



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Kay and Associates, Inc.

File: B-228434

Date: January 27, 1988

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### DIGEST

1. In a negotiated procurement, there is no requirement that award be made on the basis of lowest cost. The contracting agency may properly exercise its judgment to select a technically superior but higher-priced proposal where the solicitation evaluation criteria provide that cost considerations are secondary to technical merit.
2. Where the record indicates that the procuring agency reasonably evaluated the protester's proposal in a manner consistent with the solicitation evaluation criteria, protest based on offeror's disagreement with evaluation is denied.
3. Agency reasonably requested best and final offer from protester despite its relatively lower technical score, since regulations provide for inclusion of proposal in the competitive range when there is doubt as to whether it should be included.

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### DECISION

Kay and Associates, Inc. (KAI), protests the award of a contract to Corporate Jets, Inc., under request for proposals (RFP) No. DEA-87-R-2058 issued by the Drug Enforcement Agency (DEA), for the maintenance and repair of DEA's Aviation Program air fleet. KAI, the incumbent, contends that its best and final offer was unreasonably downgraded and that DEA improperly awarded the contract to an offeror with a "substantially equal" technical proposal at a higher price.

The protest is denied.

The RFP provided that technical factors were more important than cost. Under the RFP evaluation scheme, proposals were to be evaluated as follows: (1) management organization-40 points (2) technical experience-35 points (3) manpower utilization-15 points, and (4) total cost-10 points.

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Corporate Jets, Imagineering Systems Corp. and KAI submitted timely initial proposals. DEA evaluated the three proposals and Corporate Jets' and KAI were determined to be in the competitive range. DEA conducted written discussions with these two offerors and a second evaluation was performed. By September 17, best and final offers were received from both.

Corporate Jets' best and final offer received a perfect score from the evaluation committee of 90 points on its technical proposal, and 9.4 points on the cost component, for a total point score of 99.4. KAI's proposal received a technical score of 80 and a perfect score of 10 on its cost (which was approximately 6 percent lower than Corporate Jets' cost), for a total point score of 90. The contracting officer determined that Corporate Jets' proposal's technical superiority, which was reflected in its 11 percent higher technical score, warranted the payment of a 6-percent cost premium. On September 28, KAI was notified that its proposal had not been selected and that the contract had been awarded to Corporate Jets. KAI protested to our Office on October 7. The DEA Administrator determined that due to the urgent requirement for aircraft repair and maintenance, it was not in the best interests of the government to suspend performance of the contract pending the resolution of the protest.

KAI contends that its technical proposal was "substantially equivalent" to that of Corporate Jets' and, therefore, it was improper for the DEA to reject its lower-priced offer. There is no requirement that the award be made on the basis of lowest proposed cost in a negotiated procurement; an agency may properly exercise its discretion to reject a lower-cost proposal where a technical justification exists for accepting a higher-priced proposal, and the RFP does not require award to the lowest-cost, technically acceptable proposal. Intelcom Educational Services, Inc., B-220192.2, Jan. 24, 1986, 86-1 CPD ¶ 83.

The evaluation of proposals is the function of the procuring agency requiring the exercise of informed judgment, and it is not our function to conduct a de novo review of proposals or to make an independent determination of their relative merits. We will question a procuring agency's technical evaluation only if the protester shows that the evaluation was clearly unreasonable. Battelle Memorial Institute, B-218538, June 26, 1985, 85-1 CPD ¶ 726.

Here, DEA's report summarizes the technical differences between the two proposals as being a function of the capabilities of Corporate Jets as a full service general

aviation company, compared to KAI's capabilities as primarily a placement service which does not itself perform maintenance or repair of aircraft. KAI disputes this characterization and points out that it performs aviation maintenance contracts using its own employees. Further, KAI points out that the RFP does not require the kinds of additional services which Corporate Jets might be able to offer, summarized by DEA as Corporate Jets ability to: "provide maintenance and repair for corporate fleets at several facilities throughout the United States, employing a large full-time staff of licensed mechanics and avionics technicians [and provide] a factory-authorized service center for several aircraft manufacturers and over thirty avionics manufacturers, including the manufacturers of much equipment owned by DEA."

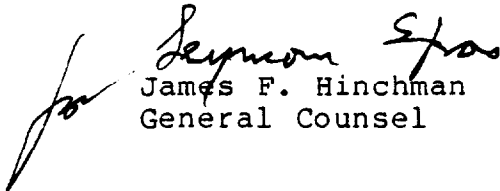
We have reviewed the proposals in camera, and we find that Corporate Jets' qualifications as a full service general aviation company are reasonably related to its higher technical rating under various RFP requirements. These include the RFP requirements for personnel experience and certifications, for specific technical expertise, and for management capability. Thus, for example, Corporate Jets' was highly rated for having available fully qualified staff, and for having extensive experience in having completed the full range of work contemplated under the RFP. KAI, on the other hand, was reasonably downgraded for proposing an inadequate number of available qualified personnel with sufficient experience, and in some instances for proposing personnel lacking the specified qualifications contained in the RFP.

Accordingly, DEA had a reasonable basis to conclude that Corporate Jets' proposal was technically superior to KAI's, and consistent with the RFP requirements. KAI's disagreement concerning the value or relevance of Corporate Jets' broader capabilities, and the value of its own firms' experience is insufficient to establish that DEA's evaluation was improper. Hydroscience, Inc., B-227989, et al, Nov. 23, 1987, 87-2 CPD ¶ 501.

Finally, KAI asserts that it should not have been asked to submit a best and final offer because, in view of the technical scoring differential between the two proposals, DEA should have determined that KAI was no longer eligible for award. DEA's action is consistent with the Federal Acquisition Regulation (FAR) § 15.609(a) (FAC 84-16), which requires the inclusion in the competitive range of all proposals that have a reasonable chance of being selected for award, and provides that "when there is doubt as to whether a proposal is in the competitive range, the proposal should be included."

In any event, KAI's argument is premised on the assumption that DEA was obligated to make an award to the offeror with the highest total points score. The RFP does not contain such a requirement; rather, it provides that where technical proposals are considered substantially equal, evaluated total cost will be a major factor in the selection. The DEA contracting officer had the discretion to consider the two proposals substantially technically equal, notwithstanding the evaluation committee's scoring, since it is well settled that the source selection official is not bound by the scoring or recommendations of the technical evaluators. Wormald Fire Systems, B-224514, Feb. 20, 1987, 87-1 CPD ¶ 189. Accordingly, we find nothing exceptionable about DEA's decision to request a best and final offer from KAI.

The protest is denied.

  
James F. Hinchman  
General Counsel