



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Cajal Defense Support Company

File: B-237426

Date: February 16, 1990

Mason Ford, for the protester.
William E. Richards, Sr., for the interested party,
Cottonwood Technology Corporation.
Craig Hodge, Esq., Office of Command Counsel, United States
Army Materiel Command, for the agency.
John W. Van Schaik, Esq., and John Brosnan, Esq., Office of
the General Counsel, GAO, participated in the preparation of
the decision.

DIGEST

1. Although protester contends that awardee cannot perform contract for the price it proposed, since in awarding contract the agency concluded that awardee could perform at the offered price and necessarily determined that the firm was responsible, awardee's alleged below cost offer is no basis to overturn award.
2. Protest filed after award that contract should not have been awarded based on fixed-price offers is untimely since it was clear from the face of the solicitation that a fixed-price contract would be awarded and under Bid Protest Regulations protests based on alleged improprieties in a solicitation which are apparent prior to the closing date for receipt of proposals must be filed prior to that date.
3. General Accounting Office's authority to decide bid protests encompasses only protests relating to particular procurements; protest of agency's general procurement practices will therefore not be considered.
4. In reviewing protests concerning the evaluation of proposals, the General Accounting Office will not substitute its judgment for that of the agency's evaluators but will examine the record to determine whether the evaluators' judgments were reasonable and in accordance with the listed

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criteria. Moreover, the protester must show that the evaluation was unreasonable and mere disagreement with the agency does not render the evaluation unreasonable.

DECISION

Cajar Defense Support Company protests the award of a contract to Cottonwood Technology Corporation under request for proposals (RFP) No. DAAA21-89-R-0089, issued as a small disadvantaged business (SDB) set-aside by the Department of the Army for engineering services to determine the feasibility of designing and implementing an automatic load, assemble and pack system for the manufacture of hand held signals.

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

The RFP requested firm, fixed-price offers for the contract, under which the awardee is to investigate the current production method for the signals, assess the feasibility of automating the production process and deliver a technical report on its findings and other written products. Award under the solicitation was to be made to the offeror whose proposal offered the best prospect for accomplishing the government's requirements in a timely and cost effective manner. Three evaluation factors were listed in the RFP; of these, technical was to be more important than management approach and technical and management combined were to be more important than price. There were several subfactors listed under both the technical and management factors.

Seven firms submitted proposals in response to the RFP. The technical and management proposals were evaluated and scored and, based on the combined technical and management scores, five proposals, including Cajar's, were included in the competitive range. Cajar's combined score was 62 and the scores of the other competitive range offerors were 71, 76, 80, and 83 on a 100 point scale.

The agency held discussions with the five competitive range offerors and requested best and final offers (BAFOs) from each. Based on a technical and management evaluation of the BAFOs, Cajar's combined score was raised to 64 while the scores of the other four competitive range offerors were raised to 90, 90, 95, and 97. Cajar's BAFO included alternative prices of \$127,400 and \$148,700 while the other four competitive range BAFOs included prices of \$93,960, \$99,993, \$149,420 and \$200,831.

The contracting officer determined that the four proposals that received score of 90 or above were essentially equal from a technical and management standpoint. Therefore, the contracting officer awarded the contract to Cottonwood, the lowest priced, at \$93,960, of the four highest rated proposals.

Cajar first argues that a substantial reduction in the awardee's price from its initial proposal to its BAFO was not justified and that Cottonwood cannot perform the contract for \$93,960 as it proposed. Further, Cajar argues that professional service contracts of the type called for by this solicitation should not be awarded on the basis of fixed prices and should include an evaluation of cost realism. In a related matter, Cajar says that it "has significant differences with the entire system of solicitation, evaluation, and award of professional services support efforts at Picatinny Arsenal," the Army activity which awarded this contract. In this respect, Cajar argues that there is a lack of management control, instruction and guidance of personnel, resulting in faulty solicitations and evaluations.

Cajar also challenges the Army's evaluation and scoring of its proposal. Among other allegations, Cajar says that the Army has not explained why Cajar was given no "cost differential evaluation credit" due to its status as a woman-owned SDB. Cajar also argues that the Army's evaluation of its technical and management proposal was unreasonable and that the agency's evaluators were not qualified and were biased against Cajar.

Cajar first contends that Cottonwood unreasonably reduced its price and cannot perform the contract for the \$93,960 it proposed. Since the Army made award to Cottonwood it obviously concluded that it could perform at the offered price and necessarily determined that the firm was responsible. Thus, that firm's alleged below cost offer is no basis to overturn the award. DH Indus., B-232963, Jan. 25, 1989, 89-1 CPD ¶ 80.

Although Cajar also argues that the contract should not have been awarded based on fixed-priced offers and that a cost realism analysis should have been conducted, these issues are untimely raised and will not be considered. Under our Bid Protest Regulations, protests based upon alleged improprieties in a solicitation which are apparent prior to the closing date for receipt of proposals must be filed prior to the closing date. 4 C.F.R. § 21.2(a)(1) (1989). Here, the solicitation clearly called for firm, fixed-price offers and did not require an evaluation of cost realism.

If Cajar believed that the contract should be awarded on a cost reimbursement basis and that the Army should evaluate cost submissions, Cajar should have protested these matters before the closing date for submission of proposals.

Similarly, the solicitation did not provide for a specific evaluation advantage, as Cajar requested in its proposal, for woman-owned SDB's. If Cajar believed that such an evaluation preference should have been provided, it was required to raise the issue before the closing date for receipt of proposals. 4 C.F.R. § 21.2(a)(1).

We also cannot consider Cajar's allegations regarding the Army's "entire system of solicitation, evaluation and award of professional service support efforts at the Picatinny Arsenal," since our bid protest function encompasses only objections which relate to particular procurements. 31 U.S.C. § 3551(1) (Supp. V 1987); see Aquirre Architects, Inc.--Request for Recon., B-230256.2, May 19, 1988, 88-1 CPD ¶ 478.

We next turn to Cajar's remaining contentions regarding the evaluation of its proposal. In reviewing protests of allegedly improper evaluations, our Office will not substitute its judgment for that of the agency's evaluators but, rather, will examine the record to determine whether the evaluators' judgments were reasonable and in accord with listed criteria. Metrolina Medical Peer Review Found., B-233007, Jan. 31, 1989, 89-1 CPD ¶ 97. Moreover, the protester must show that the evaluation of its proposal was unreasonable. Mere disagreement with the agency does not itself render the evaluation unreasonable. Id.

Here, we conclude that the evaluation of Cajar's proposal was fair and reasonable and consistent with the evaluation criteria.^{1/} First, with respect to the technical evaluation, Cajar argues that its BAFO was unfairly criticized for failing to respond to all the weaknesses raised in discussions. The record indicates that during discussions, the agency told Cajar that its "Preliminary Execution Plan," which was required by the solicitation, was hard to follow. Also, the agency identified as a weakness Cajar's required

^{1/} Cajar argues that it has been denied access to documentation relating to the evaluation. Although Cajar was provided documents concerning the evaluation of its proposal, it was not provided documents that contain information which is proprietary to the other offerors. Nevertheless, our Office has reviewed in camera documents concerning the evaluation of all the proposals.

"Plan for Final Presentation," which Cajar proposed to formalize under the contract based on agency guidance. The agency indicated that the Final Presentation Plan should not need the amount of agency guidance called for by Cajar's proposal.

In response to these criticisms by the agency, Cajar did not rewrite the Preliminary Execution Plan which the evaluators considered hard to follow and, instead of developing and submitting the required Plan for Final Presentation, Cajar simply stated that it could perform the contract without any guidance but argued that guidance from the agency during performance would be more appropriate. Thus, although the record indicates that Cajar was advised of these weaknesses in its technical proposal, Cajar did not correct the deficiencies in its BAFO.

Cajar also argues that its management proposal was unfairly evaluated and marked down because of a lack of company experience, as opposed to individual employee experience. The RFP listed four experience-related subfactors under the management factor; (1) previous experience with the type of service being procured, (2) previous experience with energetic materials, (3) previous experience with GOCO [government-owned-contractor-operated] contractors, and (4) personnel experience level. The principal concern of the evaluators with Cajar's management proposal was that, as a company, Cajar did not have experience managing the type of contract required by the solicitation. For example, under the management factor, the discussion letter sent to Cajar stated that the firm "has no proven experience managing a program" involving energetic materials and GOCO contractors.

In its BAFO response to this issue, Cajar did not show that as a firm it possessed the required management experience but argued that its individual employees have experience in the required areas and that experience as a company should not be required. Since the RFP included a separate subfactor which measured the experience level of individual employees, as opposed to company experience, it should not have been a surprise to Cajar that it was downgraded because of its lack of company experience. Since individual employee experience was considered under a separate subfactor, we think the Army's downgrading of Cajar's proposal in the area of company experience, even in light of whatever personnel experience the firm possesses, was reasonable. See DAVSAM Int'l, Inc., B-228429.5, Mar. 11, 1988, 88-1 CPD ¶ 252. We have no basis to disagree with the evaluation of Cajar's management BAFO.

Cajar also argues that the Army's evaluators were biased against the firm and lacked proper qualifications. There is no evidence of bias in the evaluation record and we regard this allegation as mere speculation. ACCESS for the Handicapped, 68 Comp. Gen. 432 (1989), 89-1 CPD ¶ 458. Further, evaluator qualifications are within the contracting agency's sound discretion and do not give rise to review by our Office unless there is a showing of possible abuse of that discretion. See National Council of Teachers of English, B-230669, July 5, 1988, 88-2 CPD ¶ 6. There has been no such showing here.

In general, Cajar's other objections to the evaluation essentially amount to a disagreement with the agency over how the contract should be performed and, as we have earlier indicated, such a disagreement does not itself render the evaluation unreasonable. Metrolina Medical Peer Review Found., B-233007, supra. We have reviewed the evaluation record and we find no basis upon which to conclude that the agency's judgment concerning the protester's proposal was unreasonable.

In any event, the record shows that there was a significant difference in price between Cajar (\$127,400 or \$148,700) and two of the higher rated offers, each of which was priced below \$100,000. Therefore, even were we to conclude that these remaining objections to the evaluation of Cajar's proposal showed some errors were committed by the agency, it is clear that an improvement in Cajar's technical and management score would not have changed the selection decision. Even if Cajar's proposal were scored in the 90s and thus considered equal to the other competitive range offerors (who scored between 90 and 97 and all of whom were considered technically equal), price would have been the determining factor in the selection of the awardee. See Harcourt Brace Jovanovich, Inc., B-234379, June 9, 1989, 89-1 CPD ¶ 546.

Finally, Cajar argues that the protest should be decided in its favor because Cajar received the Army's administrative report on the protest after the date it was due. However, since Cajar received the report and had the full period allowed under our Regulations to submit comments on it,

4 C.F.R. § 21.3(k), Cajar was not prejudiced and the late report provides no basis for sustaining the protest.

The protest is dismissed in part and denied in part.

for Seymour E. Groo
James F. Hinchman
General Counsel