



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: JWK International Corporation

File: B-237527

Date: February 21, 1990

Katheryn D. Zupan, Esq., for the protester.
John T. Thompson, Esq., Office of the General Counsel,
Department of the Navy, for the agency.
John M. Melody, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

1. Protest that awardee's low proposed labor rates amount to lack of cost realism is denied where agency's evaluation of cost realism was reasonable, and awardee confirmed its intent to comply with labor laws and was found to be otherwise responsible.
2. Where awardee's proposal was evaluated according to criteria in solicitation and found technically acceptable, contracting officer reasonably determined that awardee's understanding of the requirement and business judgment were sound despite low price.

DECISION

JWK International Corporation protests the award of a contract to National Technologies Associates, Inc. (NTA), under request for proposals (RFP) N68520-88-R-0023, issued by the Navy for logistics support services at the Naval Aviation Depot, Jacksonville, Florida. JWK alleges that NTA's cost proposal was improperly evaluated.

We deny the protest.

The solicitation, issued on December 16, 1988, contemplated award of a time and materials, indefinite quantity contract to the lowest-priced, technically acceptable offeror. Proposals were to be reviewed by a technical evaluation team and evaluated in four areas: technical approach to sample tasks, management plan and manpower utilization, corporate and organizational experience, and price/cost. The resulting contract is subject to wage determinations issued

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pursuant to the Service Contract Act of 1965, as amended (SCA), 41 U.S.C. §§ 351 et seq. (1982). Initial proposals were received from eight offerors on March 10 and reviewed by the technical evaluation team; six proposals were determined to be technically acceptable. Weaknesses in the proposals were addressed during written discussions, and best and final offers (BAFOs) were received on September 15. The technical evaluation team reviewed the BAFOs and determined that all six offers remained technically acceptable, and award was made on September 29 to NTA as the lowest-priced, technically acceptable offeror.

JWK alleges that NTA's cost proposal lacks realism because its proposed compensation plans do not comply with SCA wage determinations, and that its compensation plans for professional employees exempt from the SCA are below those of the predecessor contractor. JWK also maintains that NTA's low price indicates a lack of sound management judgment or a lack of understanding of the requirements, and that NTA's proposal therefore should have been rejected.^{1/} We do not agree.

The purpose of a cost realism evaluation by an agency under a time and materials type contract is to determine the extent to which the offeror's proposed labor rates and other costs are realistic and reasonable. Since an evaluation of this nature necessarily involves the exercise of informed judgment, the agency clearly is in the best position to make this cost realism determination; consequently, we will not disturb such a determination absent a showing that it was unreasonable. Carrier Joint Venture, B-233702, Mar. 13, 1989, 89-1 CPD ¶ 268.

We have reviewed the Navy's cost realism evaluation here in light of JWK's allegations and find it reasonable. The Navy's analysis involved three steps. First, each proposal was individually reviewed to determine whether any prices were materially unbalanced. Next, prices were compared to the federal equivalent wage, the wage determination, and other contracts for the same or similar services in the same geographic area. Finally, compensation plans for professional employees exempt from the SCA were reviewed. Where a proposed price for a particular labor category was

^{1/} JWK also offers a bare allegation that NTA's bid was unbalanced. As JWK failed to rebut the agency's response to that protest issue, we deem it abandoned and not for our consideration. See Universal Hydraulics, Inc., B-235006, June 21, 1989, 89-1 CPD ¶ 585

questionable, the Navy brought it to the offeror's attention during discussions.

The Navy found, and the record indicates, that the labor rates proposed by NTA were for the most part in line with both the predecessor contractor's rates and the wage determination. Contrary to JWK's allegation, NTA proposed rates well above the SCA wages in 11 out of the 17 labor categories. Rates for the other six categories were only slightly lower than the SCA wage. The Navy addressed during discussions areas where NTA's proposed compensation was considered low, and was satisfied with NTA's response. In particular, some lower rates are explained by the fact that NTA proposed using some part-time employees who receive no fringe benefits. This business decision on the part of NTA is not in conflict with the requirements of the contract. NTA confirmed its intent to comply fully with the SCA.

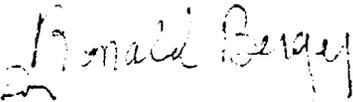
Concerning JWK's argument that NTA's low price indicates a lack of sound management judgment or a lack of understanding of the requirements, we note that it is not a function of this Office to evaluate technical proposals; rather, we will examine the agency's evaluation only to ensure that it was fair and reasonable and consistent with the evaluation criteria stated in the RFP. United Healthserv Inc., B-232640 et al., Jan. 18, 1989, 89-1 CPD ¶ 43.

We find the Navy's evaluation reasonable. The record indicates that the Navy evaluated technical proposals according to the evaluation criteria in the solicitation. The technical evaluation team found nothing in NTA's technical proposal that indicated a lack of understanding of the requirement or lack of sound management judgment. Understanding of the requirement was a part of the technical approach evaluation factor; the Navy found that NTA's proposed approach to the sample tasks indicated sufficient understanding of the requirement. Sound business judgment was included in the management plan and manpower utilization factor; the Navy found NTA's management approach to be sound. While NTA offered a lower price than the other offerors, the contracting officer determined that since NTA's proposal was technically acceptable, and the firm had performed satisfactorily on similar contracts, its understanding of the requirement and management judgment were sound.

Finally, we note that there is no legal basis to object to a below-cost award if the offeror was otherwise found to be responsible. United Healthserv Inc., B-232640 et al., supra. During discussions, NTA confirmed its intent to pay wages and benefits contained in the applicable SCA wage

determination, the contract requires that it do so, and the Navy was satisfied NTA would be able to comply with the SCA requirements and was otherwise responsible. To the extent that the protest challenges the agency's assessment in this regard (JWK asserts that NTA experienced performance problems on at least one prior Navy contract resulting from unrealistic proposed levels of compensation, but the Navy states that the firm's prior performance has been satisfactory), it relates to an affirmative determination of responsibility which we will not review absent a showing of possible agency fraud or bad faith or alleged failure by the agency properly to apply definitive responsibility criteria. 4 C.F.R. § 21.3(m)(5) (1989); ALM, Inc., B-225679.3, May 8, 1987, 87-1 CPD ¶ 493. Neither exception applies here.

The protest is denied.



James F. Hinchman
General Counsel