

DECISION

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

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FILE:

B-216996

DATE: April 12, 1985**MATTER OF:** Air Flight Service**DIGEST:**

An agency's evaluation of proposals is proper where the criteria on which it based its conclusion that the awardee's proposal was superior are consistent with the stated evaluation criteria, and the protester fails to establish that the agency erroneously determined that the awardee's proposal was superior under these criteria.

Air Flight Service (Air Flight) protests the award of a contract to Capitol Color Lab, Inc. (Capitol), under request for proposals (RFP) No. 2-31441, issued by the National Aeronautic and Space Administration (NASA) for photographic and audiovisual support services. Air Flight contends the award was based on an erroneous evaluation. We deny the protest.

The RFP, which contemplated award of a cost-plus-fixed-fee contract, provided for evaluation of proposals in four areas: mission suitability, cost, experience/past performance, and "other factors" (for example, financial condition and capability). Only the mission suitability factor was to be scored in the evaluation, although the RFP advised that cost and the other factors could become very important once evaluation of the mission suitability category indicated that firms could perform properly. The criteria for evaluating mission suitability were listed as follows, in order of descending importance: technical understanding; organizational structure; management approach; key personnel experience and qualifications; staffing plan; total compensation plan; safety phase-in and training plan; commitment of key personnel; replacement of personnel; and management and technical corporate support.

Eight proposals were received, and those of Capitol and Air Flight were highest rated following evaluation of best

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and final offers. Both offerors were judged capable of performing, but NASA determined that Capitol was slightly superior to Air Flight in three mission suitability categories--total compensation plan, key personnel experience and qualification, and replacement of personnel. Capitol's compensation plan, based on wage ranges instead of just wage rates, was deemed superior because it provided for wages based in part on job experience--an arrangement NASA viewed as potentially cost effective. Capitol was accorded an edge in the key personnel category because its proposed conference coordinator--one of three positions NASA considered critical--currently was performing exactly the type of work covered by the contract. Air Flight's conference coordinator had a background in finance and was rated only acceptable. Capitol's approach for backup and replacement personnel also was found by NASA to be slightly superior to Air Flight's.

In addition to being evaluated as slightly superior to Air Flight in mission suitability, Capitol's proposed and probable cost (based on a cost realism analysis by NASA) both were slightly lower than Air Flight's evaluated cost. NASA made award to Capitol based on its slightly superior technical rating and lower cost.

Air Flight argues that the discriminators on which NASA relied were an improper basis for award. Cost, it maintains, should not have been a consideration, since Capitol's evaluated cost was only 2.8 percent lower, the RFP stated that award would not necessarily be based on lowest cost, and Capitol's cost proposal probably was inadequate and incomplete. As for the wage range factor, Air Flight states that its proposal was based on wage rates "as specifically directed by the RFP." Air Flight believes NASA should have awarded it a contract based on the commitment of key personnel and replacement of personnel criteria under mission suitability. Air Flight claims it was superior in these categories because it presented signed agreements from every individual under the contract and had experienced, in-house backup personnel; it speculates that Capitol did not have written commitments from key personnel or readily available backup personnel.

It is neither the function nor the practice of our Office to evaluate technical proposals de novo or resolve disputes over the scoring of technical proposals. Rather, we will examine an agency's evaluation only to ensure that it was reasonable and consistent with the stated evaluation criteria. Potomac Scheduling Co.; Axxa Corp., B-213927; B-213927.2, Aug. 13, 1984, 84-2 C.P.D. ¶ 162. The protester bears the burden of clearly establishing that an evaluation was unreasonable. ATI Industries, B-215933, Nov. 19, 1984, 84-2 C.P.D. ¶ 540.

Preliminarily, NASA argues that Air Flight's protest is untimely because its purported protest letter of September 24 stated only Air Flight's intent to protest, and a subsequent detailed protest letter was not received until October 4, more than 10 days after the debriefing at which the bases for protest arose. See 4 C.F.R. § 21.2(b)(2) (1984). NASA also asserts that in a September 27 telephone conversation, Air Flight informed NASA that its earlier letter was not meant to be a protest.

We believe Air Flight's protest was timely. Although the September 24 letter did notify NASA of an "intent to protest," it also set forth Air Flight's belief that the evaluation criteria were not "properly followed" and specifically requested "that no award be made from this RFP until decision is made on this protest." (Award actually had been made on August 16.) We consider this language a clear indication of Air Flight's present intent to protest. Air Flight's subsequent telephone conversation casts some doubt on this intent since it conflicts with the intent expressed in the September 24 letter, but it is our practice to resolve such doubt in favor of the protester. See Weardco Construction Corp., B-210259, Sept. 2, 1983, 83-2 C.P.D. ¶ 296.

NASA further argues that Air Flight never adequately explained its basis of protest. We disagree. We were able to understand Air Flight's arguments, and NASA's administrative report responding to each of Air Flight's concerns described above indicates that Air Flight did adequately present its protest. We therefore will consider the protest on the merits.

Air Flight's argument that cost should not have been relied upon as a discriminator has no merit. As already explained, the RFP specified cost as one of the four evaluation categories and specifically provided that cost could become an important consideration in the award decision. The fact that Capitol's evaluated cost was only 2.8 percent below Air Flight's thus did not preclude NASA from considering cost in accordance with the RFP; since Capitol's cost was slightly lower than Air Flight's, NASA properly accorded Capitol a corresponding slight advantage in the evaluation. We have reviewed Capitol's cost proposal, as well as NASA's cost realism analysis of that proposal, and find no indication that the proposal was incomplete or otherwise inadequate. It appears Capitol provided sufficient information to enable NASA to perform a cost realism analysis similar to that performed on Air Flight's cost proposal. We find no other basis for questioning the reliability of NASA's determination that Capitol's probable cost was lower than Air Flight's.

Air Flight's argument that Capitol's proposal should not have been upgraded based on its use of wage ranges similarly is without merit. Contrary to Air Flight's apparent position, the RFP contained no requirement that an offeror's total compensation plan be based on paying employees at a certain wage rate for a certain type of work. The RFP also contained no prohibition against proposing the use of wage ranges under which the wage rate for a certain type of work will vary depending on an employee's experience. In fact, as part of the RFP's description of the total compensation plan criterion under the mission suitability factor, the RFP stated that "the salary rates and ranges must recognize the distinct differences in professional skills and the complexity of varied disciplines as well as job difficulty." This language not only supports the view that wage ranges, as well as wage rates, were permissible, but actually encourages offerors to propose rates or ranges that reflect employee skill level.

We believe NASA appropriately could consider the extent to which Capitol's compensation plan reflected skill level and the potential benefits of such a plan. The record indicates that this is precisely what NASA did, and we

therefore find that this aspect of the evaluation was consistent with the stated evaluation criteria. Air Flight presents no arguments or evidence that NASA incorrectly determined that Capitol's proposed wage ranges would be cost effective, and there is nothing in the record suggesting that NASA's determination in this regard was erroneous.^{1/}

We also find no basis for Air Flight's position that the award decision should have been based on its alleged superiority in the commitment of key personnel and replacement of personnel criteria. The key personnel experience and qualifications and total compensation plan criteria were more important under the evaluation scheme described to offerors in the RFP, and cost was one of the four major evaluation areas. We therefore could not conclude that NASA unreasonably determined that these criteria were more relevant to the award decision than those urged by Air Flight.

NASA points out, furthermore, that Air Flight was not superior, as claimed, in the two areas it believes should have been the major discriminators. NASA notes in this regard that the RFP did not require offerors to submit written commitments for each key employee, as Air Flight suggests, and that, contrary to one of Air Flight's speculations, Capitol did not propose key employees with whom it had "absolutely no contact." Capitol identifies and discusses its key employees in its proposal, and these individuals reportedly attended Capitol's negotiating sessions with NASA. NASA considered these facts adequate indicia of key employee commitment, and we find no reason to conclude otherwise.

NASA's finding that Capitol was superior to Air Flight in the replacement of personnel criterion also does not appear unreasonable. Again, Air Flight's speculation that Capitol had inadequate backup personnel simply is unsupported. Capitol explained in its proposal both that it has well-qualified, in-house personnel available for rapid

^{1/} Air Flight does not challenge NASA's conclusion that Capitol's conference coordinator was slightly superior to Air Flight's.

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backup, and the method for recruiting backup personnel when needed to replace employees working under the contract. The evaluators rated Capitol's backup capability a major strength. We conclude that NASA reasonably determined Capitol slightly superior under this criterion.

The protest is denied.

for *Signature*
Harry R. Van Cleve
General Counsel