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DECISION

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

FILE: B-218335 **DATE:** June 28, 1985

MATTER OF: DLI Engineering Corporation

DIGEST:

1. Although an agency may properly decide that the cost of a technically superior proposal is so high that selection of a lower cost, technically inferior proposal will be more advantageous, notwithstanding an RFP evaluation scheme in which cost is stated as being the least important criterion, such a selection must be supported by an extremely strong justification.

2. The fact that a proposal scored as being nearly perfect in terms of technical merit was more than 50 percent higher in proposed cost than the awardee's markedly inferior proposal did not by itself preclude the agency from selecting the superior proposal. Although an agency must consider cost in a negotiated procurement, the agency here deviated from established evaluation criteria by concluding that the superior technical merit of the protester's offer did not justify a significantly greater expenditure.

DLI Engineering Corporation protests the award of a cost-plus-fixed-fee contract to Integrated Systems Analysts, Inc. (ISA) under request for proposals (RFP) No. N00140-84-R-0191, issued by the Department of the Navy, Naval Supply Systems Command. The procurement is for the acquisition of an estimated 44,000 contractor man-hours of engineering and technical services over a three-year period, in support of the Navy's development and implementation of surface ship machinery vibration monitoring techniques and procedures. DLI complains that the Navy did not properly evaluate proposals from a technical/cost standpoint in accordance with the RFP's stated criteria. We sustain the protest.

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Background

The RFP provided that the award would be made "to that responsible offeror whose offer, conforming to the solicitation, is determined most advantageous to the government, cost and other factors considered." The criteria for evaluation of proposals were set forth as follows, with the RFP stating that criteria (1) and (2) were of equal importance and were the most important criteria, and that criteria (3), (4), and (5) were listed in descending order of importance:

(1) corporate past experience;
(2) personnel (quantity and quality of available personnel);
(3) management plan/approach;
(4) contractor facilities; and
(5) cost and cost realism.

The RFP further provided:

> "Although cost is the least important evaluation factor, it is an important factor and should not be ignored. The degree of its importance will increase with the degree of equality of the proposals in relation to the other factors on which selection is to be based. Furthermore, costs will be evaluated on the basis of cost realism. Cost realism pertains to the offeror's ability to project costs which are realistic and reasonable and which indicate that the offeror understands the nature and scope of work to be performed."

Offerors were required to submit technical and cost proposals. The three firms scoring the highest as the result of the Navy's initial technical rating of proposals were as follows:

	Technical Points (100 maximum)	Proposed cost-plus-fixed-fee
DLI	96	$1,728,835
ROH, Inc.	83	1,040,733
ISA	76	867,880

Discussions were then held with the competitive range offerors, and the Navy requested the submission of best and final offers. Upon evaluation of the revised proposals submitted, while making certain adjustments in the ratings, the Navy determined that the relative standing of the three highest rated offerors remained the same, and the proposals were not mathematically rescored in terms of technical merit. However, the Navy's evaluators felt that DLI had in fact significantly improved the quality of its offer.

The best and final cost proposals were as follows:

DLI	$1,467,175
ROH, Inc.	1,093,091
ISA	787,544

The Navy concluded that there were "meaningful differences" in the quality of the technical proposals, and performed a technical/cost tradeoff analysis to examine the effect of superior technical quality on the overall cost to the government. The Navy determined that since DLI was the highest rated offeror, the firm would provide the most efficient performance, and that performance by other offerors would necessitate a greater contractor and government man-hour effort to compensate for their lesser degree of efficiency. According to the Navy's technical/cost tradeoff analysis, performance by either ROH or ISA would entail, respectively, a total of $201,213 and $243,406 in contractor and government man-hour costs in addition to the cost-plus-fixed-fee amounts proposed in the firms' best and final offers.

The Navy also concluded that ISA had underestimated certain elements in its cost proposal, such as overhead and general and administrative expense, and the Navy accordingly performed a cost realism ("should cost") analysis. Under this analysis, the Navy determined that a realistic cost-plus-fixed-fee amount for ISA's best and final cost proposal should be $923,175.

Although the Navy recognized the superior technical merit of DLI's offer, it was felt that this superiority was not enough to justify an award to the firm. The Navy noted that DLI's best and final cost proposal was more than $500,000 higher than ISA's best and final offer (as adjusted for cost realism). Further, the Navy determined that ROH's technical proposal, considerably inferior to DLI's, was not sufficiently superior to ISA's to justify an award to the firm--ROH's best and final cost proposal was $170,000 higher than ISA's "should cost" offer.

The Navy's justification for selection of ISA is largely founded on its determination that, even though ISA's offer was technically inferior, this inferiority could be overcome by the application of additional contractor and government man-hours in performing the work. According to the Navy, even when these estimated additional costs are added to the firm's "should cost" best and final offer, the total anticipated government expenditure would still be less than DLI's best and final offer:

	Realistic Cost-Plus-Fixed-Fee	Cost Impact Estimate	Total
DLI	$1,467,175	-0-	$1,467,175
ROH, Inc.	1,093,091	$201,213	1,294,304
ISA	923,175	243,406	1,166,581

Hence, the Navy concluded that an award to ISA would be most advantageous to the government.

DLI contends that the award to ISA was improper because the Navy failed to follow the evaluation scheme established by the RFP. The firm points out that the RFP clearly provided that cost, although important, was the least important evaluation criterion, and that its importance would only increase when technical proposals were judged to be relatively equal in quality. DLI, therefore, asserts that the Navy impermissibly altered the evaluation scheme to make cost the most important factor, since ISA's technical proposal always remained markedly inferior to DLI's.

Furthermore, DLI alleges that the Navy's cost realism analysis with respect to ISA's best and final cost proposal was erroneous, and that the Navy failed to downgrade ISA's offer on the basis that ISA's underestimation of costs indicated that the firm did not fully understand the nature and scope of the RFP's requirements.

DLI also alleges that ISA may have misrepresented its corporate past experience, one of the two most important evaluation criteria, as ISA's proposal apparently lists contracts successfully performed by the firm prior to the date of ISA's own corporate organization, and that the Navy's evaluators may have overlooked these discrepancies during the evaluation process.

Analysis

In a negotiated procurement, the contracting agency's selection officials have broad discretion in determining the manner and extent to which they will make use of the technical and cost evaluation results. Stewart & Stevenson Services, Inc., B-213949, Sept. 10, 1984, 84-2 CPD ¶ 268. Cost/technical tradeoffs may be made, and the extent to which one may be sacrificed for the other is governed only by the tests of rationality and consistency with the established evaluation critieria. Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 CPD ¶ 325. Thus, we have upheld awards to higher technically rated offerors with significantly higher proposed costs because it was determined that the cost premium involved was justified considering the significant technical superiority of the selected offeror's proposal. Riggins & Williamson Machine Co., Inc., et al., 54 Comp. Gen. 783 (1975), 75-1 CPD ¶ 168. Conversely, we have upheld awards to lower priced, lower technically scored offerors where it was determined that the cost premimum involved in making an award to a higher rated, higher priced offeror was not justified in view of the acceptable level of technical competence available at the lower cost. Grey Advertising, Inc., 55 Comp. Gen. 1111, supra.

Where the contracting agency has made a cost/techical tradeoff, the essential question is whether the determination to make an award to a particular contractor was reasonable in light of the RFP's expressed evaluation scheme. Hager, Sharp & Abramson, Inc., B-201368, May 8, 1981, 81-1 CPD ¶ 365. In System Development Corp., B-213726, June 6, 1984, 84-1 CPD ¶ 605, we found an award to a higher technically rated, higher cost firm to have been improper where the awardee's offer was only scored 8 points higher than the protester's proposal (on a scale of 100 possible points), but the awardee's proposed cost was more than 50 percent higher. In that case, while we recognized that the awardee's proposal was rated as being superior technically, the record contained no justification for paying a much greater cost for a proposal only slightly better in terms of quality. We disputed the contracting officer's assertion that, where the RFP's evaluation criteria do not assign a numerical weight to the overall cost of the proposal for evaluation, it need not be determined that technical merit justifies the additional expenditure. We noted that the contracting officer's position was incorrect and contrary to law, since 10 U.S.C. § 2304(g) (1982) expressly provided that cost must be afforded some consideration in negotiated procurements even where cost or price is stated as being of lesser importance than other evaluation criteria.

On the other hand, in EPSCO, Inc., B-183816, Nov. 21, 1975, 75-2 CPD ¶ 338, we questioned the propriety of selecting a lower priced, technically "average" proposal over competing proposals that were judged to be technically superior where the RFP indicated that price was only a secondary evaluation criterion. We noted that although a selection official could reasonably judge that the cost of a technically superior proposal is so high that selection of a lower priced, technically inferior proposal is justified, notwithstanding an evaluation scheme placing primary importance on technical considerations, such a selection would deviate from the established criteria and would have to be supported by "an extremely strong justification." Id. at 10.

The selection of ISA is largely founded upon the Navy's determination that the technical inferiority of ISA's offer can be overcome by an additional contractor and government man-hour effort, and that these estimated increased costs, when added to ISA's "should cost" best and final offer, do not approach the cost of DLI's superior offer. However, we do not believe that an increased man-hour effort necessarily means that ISA's technical inferiority will be obviated.

In this regard, the Navy's evaluators determined that DLI's revised proposal featured several innovations in its technical approach to meet the agency's needs. Significantly, the evaluators noted that:

> "DLI is the only offeror to recognize and address the fact that erroneous repair recommendations will lead to unnecessary expenditures . . . in dollar amounts which far exceed the total amount of this contract. Such high stakes make it imperative that the selected contractor provide a fully documented and substantiated technical approach in which the Navy can be confident of minimum error in repair recommendations. Toward this end, DLI has developed a sophisticated pickup identification bar coding technique and an Autogain Signal Conditioning process, both of which greatly reduce possibilities for incorrect data acquisition through recording information logging and instrumentation variables. These considerations were not addressed in any other proposals, nor are similar capabilities known to be available from the other offerors."

We fail to see how ISA will be able to perform on a qualitatively similar basis simply because the firm may be allowed additional man-hours to satisfy the agency's requirements. As the record shows, the superior merit of DLI's proposal stems not merely from DLI's anticipated greater efficiency, but, more importantly, from the uniqueness of the firm's technical approach. Hence, it is our view that the underlying premise for the Navy's technical/cost tradeoff analysis is subject to question.

The contracting officer's stated position is that an award to DLI would be justified if the firm's proposed costs were 30 percent or even 40 percent higher than ISA's, but that the technical merit of DLI's offer did not justify an award where the cost differential was more than 50 percent. In our view, such a distinction is arbitrary. Although the Navy heavily relies upon our decision in System Development Corp., B-213726, supra, as support for this position, we point out that our holding in that case was based on the fact that the awardee's cost was more than 50 percent higher, but that its technical proposal was scored only 8 points higher. Here, we emphasize that there was at least a 20 point technical differential between DLI's and ISA's offers at all times--in essence, DLI's proposal was rated as nearly perfect in terms of technical merit, whereas ISA's offer, although acceptable, was, at best, merely "average." EPSCO, Inc., B-183816, supra. (The mean technical score upon initial proposal evaluation was, in fact, 77 points.) We believe that the Navy has mistakenly relied upon our decision in System Development Corp. into assuming that a cost differential of that magnitude by itself precludes selection of an offeror whose technical proposal is significantly superior. In this regard, it is well settled that where an RFP clearly assigns greater weight to technical criteria than to cost, it is improper to reject a technically superior proposal simply because an inferior proposal offers a better price. Applied Financial Analysis, Ltd., B-194388.2, Aug. 10, 1979, 79-2 CPD ¶ 113.

Furthermore, with respect to the cost issue, DLI's best and final proposed cost was clearly more in line with the other cost proposals than was ISA's. ISA's offer excepted, the best and final cost offers ranged from $1,093,091 to $1,489,523, (DLI's offer was not the highest). Therefore, the 50 percent cost differential at issue here could reflect ISA's underestimation of the effort needed to perform the work rather than any undue premium for DLI's technical superiority.

We recognize that technical point scores are merely guides for decision-making by source selection officials whose responsibility it is to determine whether technical point advantages are worth the cost that might be associated with a higher scored proposal. SETAC, Inc., 62 Comp. Gen. 577 (1983), 83-2 CPD ¶ 121. Here, however, there is nothing in the record to suggest that the contracting officer did not agree with the technical scoring or otherwise concluded that the point differential was not a clear and accurate indication of the significantly superior merit of DLI's innovative proposal. In fact, as already indicated, the Navy's report states that the contracting officer determined that there were "meaningful differences" in technical quality between the proposals.

We emphasize that the RFP's stated evaluation scheme provided that cost was of secondary importance to technical considerations, and that the degree of its importance would be conditioned by the degree of technical equality of the proposals. Since DLI's proposal was always viewed as markedly superior, the contracting officer essentially abused his discretion by placing primary importance on cost in selecting ISA for the award absent a compelling justification for his action. EPSCO, Inc., B-183816, supra.

Therefore, because the Navy's deviation from the RFP's stated evaluation scheme has not been justified, corrective action is warranted. See Republic Electronic Industries Corp., B-183816, Dec. 31, 1975, 75-2 CPD ¶ 418. By separate letter of today, we are recommending to the Secretary of the Navy that the source selection be reconsidered consistent with the evaluation criteria. If DLI's proposed costs are determined to be reasonable, the Navy should consider the feasibility of terminating the present contract with ISA for the convenience of the government and awarding the balance of the requirement to DLI. See System Development Corp., B-213726, supra, 84-1 CPD ¶ 605 at 4. Because of our recommendation that corrective action be taken, we need not address the other issues set forth in DLI's protest.

The protest is sustained.

Milton J. Socolar

Acting Comptroller General
of the United States