

Cooper

DECISION



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

FILE:

B-220632.2

DATE: April 9, 1986

MATTER OF:

Continental Maritime of San Francisco,
Inc.--Reconsideration

DIGEST:

1. In considering protests concerning the evaluation of either technical or cost proposals, the General Accounting Office's function is not to evaluate them anew and make its own determination as to their merits; rather, it is limited to considering whether the evaluation was fair and reasonable and in accord with listed criteria.
2. An agency's task when conducting discussions is to furnish offerors within the competitive range with information concerning areas of perceived deficiencies in their proposals and to give those offerors the opportunity to revise their proposals. The extent and content of discussions are matters primarily for the judgment of the contracting agency, so long as the judgment is reasonable.
3. In a cost-type contract, an agency properly may use government manhour estimates in the evaluation of cost realism and may use evaluated costs, rather than proposed costs, to determine which proposal is the most advantageous to the government.
4. Agency decision to award to a higher cost, technically superior offeror is reasonable when the solicitation does not state that award will be made to the lowest priced, technically acceptable offeror and the selection of a higher priced offeror is consistent with the evaluation criteria and deemed worth the additional cost.

Continental Maritime of San Francisco, Inc. protests the award of a contract to Triple A Shipyards North under

request for proposals (RFP) No. N00024-85-R-8505, issued on March 26, 1985 by the Naval Sea Systems Command. We initially dismissed the protest because we did not receive the protester's comments responding to the contracting agency's report within 7 working days after we received the report; we now consider the merits. See Dresser Industries, Inc. et al., B-218535.3, Jan. 6, 1986, 86-1 CPD ¶ 10 (where notice acknowledging protest is allegedly ambiguous as to need to comment on agency report within 7 days, the General Accounting Office will give protester the benefit of the doubt and consider the merits. In addition, notice will be modified to prevent problem in future protests).

We deny the protest.

Background

The solicitation called for planning and performing the repair and modernization of four AE/AFS class vessels homeported in the San Francisco Bay area under the phased maintenance program. The RFP, a total small business set-aside, was for a cost-plus-award-fee contract for a base year and options to 1990.

The RFP provided for evaluation of proposals in four areas, in descending order of importance: (1) management capability; (2) cost; (3) technical approach; and (4) resource availability. The solicitation stated that award would be made to the responsive and responsible offeror whose proposal was considered to be in the best interest of the government, cost and other factors considered.

The Navy received proposals from three firms, including Triple A and Continental, on May 14. A contract review panel evaluated the initial technical proposals and a separate cost realism team evaluated the initial cost proposals. Discussions were conducted and offerors were given the opportunity to submit best and final offers by August 8. Offerors were then ranked according to total weighted scores for all factors, and, on September 30, the Navy awarded a contract to Triple A in the amount of \$34,314,897 (cost plus base fee). After determining that urgent and compelling circumstances would not permit waiting for our Office's decision on Continental's subsequent protest, the Navy on November 5 instructed Triple A to proceed with performance.

Continental argues that cost should have been the determining factor in the award. Since its own proposed

cost plus base fee was \$884,392 less than Triple A's, Continental believes it was entitled to the contract. According to the protester, its technical proposal should have been rated essentially equal to any other proposals because Continental had been the successful offeror on another ship repair contract and had updated its technical proposal to correct weaknesses pointed out by the Navy in a proposal for a prior phased maintenance program. In support of this argument, the protester further states that the Navy did not ask any questions regarding its technical proposal, but only discussed its cost proposal.

Continental also alleges that the Navy arbitrarily adjusted its proposed costs upward. Finally, the firm protests that the Navy improperly based its award decision on a desire to spread business among San Francisco area ship repair firms, rather than on the evaluation criteria listed in the RFP.

Technical Evaluation

In considering the propriety of the Navy's evaluation, our function is not to evaluate proposals anew and make our own determinations as to their merits. Our review is instead limited to considering whether the evaluation was fair and reasonable and consistent with the evaluation criteria set forth in the RFP. See Deuel and Assocs., Inc., B-212962, Apr. 25, 1984, 84-1 CPD ¶ 477.

Contrary to Continental's assertion, the Navy did not adjudge its technical proposal to be equal to Triple A's. Of the three offerors, Triple A received the highest overall score, the highest technical score, and the greatest number of points for each technical evaluation factor. The evaluation record, which we have reviewed in camera, reveals that the contract review panel scored Continental's technical proposal lowest of the three. Its score was 18 percent lower than Triple A's; Continental received only 61.1 percent of the available points, while Triple A received 79.2 percent. This was principally because of Continental's manpower projections. The panel found Continental's proposal to be weak with respect to test support projections, production manpower curves, and planning and engineering manpower. These were among the evaluation subfactors related to resource availability, as indicated in an attachment to section L of the solicitation's instructions to offerors. In this section, the Navy advised offerors to include in their proposals all contractor mandays in support of the program, to show manning curves and tables, and to provide a supporting rationale for manpower estimates.

Continental complains that, during discussions, it was only told that its manday estimate varied significantly from that of the government's, and that the Navy was not specific as to the amount or areas of difference. As a result of the discussions, the protester states, it reviewed its entire work package and confirmed its original estimate as reasonable and realistic, identifying in its best and final offer "areas of unique labor savings" that could account in part for the difference between its own and the government's estimate.

The Navy responds, and we agree, that it sufficiently identified this deficiency. When an agency conducts discussions, its task is to furnish offerors whose proposals are in the competitive range with information concerning perceived deficiencies and give those offerors the opportunity to revise their proposals. The extent and content of discussions, however, are matters primarily for the judgment of the contracting agency, so long as that judgment is reasonable. Barber-Nichols Engineering Co., B-216846, Mar. 25, 1985, 85-1 CPD ¶ 343.

In this case, if the Navy had informed Continental of the amount of variance from the government estimate, it would have given the firm an unfair competitive advantage, since the estimate was not released to any other offeror. Moreover, given the instructions in the RFP, it should have been clear to Continental that the Navy's discussion question indicated a concern with its technical proposal. Continental's decision not to change its manpower estimates in its best and final offer in the face of that concern was a business judgment for which the firm must accept responsibility.

The Navy further notes that since overhaul and repair specifications for ship repair may differ, depending on the extent and nature of each ship's disrepair, Continental's correction of weaknesses noted in connection with a proposal for a prior procurement did not in itself entitle the firm's proposal to be rated equal to any other proposal in this procurement. We agree. Requirements and evaluation criteria vary in substance and order of importance from one procurement to another, and all proposals must be evaluated independently in accord with the criteria in a particular RFP. See Channel Disposal Co., B-215486, Aug. 17, 1984, 84-2 CPD ¶ 191.

Cost Evaluation

With regard to evaluation of its cost proposal, Continental contends that the Navy arbitrarily adjusted its proposed costs upward. We do not agree.

We note first that the RFP notified offerors that their cost proposals must correlate with the manday estimates in their technical proposals. In addition, it stated that scores might be adjusted for major adjustments found to be necessary in the cost analysis and for discrepancies between manhours in an offeror's technical and cost proposals.

The evaluation record shows that the Navy scored cost proposals under the following listed subfactors: cost realism; cost to the government; and cost data support. Essentially, the Navy assessed each proposal by comparing proposed manhour and material costs to estimates prepared by the Supervisor of Shipbuilding to determine whether the proposed costs were realistic. It also considered the supporting documentation supplied with proposals. Each offeror's proposed manhour or material costs were adjusted to reflect the costs the Navy expected to incur if that offeror were awarded the contract. The record indicates that the Navy adjusted both Triple A's and Continental's proposed costs upward by a substantial amount and that after best and finals, Triple A's projected, i.e. evaluated, costs were 2.3 percent more than Continental's.

We have specifically approved the use of government manhour estimates in the evaluation of cost realism. OA0 Corp., B-211803, July 17, 1984, 84-2 CPD ¶ 54; Robert E. Derecktor of Rhode Island, Inc., et al., B-211922 et al., Feb. 2, 1984, 84-1 CPD ¶ 140. Additionally, we have approved the use of evaluated costs, rather than proposed costs, for determining which offer will be the most advantageous to the government. Prospective Computer Analysts, B-203095, Sept. 20, 1982, 82-2 CPD ¶ 234; OA0 Corp., supra.

Our review in this case reveals no basis to question either the Navy's manhour estimates or overall cost evaluation. While in its protest Continental refers to areas of unique labor savings, it has not provided our Office with any real evidence that its own estimates were correct or that the Navy's estimates were unreasonable, considering the scope of work to be performed. Cost realism determinations are necessarily judgmental in nature, and unless they are clearly unreasonable they are not subject to objection. See generally Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 CPD ¶ 325. Continental has not made such a showing here.

Selection

Given the fact that the technical proposals were not adjudged equal, we cannot conclude that the Navy improperly accepted an offer with a higher cost than that proposed by Continental. In a negotiated procurement, there is no requirement that award be made on the basis of lowest cost unless the solicitation so provides. Henderson Aerial Surveys, Inc., B-215175, Feb. 6, 1985, 85-1 CPD ¶ 145. The RFP here indicated that award was to be made to the offeror whose proposal was in the best interest of the government, cost and other factors considered. We have consistently upheld awards to offerors with higher technical scores and higher costs, so long as the result is consistent with the evaluation criteria and the procuring agency determines that the technical difference outweighs the cost difference. Kelsey-Seybold Clinic, P.A., B-217246, July 26, 1985, 85-2 CPD ¶ 90.

In this case, the source selection official concluded that Triple A's 2.3 percent higher evaluated cost resulted from its superior management, technical approach, and resource availability. In contrast, Continental's lower cost proposal received the lowest score in all technical categories, and was regarded as unduly optimistic in manpower projections. We find no evidence, either in the source selection plan or the evaluation summaries, that, as the protester alleges, the Navy awarded the contract to Triple A in an effort to broaden the ship repair business base. We find simply that the Navy's conclusion that Triple A's proposal was the most advantageous to the government, cost and other factors considered, was reasonable.

Continental's requested relief includes proposal preparation costs. Our Bid Protest Regulations provide for the award of such costs where we have determined that a solicitation, proposed award, or award does not comply with statute or regulation. 4 C.F.R. § 21.6(d) (1985). Since we make no such finding here, we deny both the protest and the claim for proposal preparation costs.

for 
Harry R. Van Cleve
General Counsel