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**DECISION**



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

**FILE:**

B-220565

**DATE:** December 16, 1985

**MATTER OF:**

AMG Associates, Inc.

**DIGEST:**

1. Contracting officer properly may decide in favor of a technically lower rated proposal in order to take advantage of its lower cost, even though cost was the least important evaluation criterion, where he reasonably determines that the cost premium involved in making an award to the higher rated, higher priced offeror is not justified in light of the acceptable level of technical competence available at the lower cost.
2. Agency determinations resulting from a cost realism analysis will not be disturbed unless they clearly lack a reasonable basis, and the protester has not shown that the agency's determinations were unreasonable in this case.

AMG Associates, Inc. protests the proposed award of a cost-plus-fixed-fee (CPFF), level-of-effort contract to Specialty Systems, Inc. (SSI) under request for proposals (RFP) No. N00140-84-R-1178, a small business set-aside, issued by the Naval Regional Contracting Center, Philadelphia, Pennsylvania for technical and engineering services to support software tasks for common automatic test equipment. The Navy determined that the proposal submitted by AMG, the incumbent contractor for this requirement, was not sufficiently superior from a technical standpoint to justify award at its higher proposed cost. AMG

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disputes this finding and argues that its proposal was clearly technically superior. AMG also argues that the Navy did not properly evaluate the realism of SSI's proposed cost.<sup>1/</sup>

We deny the protest.

#### Background

For award purposes, the solicitation listed the following five evaluation criteria:

- (1) Corporate Past Performance
- (2) Personnel Resources
- (3) Management Approach, Organization and Staffing/Subcontracting
- (4) Contractor Facilities
- (5) Cost and Cost Realism

The solicitation stated that factors (1) and (2) were equal and most important, while the remaining factors were listed in descending order of importance. Concerning the Cost and Cost Realism criterion (factor (5)), the solicitation advised offerors that although cost was the least important factor, it nonetheless was important, and that "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."

The solicitation also included a detailed list of tasks, and provided precise minimum qualifications and level-of-effort estimates for certain labor categories--such as senior project engineer, computer facility manager, electronics engineer, and operations supervisor. The offeror's proposed labor rate times the estimated manhours for each category, plus the offeror's proposed fee, basically provided the basis for cost evaluation.

Two firms, SSI and AMG, submitted proposals. The Navy evaluated the initial technical and cost proposals, and both

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<sup>1/</sup> AMG also asserts that SSI is ineligible for award because SSI's relationship with its subcontractor is allegedly "the legal equivalent of a joint venture agreement," so that SSI does not qualify as a small business concern. Our Office does not consider size status protests as the Small Business Administration (SBA) has conclusive authority to determine questions of size status. Mark Dunning Industries, Inc., B-217500, Jan. 18, 1985, 85-1 CPD ¶ 68. We understand that the contracting officer forwarded AMG's size status protest to SBA, that SBA found SSI qualified as a small business and that AMG has appealed this determination to the SBA Office of Hearings and Appeals.

firms were determined to be in the competitive range.<sup>2/</sup> These firms were subsequently requested to provide best and final offers.

The best and final offers of the two firms were evaluated with regard to technical factors and cost reasonableness and realism. The agency found the offeror's responses to its technical concerns satisfactory. The results of the cost analysis were as follows:

<u>Offeror</u>	<u>Initial Proposal</u>	<u>Best and Final Offer</u>	<u>Best and Final Offer Adjusted for Cost Realism</u>
SSI	\$10,650,062	\$10,145,598	\$10,172,357
AMG	\$14,348,686	\$12,492,763	\$12,997,521

The Navy's adjusted amounts reflected Defense Contract Audit Agency (DCAA) recommendations and other adjustments deemed necessary to project the total actual cost of the proposed CPFF contract.

While AMG's proposal was found by the Navy to be superior in corporate experience, the proposals were considered equal with respect to all other technical factors, and the technical difference between the two proposals was not considered to be sufficiently significant to award the contract to AMG at a premium cost. Therefore, the Navy's technical evaluators recommended that SSI be awarded the contract.

#### Technical Evaluation

AMG disputes the Navy's determination that there was not a sufficient technical difference between AMG's and SSI's technical proposals to justify award to AMG at its higher proposed cost. Since the Navy did not numerically score the technical proposals, AMG relies on descriptive statements appearing in certain portions of the technical evaluation narrative reports to support its contention regarding the superiority of its proposal. Specifically, AMG argues that its proposal was clearly superior in the areas of Corporate Past Performance and Personnel Resources.

AMG notes that with respect to Corporate Past Performance, the Navy's evaluation of initial proposals found AMG's experience to be "highly acceptable" while SSI was only found to be "acceptable." AMG also notes that a subsequent narrative statement by

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<sup>2/</sup> The Navy did not numerically score the technical proposals; rather, short narrative descriptions were used to evaluate the proposals. The contracting officer states that AMG has not discussed the results of the technical evaluation with him and has never requested a debriefing.

the evaluators highlighted areas where AMG's experience with various types of equipment was evaluated "much higher" than SSI's experience. AMG asserts that experience in these areas relates to almost all of the work encompassed by the RFP.

With respect to Personnel Resources, AMG points to a statement in the evaluation report that the "AMG proposal contains somewhat more depth in numbers." In addition, AMG notes that SSI was initially evaluated by the Navy as only "conditionally acceptable," because the SSI proposal improperly designated its president as filling two separate full-time positions, senior principal engineer and president. AMG also alleges that, even according to the Navy, SSI would have to expend 15,000 extra manhours (15-17 personnel) and require an additional 2 or 3 Navy personnel during the contract start-up period (first 4-8 months) to perform satisfactorily. The protester asserts that this proves its proposal is superior.

In response, the Navy emphasizes that the use of descriptive terms in the evaluation reports indicating superiority of the AMG proposal in the area of Corporate Past Performance was not intended to describe AMG superiority with respect to the entire range of contract services from a corporate experience standpoint. The Navy states that while AMG does show greater overall depth and breadth of corporate experience, SSI demonstrated relevant and meaningful past corporate experience. Specifically, SSI provided a description of previous contracts that were similar in nature to the work contemplated by this RFP and submitted a description of previous tasks performed and actual work samples related to the tasks in the RFP. Thus, while the record shows that the Navy in fact found AMG's experience superior, the record also shows that SSI's experience was considered more than adequate to meet the agency's needs.

Concerning Personnel Resources, the agency report indicates that SSI corrected the deficiency which was the basis for finding its initial proposal conditionally acceptable for this criterion (one employee filling two positions). With respect to the extra man-hours that SSI's proposal allegedly would require, the evaluation report merely notes that, during the start-up period, a lower level of efficiency equivalent to 15,000 manhours can be expected from SSI in tasks involving compilers, and that an additional 2,000 government manhours will be required as a result. The Navy states that this lower level of efficiency does not mean that SSI would employ or be reimbursed by the government for additional manhours during this period; rather, the Navy merely estimated that SSI would complete less tasks than AMG during the early contract performance period. The Navy indicates

that it expects SSI to be as efficient as AMG after the start-up period.<sup>3/</sup> The Navy reports that it considered this matter in its Technical evaluation, and estimated that its cost impact was insignificant. In this connection, even if the cost of 15,000 extra manhours, using the protester's own estimate of SSI's true burdened labor rate, were added to SSI's proposed cost, SSI would still be significantly lower than AMG from a cost standpoint.

Accordingly, despite AMG's assertions to the contrary, the record shows that the Navy reasonably considered the proposals to be essentially equal with respect to all technical factors, except Corporate Past Performance. The Navy's technical personnel conducted a cost/technical tradeoff analysis and concluded that AMG's technical superiority did not justify a contract award at its higher price. Specifically, the Navy determined that a cost premium of 3-5 percent over the realistic cost of SSI would be justified to obtain AMG's technically higher rated services. Since the difference in cost was much greater (approximately 27 percent), the contracting officer decided to award the contract to SSI.

We have recognized that in a negotiated procurement selection officials have the discretion to make determinations concerning cost/technical tradeoffs 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 factors. Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 CPD ¶ 325. Thus, even when cost is the least important evaluation criterion, we will uphold an award to a lower priced, lower scored offeror where it is determined that the cost premium involved in making an award to a higher rated, higher priced offeror is not justified in light of the acceptable level of technical competence available at the lower cost. The BDM Corp., B-202707, Oct. 28, 1981, 81-2 CPD ¶ 354. The determining element is not the difference in technical merit, per se, but the considered judgment of the procuring agency concerning the significance of that difference. Hager, Sharp & Abramson, Inc., B-201368, May 8, 1981, 81-1 CPD ¶ 365.

Here, AMG has, at most, presented some evidence indicating that its proposal was technically superior in certain areas.

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<sup>3/</sup> AMG also alleges that this technical deficiency violates Section L71, paragraph 2(b) of the RFP. However, that provision requires only that all personnel be fully trained prior to reporting for work, and that any initial training will be at the contractor's expense. We do not think that the agency's conclusions about SSI's initial performance efficiency indicate that SSI's staff will be untrained, in violation of the cited RFP section.

Indeed, the Navy does not dispute this. However, the contracting officer made a considered judgment, based on overall technical and cost considerations, to award the contract to SSI as the most advantageous offeror. The record shows that the contracting officer specifically considered whether the additional technical merit offered by AMG was worth the considerable extra expense associated with the proposal. The contracting officer determined that the difference in technical merit was not significant, particularly in view of the great difference in cost. This is exactly the kind of decision making which is vested in the discretion of selection officials, and we find no basis to object to it here. Accordingly, this basis for protest is denied.<sup>4/</sup>

#### Cost Realism Analysis

In its initial protest, AMG alleged that the Navy failed to conduct any cost realism analysis of SSI's cost proposal as required by the terms of the RFP. Moreover, AMG alleged that the Navy selected SSI as the successful offeror based on SSI's low, unrealistic estimated cost. AMG contrasts SSI's allegedly unrealistic cost with its own cost that is "based upon its past actual experience and upon realistic projections derived therefrom."

In its report, the Navy explained that an independent cost realism analysis was performed on SSI's cost proposal with fully audited rates, adjusted as necessary, based on a DCAA audit. In its comments, the protester now primarily asserts that the Navy improperly accepted "at face value" SSI's proposed payroll costs, which are allegedly unrealistically low. In support of its position, the protester has submitted a salary survey by a trade journal indicating that actual market salary rates are considerably higher than the direct labor rates proposed by SSI, especially when the personnel experience and qualification requirements of this RFP and the prevailing salaries in the geographical area of the place of contract performance are taken into account. Further, AMG asserts that SSI will employ, in part, current AMG employees who are paid in excess of SSI's proposed rates. In this connection, the protester has submitted, among other things, affidavits from four current employees who have been offered employment by SSI at or above their current salary levels.

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<sup>4/</sup> In a late submission to our Office, the protester cites our decision, DLI Engineering Corp., B-218335, June 28, 1985, 85-1 CPD ¶ 742, for the proposition that a markedly superior higher-cost proposal must receive an award unless the award to the inferior lower-cost proposal is supported by "extremely strong justification." In that decision, however, one competing proposal was "nearly perfect," while the other was merely "average." No such marked technical difference exists here.

We have consistently held that a contracting agency's analysis of competing cost proposals involves the exercise of informed judgment, and we therefore will not disturb a cost realism determination unless it lacks a reasonable basis. Prospective Computer Analysts, B-203095, Sept. 20, 1982, 82-2 CPD ¶ 234. The extent to which proposed costs are examined is a matter of agency discretion. Systematics General Corp., B-214171, Jan 22, 1985, 85-1 CPD ¶ 73. Where the agency has reviewed the offeror's proposed costs against a DCAA audit report, as well as against its own estimate, we have found the cost analysis technique a reasonable exercise of the agency's discretion. See JVAN, Inc., B-220357, Aug. 28, 1981, 81-2 CPD ¶ 184.

We are not persuaded that the Navy's cost realism analysis was faulty. The DCAA reviewed SSI's proposed labor and overhead rates and did not find them understated. Specifically, DCAA found that SSI's proposed direct labor cost primarily consisted of the personnel costs of SSI's subcontractor, which were based on actual average rates, by labor category, currently being paid. Similarly, SSI's own labor rates were found to be based primarily on its existing work force for similar work. The Navy independently reviewed the rates against DCAA's report, as well its own cost negotiator's cost realism estimate, and found no basis to question them. Moreover, we note that the Navy's independent review of SSI's proposed rates specifically indicates that DCAA reviewed both the actual rates available and the offers made to new hires,<sup>5/</sup> and determined that the proposed rates were realistic. In our view, this approach to assessing cost realism was reasonable, and we do not consider a potentially self-serving trade journal article sufficient evidence to prove the contrary.

Concerning the offers made to four AMG employees at salaries equivalent to or greater than they currently earn, we note that the protester has not indicated what these salaries are, or demonstrated that they actually exceed the labor rates for the applicable labor category proposed by SSI. Accordingly, AMG simply has failed to meet its burden of affirmatively proving its case in this respect.

The protester also alleges that the Navy's cost analysis failed to take into account certain relocation expenses of SSI for employees not currently located in the geographical area of contract performance. The agency states, however, that the solicitation required offerors to include in their proposals the

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<sup>5/</sup> The evaluation documents indicate that only 10 of the proposed 62 employees will be new hires.

maximum amount to be reimbursed for relocation costs, and that SSI inserted "0" in the line item included for that purpose. We therefore find no merit to this basis for protest.

The protest is denied.

*for Seymour E. Van*  
Harry R. Van Cleve  
General Counsel