

Circle  
145755



Comptroller General  
of the United States  
Washington, D.C. 20548

## Decision

**Matter of:** NDI Engineering Company  
**File:** B-245796  
**Date:** January 27, 1992

Marc Lamer, Esq., Kostos and Lamer, P.C., for the protester.  
Demetria Carter, Esq., Department of the Navy, for the agency.

John A. Carter, Esq., and Jerold D. Cohen, Esq., Office of the General Counsel, GAO, participated in the decision.

### DIGEST

1. Advice in request for proposals that offerors must respond with information showing successful experience in performing the kinds of tasks contemplated under the solicitation is sufficient to put offerors on notice that experience would be weighed qualitatively. Offerors were treated equally where agency relied on knowledge of incumbent's past performance and contacts with references for other offerors in order to verify assertions of experience in proposals.
2. Although agency may have improperly accorded cost greater importance in evaluation than identified in request for proposals (RFP), protester, as low cost offeror, was not prejudiced. Also, agency reasonably determined not to adjust awardee's labor costs for learning curve where awardee had extensive experience in tasks and technology similar to those contemplated under current RFP.
3. Agency did not improperly inflate importance of responses to sample problems in evaluating technical and management approach. Offerors' understanding of the technology and tasks was critical element in ability to perform engineering and technical support tasks and RFP specifically identified sample problems as basis for evaluating this area.
4. Agencies must identify deficiencies in offerors' proposals, but are not required to conduct all-encompassing discussions or point out every area where an acceptable proposal may have received less than the maximum technical score. Moreover, agencies need not disclose deficiencies in sample tasks used to provide a basis for evaluating an offeror's understanding.

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## DECISION

NDI Engineering Company protests the Department of the Navy's rejection of NDI's proposal and award of the contract to Scientific Management Associates (SMA) under request for proposals No. N68335-90-R0052. NDI contests the Navy's evaluation of proposals.

We deny the protest.

## BACKGROUND

The RFP contemplated a 3-year, cost-plus-fixed-fee, level-of-effort contract with the Naval Air Engineering Center for technical and engineering analysis, design and support activities for the Recovery Assist, Securing and Traversing (RAST) shipboard helicopter recovery system. The request for proposals (RFP) provided instructions regarding the contents of proposals and advised that the Navy would evaluate proposals based on five factors:

1. Corporate Past Experience. The offeror was to provide a narrative describing the company's history, organization and actual experience with specific emphasis on satisfactory experience in performing the types of tasks anticipated under the contract as well as samples of previous work. The RFP required identification of the contract, contracting officer, and activity if the experience was gained through prior contracts.
2. Personnel Resources (Quantity and Quality of Available Personnel). The RFP identified the minimum acceptable experience requirements for several types of personnel, to be reflected in their resumes. The Project Manager, for instance, was expected to have 10 years experience in supervising engineering personnel performing tasks similar to those anticipated under the contract. An offeror could, however, propose alternatives to the listed requirements if the offeror believed them to be more appropriate for the tasks.
3. Technical/Management Approach. Offerors were to submit descriptions of their management and technical approaches to the work and quality assurance, and also respond to three of the four sample engineering tasks described in the RFP. The RFP stated that the sample tasks would be used to evaluate the contractor's understanding of the key technical issues and expertise in the technology.
4. Contractor Facilities. The contractor would be required to have facilities within 2-1/2 hours commuting time of Lakehurst, New Jersey, and have access to equipment to

provide computer aided design drawings and parts databases. If the contractor did not have such facilities, the contractor would have to commit to their establishment.

5. Cost and Cost Realism. The cost proposal was to contain a complete and detailed cost breakdown and be submitted separate from the technical proposal.

The RFP stated that the first three factors were the most important and of equal importance, and that the last two were listed in descending order of importance. The RFP also advised that although cost and cost realism was the least important factor, its importance would increase as proposals became more equal.

The Navy received five proposals. The proposals were first graded numerically and then assigned one of five adjectival ratings (excellent, good, etc.) in each category, as well as an overall adjectival rating. The evaluation plan assigned 20 points to each of the first three evaluation factors, 10 points to the fourth factor, and 30 points to the last factor, cost and cost realism. The initial technical evaluation rated SMA the highest; NDI, the incumbent, was ranked fourth, although still acceptable. SMA and NDI had the lowest cost proposals by a significant margin and were retained within the competitive range, while the remaining three offerors were eliminated. The Navy sent NDI and SMA letters asking them each to review the entire proposal, explain any cost caps included in the cost proposal, and submit a best and final offer by June 17, 1991. After the evaluation of best and final offers, the Navy concluded that SMA's technical superiority outweighed NDI's approximately 14.4 percent lower costs, adjusted for cost realism, and awarded the contract to SMA.

#### PROTEST AND ANALYSIS

NDI's protest, summarized above, is actually comprised of numerous allegations of specific improprieties in the Navy's conduct of this acquisition. Although we have reviewed all of NDI's allegations, and find them all to be without merit, we will discuss only the most significant.

##### (1) Corporate Experience and Past Performance

The Navy found that SMA's proposal showed 23 years of experience in Navy projects performing tasks like those contemplated under this contract, primarily in small ship environments similar to those in which the RAST system is employed. The Navy also found that SMA's sample work products were far superior to those submitted by other offerors and reflected extensive SMA involvement in their preparation. In evaluating SMA, the Navy states that it

reviewed SMA's submissions and confirmed with SMA's prior contracting activities the extent and nature of SMA's involvement in the identified tasks and SMA's sample work products. The Navy rated SMA excellent for corporate past experience.

The Navy evaluated NDI's narrative of its experience at least partially in the light of the Navy's own experience with NDI as the incumbent on the RAST contract. As a reflection of this, the Navy gave less than full credit for NDI's claims of working on certain technical documentation because NDI's only involvement had been to provide illustrations and typing. The Navy rated NDI above average for corporate experience.

NDI contends that, as the incumbent, it was the only competitor with experience on the RAST system and, as such, should have received the highest rating for experience. NDI contends that experience and past performance are not the same thing and asserts that it was improper for the Navy to consider NDI's past performance on the RAST contract as part of corporate experience. NDI, while conceding that an agency may evaluate past performance if the solicitation advises offerors that it is to be an evaluation factor, argues that because this RFP did not explicitly advise that past performance would be evaluated, it was improper for the Navy to consider it. NDI also contends that because it was the only offeror with experience on the RAST system, past performance could only be applied to NDI, and argues that it was therefore unfair to use it as a criterion.

Initially, we think NDI's assertion that the Navy evaluated past performance is misplaced. Contrary to NDI's assertion, we find no evidence that the Navy evaluated past performance. What the record shows the Navy did do was to verify the depth of NDI's and SMA's claimed experience in the process of qualitatively assessing proposals--in NDI's case through the Navy's own knowledge of the extent of NDI's past involvement in technical tasks under the RAST contract and, in SMA's case, through inquiries regarding SMA's past contracts.

We think the Navy treated NDI fairly and reasonably. The RFP, as we noted above, required offerors to describe "actual experience with specific emphasis on satisfactory experience in performance of the types of tasks" anticipated under the contract. We think this was sufficient to put offerors on notice that their experience would be evaluated qualitatively. It appears that the Navy applied its knowledge of NDI's past performance to the evaluation of NDI's proposal in the same way it applied knowledge of the depth of SMA's past participation in technical efforts gained through inquiry to SMA's past contracting activities:

in each case, the information was used simply to verify their respective assertions of prior experience. The Navy concluded that SMA's involvement in its past technical tasks was more extensive and in-depth than was NDI's involvement in its past tasks, and, as a consequence, that SMA's experience was superior. We do not find this to be objectionable.

## (2) Cost Analysis

The Defense Contract Audit Agency assisted the Navy in reviewing the offerors' proposed costs. The Navy did not point score cost or cost realism and the only adjustments made to either offer as the result of the cost realism analysis were additions to NDI's overhead and general and administrative expenses. The Navy determined that SMA's extensive experience with similar tasks and systems in small ship environments would minimize or eliminate the learning curve for SMA, and concluded that as a consequence no adjustment was necessary to SMA's labor costs. NDI does not contest the accuracy of the adjustments to its proposal and, as we noted above, NDI was still low by 14.4 percent.

NDI argues that it was unfairly penalized for cost realism and asserts that the Navy erred in not adjusting SMA's labor rates upward for the learning curve needed to familiarize SMA's personnel with the RAST system and the Navy's way of doing business. NDI also contends that the Navy's use of a 30 percent weight for cost and cost realism in the evaluation was inconsistent with the relative weight accorded to this factor in the solicitation.

We think the Navy was reasonable in deciding not to adjust SMA's labor costs for a learning curve. SMA has extensive experience with equipment and tasks similar to those contemplated under this solicitation and NDI has identified no peculiarity of the RAST system that might set it so far outside of SMA's experience that a significant learning curve would be required. On this record, we see no basis to question the Navy's determination.

NDI's protest neither identifies the basis for its assertion that it was unfairly penalized for cost realism nor provides the evidence to support it. The Navy did not score cost realism and, as a consequence, NDI neither gained nor lost points for this factor. Moreover, NDI does not contest--and apparently concedes--the accuracy of the adjustments made to its overhead and general and administrative costs as a result of the cost realism analysis. Given this record, we find no basis upon which we might conclude that NDI was penalized.

On the other hand, if we accept the RFP's 20-20-20-10 point allocation to the first four evaluation criteria, then we have to agree with NDI that cost and cost realism should have been accorded fewer than 10 points in order for it to have been "listed in descending order of importance" and "the least important" criterion described in the RFP, rather than the 30 points it was accorded in the evaluation plan. As we noted above, however, the Navy did not assign points for cost realism, and the only real impact of the error was to inflate the value of cost--adjusted for cost realism--in the evaluation beyond the relative weight to which it was entitled under the RFP. As the lowest cost offeror, this operated to NDI's benefit, rather than its detriment. We therefore find that NDI was not prejudiced by the error and will not consider the issue further. See Central Air Service, Inc., B-242283.4, June 26, 1991, 91-2 CPD ¶ 8.

### (3) Sample Tasks

The Navy considered SMA's responses to the sample problems to be strong and assigned SMA a rating of very good for the technical and management approach factor. On the other hand, the Navy considered NDI's sample problems to be weak, and rated NDI's technical and management approach as significantly below average; the technical evaluation committee, in fact, considered two of NDI's proposed solutions to be impractical and unworkable. The evaluation noted that NDI's responses were "disappointing" in view of NDI's position as the incumbent.

NDI contends that the weight the Navy accorded to the evaluation of responses to the sample tasks was inconsistent with the RFP. In this regard, the Navy assigned 15 of the 20 points under the technical and management approach criterion to the sample problems. NDI contends that preparing sample task analyses and solutions is expensive and asserts that the RFP did not advise offerors of the importance that would be attached to their responses. NDI contends that the only requirement was to present workable solutions.

We disagree. The sample tasks were included as part of the technical and management approach, one of the three most important criteria, and the narrative describing the information required for evaluation focused on affording offerors an opportunity to demonstrate their understanding of and expertise in the tasks and technology. Moreover, this was a procurement for engineering and technical services, and the contractor's understanding of the key technical issues and expertise in the technology would obviously be critical to successful performance. The fact that the sample problems were specifically identified in the RFP as the basis for evaluating these critical factors

should have been sufficient to apprise offerors of their importance.

NDI's assertion that workable solutions were all that was required simply ignores the Navy's purpose in requiring submission of the sample problems. As we noted in the preceding paragraph, the sample problems were intended to provide a basis to evaluate an offeror's expertise and understanding of the technical issues. The Navy evaluated the responses and assigned higher scores to those solutions that reflected superior expertise and understanding. We have long approved of this method of evaluation. See, e.g., Mutual of Omaha Insurance Co., B-201710, Jan. 4, 1982, 82-1 CPD ¶ 2. We would find it unreasonable to presume, as NDI apparently does, that a minimally workable solution would either reflect the same level of expertise and understanding as a more appropriate and cogent solution or that it would receive the same score.

Furthermore, we find that NDI failed to meet even the minimally workable solution standard that it sets for itself. For example, the Navy states that the RAST operator must manipulate two separate controls during RAST operations, requiring that the operator have both hands free. NDI's solution to one of the sample problems, however, would require that the operator use one hand to hold down a third control during RAST operations "as a reminder that the solution was only temporary." The Navy considered this solution unworkable. We share the Navy's view and consider reasonable the relatively low score NDI received for the technology and management approach factor.

In contrast to NDI's efforts, SMA's approaches to the sample problems evidenced a thorough understanding of the engineering problems and disciplines involved. In responding to a sample question about detecting leaks in a hydraulic system, for instance, SMA proposed a range of solutions, encompassing remote detection of lost fluids in reservoirs, drops in hydraulic pressure, and/or overheating pressure pumps, reflecting engineering analyses and an approach to problem resolution superior to that reflected in NDI's proposal and sample problems. In short, we find nothing unreasonable in the Navy's conclusion that SMA presented the better solutions or that they reflected a deeper understanding of the technical issues and greater expertise in the technology.

#### (4) Discussions

The Navy states that it considered NDI's proposal to be technically acceptable and, therefore, limited its discussions with NDI to a request for clarification of any price caps in NDI's proposal and for a best and final offer.

NDI contends that the results of the evaluation show that the Navy must have found deficiencies in NDI's proposal. NDI argues that the Navy was obligated to point out these deficiencies in discussions and improperly failed to do so.

Agencies may satisfy the requirement for discussions with offerors in the competitive range by advising them of deficiencies in their proposals and affording them an opportunity to respond through submission of revised proposals. MaineTech Development Co., et al., B-243111, et al., July 2, 1991, 91-2 CPD ¶ 15. Agencies are not required, however, to provide all-encompassing discussions or to point out every area where an acceptable proposal may have received less than the maximum technical score. Id.

The Federal Acquisition Regulation, § 15.601, stipulates that deficiencies are instances in which the contractor's offer fails to meet the agency's requirements. Our review of the Navy's evaluation and accompanying narratives discloses that the Navy did, in fact, find no deficiencies in NDI's proposal and considered it to be acceptable, albeit less so than SMA's proposal. To the extent we find what might have been considered deficiencies in NDI's proposal, they were in NDI's responses to the sample problems, two of which the Navy considered to be impractical and unworkable, as we noted above. We have held that agencies are not obligated to point out deficiencies in sample problems that are used to provide a basis for evaluating an offeror's understanding, since to do so would defeat the primary purpose of the sample-task scenario--to test the offeror's understanding. See Syscon Services, Inc., 68 Comp. Gen. 698 (1989), 89-2 CPD ¶ 258. Consequently, the Navy was not required to conduct discussions with NDI beyond those actually undertaken.

#### (5) Additional Bases for Protest

The NDI protest includes other allegations not specifically discussed in this decision. For instance, NDI also contends that the Navy waived a requirement for SMA's project manager to have a minimum of 10 years experience in supervising engineering personnel in tasks similar to those contemplated under the contract--ignoring the fact that the RFP specifically permitted offerors to propose alternative experience which the Navy could accept, as it did in this case. We have reviewed these additional allegations and find that they are without legal merit.

CONCLUSION

We have reviewed all of NDI's contentions and find no basis to object to the Navy's conduct of this acquisition. The protest is denied.

*for Seymour E. Pro*  
James F. Hinchman  
General Counsel