

Van Schaik



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: MSI, Division of the Bionetics Corporation

File: B-233090

Date: February 22, 1989

DIGEST

1. Protest is sustained where agency failed to discuss with competitive range offerors the number of aircraft to be deployed under cost-type contract for aircraft maintenance in spite of evidence in the proposals that the offerors had widely divergent conceptions of the number of aircraft to be deployed and of the costs required to perform the contract.

2. Contracting agency does not satisfy the requirement for a cost realism analysis before the award of a cost-type contract for aircraft maintenance where, in spite of a wide range of cost estimates and other evidence that offerors misunderstood the number of aircraft to be deployed on the contract, agency merely scored cost estimates as submitted without considering the various elements of the cost estimates, in particular the number of aircraft to be deployed.

DECISION

MSI, Division of the Bionetics Corporation, protests the award of a contract to Corporate Jets, Inc., under request for proposals (RFP) No. 1111-820030 (JW), issued by the State Department for operational and maintenance support for the Bureau of International Narcotics Matters (INM) air wing mission to combat narcotics growing and trafficking. We agree with the protester that the selection process was flawed because the agency should have been aware of and discussed with the offerors their differing conceptions as to the number of aircraft to be supported and that the agency's cost analysis was improperly conducted. The protest is therefore sustained.

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The INM inter-regional air wing owns a number of helicopters and fixed-wing aircraft which it provides to contractors as government-furnished property (GFP) to use to spray narcotics plants and to interdict narcotics traffickers. Under the solicitation, the State Department sought to award a cost-plus-fixed-fee contract for personnel (including pilots, mechanics, avionics technicians, engineers and support personnel), facilities, administration, maintenance, training and other support services to assist in operation of the INM air wing. The contractor is to fly operational missions, maintain assigned aircraft, hire required personnel and accomplish all administrative functions. The solicitation called for proposals for a base and 4 option years.

The solicitation included five contract line items (CLINs). CLINs 0001 through 0004 for the base year dealt with detailed requirements for such tasks as the operation, maintenance and deployment of the air wing, pilot and maintenance training, maintenance of aircraft support equipment, establishment of a spare parts pool and the establishment of an overall administrative capability.

CLIN 0005, which was for the first option year, provided only for the personnel needed for the operation, maintenance and deployment of the air wing. The solicitation did not have separate CLINs for the first option year comparable to those for the base year dealing with training, equipment, parts and administration, although these items and services were still required for the option years. Also, the solicitation did not include any separate CLINs for the second through fourth option years although it did include a summary chart into which offerors were to insert total estimated costs and fixed fees for the base and each of the 4 option years.

Section C-3 of the RFP included lists of aircraft to be supplied as GFP and stated that the contractor's task was to support all systems on the assigned aircraft. Also, amendment No. 2 included a "Deployment schedule for FY [fiscal year] 89" which listed, for six foreign countries and the continental United States, the types of aircraft to be deployed, quantity of aircraft and the duration of the deployment. According to the State Department, the solicitation and amendment No. 2 indicated that 29 aircraft would be deployed in the base year and 63 in each of the option years.

Section M of the solicitation listed the evaluation criteria and their weights as: technical, 45 percent; management,

30 percent and cost, 25 percent. The technical factor included 11 subfactors: data management, maintenance/production control, field maintenance, base maintenance, depot level maintenance, material logistics support, quality control, training, asset physical security, operations and sample task. All of these subfactors were to have equal weight except the sample task which was to be valued at 25 percent of the technical evaluation.

The cost evaluation was to consider the following subfactors: completeness, realism, reasonableness and evidence of financial capability.

Five firms submitted offers. Each was evaluated and all five were found technically acceptable. According to the contracting officer's statement, an agency contract specialist evaluated the proposals for cost realism and notified each of the offerors by letter regarding weaknesses in their cost proposals. After best and final offers (BAFOs) were requested and submitted, other elements of the cost proposals, such as fuel costs, the number of pilots and spare parts, were evaluated. The agency held a second round of negotiations and second BAFOs were requested and submitted by all five firms. The final weighted technical and management scores and final proposed costs were as follows:

Company	Technical/ Management	Base Year Cost	Base and Options Cost
Corporate Jets	27.89	\$12,804,959	\$ 70,380,475
MSI	21.81	21,799,025	196,913,445
Offeror A	19.6	21,569,343	98,907,411
Offeror B	22.014	45,456,067	384,630,822
Offeror C	25.26	14,806,579	81,005,390

The State Department explains that the four cost subfactors were each assigned 6.25 points in the cost evaluation scoring. As a result of this scoring, Corporate Jets received a cost score of 22.636 and MSI received a cost score of 21.468. Based on Corporate Jets' highest combined score for technical, management and cost of 50.5 compared to a combined score of 43.2 for MSI and 37.6, 42.9 and 47.6 for the other offerors, and based on Corporate Jets' lowest estimated cost of \$70,380,475 for the base and option years, the State Department awarded the contract to that firm on September 28, 1988. MSI protested to this Office on October 7. The State Department then made the determination under 31 U.S.C. § 3553(d) (Supp. IV 1986) that urgent and compelling circumstances significantly affecting the

interests of the United States did not permit delaying contract performance until the decision on the protest.

MSI's protest has two main arguments. First, the protester states that the offerors were confused by the RFP as to how many aircraft were to be deployed and therefore were not offering on a common basis. MSI maintains that the agency should have known this from the proposals and raised the matter during discussions. Second, the protester argues that the method used by the agency to analyze costs was arbitrary and did little other than to rank the widely varied cost estimates by quantum. We think the protester is correct on both counts.

MSI begins by pointing out that although the agency explains now that the solicitation called for the deployment of 29 aircraft in the base year and 63 aircraft in each of the option years, MSI's proposal clearly indicated in at least 4 places that the firm anticipated 29 aircraft for the base year, 64 for the first option year and 66 in each of the remaining option years. The protester argues that the contracting officer should have known of MSI's error concerning the number of aircraft and should have brought it up during discussions. MSI also argues that the contracting officer should have known that other offerors also erred in calculating the number of aircraft to be supported. MSI says that it has been informed that the three other unsuccessful offerors based their proposals on varying numbers of aircraft.

Further, MSI maintains that the agency had actual notice that the awardee based its proposal on far fewer aircraft than the agency says were called for by the solicitation. MSI submitted an affidavit and a declaration from two of its employees which state that in telephone conversations which occurred after the contract award, the State Department contract specialist responsible for this procurement said that Corporate Jets had proposed to support only 26 aircraft in the base year and in each option year.

Finally, MSI states that the contracting officer should have known simply as a result of the enormous range in total cost estimates that the offerors were proposing based on different understandings of the requirements. MSI points out that the number of aircraft to be deployed was the driving force in the contract costs and argues that the range of cost estimates from \$70 million for Corporate Jets to more than \$384 million should have indicated that there was confusion among the offerors as to the required number of aircraft.

The State Department responds that, based on the information in solicitation Section C-3.1.3 entitled "CURRENT AND PROJECTED FORCE STRUCTURE" and on the "FY 89" deployment schedule set forth in amendment No. 2, offerors were informed that 29 aircraft were to be deployed in the base year (FY 1989) and 63 in each of the 4 option years. It is clear from the record, however, that the various offerors structured their proposals on the basis of different numbers of aircraft, such that the State Department had a duty to clarify for all acceptable vendors just what the Department's needs were.

First, although it was reasonably clear from the deployment schedule in amendment No. 2 that 29 aircraft were to be deployed in the base year, that amendment does not clarify the provisions in Section C-3.1.3 regarding aircraft deployment for the option years. This section, which lists the aircraft by type and deployment location, is confusing in some areas because it does not specify when certain projected aircraft are to be available. For example, although it states that some aircraft will be deployed in a particular country in FY 1989 or FY 1990, others are simply listed as "projected." Under another deployment location, the solicitation states that "[i]t is expected that a total of 15 of this type aircraft will be in operation over the next 3 years."

It is not surprising that this lack of clarity in the solicitation as to the number of aircraft to be deployed resulted in at least some offerors basing their proposals on different numbers of aircraft. For example, while MSI's proposal envisioned a deployment of 29 aircraft for the base year and 64 in the first and 66 in later option years, the proposal submitted by Offeror A indicated that it was based on only 28 aircraft for the base and the option years. Further, the record shows that during negotiations, the awardee submitted to the agency a chart entitled "FY 1989 Fleet Maintenance Ratios," which is based on only 23 aircraft, rather than the 29 which the State Department says are to be deployed in 1989. We think these disparities alone should have alerted the agency to the fact that at least some of the technically acceptable offerors were basing their proposals on expectations that were not consistent with the agency's deployment plans.

It also appears that the problem was further reflected in the wide range of cost estimates submitted in response to the solicitation for the base and the option years. The five BAFOs included cost estimates for the base year that ranged from approximately \$12.8 million to \$45 million, while the government's estimate for this period was

\$24 million. The range of proposed cost estimates for the entire effort including options--for which there was no government estimate--was \$70 million to more than \$384 million. Of the two proposals which explicitly stated the number of aircraft upon which they were based, one of these, the proposal submitted by MSI, was based on more than the expected number of aircraft for the option years and included one of the higher cost estimates for the total effort, \$196,913,445, while the other one, Offeror A's proposal, stated that it was based on only 28 aircraft for all 5 years and included a cost estimate of only \$99 million, at the lower end of the range of estimates.

In addition, in spite of the fact that the number of aircraft is expected to more than double in the first option year from 29 to 63, there is no significant escalation in the cost estimates from the base year to the first option year for three of the five proposals, including that of the awardee.

While it is not absolutely clear from the record that the wide variation in the offerors' proposed cost estimates was in every case the direct result of the confusion concerning the number of aircraft to be deployed, the agency has offered no other explanation. Consequently, in the absence of any evidence to the contrary in the record, we think it is reasonable to conclude that at least in part the divergent cost estimates reflected different understandings regarding the number of aircraft to be deployed throughout the entire period.

When faced with evidence from the proposals or from material submitted during discussions that at least three of the five offerors had misunderstandings concerning aircraft deployment, the State Department should have clarified this matter and confirmed its actual requirements through the discussion process. See Presentations South, Inc., B-229842, Apr. 18, 1988, 88-1 CPD ¶ 374 (where we concluded that discussions of the level of effort should have been held because it should have been obvious, based on the range of proposed labor hours, that two of the three offerors in the competitive range did not have the same expectation as the government thought was conveyed by the statement of work). Instead, it did nothing in this regard.

Moreover, the problem was compounded by the agency's method of analyzing the cost proposals. The record shows that the agency's cost analysis consisted essentially^{1/} of scoring the offerors' cost estimates for the total effort up to 6.25 points based on proximity to Corporate Jets' lowest estimate of \$70,380,475 and scoring the base year estimates up to 6.25 points based on proximity to the government's estimate of \$24 million. Under this scoring scheme, in spite of the fact that Corporate Jets' estimate for the total effort, including options (\$70,380,475), was approximately one-third of MSI's estimate (\$196,913,445), the firms' total cost scores (including points for completeness and financial capability) of 22.636 for Corporate Jets and 21.468 for MSI were different by less than 2 points. Obviously, the Department's scoring method did not provide for any meaningful comparison of significantly different cost proposals. Moreover, there is no evidence in the record that the agency considered in the cost evaluation that some of the cost estimates were based on the deployment of more or less aircraft than the agency's expected deployment of 29 aircraft for the base year and 63 aircraft for the 4 option years. The cost evaluation and scoring was based on the cost estimates as submitted with no consideration of realism as required when a cost-reimbursement contract is to be awarded. See Federal Acquisition Regulation § 15.605(d); Petro-Engineering Inc., B-218255.2, June 12, 1985, 85-1 CPD ¶ 677.

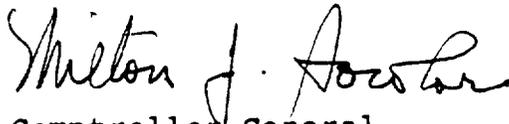
As a result of the Department's failure to clarify its requirements and to take reasonable steps to assure that all vendors had a common understanding of those requirements, we cannot conclude that the competing offerors in fact competed on an equal basis. Moreover, because the cost evaluation did not take into account the divergent understandings of the offerors with respect to aircraft numbers, there was no meaningful cost comparison--the proposed costs that were compared simply reflected requirements that were not the same as those intended by the agency.

The State Department argues that MSI was not prejudiced by the agency's failure to recognize the discrepancies in the proposals regarding the number of aircraft and costs since, as a result of Corporate Jets' relatively high technical score and the evaluation scheme that was heavily weighted

^{1/} The agency gave all five offerors the maximum possible 6.25 points for each of the other two cost subfactors, completeness and evidence of financial capability, based on the determination that all five offerors met these requirements.

toward technical merit, MSI would not be in line for award even if it received maximum points in the cost evaluation. We do not agree. The State Department's argument ignores the possibility that, if all the offerors, including Corporate Jets, had prepared their proposals on a common basis and the agency had performed a meaningful cost analysis, the awardee's evaluated costs could have increased while those of the protester or another offeror could have decreased to the extent that the selection would have been affected.

We sustain the protest. Because the base year performance is nearly half complete, we do not recommend termination of the contract. However, we do recommend that the State Department not exercise any contract options, but instead recompetes under a new solicitation that clearly sets forth its requirements and under which a proper cost evaluation will be made. We also find that the protester is entitled to recover its costs of filing and pursuing the protest, including attorneys' fees. Bid Protest Regulations, 4 C.F.R. § 21.6(d)(1) (1988).

for 
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