



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Trident Systems Incorporated

File: B-243101

Date: June 25, 1991

Gary J. Grosicki for the protester.
Sophie A. Krasik, Esq., and Robert H. Swennes II, Esq.,
Department of the Navy, for the agency.
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of the General Counsel, GAO, participated in the preparation
of the decision.

DIGEST

1. Protest that protester should have received the contract award because it submitted the low cost proposal which was technically equal to the awardee's proposal is denied where the procuring agency reasonably determined that the awardee's proposal was technically superior to the protester's proposal.
2. Protest that agency should have awarded the contract to the protester based on initial proposals is denied where after evaluating the initial proposals the agency found that another, higher cost proposal was technically superior to the protester's proposal and that the protester's proposal was not the most advantageous to the government.
3. Protest that agency failed to conduct equal discussions with the protester and awardee because the agency did not ask each of the two offerors the same questions is denied since agencies are required to tailor the questions to each offeror on the basis of the deficiencies the agency finds in the offeror's proposal.
4. Alleged deficiencies in source selection plan do not themselves provide a basis for challenging the propriety of an award decision since source selection plan is merely an internal agency instruction which does not vest outside parties with rights; propriety of award decision is judged by whether agency adhered to the evaluation scheme outlined in the solicitation.

5. Protest that agency improperly considered pages of awardee's technical proposal which exceeded the 50-page limitation set forth in the request for proposals is denied where the procuring agency reasonably interpreted the limitation as applying only to the substantive portions of the technical volume and not to the cover page and table of contents.

DECISION

Trident Systems Incorporated protests the award of a contract to Systems Planning and Analysis (SPA) under request for proposals (RFP) No. N00014-90-R-0004, issued by the Department of the Navy, Office of Naval Research, for engineering services.

We deny the protest.

BACKGROUND

The RFP was issued on February 28, 1990, for a contractor to analyze the anti-submarine warfare capabilities of various Navy fleet elements. The RFP contemplated award of a cost-plus-fixed-fee contract for a base year and 2 option years. Offerors were to submit a technical volume limited to 50 pages, not including resumes, which would be evaluated under two categories, technical approach and qualifications, and a cost volume, which would be evaluated for cost realism and proposed overall cost. The proposed costs for the option years were to be evaluated for award purposes. The solicitation provided that the technical factors were worth more than the cost factors but that cost would become more important as technical scores got closer. The RFP further provided that the award would be made to the offeror who submitted the proposal that was most advantageous to the government, proposed cost and other factors considered.

On March 30, the closing date for the receipt of proposals, six offerors responded to the solicitation. The technical proposals were evaluated by a technical evaluation team, which found two of the six proposals, those submitted by Trident and SPA, technically acceptable, but considered the proposal submitted by SPA technically superior. The contracting officer then reviewed the cost proposals and found that Trident submitted a moderately lower cost proposal than SPA. The contracting officer included both Trident and SPA in the competitive range, held oral discussions with both offerors, submitted a list of written questions to each offeror and requested best and final offers (BAFO) by August 24. The technical evaluation team reviewed the revised proposals and found that both proposals were acceptable but that the proposal of SPA remained technically superior to Trident's

proposal. At this time the technical evaluation team also reviewed the cost proposals of Trident and SPA. The panel concluded that while Trident's proposed cost of \$366,315 for the base year was lower than SPA's proposed cost of \$382,420, SPA's proposal was sufficiently superior technically to be worth the additional cost. Accordingly, the technical evaluation team recommended award to SPA. The contracting officer concurred with the technical evaluation team and on November 1 awarded the contract to SPA.

On November 11, Trident submitted a protest to the Navy challenging the award of the contract to SPA. After that protest was denied, Trident submitted its protest to our Office.

EVALUATION OF PROPOSALS

Trident first protests that in awarding the contract to SPA, the Navy did not follow the evaluation criteria in the RFP, which required the Navy to award the contract to the offeror that submitted the proposal most advantageous to the government, cost or price and other factors considered. Specifically, Trident asserts that since its technical proposal was rated only four points (or 7.7 percent) below SPA's, the proposals should have been considered technically equal and, as the low cost offeror, Trident should have received the award. Trident also complains that in reaching the award decision the agency did not evaluate the option year costs, in direct contradiction to the RFP, which stated that these costs would be evaluated. Trident asserts that when the proposed option year costs are considered, its cost advantage becomes more pronounced, thus making the technical difference between the two proposals even less important. Finally, Trident complains that for purposes of the cost realism analysis the Navy relied solely upon the labor and overhead rates recommendation by the Defense Contract Audit Agency (DCAA) rather than conducting its own detailed cost realism analysis.

The Navy responds that even though there was only a four point difference between the technical proposal submitted by Trident and that submitted by SPA, SPA's proposal was technically superior, not technically equal, to the proposal submitted by Trident. The Navy also admits that in initially evaluating the proposals it failed to consider the proposed option year costs. The Navy reports, however, that when the proposed option year costs are considered, SPA's total cost is \$1,193,675, and Trident's total cost is \$1,133,031. The Navy states that even when these total costs are considered, the technical superiority of SPA's proposal is worth the additional cost.

Whether a given point spread between competing offerors alone indicates significant superiority of one proposal over another depends on the facts and circumstances of each procurement. Sparta, Inc., B-228216, Jan. 15, 1988, 88-1 CPD ¶ 37. It is up to the selection official to determine whether the point score difference is indicative of technical superiority. Id. In addition, in a negotiated procurement, where the selection official reasonably determines that one proposal is technically superior, there is no requirement that the award be made to the offeror offering the lowest cost. See URS Int'l, Inc., and Fischer Eng'g & Maintenance Co., Inc.; Global-Knight, Inc., B-232500; B-232500.2, Jan. 10, 1989, 89-1 CPD ¶ 21. The contracting agency is primarily responsible for determining which technical proposal best meets its needs, since it must bear the burden of any difficulties incurred by reason of a defective evaluation; accordingly, procuring officials enjoy a reasonable range of discretion in the evaluation of proposals and in the determination of which offeror or proposal is to be accepted for award. We will disturb such determinations only if they are unreasonable or in violation of procurement statutes or regulations. Id.

Here, the record shows that in evaluating Trident's proposal, the Navy did find that Trident submitted an acceptable proposal; however, the Navy considered the proposal submitted by SPA technically superior, not technically equal, to the proposal submitted by Trident. More specifically, the Navy found that SPA clearly had the best grasp of the issues in determining the contribution of anti-submarine warfare systems to warfighting effectiveness. In this regard, the Navy found, among other things, that SPA's proposal demonstrated a detailed approach to determining the cost effectiveness of individual systems across a broad spectrum of anti-submarine warfare operational areas, including numerous illustrative examples, while Trident acknowledged the need for such analysis but did not demonstrate an understanding of the depth and rigor required. In the evaluators' opinion, this difference in the proposals demonstrated that SPA clearly understood the requirements of the solicitation while it left them with some questions concerning Trident's understanding of the technical requirements.

Trident has not challenged this evaluation but instead only asserts summarily that the proposals should have been considered technically equal, and we see no basis on which to question the Navy's conclusion that SPA submitted a superior technical proposal. Given that the Navy reasonably decided that SPA's technical proposal was superior, the Navy properly awarded the contract to SPA despite its higher cost. See URS Int'l, Inc., and Fischer Eng'g & Maintenance Co., Inc.; Global-Knight, Inc., B-232500; B-232500.2, supra.

Insofar as the Navy failed to consider the option year costs in initially evaluating the proposal and performing the technical/cost trade-off, the agency states that even when the proposed option year costs are considered, the technical superiority of SPA's proposal is worth the additional cost. The difference in cost between the proposals is \$16,000 for the base year and \$60,000 for the base year and the 2 option years. Given that the agency properly determined that SPA's proposal was sufficiently superior technically to be worth the additional \$16,000 in the base year, and the difference for each of the 2 option years is essentially equal to the cost difference for the base year, we believe that the agency would have reached the same award decision. Accordingly, the agency's failure to consider the option year costs during the initial evaluation provides no basis on which to disturb the award to SPA.

Finally, the Navy did perform a cost realism analysis and found that SPA's proposed costs were reasonable for the effort it proposed. In this regard, contrary to Trident's contention, a contracting agency properly may rely on DCAA's advice in performing a cost realism analysis where, as here, there is no showing that the DCAA analysis is erroneous. See United Eng'rs & Constructors, Inc., Sterns-Roger Div., B-240691; B-240691.2, Dec. 14, 1990, 90-2 CPD ¶ 490.

DISCUSSIONS AND REQUEST FOR BAFOs

Trident alleges that the Navy improperly conducted discussions and requested BAFOs. Trident first argues that the Navy should not have held discussions or requested BAFOs because the evaluation of initial proposals indicated that Trident submitted the proposal most advantageous to the government considering cost and other factors. Trident also argues that the Navy's decision to conduct discussions amounted to a prohibited auction under Federal Acquisition Regulation (FAR) § 15.610(e). Trident further complains that the August 20 request for BAFOs was confusing because the second paragraph of the request stated that BAFOs were due by August 24, while the last paragraph requested BAFOs by July 27. In addition, Trident protests that the Navy did not conduct discussions in a fair and equal manner because Trident received and was required to respond to more and different questions than SPA. Trident questions how the Navy could have fairly evaluated the proposals and compared them to each other if the offerors were not required to respond to the same questions. Finally, Trident notes that after reviewing Trident's BAFO the Navy stated in a letter to Trident that the agency had concluded that the firm's proposal was technically unacceptable. While Trident notes that the Navy now admits that this statement was an error and that Trident's proposal

was at all times acceptable, Trident asserts that the error demonstrates the Navy's bias in favor of SPA.

Based on our review of the record, we find that the Navy's decision to conduct discussions and request BAFOs was proper. First, after the initial evaluation, Trident's proposal was not considered the proposal most advantageous to the government. Rather, as explained above, while Trident's proposal was lower in cost, the technical evaluation team found that the technical proposal of SPA was superior. There is no requirement that award be made on the basis of initial proposals where, as here, the lowest cost proposal is not considered the most advantageous to the government. See FAR § 15.610(a), (b); Medical Research Laboratories, Inc., B-235243, July 17, 1989, 89-2 CPD ¶ 54. In addition, during discussions the Navy did not establish a cost goal for offerors or reveal the offerors' relative cost standing. Thus, no improper auction was conducted. See CC Distributors, Inc., B-225446, Feb. 18, 1987, 87-1 CPD ¶ 183.

Second, insofar as Trident asserts that the request for BAFOs was confusing because it contained conflicting due dates, under our Bid Protest Regulations, to be timely, a protest based on an apparent solicitation impropriety, which is incorporated into an RFP after it is issued, must be filed before the next established closing date for the receipt of proposals. 4 C.F.R. § 21.2(a)(1) (1991). Trident thus was required to protest on this ground before August 24, 1990, the latest closing date listed in the request for BAFOs. Since Trident did not raise this issue until April 9, 1991, when it submitted its comments on the agency report, it is untimely. In any event, this defect did not prejudice Trident since it submitted a timely BAFO that was considered for award.

Third, Trident has not provided us with any basis other than its conclusory statement, and we see none in the record, to conclude that the agency's erroneous statement advising Trident that its proposal was considered unacceptable indicated that the agency was biased in favor of SPA.

Finally, insofar as Trident alleges the Navy did not hold equal discussions because the offerors were not asked the same questions, the only additional question Trident was asked concerned its relationship with its subcontractor; SPA was not asked this question because SPA did not propose to use a subcontractor. In any case, in order for discussions to be meaningful, contracting agencies must furnish information to all offerors in the competitive range as to the areas in which their proposals are believed to be deficient so that the offerors have a chance to revise their proposals to fully

satisfy the agency requirements. Pan Am World Servs., Inc.; Base Maintenance Support Group; Holmes & Narver Servs., Inc., B-231840 et al., Nov. 7, 1988, 88-2 CPD ¶ 446. In other words, since the number and type of proposal deficiencies will vary among offerors the agency should tailor the discussions for each offeror, based on the offerors' evaluated deficiencies. Holmes & Narver, Inc., B-239469.2; B-239469.3, Sept. 14, 1990, 90-2 CPD ¶ 210.

SOURCE EVALUATION PLAN

Trident also protests that the Navy's source evaluation plan is defective because it does not specify the criteria for scoring cost proposals or detail the method for evaluating cost with respect to magnitude and realism.

The reason for the omission from the evaluation plan relating to cost criteria is that the plan was prepared for the technical evaluation team to use in evaluating the technical proposals only. In any case, alleged deficiencies in the agency's source selection plan do not provide a basis for questioning the award decision. Source selection plans are internal agency instructions and as such do not give outside parties any rights. Quality Sys., Inc., B-235344; B-235344.2, Aug. 31, 1989, 89-2 CPD ¶ 197. Rather, it is the evaluation scheme in the RFP to which the agency is required to adhere. Antenna Prods. Corp., 69 Comp. Gen. 182 (1990), 90-1 CPD ¶ 82.

PAGE LIMITATION IN THE RFP

Trident protests that SPA's technical proposal exceeded the RFP's 50-page limitation requirement by 6 pages plus a 4-page library holdings appendix. Trident alleges that if the last 10 pages of SPA's proposal were not considered, Trident's proposal would have become technically superior to SPA's and Trident would have received the contract award.

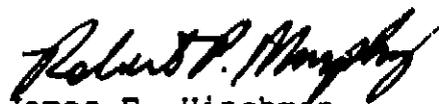
The RFP required that the technical volume of the proposal be no more than 50 pages, not including resumes and 4 fold-out pages. The Navy reports that SPA's proposal consisted of 50 pages plus a cover page, a 5-page table of contents, and a 4-page library holdings appendix. The Navy states that it viewed the 50-page limitation as applying only to the substantive portion of the technical proposal and not to pages taken up by the table of contents and the cover page. The Navy thus reports that it considered the entire 50 substantive pages of SPA's proposal, but did not consider the library holdings appendix because it exceeded the 50-page limitation.

Trident replies that it limited its proposal to 50 total pages and SPA should be held to the same standard. Trident points out that the Navy made a specific exception to the 50-page limitation for resumes and 4 fold-out pages, and that if it had so desired it also would have made an exception for the table of contents and cover page.

The purpose of a page limitation in a proposal generally is to eliminate information and data that is not germane to the decisionmaking process because excessive proposal size is costly for the offeror and time consuming for government evaluators. See Infotec Dev., Inc., B-238980, July 20, 1990, 90-2 CPD ¶ 58. Given this purpose, the Navy reasonably interpreted the limitation as applying only to substantive portions of the proposal since the evaluators could skip the table of contents with no effect on the evaluation, or use the table of contents merely for their own convenience in reviewing the proposal. The fact that the Navy made a specific exception for resumes and fold-out pages does not show that the Navy intended to apply the limitation except where it specifically made such exceptions, since both resumes and fold-outs contain information that is substantive and potentially vital to the proposal evaluation, whereas a table of contents and cover page generally contain information unrelated to the substance of the proposal.

In any case, we note that Trident does not argue that if it had been aware of the Navy's interpretation of the 50-page limitation, it would have taken the opportunity to expand its proposal, and could have or would have provided information that enhances the proposal's technical merit. Consequently, Trident has not demonstrated that it was prejudiced during the proposal evaluation. See Simulaser Corp., B-233850, Mar. 3, 1989, 89-1 CPD ¶ 236.

The protest is denied.


for James F. Hinchman
General Counsel