DECISION

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

24698

FILE: B-209323 **DATE:** March 31, 1983

MATTER OF: Ares, Inc.

DIGEST:

1. The allegation that a firm is "buying in" does not constitute a basis to preclude award to an otherwise acceptable offeror.

2. Where competing technical proposals are essentially equal, cost may become the determinative factor, even though cost was ranked as the least important evaluation factor in the solicitation.

Ares, Inc. (Ares), protests the award of a contract for the development of a general purpose heavy machine gun to AAI, Inc. (AAI), under request for proposals (RFP) No. DAAK10-82-R-0164 issued by the United States Army Research and Development Command (ARRADCOM). Ares claims that the contract award was improper because Ares' proposal was technically superior to AAI's and technical factors were most heavily stressed in the solicitation. Ares also asserts that AAI's proposed cost was so low that it amounted to a buy-in under Defense Acquisition Regulation (DAR) § 1-311 (1976 ed.) and that ARRADCOM consequently could not have applied the cost realism criteria called for in the RFP to AAI's proposal. Lastly, Ares claims that it was not informed of ARRADCOM's decision to award the contract to AAI until 3 days after other competing and noncompeting parties were notified.

The protest is denied.

Ares' allegation of ARRADCOM's failure to notify it promptly of the award to AAI, as required by DAR § 2-408 (1976 ed.), is unwarranted. Award was made to AAI on September 23, 1982. Ares was informed of this decision on September 27, 1982, and all other unsuccessful offerors were notified on September 29, 1982. We find the 4-day period between the time of award and notification to Ares

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reasonable. See Liquid Controls Corp., B-208257, December 7, 1982, 82-2 CPD 512.

Ares' allegation that cost realism criteria were not applied to AAI is without merit. The report submitted by ARRADCOM establishes that a cost realism evaluation of AAI's proposal was in fact performed. That evaluation showed that AAI's proposal most favorably compared to the Government cost estimate. The ultimate goal of such an evaluation is to adjust the contractor's proposed cost and fee for realism and to predict the final probable cost to the Government for each proposal. Based on an evaluation of the probable cost of both proposals, the contracting officer determined that it was in the best interests of the Government to make the award to AAI.

Ares next asserts that AAI's proposed costs were so low that the proposal amounted to an attempt to buy in, contrary to DAR § 1-311 (1976 ed.). Ares states that because AAI is a large manufacturing firm, a development contract such as this one would be a means to future large-scale production contracts.

Generally, we have held that the allegation that a firm is buying in does not constitute a basis to preclude award to an otherwise acceptable bidder. DAR § 1-311, supra, merely cautions contracting officers to assure that losses are not recouped through change orders or "follow-on" contracts. ACL - FILCO Corporation, B-179835, January 29, 1974, 74-1 CPD 39. Additionally, the record indicates that ARRADCOM carefully considered the risks inherent in accepting a low offer in its evaluation of AAI's proposal and determined that AAI's proposal was not a buy-in. In an evaluation of AAI's past performance, it was found that none of the 22 contracts for similar or related work since 1970 have resulted in cost growths, overruns or reprocurement proceedings. There is no indication that the contracting officer will not follow the guidelines of DAR § 1-311, supra, in administering the contract. Consequently, Ares' assertion that a buy-in has occurred is no basis to preclude award to AAI.

Ares asserts that the award to AAI was improper because Ares' proposal was technically superior to that of AAI and the technical rating of a proposal was more important than any other factor under the solicitation. The solicitation lists the evaluation factors as: technical rating, management rating, combined merit rating and cost. The solicitation stated that:

> "[t]he Government reserves the right of such flexibility in evaluation as is necessary to assure placement of the contract in its best interest. Accordingly, the Government may award any resulting contract to other than the lower priced offeror, or other than the contractor with the highest merit rating * * *. Evaluation of Proposals will be based primarily on the following factors in descending order of importance: technical, management, cost * * *. The merit rating is more important than the probable cost."

After the submission of best and final offers, a final technical evaluation was performed. Out of a total of 70 points, Ares was given a combined merit rating of 63.2, which consisted of a technical rating of 36.9 and a management rating of 26.3. AAI received a combined merit rating of 57.9 (33.2 for technical merit and 24.7 for management). The point spread between the two proposals was 5.3 points. Because of the small difference in the ratings, Ares' and AAI's proposals were deemed by ARRADCOM to be "technically essentially equal." Ares believes that, because of the higher rating it received, its proposal was technically superior and that, according to the order of importance of the evaluation factors listed in the solicitation, it should have been awarded the contract instead of AAI.

While technical point ratings are useful as guides for intelligent decisionmaking in the procurement process, whether a given point spread between two competing proposals indicates a significant superiority of one proposal over another depends upon the facts and circumstances of each procurement and is primarily a matter within the discretion.

of the procuring agency. See 52 Comp. Gen. 686 (1973). See also Management Services Incorporated, 55 Comp. Gen. 715 (1976), 76-1 CPD 74. In the instant case, the record does not establish that ARRADCOM abused its discretion in determining that the technical proposals were essentially equal.

The fact that cost was ranked least in importance in the solicitation does not require that ARRADCOM ignore the difference in the cost of the two proposals. Ares' proposed cost was $3.4 million; whereas, AAI's proposed cost was $1.57 million. The Government cost estimate was $1.9 million. We have held that where competing proposals are essentially equal technically, cost may become a determinative factor, notwithstanding the fact that, in the overall evaluation scheme, cost was of less importance than other factors. Applied Financial Analysis, Ltd., B-194388.2, August 10, 1979, 79-2 CPD 113. In any event, even if Ares' proposal is considered technically superior, as it contends, award to Ares would not have been justified in view of its significantly higher proposed cost. In a case where award was made to an offeror whose technical proposal was scored about 5 percent higher than a competitor's technical proposal, but whose cost was approximately 4-1/2 times higher, we said the record did not indicate that the technical superiority of the one offeror "warrented an award to him at a substantially higher price" and that, therefore, the record did not support the conclusion that the award was most advantageous to the Government. See Design Concepts, Inc., B-184658, January 23, 1976, 76-1 CPD 39.

The protest is denied.

for Milton J. Socolar
Comptroller General
of the United States