Gilhody

The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Dalfi, Inc.

File: B-224248

Date: January 7, 1987

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 evaluation criteria.

2. Award of a cost-reimbursement contract to a higher-cost, technically superior offeror is not objectionable where award on that basis is consistent with the solicitation evaluation criteria and the agency reasonably determined that the difference in technical merit was sufficiently significant to justify cost difference.

3. GAO will not dispute an agency's determination as to the realism of proposed costs, unless the determination is shown to be unreasonable, because the agency is clearly in the best position to make such judgment.

4. An agency is not required to equalize competition for a particular procurement by considering the competitive advantage accruing to an offeror due to its incumbent status provided that such advantage is not the result of unfair government action or favoritism.

DECISION

Dalfi, Inc. (DALFI), protests the award of a cost-plus-fixed-fee contract to Cerberonics, Inc. (Cerberonics), under request for proposals (RFP) No. N00140-84-R-0439, issued by the Naval Regional Contracting Center (Navy), Philadelphia, Pennsylvania. The RFP solicited automated data processing and technical support services for the Navy's Metrology Automated System for Uniform Recall and Reporting (MEASURE). MEASURE is an automated system which inventories and tracks, on a worldwide basis, those Naval equipment items which require calibration. DALFI contends that the Navy improperly evaluated proposals.

We deny the protest.

Offerors were required to submit separate technical and cost proposals. The RFP listed the following five evaluation factors:

(1) Corporate Past Experience

(2) Personnel Resources (Quantity and Quality of Available Personnel)

(3) Management Plan/Technical Approach and Organization

(4) Facilities

(5) Cost.

The RFP advised offerors that factors 1 and 2 were of equal importance and were the most important evaluation factors, and that evaluation factors 3, 4 and 5 were listed in descending order of importance. Costs were to be evaluated on the basis of cost realism, and award would be made to the responsible offeror whose offer was determined most advantageous to the government, cost and other factors considered.

Only DALFI and Cerberonics, the incumbent contractor, submitted propsoals by the closing date. DALFI's proposal for $9,285,997 was rated technically acceptable overall, and Cerberonics' proposal for $11,076,811 was rated highly acceptable. Discussions were held with both offerors, who submitted best and final offers by the May 19, 1986, closing date. The Navy's technical ranking of the two proposals remained unchanged, with DALFI rated as acceptable and Cerberonics as highly acceptable. The Navy conducted a cost realism analysis and adjusted each offeror's cost as follows:

	Best and Final Offer	Cost Realism Adjustment
DALFI	$8,654,776	$10,184,023
Cerberonics	$10,381,110	$10,414,042

The contracting officer determined that Cerberonics' technical superiority outweighed its additional cost and awarded a contract to it on September 16, 1986.

DALFI protests that the shortcomings in DALFI's technical proposal found during the Navy's evaluation were baseless and were mainly based on Cerberonics' incumbency and that the increase of DALFI's cost proposal during the cost realism evaluation was arbitrary and capricious.

In reviewing protests of allegedly improper evaluations, this Office will not substitute its judgment for that of the agency's evaluators, who have wide discretion, but rather will examine the record to determine whether the evaluators' judgments were reasonable and in accord with listed criteria and whether there were any violations of procurement statutes and regulations. Norfolk Ship Systems, Inc., B-219404, Sept. 19, 1985, 85-2 C.P.D. ¶ 309.

Furthermore, in a negotiated procurement, there is no requirement that award be made on the basis of lowest cost. Agency officials have broad discretion in determining the manner and extent to which they will make use of the technical and cost evaluation results. Cost/technical tradeoffs may be made, and the extent to which one may be sacrificed for the other is governed only by the test of rationality and consistency with the established evaluation factors. Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 C.P.D. ¶ 325. The judgment of the procuring agency concerning the significance of the difference in the technical merit of offers is accorded great weight. Asset Inc., B-207045, Feb. 14, 1983, 83-1 C.P.D. ¶ 150. 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 has determined that the technical difference is sufficiently significant to outweigh the cost difference. Battelle Memorial Institute, B-218538, June 26, 1985, 85-1 C.P.D. ¶ 726.

Here, we find that the Navy has provided a reasonable basis justifying the award to Cerberonics at the higher cost. The record shows that the Navy judged Cerberonics' proposal as technically superior in corporate past experience and personnel resources, the two most important evaluation criteria identified in the RFP, and its management plan, the next most important criterion. Cerberonics' and DALFI's proposals were both considered technically acceptable under the facilities criteria. The Navy found that Cerberonics possessed extensive corporate and personnel experience relative to large scale Measure Operation Control Center (MOCC) operations as well as specific MEASURE requirements, and their management plan exhibited superior MOCC knowledge and more effective personnel utilization. The Navy considered DALFI's corporate experience relative to large scale ADP operations to be limited in scope and found their personnel lacked the extensive MOCC experience demonstrated by Cerberonics. Although the Navy felt DALFI presented a generally acceptable management plan with a good quality assurance approach, the Navy concluded the plan did not illustrate the thorough understanding of MOCC operations enjoyed by Cerberonics.

DALFI disputes certain findings by the Navy in its evaluation of corporate experience and management plan. For example, DALFI argues that its corporate experience is not limited in scope because it and its proposed subcontractor already operate most of the substations which comprise the MEASURE system and that this experience is directly transferable to the operation of the MOCCs themselves. Furthermore, argues DALFI, it has a contract to design and maintain the software systems used in the MEASURE program, and it had 18 months of direct experience with MOCC operations during the program's inception 12 years ago.

The record shows that the Navy considered this information during evaluation of proposals, but did not believe DALFI's experience was comparable with the actual operation of the MOCCs. The Navy notes that the substations represent only a small portion of total MEASURE operations, and the functions performed there do not require the experience level of the MOCC, which has a substantially higher input of items. The Navy determined that DALFI's experience in developing software for the MOCCs did not translate into MOCC operating experience. The software designed by DALFI is now used in less than half of MOCC operations, notes the Navy. The Navy believed that DALFI's involvement with VAX computer systems enhanced overall corporate ADP experience but did not equate to operating and managing MOCCs which have unique processing and distribution requirements. The Navy also considered DALFI's experience in operating a General Electric Mark III TSP backup to the MOCCs, but felt the experience was limited in scope because General Electric personnel were responsible for operational requirements.

In its comments on the agency report, DALFI disagrees with the Navy's contention that GE personnel were responsible for all operational requirements. DALFI notes that it was operating from a remote facility, and while it did not physically hang tapes or change disk it did maintain pacts, operational controls, such as backups, tape generation and product distribution. DALFI also argues that its product distribution experience is not limited since it has been distributing the same products through the regional control centers as are distributed by the MOCCs.

These comments, and those made by DALFI with respect to other evaluation areas, merely emphasize DALFI's disagreement with the Navy's evaluation, but do not show the evaluation was unreasonable. It appears to us that the Navy could rationally evaluate the technical proposals as it did. The fact that the protester objects to the evaluation, and perhaps believes its own proposal was better than as evaluated by the Navy, does not render the evaluation unreasonable. Experimental Pathology Laboratories, B-221304, Mar. 10, 1986, 65 Comp. Gen. ___, 86-1 C.P.D. ¶ 235.

DALFI also contends that the Navy's cost realism analysis is based on invalid assumptions and artificially inflates DALFI's costs. DALFI specifically objects to the Navy's upward adjustment of its estimated direct labor costs and the overhead rate it proposed for off-site facilities.

The Navy responds that DALFI's proposed direct labor hour rates in its initial proposal were significantly lower than its actual labor rates, and thus the Navy specifically asked DALFI to address in its best and final offer (BAFO) how these rates were computed. The DALFI BAFO contained new direct labor cost projections which were even lower than those in its initial proposal, but did not explain how the direct labor rates in the initial proposal were calculated. The BAFO stated that DALFI expected to use its employees only during the early stages of performance and thereafter would staff 80 percent of the positions with personnel employed by Cerberonics, the incumbent contractor. The wage rates projected for these "new hires" were significantly below the wage rates being paid to DALFI employees and the wage rates paid by Cerberonics to its employees. Navy review of the cost proposal revealed that DALFI was apparently assuming it could hire the Cerberonics employees at wage rates 15 to 65 percent below their current wages. Since there was no documentation in DALFI's proposal to support its assumption that 80 percent of Cerberonics' employees would accept employment with DALFI at greatly reduced wage rates, the Navy calculated direct labor costs for DALFI based upon the use of DALFI employees and subcontractor personnel as set forth in its technical proposal.

DALFI argues that Cerberonics' current employees have very low marketability because their experience has been on antiquated systems, and thus they would accept a job with DALFI for substantially less pay. DALFI cites two Cerberonics employees who took pay cuts in the past to join DALFI.

The Navy responds that its technical personnel believe personnel working on the current contract have ADP skills and capabilities which are highly marketable. The Navy points out that no information was presented in the DALFI proposal to support the assumption that Cerberonics' employees could be hired at the wage rates used in calculating the BAFO cost proposal.

When a cost-reimbursement contract is to be awarded, the offerors' estimated costs of contract performance and their proposed fees should not be considered as controlling since the estimates may not provide valid indications of final actual costs, which the government is required, within certain limits, to pay. See Federal Acquisition Regulation, 48 C.F.R. § 15.605(d) (1985); Petro-Engineering, Inc., B-218255.2, June 12, 1985, 85-1 C.P.D. ¶ 677. The government's evaluation of estimated costs thus should determine the extent to which the offerors' estimates represent what the contract should cost, assuming reasonable economy and efficiency. This determination in essence involves an informed judgment of what costs actually would be incurred by acceptance of a particular proposal. Marine Design Technologies, Inc., B-221897, May 29, 1986, 86-1 C.P.D. ¶ 502. Because the contracting agency clearly is in the best position to make this cost realism determination, we will disturb its determination only where it is shown to be unreasonable. See Norfolk Ship Systems, Inc., B-219404, supra at 12.

Here, there is a significant discrepancy between wage rates currently paid to DALFI and Cerberonics employees, and those projected in DALFI's best and final offer cost proposal. Considering the lack of documentation in DALFI's proposal to support the assumption that Cerberonics employees would work for DALFI at wage cuts of from 15 percent to 65 percent, we do not believe it was unreasonable for the Navy to calculate direct labor costs for DALFI using DALFI's actual wages for its proposed key personnel and average actual rates from its current personnel pools for categories of other than key personnel. See MAR, Inc., B-215798, Jan. 30, 1985, 85-1 C.P.D. ¶ 121.

DALFI also contends that the Navy's cost realism analysis improperly increased the overhead rate proposed by DALFI for its off-site (contractor-furnished) facilities. DALFI argues that since the Navy accepted its proposed overhead rate for on-site (government-furnished) facilities, which was lower than its actual rate for previous years, the Navy should also have accepted its proposed off-site rate which was similarly lower than previous years. DALFI asserts that while the Navy considered the effect an increase in the number of on-site employees would have on its on-site overhead rate, it didn't take into account the effect an increase in on-site employees would have on its off-site rate.

The record shows, however, that the Navy considered how an increase in the direct labor base would affect both on-site and off-site overhead rates. The Navy accepted DALFI's proposed on-site overhead rate, recognizing that the overhead would be spread over a much greater direct labor base for on-site facilities than in recent years. However, the Navy calculated that the increase in the direct labor base as a result of this contract would have little impact on DALFI's off-site direct labor base, which was many times larger than its on-site direct labor base. The Navy considered that award of this contract would increase DALFI's off-site direct labor base to the approximate level upon which its 1984 overhead rates were based, and adjusted DALFI's proposed off-site overhead rate to reflect its off-site rate for 1984. We believe it was reasonable for the Navy to adjust the proposed rate to reflect the actual rate of what the Navy considered a comparable year, 1984.

DALFI protests that the Navy gave an improper preference to the incumbent, Cerberonics, during evaluation of initial proposals and best and final offers. According to DALFI, where corporate experience is concerned, the Navy prefers Cerberonics because it is the incumbent, in violation of the RFP which does not make actual operation of MOCCs an evaluation criterion. Furthermore, contends DALFI, an improper preference is apparent in the Navy's claim that DALFI's corporate experience in the MEASURE program is limited, when DALFI and its subcontractor perform the same functions in the regional control conters (RCCs) as Cerberonics performs in the MOCCs. DALFI also asserts that preference to the incumbent is apparent from the Navy's cost realism study which increased DALFI's proposal price to within 2 percent of Cerberonics' price and from a Navy statement that at least a10 percent differential between offers would be required to offset transition costs.

We have long recognized that incumbent contractors with good performance records can offer real advantages to the government, and that those advantages are often taken into account in proposal evaluation. Burns and Roe Tennessee, Inc., B-189462, July 21, 1978, 78-2 C.P.D. ¶ 57; Houston Films, Inc., B-184402, Dec. 22, 1975, 75-2 C.P.D. ¶ 404. An agency is not required to equalize competition with respect to these advantages so long as these advantages do not result from a preference or unfair action by the government. Wolf, Block, Schorr & Solis-Cohen, B-221363.2, May 28, 1986, 86-1 C.P.D. ¶ 491.

The record here does not support a conclusion that the Navy acted unfairly to DALFI or showed any particular preference to Cerberonics. Rather, it appears that the Navy made a reasonable judgment that award to Cerberonics was more advantageous to the government. The Navy properly considered Cerberonics' MOCC experience as a relevant factor under the RFP's category of corporate past experience, which provided for evaluation of offerors' experience with the Navy's MEASURE or similar programs. As discussed above, the Navy also considered DALFI's experience in RCC operations, and reasonably determined Cerberonics' corporate past experience to be superior. Similarly, as discussed above, the Navy's cost realism analysis, which increased DALFI's proposal price to within 2 percent of Cerberonic's price, has not been shown to be unreasonable.

In making a cost/technical trade off, the Navy considered that additional government manhours would be expended if award were made to DALFI, whose proposal was rated lower technically. The Navy felt that the high quality of the deliverable work products furnished by Cerberonics would result in less review and correction of the products and less guidance to the contractor. The Navy anticipated significant savings because Cerberonics was expected to perform the required services in a more effective and efficient manner so that fewer contractor manhours would be spent on individual tasks, allowing a greater volume of completed work products within the specified level of effort. Since this related to differences in the offerors' experience, a principal evaluation criterion, the contracting officer could properly consider it. See Fox & Co., B-197272, Nov. 6, 1980, 80-2 C.P.D. ¶ 340.

The contracting officer concluded that award to Cerberonics was justified because of the greater production and accomplishment which would be achieved by Cerberonics within the specified level of effort, the lower use of government manhours for review and correction of work products, and the general benefits to MEASURE operations from superior contractor performance. Accordingly, we will not object to the Navy's award of the contract to Cerberonics as the higher cost, but technically superior, offeror. Norfolk Ship Systems, Inc., B-219404, supra.

The protest is denied.

for Seymour Efros

Harry R. Van Cleve
General Counsel