



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Information Spectrum, Inc.

File: B-233208

Date: February 22, 1989

DIGEST:

Contracting agency improperly made award on the basis of initial proposals without discussions, where the record does not clearly show that the contract awarded will result in the lowest overall cost to the government.

DECISION

Information Spectrum, Inc. (ISI), protests award of a cost-plus-fixed-fee contract to Science Applications International Corporation (SAIC) pursuant to request for proposals (RFP) No. N00014-88-R-0002, issued by the Department of the Navy for contractor support services to develop a series of severe weather guides for Mediterranean ports. ISI alleges that the Navy improperly awarded the contract to SAIC on the basis of initial proposals without discussions, even though ISI's proposal was within the competitive range and proposed a lower total cost than that offered by SAIC. We sustain the protest.

Issued on December 14, 1987, the RFP solicited proposals for an indefinite quantity, requirements contract to cover a basic requirement for 1 year with options for 2 additional years. The contract was to be a follow-on contract to continue the Navy's ongoing effort to research and document severe weather and sea conditions that could affect Navy ship operations in various Mediterranean ports. Results of the research are to be compiled in a series of port evaluations in order to offer operational guidance to aid ship captains and meteorologists in making decisions for storm protection and evasion.

The RFP listed the following technical evaluation factors for award, in descending order of importance: personnel experience, technical approach, and organizational experience. The RFP stated that the technical evaluation factors were significantly more important than cost for purposes of award. The RFP also indicated that evaluated

044671/138010

probable cost to the government could become the deciding factor in selection of a contractor, depending on whether the most acceptable technical proposal was determined to be worth the cost differential.

Five proposals were received by the January 20, 1988, closing date. The Navy's evaluation of initial proposals found two proposals to be technically unacceptable. Three other proposals, including the proposals of ISI and SAIC, were determined to be technically acceptable.^{1/} Of the three technically acceptable offers, SAIC's proposal was rated highest on technical merit, while ISI's proposal received the lowest technical score. However, ISI's total proposed cost was the lowest of the three, while SAIC's was the second lowest. The third offeror's proposal received the second highest technical evaluation score, but its total proposed cost was the highest by a substantial margin.

The agency performed a limited review of the offerors' proposed costs, noting that the awardee's cost appeared "reasonable and complete." With regard to ISI's proposed cost, while the agency evaluator noted that ISI's offer did not include certain costs, there is no indication of what amounts were involved. No adjustments were made to the offeror's proposed costs, and the contracting officer used the proposed costs in ranking the offerors.

The evaluation panel determined that ISI's proposal, though technically acceptable and representing the lowest cost to the government, would need elaborate revisions "in order to bring it anywhere near SAIC's offer," and thus that "it would not be advantageous to the Government to award to [ISI]." Regarding the third technically acceptable offer, the evaluation panel stated that "it is very unlikely that an improvement can be made in their technical standing without increasing their already high cost." Therefore, the technical evaluation panel recommended that award be made to SAIC at a proposed cost plus fee in the amount of \$202,844.

^{1/} The Navy has withheld many of the evaluation materials and certain proprietary documents from the protester and the awardee, but has provided all of the materials to our Office for our use in resolving ISI's protest. While we are not at liberty to disclose the technical and cost evaluation scores of the offers due to the sensitive nature of these source selection materials, we have examined the materials in camera in light of the protester's allegations.

The contracting officer agreed with the evaluation panel's recommendation and, by letter of July 1, 1988, notified ISI that award would be made to SAIC, the highest technically ranked offeror. The contract actually was awarded to SAIC on September 22. ISI was given a technical debriefing by telephone on October 7, and filed its protest in our Office on October 13.

ISI asserts that since its offer, in the total amount of \$163,441, was significantly lower than the \$202,844 proposed by SAIC, award to SAIC on the basis of initial proposals was improper. Furthermore, ISI states that the Navy's technical representative told ISI at the debriefing that ISI's proposal contained no weaknesses; when queried further about the technical merit of ISI's proposal, the Navy technical representative allegedly stated that ISI was technically qualified but was not in the competitive range. ISI reports further that either the contracting officer or the technical representative stated that ISI's lower cost was not sufficient to overcome SAIC's higher technical score.

The Navy concedes that the proposals of both ISI and SAIC, as well as that of a third offeror, initially were determined to be technically acceptable by the technical evaluation panel. However, the Navy now defends its award to SAIC on the basis of initial proposals without discussions by arguing that the contracting officer correctly determined that ISI's proposal nevertheless did not have a reasonable chance of being selected for award and thus was outside the competitive range ". . . due to severe deficiencies in its personnel experience, technical approach and corporate experience, as well as the technical superiority of SAIC." The Navy also argues that the contracting officer properly determined that the third offeror was not in the competitive range primarily because of its high proposed price. Concerning ISI's proposal, the contracting officer stated:

"Due to the superiority of SAIC's technical proposal and when considering cost . . . , the contracting officer determined that ISI had no reasonable chance of award."

Under the Competition in Contracting Act of 1984 (CICA), 10 U.S.C. § 2305(b)(4)(A)(ii) (Supp. IV 1986), agencies may make awards on the basis of initial proposals without discussions only ". . . when it can be clearly demonstrated from the existence of full and open competition or accurate prior cost experience with the product or service that acceptance of an initial proposal without discussions would result in the lowest overall cost to the United States." By

its express terms, the statute limits the contracting officer's discretion and prohibits acceptance of an initial proposal where there is at least one other lower cost proposal in the competitive range. United Telecontrol Electronics, Inc., B-230246, B-230246.2, June 21, 1988, 88-1 CPD ¶ 590. Accordingly, cost/technical tradeoffs cannot be used where award is to be made on the basis of initial proposals without discussions because CICA clearly precludes such judgmental determinations in that situation. Pan Am Support Services, Inc.--Request for Reconsideration, 66 Comp. Gen. 457 (1987), 87-1 CPD ¶ 512.

In our opinion, the Navy's award to SAIC without holding discussions clearly contravenes the statutory mandate. The record shows that the award decision was based on a cost/technical tradeoff that the superior technical merit of SAIC's proposal warranted its higher cost relative to ISI's proposal. Under CICA, the Navy could not make award to any offeror other than ISI, the lowest cost offeror, without first holding discussions and accepting revised proposals from the offerors in the competitive range. Id.

The Navy has attempted to justify its award to SAIC on the basis of initial proposals by characterizing ISI's proposal as being outside of the competitive range. In its report on the protest the Navy raises a number of serious deficiencies that it now says would have prevented ISI from improving its technical rating without substantially increasing its proposed cost. However, the evaluators' scoresheets simply do not reflect the great number of "severe deficiencies" that the Navy now alleges are present in ISI's proposal. On the contrary, the evaluation documents that have been provided for our in camera review show that not only was ISI's proposal technically acceptable, but, under the combined scoring system used by the Navy, weighing both cost and technical evaluation factors, the total score ISI's proposal received was not far below the total score received by SAIC's proposal.

As a result, although it is clear that the Navy considered SAIC's proposal to be technically superior, in our view, the record does not show that ISI's proposal was so technically deficient relative to SAIC's that it had no reasonable chance of award if competitive range discussions were held. Under these circumstances, ISI's proposal should have been included in the competitive range, especially in light of the significant cost savings that it represented. See Federal Acquisition Regulation § 15.609 (contracting officer must consider cost or price in competitive range determination). To the extent that the contracting officer speculated that ISI would not have been able to improve its

technical rating appreciably without a significant increase in its proposed price, the appropriate action would have been to advise ISI of the deficiencies in its proposal through discussions and give ISI and the other offeror in the competitive range an opportunity to submit revised proposals. In this way, the competition, rather than the contracting officer's speculations, would have determined the outcome.

Accordingly, as the Navy made award on the basis of initial proposals without discussions to an offeror that did not represent the lowest overall cost to the government even though there was at least one other lower cost offeror in the competitive range, we sustain the protest. By letter of today to the Secretary of the Navy, we are recommending that the competition be reopened, discussions be held with the offerors in the competitive range, and best and final offers be received. In the event that SAIC is not selected for award under this reopened competition, the contract awarded to SAIC should be terminated for convenience. We also are recommending that the Navy refrain, if possible, from ordering any more work under SAIC's contract until the outcome of the reopened competition has been determined. In addition, we find that ISI is entitled to the cost of filing and pursuing the protest, including attorneys' fees. See 4 C.F.R. § 21.6(d)(1) (1988).

The protest is sustained.

for *Milton F. Dorsey*
Comptroller General
of the United States