a matter within the agency's discretion.

5. Certain qualifications of individual members of a joint venture--including past compliance with equal employment opportunity requirements and security clearances--properly may be considered by a contracting agency in evaluating the qualifications of the joint venture, where the individual members will perform all contract work.

6. Whether a joint venture is a legal entity eligible for a contract award is a matter of the joint venture's responsibility, the affirmative determination of which GAO generally will not review.

7. Allegation that agency should have made multiple awards is untimely and will not be considered where protester was advised in request for best and final offers that single award would be made and did not raise the allegation before the due date for best and final offers.

DDL Omni Engineering (DDL) protests the award of a contract to Military Training Associates (MTA) under request for proposals (RFP) No. N00030-86-R-0061, issued by the Department of the Navy for training services supporting the Fleet Ballistic Missile/Strategic Weapon System (FBM/SWS) Training Program. DDL contends that the Navy failed to evaluate cost and technical proposals in accordance with the RFP and that the resulting award to MTA was improper. We deny the protest in part and dismiss it in part.

The RFP contemplated the award of a 1-year cost-plus-fixed-fee, level-of-effort contract, with four additional 1-year options. The services to be provided were broken

into two separate items for proposal purposes, and the RFP provided for either separate contract awards for the items or a single combined award to one offeror. The RFP also provided that while technical capability was of paramount importance, cost (including cost realism) would be evaluated and would assume greater importance in the overall evaluation in the case of substantially equal technical proposals. The technical evaluation criteria were listed in section M as follows, in order of descending importance: technical approach/personnel; management approach/corporate experience; and facilities. Section L set forth the factors that would be considered under each criterion.

Four proposals, including those of DDL and MTA, were received by the June 24, 1985 initial closing date, and immediately were forwarded to the technical evaluation panel for review. The raw evaluation scores then were forwarded to the award review panel, which found the evaluations supportable and applied predetermined weights to the criteria (Technical/Personnel - 30 percent each, Management/Corporate Experience - 15 percent each; Facilities - 10 percent) in calculating initial proposal final scores. DDL and MTA received final scores of 6.60 and 5.90 (on a scale of 10), respectively. The contracting officer determined that both firms' costs were reasonable and realistic, and thus included DDL and MTA in the competitive range (along with a third firm, Control Data Corporation (CDC)) for negotiation purposes.

Negotiations were conducted with each offeror, and by letters of August 7 offerors were presented questions to be addressed in their best and final offers, due August 16. These letters also advised that a single award combining both items would be made and that sub-line item costs submitted with initial cost proposals need not be recalculated and resubmitted; only line item costs now were required. The best and final offers were evaluated anew under the scoring plan. The raw scores again were forwarded to the review panel which, after reaching agreement on the scoring, again applied the predetermined weights. The final weighted scores and proposed costs were as follows:

	Score	Cost
DDL	6.96	$38,944,786
CDC	6.72	$54,720,684
MTA	6.61	$36,248,035

The review panel determined that the 0.35 point difference between the high and low scores did not indicate a significant difference in the three offerors' technical capabilities. The difference in the DDL and MTA scores largely was attributable to the less important evaluation categories; MTA was rated superior to DDL under the key Technical Approach criterion and was essentially equal to DDL in the other key category, Personnel. Based on these considerations, the panel rated the proposals substantially equal and, in view of the $2.7 million cost advantage represented by MTA's proposal, recommended award to MTA on September 6.

DDL alleges a number of improprieties in the technical and cost evaluations which, DDL asserts, led the Navy to conclude erroneously that MTA's proposal was essentially equal in quality to DDL's, resulting in an award to MTA based on its lower proposed cost. DDL also challenges the Navy's evaluation of MTA's proposed cost.

Technical Evaluation

A. Personnel Experience

DDL argues that the evaluation under the Personnel criterion was faulty in several respects. First, it claims the Navy scored MTA too high in view of MTA's alleged failure to include bona fide employee agreements in its proposal covering employees currently working for DDL and CDC; section L of the RFP provided that proposals would not be evaluated as highly absent such agreements for proposed future employees.

The Navy explains in its report, and the record shows, that MTA did submit bona fide employment agreements for all but one employee for whom such agreements were required. MTA included only 10 current DDL employees, and no CDC employees, in its proposal and, based on the absence of an agreement for one of the DDL employees, MTA was awarded only 9 of a possible 10 points for this factor. DDL submitted agreements for all proposed future employees and accordingly received all 10 possible points. This allegation therefore is without merit.

DDL contends that the Navy improperly evaluated the two firms' personnel since MTA's personnel allegedly lacked the FBM/SWS program experience specified as an evaluation consideration, but apparently were rated more highly than DDL's experienced personnel based on having college degrees in fields not directly related to FBM/SWS.

We point out at this juncture that the determination of the relative merits of proposals is primarily the responsibility of the contracting agency, not our Office. It is the contracting agency that must bear the burden of any difficulties arising from a faulty evaluation. Litton Systems, Inc., Electron Tube Division, 63 Comp. Gen. 585 (1984), 84-2 C.P.D. ¶ 317. Our standard for reviewing matters of technical evaluations reflects this consideration. We repeatedly have expressed our view that procuring officials enjoy a reasonable degree of discretion in evaluating proposals, and we will not question their judgments in this regard absent a showing that those judgments are unreasonable or contrary to procurement laws and regulations. See, e.g., Petro-Engineering, Inc., B-218255.2, June 12, 1985, 85-1 C.P.D. ¶ 677.

The Navy again responds, and the record again shows, that the premise of DDL's argument is incorrect. MTA's personnel in fact were found to have significant FBM/SWS program experience; of 27 proposed key personnel, 20 possessed between 10 and 20 years of FBM/SWS experience. MTA also demonstrated substantial experience at the working level, submitting 15 optional resumes of employees having 10-20 years of FBM/SWS experience. Although DDL's extensive FBM/SWS personnel experience was scored highly (1955.5 points), MTA's experience in FBM/SWS programs, together with its edge in education--section L of the RFP, as amended during the course of the procurement, specifically indicated that education would be evaluated--was deemed sufficient to warrant scoring MTA's proposal essentially equal to DDL's (1952.9 points) under the Personnel criterion. We find no basis for concluding that the Navy's judgment in this regard was unreasonable based on the proposals, or otherwise was inconsistent with the evaluation scheme set forth in the RFP.

B. Corporate Experience

DDL maintains that MTA was scored too high under the Corporate Experience criterion. It asserts that none of

the joint venturers comprising MTA had any experience in FBM/SWS programs, and believes the Navy improperly took into account the FBM/SWS experience of certain MTA employees.

The Navy concedes that MTA had little corporate FBM/SWS experience, but points out that MTA accordingly was scored very low on this factor; the record indicates that MTA received only 5.3 of a possible 30 points (DDL received 25 points). MTA's overall score for Corporate Experience was 752.8 out of 1500 points (still substantially lower than DDL's score of 1113.4), due to MTA's experience with other training programs. For example, MTA received 26 of 30 points for the Navy Training Plans factor. We find no basis for concluding that MTA's Corporate Experience score was unduly inflated; the assigning of only approximately 50 percent of the total available points seems to us a reasonable means of reflecting MTA's limited FBM/SWS experience. Further, we find no evidence that the Navy improperly substituted personnel experience in evaluating MTA's corporate experience.

DDL objects to the Navy's consideration of three experience areas--Department of Defense training programs; TRIDENT SSBN Command and Control Systems and Hull, Mechanical and Electrical training programs; and SSBN Unique Sonar training programs--not specified in the RFP's evaluation scheme. DDL claims that evaluation of these additional programs not specified in the RFP resulted in a reduction of its score under this criterion and an increase in MTA's score.

As the Navy points out, while agencies must identify major evaluation areas for a procurement, they need not identify the various aspects of each factor which may be taken into account. Technical Services Corp., 64 Comp. Gen. 245 (1985), 85-1 C.P.D. ¶ 152. Although DDL is correct that the RFP did not specify precisely what categories of experience would be considered, section L did advise offerors to emphasize in their proposals "experience directly related to the statement of work, particularly Navy Training programs and the FBM/SWS program." We believe the wording of this provision was sufficient to put offerors on notice that related experience other than Navy

training programs and the FBM/SWS program would be considered. It also appears that the other programs evaluated were reasonably related to the corporate experience criterion, so that we find it was reasonable for the Navy to evaluate the offerors' corporate experience in them.

C. Evaluation Scheme

DDL argues that the evaluation scheme in the RFP, as applied by the Navy, was deficient since technical capability was to be of paramount importance, but no significant discrimination between offers was made. DDL asserts that, in order to give effect to the emphasis on technical capability, the Navy should have viewed the 0.35 point differential between DDL and MTA as significant enough to warrant making award to DDL.

The fact that offerors were scored close technically does not evidence any impropriety in the evaluation. The evaluation scoring would be deficient, i.e., unreasonable, only if it were shown that the scoring clearly did not reflect the quality of the proposals when considered in light of the evaluation criteria in the RFP. We have found no deficiencies in the evaluation areas challenged by DDL, and thus find nothing objectionable in the fact that the proposals received relatively close scores.

There also was nothing improper in the Navy's determination that the 0.35 point difference in DDL's and MTA's technical scores was insignificant. Whether a given point spread between two proposals indicates a significant superiority in the higher scored proposal depends on the circumstances of each procurement and is primarily a matter within the contracting agency's discretion. Culp/Wesner/Culp, B-212318, Dec. 23, 1983, 84-1 C.P.D. ¶ 17. As explained previously, the Navy did not consider the difference in DDL's and MTA's scores an indication that DDL's proposal was materially superior to MTA's, particularly in light of MTA's higher combined scores under the Technical Approach and Personnel criteria, which carried 60 percent of the total scoring weight. We find that the Navy's determination in this regard was reasonable and that its consideration of cost in making award was in accordance with the evaluation scheme and, therefore, unobjectionable. DDL's mere disagreement with the Navy on this point

is not sufficient to establish otherwise. See Harrison Systems Ltd., 63 Comp Gen. 379 (1984), 84-1 C.P.D. ¶ 572.

Cost Realism

DDL challenges the Navy's determination that MTA's cost proposal was realistic, that is, that it reasonably reflected the costs likely to be incurred by MTA in performing the contract. More specifically, DDL believes the Navy's cost realism analysis was deficient since the Navy: (1) failed to submit the cost proposals to the Defense Contract Audit Agency (DCAA) for a detailed audit of the proposed direct labor rates; (2) failed to consider whether MTA was planning on using uncompensated overtime in performing; and (3) did not confirm that MTA would incur no general and administrative (G&A) expenses at the joint venture level as it proposed.

We have held that a contracting agency's analysis of cost proposals so involves the exercise of informed judgment that we will not disturb an agency's cost realism determination absent a showing that it lacks a reasonable basis. See, e.g., Prospective Computer Analysts, B-203095, Sept. 20, 1982, 82-2 C.P.D. ¶ 234. The extent to which proposed costs will be examined generally is a matter within the contracting agency's discretion, Robert E. Derecktor of Rhode Island, Inc., et al., B-211922, et al., Feb. 2, 1984, 84-1 C.P.D. ¶ 140; the agency need not necessarily conduct an in-depth cost analysis or verify each and every cost item in an offeror's proposal. Hager, Sharp & Abramson, Inc., B-201368, May 8, 1981, 81-1 C.P.D. ¶ 365. Applying this standard here, we find no basis for objecting to the Navy's determination that MTA's proposed costs were realistic.

The Navy evaluated MTA's and the other offerors' labor rates--the most significant cost element in this level-of-effort contract--by considering whether a given rate would result in an appropriate salary for a given category of employee (e.g., senior engineer). This approach was favored by the Navy over a comparison with past salaries since it believed verification of past salaries would be difficult or impossible. The Navy's analysis was made in light of detailed line item and sub-line item cost breakdowns in initial proposals, covering each labor category; each offeror's current cost or pricing data; and each

offeror's certification that the labor rates were DCAA-approved. The Navy also noted that MTA proposed a reasonable, realistic 3 percent wage escalation for each option year and offered its employees a good overall compensation plan generally.1/ While DDL believes there existed more reliable methods for evaluating labor rates, the Navy's approach does not appear per se unreasonable and clearly was based on a substantial amount of cost data.

DDL suspects that MTA has a policy of having its employees work uncompensated overtime--overtime hours for which the employee is not reimbursed and which therefore would not be reflected in MTA's proposal. DDL concludes that, due to federal wage and hours laws, the Navy could end up paying MTA time-and-a-half for these hours of labor. The Navy replies, however, that MTA did not propose uncompensated overtime hours and that, even if DDL's speculation as to MTA's policy is correct, MTA would not be paid time-and-a-half since the RFP specified that no overtime payments were authorized under the contract. We find nothing in the record supporting DDL's speculation as to MTA's business policies, or suggesting that the Navy overlooked the possibility of uncompensated overtime in analyzing proposed costs. In any case, we find the Navy's position reasonable.

We also find nothing unreasonable in the Navy's determination that MTA's proposed G&A expenses were realistic. Unlike DDL and CDC, MTA, organized as a joint venture, reduced its overall costs, including G&A expense and fee, by proposing to subcontract all of the work out to the members of the joint venture. The member companies would incur G&A expenses and charge a proportionate fee based on the amount of work performed (just as any other subcontractor), but the joint venture (which is no more than a combination of the member companies) then would not

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1/ DDL had speculated in its original protest that MTA planned to pay salaries 25 percent below some employees' current levels. Given the Navy's determination that MTA's total compensation plan is reasonable and our review of all offerors' proposed labor rates, we find no basis for this assertion.

have to add its own additional G&A expenses and fee on top of these costs. DDL and Control Data both added G&A expense and fee on top of their subcontract costs.

The record shows that the Navy scrutinized MTA's proposed G&A expense and fee arrangement. In fact, the Navy clearly recognized that these costs were responsible for a large portion of the difference in DDL's and MTA's proposed costs. The Navy found that it was realistic to anticipate such significant savings based on both MTA's joint venture arrangement and MTA's willingness, in effect, to perform the contract with a significantly lower overall fixed fee. As with the cost realism analysis generally, DDL would have us reanalyze the likelihood that MTA's G&A expenses will be as proposed. As stated above, however, our review is limited to considering whether the Navy unreasonably determined that MTA's proposed costs are realistic. We find no basis for questioning the Navy's approach or determination as to MTA's proposed G&A costs.

Certification

DDL contends that MTA falsely certified in its proposal that it was entitled to modified cost accounting standards (CAS) coverage and that it had complied with equal employment opportunity/affirmative action requirements under prior contracts. The record contains no evidence conclusively indicating whether MTA was entitled to modified CAS coverage but, even assuming MTA's allegation in this regard is correct, we do not believe an offeror's mistaken belief that it is entitled to the modified coverage is, by itself, a proper basis for withholding an award. In any case, the Navy included the standard CAS provision in MTA's contract, so the certification had no practical effect. DDL suggests that this certification may have led the Navy to conduct an inadequate cost realism analysis. We already have examined this matter and have concluded that the Navy conducted a reasonable cost realism analysis.

As for MTA's certification that it had complied with affirmative action requirements on prior contracts, the Navy requested Department of Labor equal employment opportunity clearances on each MTA joint venturer prior to award. As Labor granted clearances for each joint

venturer, this aspect of the protest is without merit. To the extent DDL's argument is founded on the fact that MTA, a newly formed joint venture for this procurement, could not have had a history of equal employment opportunity compliance, it also has no merit. As the Navy correctly points out in its report, we have held that certain qualifications of individual members of a joint venture properly may be considered in evaluating the qualifications of the joint venture. Parker-Kirlin, Joint Venture, B-213667, June 12, 1984, 84-1 C.P.D. ¶ 621. We see no reason why the joint venturers' compliance with equal employment opportunity requirements should not be imputed to the joint venture where, as here, the joint venturers themselves will perform essentially all of the work under the contract.

Security Clearance/Responsibility

DDL maintains that the award to MTA was improper because, contrary to a mandatory requirement in the RFP, MTA did not have a security clearance prior to award. Each of MTA's joint venturers did have the requisite clearances and the Navy deemed this sufficient, but DDL submits that this did not satisfy the RFP requirement that MTA, the offeror, have its own clearance. We find the allegation to be without merit.

The Navy states that the security clearance requirement was for the purpose of assuring that the contractor would be able to handle classified information as necessary to perform the contract. Since, as noted, the joint venturers will be performing all of the work under this solicitation, and since each joint venturer possessed a valid security clearance of at least "secret," as required, we think the Navy reasonably determined that MTA satisfactorily complied with the security clearance requirement prior to award. The Navy might have opted to adhere to DDL's strict reading of the requirement by simply delaying the award until MTA formally was issued a clearance in its own name (ultimately issued on October 22). Given the Navy's view that the joint venturer's existing clearances were sufficient to enable MTA to perform, however, we do not believe such a delay was necessary.

DDL speculates that MTA may not be constituted as a legal entity eligible to receive the award here. Whether a firm is a legal entity to which a contract can be awarded also concerns the firm's responsibility. As indicated

above, we will not review the Navy's affirmative determination. F&H Mfg. Corp., B-206320, Apr. 27, 1982, 82-1 C.P.D. ¶ 392.

Untimely Issues

DDL raises additional arguments which we will not consider. First, DDL argues that, instead of making a single award to MTA based, ultimately, on its low proposed cost, the Navy should have made separate awards to DDL and CDC, since their proposals each were technically superior on one of the two RFP items and, combined, would have been technically superior to MTA's single proposal. DDL claims the RFP required multiple awards where combining proposals on the two items would result in a higher technical evaluation than any single proposal.

Under our Bid Protest Regulations, protest allegations based on alleged improprieties incorporated in the solicitation must be asserted no later than the next closing date for receipt of proposals following the incorporation. 4 C.F.R. § 21.2(a)(1) (1985). DDL and the other offerors were advised in the Navy's August 7 letters requesting best and final offers that the Navy had decided to make a single award. It should have been clear to DDL at this point that the Navy's determination had been based on considerations other than taking advantage of the most highly rated proposal on each item; no matter what the quality of the proposals after the final evaluation, a single award would be made. As DDL first raised this allegation in its comments dated October 29, it is dismissed as untimely.

DDL also questions for the first time in October 29 comments how a joint venture such as MTA possibly can fulfill the Navy's apparent requirement for considerable management control under this contract. DDL's original September 16 protest letter reveals that DDL was aware then that MTA was a joint venture, and we fail to see why DDL's concerns as to the management capability of a joint venture could not have been raised at that time. We thus find that this allegation, too, is untimely. In any case, we have reviewed the Navy's evaluation of MTA under the Management Approach criterion (which carried a weighted value of only 15 percent) and find no basis for questioning the scoring of MTA in this area.

The protest is denied in part and dismissed in part.

for Harry R. Van Cleve
General Counsel