



The Comptroller General
of the United States

Washington, D.C. 20548

Gilbert - PL

Decision

Matter of: Ship Analytics, Inc.

File: B-225798

Date: June 23, 1987

DIGEST

1. Protest that agency failed to evaluate sea system experience of personnel as required by solicitation is denied where solicitation requirement for sea system experience applied to corporate experience, not experience of proposed personnel.
2. Protest is denied where there is no indication that alleged errors in evaluating proposals adversely affected the protester's competitive standing.
3. Whether awardee will be able to perform contract using employees whose resumes were included in awardee's proposal is a matter of responsibility and General Accounting Office will not review agency's affirmative determination of awardee's responsibility absent showing of possible agency fraud or bad faith or alleged agency failure to apply definitive responsibility.
4. Where an agency regards proposals as essentially equal, price may become the determinative factor in making an award notwithstanding that in the evaluation criteria cost was of less importance than technical considerations.
5. Protest against amended solicitation award scheme filed after closing date established by the amendment is untimely.
6. Protester is not entitled to recover proposal preparation costs or costs of filing and pursuing protest where protest is found to be without merit.

DECISION

Ship Analytics, Inc. (SAI), protests the award of a contract to TSM Corporation under request for proposals (RFP) No. N61339-86-R-0035, issued by the Naval Training Systems Center (Navy), Orlando, Florida, for instructional system

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development in support of training programs in surface/sub-surface warfare areas. SAI contends that the Navy improperly evaluated proposals.

We deny the protest in part and dismiss it in part.

The RFP envisioned an indefinite quantity contract, using fixed hourly rates for designated labor categories, with a base period of 12 months and two 1-year options. Offerors were required to submit separate technical and cost proposals. The RFP listed the following technical evaluation factors in descending order of importance:

1. Personnel
2. Offers Response to Sample SOW
3. Program Management
4. Offeror's Background and Experience
5. Introduction and General Background (not scored)

The RFP advised offerors that factor 1 was twice as important as each of the others, while factors 2, 3 and 4 were of equal importance. Factor 5 was for information purposes only.

Price was to be evaluated on the basis of total prices offered for the basic and option years, and total price determined by multiplying the offeror's fixed hourly rates times the government-established estimated hours in the contract schedule. Offerors were cautioned that technical factors would be 1-1/2 times more important than price, and that price should not be disregarded as the importance of price as an award factor would increase with the degree of equality of the technical proposals.

Of six proposals received, four were found to be within the competitive range, including TSM's and SAI's. Following a request for clarifications, and review of best and final offers, the Navy awarded a contract to TSM. Though TSM and SAI received identical technical scores, TSM's overall score (technical and price) was higher than SAI's because TSM's price was lower than SAI's.

SAI protests that the Navy did not adequately assess key personnel qualifications. Specifically, SAI contends that TSM did not propose a sufficient number of personnel with the prerequisite educational and/or experience levels to meet a solicitation requirement that the number of qualified resumes and experienced personnel support the specified annual man-hour levels for each labor category. SAI argues that the Navy evaluators failed to evaluate personnel sea

system experience as required by the RFP, used an improper evaluation scale to technically rank each proposal, and waived RFP personnel experience qualification requirements.

We first note that the Navy has denied the protester access to much of the evaluation material, but has provided the material for our review. We have reviewed the evaluation material in camera, but our discussion of its contents is limited because of the restriction on its disclosure. Audits & Surveys, Inc., B-224556, Jan. 30, 1987, 87-1 CPD ¶ ____.

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 CPD ¶ 309.

We find no merit in SAI's allegation that the Navy failed to evaluate personnel sea system experience as required by the RFP. Paragraph 2.3 of the RFP's Technical Proposal Requirements (TPR) requires a "complete description of the offeror's background and experience with emphasis on experiences in Department of Defense warfare type training and with special emphasis on experiences directly related to Naval Surface and/or Subsurface Warfare Training." Paragraph 2.4 of the TPR details personnel education and experience requirements, and requires experience in the area "of complex training systems with military applications" for those personnel for whom resumes are required.

It is clear that the RFP contemplated the evaluation of the experience of offerors as corporate entities separately from the experience of their proposed personnel. The record shows that the Navy evaluated TSM's proposal in both regards, and properly evaluated only TSM's corporate experience, as opposed to experience of its personnel, in Naval surface and/or subsurface warfare type training experience. Cf. Norfolk Ship Systems, Inc., B-219404, supra at 10.

In arguing that the Navy did not adequately assess key personnel qualifications, SAI points out that the proposal evaluation plan (PEP) used by Navy evaluators specified a maximum score for 3,000 annual man-hours in each of 9 labor categories whereas the solicitation estimated 3,500 hours and 2,000 hours for the software systems engineer category as against a solicitation estimate of 1,750 hours. SAI

argues that the PEP scoring plan conflicts with the TPR requirement that the number of resumes for a labor category must in total reflect the number of man-hours specified for that category.

We do not find that SAI suffered competitively from the PEP scoring plan. Both SAI and TSM received maximum technical scores, and our review of the record shows TSM's proposal offered the required number of fully qualified resumes to meet the number of man-hours specified for each of the identified labor categories. Since the protester has shown no prejudice, we deny its protest on this basis. See Compuware Corp., B-223920, Sept. 10, 1986, 86-2 CPD ¶ 282.

SAI also argues that at the bid protest conference the Navy stated that individual key personnel resumes which did not meet the full education/work experience requirements of the solicitation were included in the proposal scoring by reducing the resume hours in proportion to the lack of experience (i.e., a 2,000 hour resume was reduced to 1,000 hours if the individual had one half of the required experience). SAI contends this was a major error because an offeror could propose unqualified personnel at a lower cost due to less experience and still receive a maximum score by submitting excess unqualified resumes.

We find that SAI's competitive standing was not adversely affected by such a scoring scheme since the Navy considered scored resumes in TSM's best and final offer as meeting full education/work experience requirements, and did not reduce TSM's resume hours for lack of experience. While the Navy did reduce resume hours for less than fully qualified personnel for several other offerors, these offerors were lower ranked than SAI. Since SAI was not prejudiced by this action, we deny its protest on this basis. See AT&T Communications, 65 Comp. Gen. 412 (1986), 86-1 CPD ¶ 247.

SAI also protests that the Navy did not verify that TSM's proposed key personnel would be available to work on the contract, and states it has reason to question the employment and/or contract availability of key personnel from the TSM team. Whether TSM could or would perform the contract with its proposed personnel, however, relates to TSM's responsibility as a prospective contractor. The Navy has determined that TSM is a responsible concern, and our Office will not review such an affirmative responsibility determination absent a showing of possible agency fraud or bad faith or an alleged agency failure to apply properly definitive responsibility criteria. 4 C.F.R. § 21.3(f)(5) (1986); Dayton T. Brown, Inc., B-223774.3, Dec. 4, 1986, 86-2 CPD ¶ 642. These circumstances are not present here.

SAI contends that the Navy improperly converted the procurement from one where award would be made to the offeror whose proposal offered the greatest value to the government in terms of technical and price into one stressing minimum qualification with price as the overriding determination. SAI objects that the proposal evaluation plan did not allow extra points for proposed personnel who materially exceeded, as opposed to those who met minimum qualification requirements for educational/work experience. According to SAI, since at least two offerors received perfect technical scores, the PEP did not achieve the solicitation objective to select the offeror who best responds to the RFP requirements.

We disagree. We do not find it objectionable that Navy evaluators judged each proposal against the stated criteria rather than each other. See Data Flow Corp., et al., B-209499 et al., July 6, 1983, 83-2 CPD ¶ 57. The point scoring plan used by the Navy maintained the relative weights of the factors set out in the RFP. Price became the determinative factor only when the Navy found that SAI and TSM were essentially equal technically. Where proposals are found technically equal, cost may become the determinative factor in making an award notwithstanding that the evaluation criteria assigned price less importance than technical considerations. See PRC Kentron, B-225677, Apr. 14, 1987, 87-1 CPD ¶ 405.

SAI also protests that the Navy failed to evaluate the reasonableness of labor rates and verify labor rates, overhead and general and administration expense. These protest bases are untimely. Under our Bid Protest Regulations, alleged improprieties which do not exist in the initial solicitation, but which are subsequently incorporated into the solicitation must be protested not later than the next closing date for receipt of proposals following the incorporation of the alleged impropriety. 4 C.F.R. § 21.2(a)(1). Amendment 2, issued on February 2, 1987, provided for a closing date of February 19 and deleted the solicitation's provision that the cost proposal would be evaluated for reasonableness of labor rates, SAI's March 6 protest of the deletion of these provisions was filed after the February 19 closing date. In any event, the Navy conducted a price analysis rather than a cost realism study because the contract was fixed priced and there was adequate price competition.

SAI requests that it be awarded its proposal preparation costs and the costs of filing and pursuing the protest. Recovery of such costs is allowed only if the protest is

found to have merit. 4 C.F.R. § 21.6(d); Technology Incorporated, B-223999, Nov. 4, 1986, 86-2 CPD ¶ 517. Since we have denied in part and dismissed in part the protest, we also deny SAI's request for proposal preparation costs.

The protest is denied in part and dismissed in part.

for 
Harry R. Van Cleve
General Counsel