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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

FILE: B-200332 DATE: February 9, 1982

MATTER OF: Support Systems Associates, Inc.

DIGEST:

1. Allegation that agency failed to properly evaluate awardee's technical proposal is denied where record shows that evaluation was consistent with reasonable interpretation of evaluation criteria and solicitation's statement of work.
2. Since extent to which proposed costs for cost-plus-fixed-fee contract will be examined is generally matter for agency discretion, GAO will not question determination of cost realism which has reasonable basis.
3. Since solicitation contemplated possible substitution of contractor personnel during contract performance, mere fact that personnel have been substituted under contract is not evidence, in itself, that offeror misstated personnel prior to contract award.

Support Systems Associates, Inc. (SSAI), protests the award of a cost-plus-award-fee avionics engineering services contract to ATE Associates, Inc. (ATE), under request for proposals (RFP) No. N00228-80-R-4000 issued by the Naval Supply Center, Oakland, California (Navy). The contract provided for a base period of 1 year's services and the possibility of up to 2 optional years of services. SSAI was the incumbent contractor on the previous contract for these same services.

SSAI objects to the award on two grounds: (1) its competitor's (ATE's) proposal was improperly evaluated and (2) its competitor misled the Navy

regarding the employees who would perform the contract. Our review of the record shows no merit in either ground of protest.

Background

The RFP sought a firm capable of providing the services with employees willing to live in a high cost area (Alameda, California) and who would agree to demanding travel requirements including, but not limited to, periods of up to 30 continuous days at sea onboard operating aircraft carriers and flights on military aircraft. The Navy states that SSAI had previously experienced problems in recruiting engineers, in part, because of the nature of the requirement and, in part, because of the high demand for, and consequent scarcity of, such highly specialized avionics engineers in the commercial marketplace. The RFP also contained a detailed listing of the Navy's "estimates of direct labor hours required" by engineering specialty.

The evaluation criteria and weights assigned to the criteria were, as follows:

Personnel Qualifications	45
Cost	30
Ability to Perform	12.5
Technical Approach	7.5
Past Performance	<u>5</u>
	100

The RFP provided that the Personnel Qualifications factor would be evaluated by the Navy's rating--based on the experience and formal education of the proposed employees--the 19 individual resumes each offeror was required to submit. Offerors were also advised of minimum experience and education requirements. Cost was to be evaluated on the basis of reasonableness and realism.

Five proposals were received in response to the solicitation. An initial evaluation limited the

competitive range to three firms. Following discussions, the Navy requested revised proposals from each of the three firms. Evaluation of the revised proposals further reduced the competitive range to two firms (SSAI and ATE). These two firms entered into the final negotiations with the following technical scores:

	<u>SSAI</u>	<u>ATE</u>
Personnel Qualifications	36.667	38.64
Ability to Perform	10.133	11.113
Technical Approach	7.167	7.16
Past Performance	<u>4.5</u>	<u>4.6</u>
	58.467	61.543

These scores remained constant throughout the balance of the evaluation. At the end of negotiations ATE's total costs, plus fixed fee, for 3 years were \$3,268,988. SSAI's proposed costs and fee were about 10 percent more than ATE's. The Navy considered both these costs and fees to be "reasonable and valid."

The Navy then calculated the proposal having the "greatest value." This was done by adding the technical scores to scores for costs. Based on the Navy's conclusion that each company's proposed costs were reasonable and realistic, ATE was given the maximum cost score of 30 for its low cost; SSAI was given a cost score roughly 10 percent lower than ATE because of its higher cost proposal. Combining the technical and cost scores, ATE's proposal was scored approximately 7 percent higher than SSAI's.

Procurement Documents

In the course of its protest SSAI sought, and the Navy refused to make available, several technical evaluation documents. We have, consistent with our established practice in such situations, obtained and considered these documents in arriving at our decision. Systems Research Laboratories, Inc. - Reconsideration, B-186842, May 5, 1978, 78-1 CPD 341.

GAO Review of Proposal Evaluation

We have observed that procuring agencies are relatively free to determine the manner in which proposals will be evaluated so long as the chosen method provides a rational basis for source selection and the actual evaluation is conducted in accordance with the established evaluation criteria. See Francis & Jackson, Associates, 57 Comp. Gen. 244 (1978), 78-1 CPD 79.

Evaluation of ATE's Cost Proposal

SSAI's principal contention is that the Navy failed to conduct a proper cost realism analysis in derogation of section D.1b of the RFP which indicates that cost will be evaluated on the basis of realism and Defense Acquisition Regulation § 3-807.1(d) (Defense Acquisition Circular No. 76-16, August 1, 1978) which requires cost analysis whenever an RFP requires the submission of cost or pricing data as is the case here.

The Navy points out that, since both offerors accepted the RFP's detailed work-hour estimate, only five cost elements were subject to audit and negotiation for purpose of a cost realism analysis. These cost elements were: (1) direct labor rates; (2) engineering overhead; (3) general and administrative (G&A) expenses; (4) "other costs"--for example, travel; and (5) fee. SSAI's proposed costs were higher than ATE's in all elements except for fee. SSAI's proposal contained an award fee instead of a fixed fee. Since an award fee is awarded periodically at the Navy's discretion, its amount is not figured into an offeror's proposed costs even though it may ultimately range between zero and 7 percent of cost incurred. However, the Navy found ATE's 1-1/2-percent fee inherently reasonable in view of the RFP's provision that fixed fees would be negotiated between 0 and 3 percent.

The Navy also reports that several elements of ATE's cost proposal were audited by the Defense Contract Audit Agency (DCAA) for reasonableness of proposed costs. For example, DCAA found ATE's labor rates to be supported by employees' affidavits and recommended acceptance of ATE's indirect costs.

SSAI disagrees with the Navy's conclusion because, allegedly, its proposed costs should have been considered more reasonable and realistic than ATE's because it was the incumbent for these services. The upshot of SSAI's position is that costs lower than its costs must be unrealistic and unreasonable. And SSAI argues:

"The use of estimated costs should have served to allow the Navy to make a more detailed analysis not a less detailed one, since time was available which would otherwise have been necessary to certify the government [work hour] estimates used. The Navy accepted ATE's ability to perform the work at ATE's estimated cost [based on the estimated work hours]. This is not cost analysis; this is blind faith * * *."

SSAI specifically questions the Navy cost evaluation in several areas. SSAI alleges that ATE is recruiting SSAI employees with offers of 10 percent over their current salaries. SSAI also points out that ATE has to establish a local facility which is totally chargeable to this contract and that ATE's proposal is premised upon a significant reduction in its historically experienced G&A rates as well as an unduly optimistic 7 percent rate of inflation.

We have taken the position that the determination of the realism of proposed costs for a cost-plus-fixed-fee contract is within the discretion of the procuring agency and is subject to objection only if it has no rational basis. Applied Financial Analysis, Ltd., B-194388.2, August 10, 1979, 79-2 CPD 113. Moreover, we will not question a determination of cost realism based on factual information contained in a proposal since the extent to which proposed costs are examined is generally a matter of agency discretion. Applied Financial Analysis, Ltd., supra.

A. Recruitment of Employees

The Navy reports that ATE's recruitment costs "were not proposed separately but included in the indirect cost element of the proposal." These costs

"were not subject to a specific audit finding," according to the Navy, especially since the entirety of ATE's indirect costs were accepted.

As to SSAI's contention that ATE recruited SSAI employees by proposing to pay higher labor rates, our review of SSAI's and ATE's direct labor rates found them to be comparable. When these rates are "weighted" according to the labor skills and labor hours involved, ATE's total labor costs are lower than SSAI's.

In these circumstances, we find no objection to the Navy's position concerning the evaluation of these costs.

B. Cost of Local Facility

We can find no basis for SSAI's assertion that the cost of ATE's establishment of a local facility was not considered. ATE's technical proposal clearly identified the facility (maps and floor plans), its rental cost and lease terms. The fact that the facility cost is not otherwise separated out in ATE's cost proposal but, instead, is generally included in engineering overhead and G&A expenses is, in our opinion, insignificant.

C. G&A Rates

SSAI is correct in its belief that the ATE proposal is premised upon a significant reduction in its historically experienced G&A rates. The Navy recognized this and verified that there was a factual foundation underlying ATE's projection of increased sales volume and consequent decreased G&A rates. The Navy considered a list of projected sales for fiscal year 1981 furnished by ATE which specifically identified anticipated projects/clients and further designated their status as existing customer, new customer-firm sale, or new customer-high expectancy. The only project in the last category is the solicitation here protested. The Navy also considered the fact that while overall the G&A rate was significantly lower than in the past, it was only 1-1/2 percent below the rate ATE experienced in the 8 months ending in April 1980.

D. Inflation

Concerning the inflation rates which ATE projected for the option years, we agree with the Navy's observation that any inflation projection is subject to question and that ATE's "seven percent inflation projection is no less valid than [SSAI's] * * * nine percent projection." The Navy found both to be optimistic but not unreasonable. We agree. In any event, even if we add an additional 2 percent to ATE's cost proposal for the option years, this addition does not disturb the relative cost standing of the offerors. Consequently, this consideration does not affect the propriety of the award.

Therefore, we find no basis to question the Navy's cost realism analysis of ATE's proposal even if it is correct, as SSAI alleges, that ATE's actual cost experience under the contract may suggest that the company will overrun its proposed costs.

Evaluation of ATE's Technical Proposal

ATE's technical proposal was awarded three points more than SSAI's as follows:

Personnel Qualifications	1.8
Ability to Perform	1
Past Performance	0.1

Both offerors were rated equally on technical approach. SSAI does not challenge ATE's slightly higher score in the area of past performance in view of ATE's experience in "test program set development."

SSAI argues that its proposal is at least technically equal to ATE's in Personnel Qualifications and Ability to Perform and proper evaluation would have disclosed this equality and, perhaps, superiority. SSAI's principal objection is that the:

"* * * evaluation team was directed to accept all claims of offerors as true and were prohibited from

questioning or investigating the veracity of an offeror's claim in any section of the proposal."

SSAI contends that two factors operated to make verification of ATE's personnel qualifications' claims necessary; (1) ATE was attempting to hire the maximum number of incumbent SSAI personnel and (2) ATE was confronted with a very difficult recruiting problem peculiar to the Alameda area. Consequently, any non-SSAI resumes submitted with ATE's proposal were open to suspicion, in SSAI's opinion, and should not have been counted unless they were "verified." As a consequence of the Navy's alleged failure to verify these aspects of ATE's proposal, SSAI contends that; (1) the evaluation team's expertise was eliminated; (2) it was impossible to assess the quality of individual resumes; and (3) ATE was allowed to present the resumes of highly qualified personnel when it actually intended to use "lesser" qualified SSAI personnel.

In reply, the Navy reports that one evaluator requested authority to interview the personnel named by the offerors as prospective employees. However, this evaluator was told to channel any questions raised by his review of the proposals through the Navy contract negotiator. The Navy insists that the chosen procedure was appropriate.

We find no basis to question the chosen procedure since any questions that the evaluator had could have been posed by the negotiator to the offerors through this procedure.

It is clear from our review of the background documents that the ranking of the resumes under the Personnel Qualifications factor was in accordance with the scheme set out in the RFP and that where both ATE and SSAI proposed the same individual that individual's ranking was identical. ATE and SSAI offered nine individuals in common. The difference in the scoring resulted from the higher ratings assigned to the balance of ATE's proposed personnel. Each resume provided the prospective employee's home phone number and was accompanied by a signed and dated offer and acceptance statement. The

record demonstrates that the Navy specifically questioned offerors concerning the qualifications of the individuals proposed during the course of the negotiations. Moreover, both offerors altered their proposals with regard to personnel during the negotiations.

Under the circumstances, we cannot question the technical evaluation of proposals.

False Statements in the ATE Proposal

SSAI's argument is based on its belief that, during negotiations, ATE was planning to substitute allegedly lesser qualified personnel (particularly incumbent SSAI personnel) after the contract had been awarded--thereby gaining an improper competitive advantage under the circumstances. SSAI argues that this substitution has, in fact, taken place during the performance of the contract.

The RFP contemplated personnel substitutions during performance of the contract as follows:

"Diversion of Personnel: Prior to diverting from this contract any of the personnel enumerated in the contractor's proposal * * * the contractor shall, in writing, notify the Contracting Officer's Technical Representative thirty (30) days prior to diversion. Replacement personnel must be at least equally qualified as diverted personnel * * *."

In view of this RFP provision, it is apparent that some substitutions of previously named personnel were contemplated for any successful offeror. Thus, the mere fact that substitutions of personnel have taken place under ATE's contract is not evidence, in itself, that ATE misstated its personnel during negotiations. SSAI has furnished no other evidence of a misstatement. Therefore, we reject the SSAI allegation as speculative.

We deny the protest.

for *Milton J. Fowler*
Comptroller General
of the United States