



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: NDI Engineering Company, Inc.
File: B-224769
Date: January 8, 1987

DIGEST

Protester's allegation that its proposal and the awardee's was technically equal and that protester should have received award based on its lower proposed costs is without merit where agency evaluators considered awardee's proposed personnel superior in one area and where protester was awarded full credit for its lower proposed costs but awardee remained the higher ranked offeror.

DECISION

NDI Engineering Company (NDI) protests the award of a contract to The M&T Company (M&T) under request for proposals (RFP) No. N68335-86-R-0374, issued by the Department of the Navy for engineering and technical services related to the Shipboard Aviation Program aboard various ships. NDI alleges that its proposal should have been selected since it offered the greatest value to the government.

We deny the protest.

The RFP was issued on December 17, 1985 with an amended closing date of January 3, 1986. The award of a cost-plus-fixed-fee type contract was contemplated and the RFP estimated that a total of 35,500 man-hours would be required over the contract's 30-month performance period. Offerors were required to submit both technical and cost proposals, and the RFP's evaluation factors for award were listed as follows:

1. Personnel Experience
2. Corporate Experience
3. Technical/Management Approach
4. Offeror's Facility
5. Cost

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The RFP indicated that the first three factors were most important and also stated that although cost was not as important as technical, the degree of importance would increase with the degree of equality of the proposals. Overall, technical factors were weighted 70 percent and cost 30 percent. In addition, the RFP advised offerors that costs would be evaluated for cost realism.

The Navy received five proposals by the RFP's closing date. After the Navy's initial technical evaluation, it was determined that all five offerors were within the competitive range. Written discussions were then held and all offerors were advised of the deficiencies in their proposals. Best and final offers (BAFOs) were received by May 20, 1986 and the revised technical proposals were evaluated. M&T was awarded a total of 70 points out of a possible technical score of 70 and NDI was ranked second with a technical score of 69.1. Although both proposals were evaluated as being highly qualified, the Navy evaluators ranked M&T first because the supervisor, engineer and technician proposed by NDI did not possess specific experience in all areas of the statement of work (SOW). The agency evaluators concluded, however, that cost should be used as the determinative factor among the proposals ranked highly qualified.

Thereafter, the offerors' cost proposals were evaluated. The Navy's initial cost analysis showed that NDI had included special material costs in its proposal and had also provided for computer-aided drafting (CAD). The Navy determined that these two factors should have been included in the RFP and as a result, the solicitation was revised to incorporate special material costs estimated at \$15,000 and to allow offerors the option of providing a CAD system. Additional discussions were then held and all offerors were requested to submit revised cost proposals by July 15.

The cost proposals submitted were then evaluated for cost realism. The Navy found that the overhead rates proposed by the offerors were not in accordance with the rates approved by the Defense Contract Audit Agency (DCAA). M&T's rates were found too high and NDI's proposed rates were found too low. The Navy advised all offerors of this problem and a letter requesting a third round of BAFOs was issued on July 31.

In response to this request, M&T reduced its proposed overhead rates and its proposed cost. The Navy evaluated M&T's cost proposal and found that there was only a \$2,000 difference between M&T's proposed costs and the evaluated realistic costs. NDI also reduced its price but did not change its proposed overhead rates or submit additional documentation to support the rate charged. Consequently, the Navy determined that NDI's realistic cost was higher than its proposed cost.

In making the award determination, however, the contracting officer utilized each offeror's proposed costs rather than the Navy's evaluated costs. As a result, the Navy awarded NDI the full 30 points for cost while M&T received 29.42 points, also based on its proposed costs. Overall, M&T received 99.42 points and NDI 99.1. Because M&T received the highest total point score, the Navy awarded a contract to M&T on September 22 in the amount of \$457,153. NDI's proposed costs were \$448,548.10.

NDI alleges that it was the highest ranked offeror after the second round of BAFOs, that there was sufficient information available at that time to make an award and that it was therefore improper for the Navy to request a third round of BAFOs. Also, NDI believes that its proposal is technically equal to M&T's and that it should have received the award based on its lower cost and because of socio-economic factors such as NDI's small business status or its labor surplus location.

In addition, NDI contends that its proposal showed a better understanding of the work and points to the fact that it was only after the Navy reviewed its cost proposal that the solicitation was revised to incorporate material support costs as well as provide offerors the opportunity to propose a CAD system. Concerning the Navy's cost realism analysis, NDI indicates that the overhead rates which were criticized as being too low were offered as ceiling rates and that there was no basis for the Navy to adjust these rates upward.

The Navy contends that the contracting officer acted reasonably in requesting the third round of BAFOs because all offerors had failed to propose realistic overhead rates. Also, the Navy argues that the two proposals were not equal since based on the numerical point scores, M&T was ranked higher. In this regard, the Navy points out that M&T had no technical deficiencies in its proposal while NDI was deficient in personnel experience for three different labor categories. Although NDI claims that its technical knowledge is superior, the Navy argues that it evaluated NDI's proposal based on the

information submitted and that NDI has not shown the evaluation to be unreasonable.

In addition, the Navy contends that its cost realism analysis was proper. The Navy argues that it properly evaluated NDI's proposal to arrive at a "should cost" estimate and disagrees that NDI's proposal was more advantageous because some of its proposed overhead rates were ceiling rates. Since NDI's proposed overhead for the first 9 months of contract performance was substantially below that approved by the DCAA, the Navy contends that its upward adjustment of these rates and of NDI's proposed costs was proper. In any event, the Navy contends that the ultimate selection did not hinge on the cost realism analysis since NDI was awarded the full 30 points for cost. The Navy indicates that award was determined by combining the numerical technical score with the final numerical cost score and since M&T received the highest total points, the Navy argues that its award to M&T was proper.

Initially, we point out that an agency may reopen negotiations after BAFOs where it is clearly in the best interests of the government to do so. Crown Point Coachworks and R&D Composite Structures et al., B-208694 et al., Sept. 29, 1983, 83-2 CPD ¶ 386. We have upheld agency determinations to request another round of BAFOs when a valid reason exists for that action. Tymnet, Inc. et al., B-209617 et al., Apr. 12, 1983, 83-1 CPD ¶ 384. Although NDI contends that it should have received an award based on its second BAFO, all offerors, including NDI, had proposed overhead rates which exceeded DCAA approved rates. We think that the Navy's determination to request an additional round of BAFOs to allow offerors the opportunity to revise their proposals or submit additional information to support the offered rates falls within the permissible grounds of discretion afforded contracting officers in this area. Consequently, we find no basis to object to the agency's determination to request a third round of BAFOs.

Concerning the agency's technical evaluation, we point out that the determination of the relative merits of proposals is primarily the responsibility of the contracting agency, not our office, which must bear the burden of any difficulties resulting from a defective solicitation. Petro-Engineering, Inc., B-218255.2, June 12, 1985, 85-1 CPD ¶ 677. In light of this, we repeatedly have held that procuring officials enjoy a reasonable degree of discretion in the evaluation of proposals, and that their decision will not be disturbed unless shown to be arbitrary or in violation of the procurement laws and regulations. Vibra-Tech Engineers, Inc., B-209541.2, May 23, 1983, 83-1 CPD ¶ 550. Furthermore, it is

>ltimately the responsibility of the selection official or contracting officer to determine what significance, if any, should be attached to the technical evaluators' ratings. National Capital Medical Foundation, Inc., B-215303.5, June 4, 1985, 85-1 CPD ¶ 637.

Here, the record shows that although M&T and NDI were both rated highly qualified, M&T was ranked superior in the most important technical factor: personnel experience. While NDI questions whether its deficiency in this area is significant, M&T's proposed supervisor in one area had specific experience in the development of the specific deliverables required by contract line items 0001-0007 whereas NDI's proposed supervisor did not have such experience. We note that it is not the overall numerical difference between the proposals which is significant but rather whether the deficiencies identified are sufficient to support a meaningful distinction between the proposals, and we believe that the difference between the the proposals in this area supports the contracting officer's determination not to consider the proposals technically equal. Although NDI disagrees, we are unable to conclude that the contracting officer was unreasonable in failing to consider the proposals technically equal despite this difference.

Moreover, to the extent NDI is arguing that it should have been awarded more points because of its proposed use of CAD, we note that it is not the function of our Office to rescore proposals nor will we make independent judgments as to the numerical scores that should have been assigned. Blurton, Banks & Assocs., Inc., B-206429, Sept. 20, 1982, 82-2 CPD ¶ 238. In this regard, our review of the record shows that NDI was not downgraded in any way for its proposed use of CAD and while NDI asserts that its proposal demonstrated a better understanding of the requirements than M&T's, the Navy had no reservations regarding either offeror's technical approach in performing the contract requirements. The fact that NDI believes that it should have received additional points for its approach does not establish that the evaluation had no reasonable basis. Diversified Data Corp., B-204969, Aug. 18, 1982, 82-2 CPD ¶ 146. Also, since the two proposals were not found technically equal, we see no basis for the Navy to consider NDI's small business status or labor surplus location in the award decision.

Finally, concerning the Navy's cost realism analysis, we note that the cost realism analysis was not utilized by the Navy in the selection of M&T and even though the Navy considered NDI's realistic costs higher than M&T's, NDI was awarded the full 30 points allotted for cost. We agree with NDI that where an

offeror proposes a fixed ceiling on overhead, this should be taken into account and the offeror credited for this aspect of its proposal. Designers and Planners, Inc., et al., B-221385 et al., May 15, 1986, 86-1 CPD ¶ 463; Ecology and Environment, Inc., B-209516, Aug. 23, 1983, 83-2 CPD ¶ 229. However, since the Navy gave NDI full credit based on NDI's lower proposed cost, we see no prejudice to NDI since it had no impact on the overall selection decision. The record shows that the Navy followed the RFP's evaluation and in accordance with the cost/technical tradeoff set forth in the RFP, M&T was rated higher than NDI. Based on the record, we are unable to find the Navy's selection of M&T under these circumstances to be unreasonable.

The protest is denied.

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