

CLASS



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Carrier Joint Venture--Request for
Reconsideration

File: B-233702.2

Date: June 23, 1989

DIGEST

Request for reconsideration which essentially restates arguments previously considered and does not establish any error of law or provide information not previously considered is denied.

DECISION

Carrier Joint Venture requests reconsideration of our decision, Carrier Joint Venture, B-233702, Mar. 13, 1989, 89-1, CPD ¶ 268, denying its protest against the award of a contract to Training Systems Group (TSG), to provide technical and logistical support for the Aviation Training Division of the Naval Air Systems Command (NAVAIR) under request for proposals (RFP) No. N00019-88-R-0026 issued by the Department of the Navy.

We deny the request for reconsideration.

The RFP, issued on July 29, 1988, provided that award would be made to the offeror whose proposal is the most advantageous to the government, all factors considered. The RFP requested the submission of separate technical and cost proposals and contemplated the award of 1-year plus 4 option years indefinite delivery, indefinite quantity time and materials contract. The RFP contained two principal evaluation criteria, technical and cost, with technical being more important than cost. The RFP specified four technical evaluation criteria which were listed in descending order of importance: (1) technical approach to performing sample tasks; (2) personnel; (3) management plan and manpower utilization matrix; and (4) corporate experience.

Concerning cost, the solicitation, as amended, included precise minimum qualifications and maximum level-of-effort estimates for numerous labor categories--such as Senior

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Analyst, Senior ADP Systems Analyst, and Research Psychologist. The offeror's fully burdened fixed-hourly rate times the maximum level-of-effort estimates for each labor category, as well as certain other direct costs and travel expenses, provided the basis for the cost evaluation. The cost evaluation included the base year and all option years. Finally, the RFP also stated that cost proposals would be evaluated for reasonableness and realism, including consideration of actual rates being paid for similar work under other contracts, rates being paid for comparable civil service employees, excessive amounts of uncompensated overtime, and Defense Contract Audit Agency (DCAA) audit information.

Two firms submitted proposals which were included in the competitive range. The protester's proposal was considered "outstanding." TSG's proposal, which was lower in cost, was considered "acceptable." TSG's proposed total 5-year cost was approximately \$20 million less than Carrier's proposed costs.

The Navy determined, without holding discussions, that TSG's offer was most advantageous to the government, cost and other factors considered because of the firm's technically acceptable proposal and lower cost. The agency also found that TSG's proposal represented the lowest overall cost that was fair and reasonable based on adequate competition and a cost realism analysis. The agency decided to award a contract to TSG.

In its original protest, Carrier first argued that award to TSG was improper because the Navy failed to evaluate the proposals consistent with the RFP terms. Carrier argued that the RFP required the Navy to evaluate the reasonableness and realism of proposals, including the specific factors listed in the RFP. Carrier argued that the Navy failed to consider these specific factors and thereby failed to make a valid assessment of whether TSG's rates were reasonable and realistic. Second, Carrier argued that despite the evaluation scheme established in the RFP, which gave technical factors greater importance than cost, the Navy failed to provide a reasonable justification for awarding the contract based on TSG's technically acceptable proposal as opposed to Carrier's technically outstanding proposal. The protester argued that the Navy's ultimate cost versus technical trade-off gave no consideration to the effect a technically outstanding proposal would have on the total cost incurred by the government. Lastly, Carrier argued that the award to TSG on the basis of initial proposals was improper because acceptance of TSG's proposal may not reflect the lowest overall cost to the government.

In our decision, we found that the record established that the Navy's cost realism evaluation was reasonable and that the Navy made an informed judgment as to the realism of TSG's proposed rates. In addition to verifying the total maximum contract labor costs proposed, the Navy's cost evaluation consisted of comparing the proposed fully burdened labor rates to recent competitively awarded contracts for similar efforts and to equivalent civil service employee pay rates. In an attempt to detect uncompensated overtime, the Navy stated that it performed a random check and found no uncompensated overtime in TSG's proposal. The differences in each offeror's proposed fully burdened labor rates were also taken into consideration by the Navy, with specific emphasis on the differences in escalation, overhead, profit and G&A. The record showed that TSG's rates were comparable with recently awarded contracts and with equivalent civil service employee pay rates and that the TSG proposal apparently contained no uncompensated overtime.

In response to Carrier's objection to the Navy's cost evaluation with respect to the specific factors examined, we noted that, with respect to cost realism, the RFP merely stated that certain specific factors would be taken into consideration and did not require the evaluation of each factor in-depth.

We further stated that the record showed that the Navy used, for comparison purposes, recent competitively awarded contracts containing labor categories of personnel that were generally comparable in experience and education. While the labor categories contained in the other contracts were not identical to those in this solicitation, the record showed that they were sufficiently similar to permit a rational comparison by the agency, and that TSG's proposed labor rates were consistent with these other contracts.

With respect to the Navy's alleged failure to consider DCAA audit information, the record indicated that the Navy informally contacted DCAA which could not provide verification of indirect rates. DCAA did not have information on either firms because both were joint ventures specifically created for this procurement. We concluded that the information provided by DCAA regarding the various joint venture members and subcontractors concerning overhead, profit and G&A was sufficient under the circumstances.

With regard to Carrier's argument that, because of the evaluation scheme established in the RFP, which gave technical factors greater importance than cost, the Navy failed to provide an adequate justification for awarding the

contract based on TSG's technically acceptable proposal as opposed to Carrier's technically outstanding proposal, we found that the Navy's decision to award to TSG, as the low technically acceptable offeror, was reasonable and consistent with the RFP's evaluation scheme, given the great disparity in cost between the two proposals.

Lastly, we rejected Carrier's allegation that the award to TSG on the basis of initial proposals was improper because acceptance of TSG's proposal may not reflect the lowest overall cost to the government. We found that Carrier's contention merely expressed disagreement with the Navy's cost evaluation which we had already determined to be proper.

In its request for reconsideration, Carrier asserts that our decision did not address its allegation that the Navy failed to comply with the express requirements of the Competition in Contracting Act of 1984 (CICA). Carrier argues that our conclusion that the Navy was not required to consider cost factors other than those contained in the RFP to determine lowest overall cost was an erroneous interpretation of the CICA requirement with respect to award based on initial proposals. Carrier contends that CICA has separate and distinct requirements concerning the determination of lowest overall cost that the Navy failed to consider. Carrier additionally argues that our decision did not address its allegation that the Navy failed to evaluate TSG's proposed level of compensation for professional employees required by RFP section M-3.

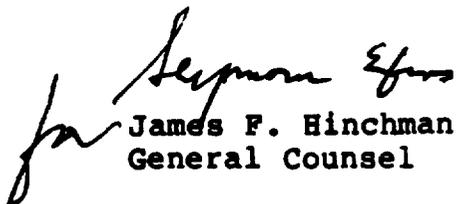
Carrier basically is arguing, as it did in its original protest, that award on initial offers was improper here because an improper cost realism determination precludes a finding that the award was made to TSG at the lowest overall cost. In our view, Carrier is essentially reiterating its basic argument that the Navy failed to perform a proper cost realism analysis of TSG's proposal (which we considered in our first decision) without offering any new evidence or information. CICA and the implementing Federal Acquisition Regulation (FAR), allow an agency to award a contract on the basis of initial proposals where the solicitation allows offerors of that possibility and the existence of full and open competition or accurate prior cost experience clearly demonstrates that acceptance of an initial proposal will result in the lowest overall cost to the government. 10 U.S.C. § 2305(b)(4)(A)(ii) (Supp. IV 1986); FAR § 15.610(a)(3) (FAC 84-16).

As stated in our prior decision, the agency made the determination that TSG's proposal represented the lowest

overall cost to the government based on its verification of the reasonableness of TSG's proposed labor rates and other costs. The record supported the reasonableness of percent TSG's cost and since TSG's cost was based on a labor mix fully acceptable to the Navy and was lower by 32 percent over Carrier's costs, we found the Navy's decision to make award without discussions reasonable. Carrier simply has not shown that the agency's decision was not proper.

Lastly, regarding Carrier's allegation that our decision failed to address its contention that the Navy did not comply with the RFP requirement for evaluation of compensation of professional employees, we did not deem it necessary to discuss this issue separately in our prior decision, since Carrier again was merely reiterating its argument that the Navy did not perform a proper cost analysis, and we had already concluded that the record fully supported the agency's determination that TSG's costs were reasonable, realistic and low. Furthermore, the record did indicate that compensation plans for professional employees were submitted by both offerors and evaluated. In any event, assuming that the Navy's failure to evaluate the compensation plan in accordance with the RFP in some way accounts for the difference in proposed costs, Carrier has failed to demonstrate, in its protest and this reconsideration request, how the failure to evaluate the compensation plan explains the significant cost difference between the two proposals.

Since the protester, in its request for reconsideration, essentially expresses disagreement with our decision and merely reiterates previous arguments, we do not think the firm has established a basis for reconsideration. See 4 C.F.R. § 21.12(a). Accordingly, we deny the request for reconsideration.


James F. Hinchman
General Counsel