DECISION

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

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FILE: B-217524 **DATE:** April 18, 1985

MATTER OF: The University of Dayton

DIGEST:

Award to low cost, technically acceptable offeror is not required where the request for proposals, in effect, weighs technical and cost factors equally, and agency based award to technically superior, higher priced offeror on cost/technical tradeoff.

The University of Dayton, Research Institute (UDRI), protests the award of a contract to Boeing Vertol Company, Inc. (Boeing), under request for proposals (RFP) No. DTFA03-84-R-40027, issued by the Federal Aviation Administration (FAA), Department of Transportation. The RFP is for the development of a research rationale and a plan for achieving aircraft icing certification without natural icing testing for fixed-wing aircraft and rotorcraft.

The protest is denied.

The protester contends that under Federal Acquisition Regulation (FAR), 48 C.F.R. § 15.609(d) (1984), award should have been made to UDRI because it submitted an acceptable technical proposal and was the lowest responsible offeror. UDRI implies that cost was not considered because the UDRI proposal cost was $130,909, and Boeing was awarded a contract in the amount of $245,390. Citing 50 Comp. Gen. 117 (1970) and 50 Comp. Gen. 246 (1970), UDRI states that superior quality cannot be the sole basis for award and that where two offerors are substantially equal technically, the only award consideration remaining would be cost. UDRI bases its conclusion that it submitted an acceptable technical proposal on the fact that the FAA requested that it submit a best and final offer.

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The FAA states that UDRI's technical proposal was not found acceptable by the technical evaluation team (TET), and that UDRI's technical score did not meet the minimum level for technical acceptability. A best and final offer was requested because UDRI was in the competitive range, which includes all proposals, including doubtful proposals, having a reasonable chance of being selected for award. 48 C.F.R. § 15.609(a). The FAA states that FAR § 15.609(d), which requires the submission of unpriced proposals followed by price proposals from offerors with technically acceptable proposals, does not apply here because the RFP required the simultaneous submission of technical and cost proposals. Finally, the FAA states that the evaluation factors, listed in the RFP, placed greater importance on technical excellence than on cost.

The record is unclear as to whether the agency considered UDRI's proposal to be technically unacceptable. Although the contracting officer's statement indicates that UDRI's proposal failed to meet the minimum technical acceptance level, there are indications elsewhere in the report that UDRI's proposal was merely inferior. In any case, the real question is whether the FAA was required to award the contract to UDRI under the solicitation.

Even assuming the technical acceptability of the UDRI proposal, there is nothing in the solicitation that would require award to UDRI as the low cost proposal. Initially, we note that FAA did not use the FAR § 15.609(d) negotiation procedure. Furthermore, the RFP incorporates by reference the FAR clause (48 C.F.R. § 52.215-16 (1984)), which provides that the government will award a contract to the responsible offeror whose offer, conforming to the solicitation, will be most advantageous to the government, cost and other factors considered, and that the government may accept other than the lowest offer. Although the RFP's evaluation factors included only weighted technical evaluation criteria, the incorporated clause and the internal TET evaluation criteria called for a standard cost/technical tradeoff. Although the evaluation criteria, used internally by the TET, state that technical considerations are more important than cost, the RFP does not give any indication of the relative weight of technical factors and cost. Therefore, offerors could presume each would be considered approximately equal in weight. Riggins Company, Inc., B-214460, July 31, 1984, 84-2 CPD ¶ 137.

Our review of the record reveals that the agency's award decision comported with this evaluation scheme. Contrary to UDRI's allegation that cost was not considered, the record clearly indicates that the FAA evaluated cost, but considered that Boeing's technical superiority outweighed the cost savings. The record indicates that, of the three competitive offerors, only Boeing had extensive aircraft icing certification experience for both transport category airplanes and rotorcraft. The FAA, on the other hand, had reservations as to UDRI's ability to provide a high quality, technically viable product. Additionally, the record indicates that FAA found the aircraft icing certification experience of UDRI's proposed consultant to be marginal. Based on this, we do not find FAA's determination of Boeing's technical superiority to be unreasonable. In view of the above, we agree with the FAA that the decisions cited by UDRI, which deal with technically equal proposals and the lack of price competition, do not apply here.

for Seymour Efros
Harry R. Van Cleve
General Counsel