

DECISION**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548****FILE:** B-214103.2**DATE:** October 2, 1984**MATTER OF:** Alturdyne**DIGEST:**

Selection of awardee based on lower expected cost was proper where proposals to furnish Sterling engine driven generator sets on cost-plus-fixed-fee basis were otherwise considered equal.

Alturdyne protests the award of a contract to Tierney Manufacturing under request for proposals (RFP) DAAK70-83-R-0018 issued by the Department of the Army. The RFP is for the production of 10 5kw Sterling engine driven generator sets as part of an Army sponsored effort to develop a silent, lightweight electric power source for use in forward areas by tactical units. The protester complains that the Army, by selecting Tierney on the basis of cost considerations, disregarded the RFP evaluation criteria, which indicated that technical merit would be given the greatest weight in evaluating proposals. Alturdyne also says cost was an improper basis for selection because a cost-plus-fixed-fee contract is involved.

In denying the protest, we note that the Army's scoring of proposals gave Tierney a small edge with respect to each of the principal areas of evaluation: technical merit, cost and management factors. The Army says it properly selected Tierney because, treating the proposals as otherwise equal, it concluded that contracting with Tierney will allow the government to realize lower costs than would be incurred were Alturdyne selected. While the RFP required that the Army give technical merit greater weight than cost and management factors combined, our decisions have consistently pointed out that a selection may turn upon cost where, as here, the proposals are judged to be otherwise essentially equal. See Telecommunications Management Corp., 57 Comp. Gen. 251 (1978), 78-1 CPD ¶ 80.

Although Alturdyne contends that the Army disregarded the RFP evaluation criteria because it is in its view inconceivable that the proposals were completely equal technically, we view this contention as misplaced. Exact equality of proposals is not required. It is only necessary that the differences in technical merit between them be reasonably viewed by the contracting activity as relatively insignificant because in that event the closeness of technical scores makes cost the critical determinant in selecting an awardee. William Brill Associates, Inc., B-190967, Aug. 7, 1978, 78-2 CPD ¶ 95. The RFP stated that technical merit would be given more weight than cost and management considerations combined; the RFP did not state that award would be based solely on technical merit, which would be the effect of agreeing to Alturdyne's view that there must be complete technical equality before other factors are considered.

Concerning the Army's evaluation of the technical merit of the proposals, we have consistently held that evaluation of the technical merit of proposals is primarily an exercise of judgment that we will not disturb unless it is shown that the contracting activity has acted arbitrarily or has violated procurement law. Leo Kanner Associates, B-213520, Mar. 13, 1984, 84-1 CPD ¶ 299. A protest alleging that an agency acted arbitrarily in scoring proposals will be denied provided the record shows that the agency had a rational basis for its determination.

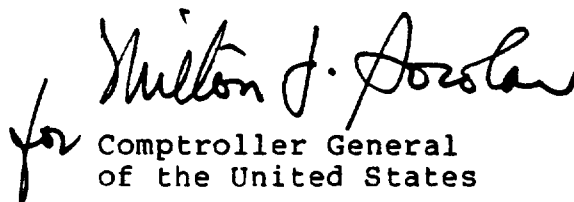
Here, the record supports the Army's decision. Alturdyne points out that the main component of the generator sets is the Sterling engine, which could be purchased only from one source. The generator itself is a rather standard item. Differences in the technical proposals, therefore, would relate principally to the design and construction of the remainder of the unit, and to how well offerors documented their approach to meeting data, test, field support, and spare parts requirements. The record shows that Alturdyne and Tierney submitted good, well documented proposals. Throughout the procurement, the Army gave their proposals nearly equal technical scores, with Tierney having some advantage with respect to some subcriteria and with Alturdyne having some advantage with respect to other subcriteria.

Nevertheless, Alturdyne contends that fee rather than cost should have been the basis for selection because a cost-plus-fixed-fee contract is involved. Alturdyne says that it proposed a lower fee than did Tierney and contends that the cost difference, which Alturdyne characterizes as miniscule, is not meaningful under the circumstances because Tierney will not be contractually bound by its proposed cost.

We have often indicated that cost should not be accorded undue weight in evaluating proposals to perform a cost-reimbursement-type contract because the government will be obligated to reimburse the contractor's actual costs. Ionics Inc., B-211180, Mar. 13, 1984, 84-1 CPD ¶ 290, at 15. However, it is not improper for the government to take into account expected cost differences as a means of measuring an offeror's understanding of the government's needs or where it has a reasonable basis to believe that a real difference in cost would result from the selection of one offeror over another. See generally, Dynalectron Corp. Lockheed Electronics Co., Inc., 54 Comp. Gen. 562, 573-579 (1975), 75-1 CPD ¶ 17.

The record in this case indicates that the Army, after examining the realism of each offeror's proposed cost, found that Tierney's proposed cost breakdown conformed more closely to the government's carefully developed cost estimate. The Army concluded that both offerors' overall cost estimates were realistic but that a number of individual cost elements in Alturdyne's proposal were inadequately supported. As a result, the Army believed that it would be likely to incur lower cost by contracting with Tierney, whose lower proposed cost appeared to present less cost risk than Alturdyne's somewhat higher cost. The record discloses no basis to question the reasonableness of that determination.

The protest is denied.


for Comptroller General
of the United States