The Comptroller General
of the United States

Washington, D.C. 20548

Cunningham
PL-I

Decision

Matter of: Miller Printing Equipment Corp.

File: B-225447.2

Date: March 24, 1987

DIGEST

Award of contract for prototype currency printing press for the Bureau of Engraving and Printing is proper where record shows that: (1) Bureau's decision was made on valid technical evaluation of submitted proposals; (2) meaningful discussions were held with protester in area of proposal which was considered at first deficient and then weak; and (3) award was not the result of improper political influence or bias.

DECISION

Miller Printing Equipment Corporation protests the Bureau of Engraving and Printing's decision to award a firm-fixed price contract to Hamilton Tool Company for a "Web Intaglio Printing Press" under request for proposals (RFP) No. BEP-85-73(N). Specifically, the RFP required the contractor to "design, construct, factory test, deliver and install [the press], and [thereafter] conduct an acceptance test, and an extended test and evaluation [on the performance of the press]." The contractor was to supply all labor, materials, and supplies and provide the Bureau with a press which had satisfied the acceptance test requirements, along with the requisite documentation, associated equipment, and training.

We deny the protest.

The RFP provided for five technical evaluation standards in descending order of importance (except for the second and third standards which were equally weighted), as follows: technological approach; project management plan; offeror's experience and capacity; qualifications of professional staff; and implementation cost. All of these standards together were worth a maximum weight of 75 points.

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As to the importance of price, the RFP assigned a maximum weight of 25 points under a mathematical formula, which assigned the lowest-priced technically acceptable proposal the maximum possible number (25) of price points. All other proposals were to receive proportionally fewer price points depending on how close (or how far away) the proposed prices were to the lowest priced proposal. The RFP further provided that technical proposals were to show merit in the following areas to be considered acceptable: management experience and competency, demonstrated production proven intaglio printing technology, development, manufacturing and implementation of intaglio printing equipment, documentation and training, maintenance, complex electronics, including computer system technology, and applications, intaglio web press technology, including automated control, paper handling, inking and impression subsystems and web drying, and, finally, ergonomics.

The Bureau received four proposals, including ones from Miller and Hamilton, by the RFP's closing date on October 10, 1985. One proposal was considered to be noncompetitive and eliminated from consideration. The proposals of Miller, Hamilton, and one other offeror, De La Rue Giori, were all considered to be competitive. Hamilton received substantially more technical points than either Miller or Giori who were scored relatively equal. All of these offers were then each sent a Bureau letter on November 21, 1985, which listed deficiencies and weaknesses in the offeror's proposal, and required a response from each offeror by January 3, 1986.

On January 16, 1986, the Bureau notified the three remaining offerors again in writing concerning further clarifications requested. Responses were due by January 27, 1986. Also during the week of January 26, 1986, a visiting committee from the Bureau toured the offerors' designated sites to confirm the level of intaglio web capability of each firm. The visiting committee attempted to assess the level of user training required to learn to operate the existing press; maintenance complexity of the equipment; user satisfaction with equipment and vendor; the level of availability of the equipment--its mean time between failure and mean time to repair; the stability of the equipment; and ergonomics.

After evaluations of the information received on January 27, 1986, letters dated March 21, 1986, were sent to all parties concerned requesting "best and final" offers. These letters also contained RFP amendment No. 5 which added an unpriced option for a second printing press to the RFP and stated that responses were due by April 14, 1986. This option was subsequently deleted by amendment No. 6, dated July 14, 1986.

After the Bureau decided that the unpriced option added by amendment No. 5 was "inappropriate," a second "best and final" was requested by letter dated July 14, 1986, and sent to all parties concerned and required a response by July 28, 1986. The letter stated that changes could be made to both technical and business proposals and required the submission of cost and pricing data.

Oral discussions were held with each company on August 12, 1986, concerning its cost and price data. On August 15, 1986, a request for more detailed cost information was confirmed in writing with each company. The letter also provided additional technical information that could have had a bearing on the price offered.

On September 8, 1986, each remaining offeror was requested by telephone to submit a third "best and final" offer which was due by September 16, 1986.

Upon later oral request, each company provided an extension in writing dated October 1, 1986, to the acceptance period of its proposal.

As to the evaluation of final offers, which was completed after the on-site investigations of late January 1986, Hamilton still received a higher score than the other two offerors who were quite closely ranked. As to price, Giori received the maximum number (25) of points because of its low offer. Miller's price was slightly higher than Hamilton's price. The final summary of technical and price points was as follows:

	Miller	Giori	Hamilton
Technical	56.64	54.3	61.70
Price	19.22	25.	19.75
Total	75.86	79.3	81.45

Based on this evaluation result, the Bureau awarded a contract to Hamilton on October 21, 1986, for the press at a price of $10,196,504.

Miller has four basic grounds of protest. First, Miller alleges that the Bureau failed to evaluate its proposal in accordance with the evaluation criteria stated in the RFP; second, the Bureau allegedly failed to conduct meaningful discussions with Miller when it requested Miller to submit a third final offer emphasizing only cost and pricing data; third, the procurement process was allegedly marked by "basic irregularities which compromised the integrity of the process and prejudiced Miller"; and fourth, that Hamilton was purchased by another company after award and that most likely the management team, which was evaluated by the Bureau as capable of doing the work, may change after the sale.

I. TECHNICAL ISSUES

The determination of the relative merits of technical proposals is the responsibility of the contracting agency since it must bear the burden of any difficulties incurred by reason of a defective evaluation. Culp/Wesner/Culp, B-212318, Dec. 23, 1983, 84-1 C.P.D. ¶ 17. Further, contracting officials have broad discretion in performing that evaluation function. Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 C.P.D. ¶ 325. Our Office will question an agency's evaluation only upon a clear showing of unreasonableness. American Coalition of Citizens with Disabilities, Inc., B-205191, Apr. 6, 1982, 82-1 C.P.D. ¶ 318. Mere disagreement with an agency's evaluation does not show that the evaluation is unreasonable. Intelcom Educational Services, B-220192.2, Jan. 24, 1986, 86-1 C.P.D. ¶ 83.

Miller argues that the Bureau refused to give its proposal appropriate credit for the company's "proven technology"; that the Bureau's proposal evaluation was faulty in the areas of currency "spoilage rates" and "ink drying process"; and that the evaluation of Miller's management capability was erroneous.

A. Technology Credit

Miller argues that a proper application of the above RFP standard requiring offerors to show "demonstrated . . . technology" would have resulted in higher merit given to Miller's proposal as compared with Hamilton's. In reply, the Bureau argues that its proposal evaluation group was seeking an experienced manufacturer of web and intaglio presses to use technology existing in the marketplace, but in a different configuration, to manufacture a press to the Bureau's specifications. However, the Bureau emphasizes that "nowhere in the specifications" was there a requirement for an existing press and that the "prototype press" the Bureau was seeking does not exist in commercial operation any place in the world. Consistent with this understanding, the Bureau awarded both Miller and Hamilton full evaluation points for demonstrating this technology. Thus, Miller was given full credit for its demonstrated technology. While Miller argues in effect that Hamilton should have been downgraded in this area, we see no basis in the record to agree with Miller.

For example, the Bureau found that Hamilton had demonstrated experience building both intaglio and web printing presses and that the proposal submitted by Hamilton was based on a design that demonstrated an understanding of what had to be done.

B. Spoilage Rate

The RFP specified a spoilage rate of no more than 8 percent. Miller's proposal was rated incomplete in this area because the Bureau felt the company merely proposed compliance at rates of 3 percent and, later, 6 percent without showing how Miller was going to achieve compliance.

Miller states that its existing presses had a proven record of spoilage rates of less than 6 percent, which rate should have been accepted without question since there are only "insubstantial" differences between its existing press and the RFP press. The Bureau, on the other hand, argues that it is "specious" to suggest that spoilage rates of an existing press built to different specifications indicates the spoilage rate to be expected from a "yet-to-be-built" press.

We think the Bureau's position is reasonable. We note the Bureau sought clarification from Miller as to how it intended to comply with the spoilage rate requirement, but Miller merely responded with a statement that it would comply. In the circumstances, we think the Bureau properly rated the proposal incomplete.

C. Ink Drying Process

The Bureau also criticized Miller's proposal for a lack of clarity and specificity as to how Miller would fulfill all RFP requirements described for this process. Miller cites the performance of its ink dryer on the company's existing press as proof that all requirements would be met. The Bureau points out, however, that Miller initially proposed a dryer which the Bureau considered to be too short. When this matter was raised with Miller, it merely stated that it would expand the dryer. No discussion was presented of how Miller would determine the proper length of the dryer.

II. DISCUSSIONS

Miller essentially contends that the Bureau failed in its negotiation sessions to lead the company into the specific area of perceived deficiencies in the company's proposal. Specifically, Miller argues that, during the "negotiations" leading to the Bureau's request for third final offer, the

Bureau did not advise or otherwise give notice to Miller that Miller's technical proposal was deficient in the area of project management. After Miller's submission of its first final offer, in which Miller complied with a request to clarify certain aspects of its project management plan, the Bureau allegedly took no further action in its discussions with Miller which would have given Miller notice that its project management plan was still deficient. Instead, negotiations preceding the oral request for a third final offer allegedly focused only upon the need for additional cost and pricing data from Miller. As a result, Miller was allegedly not put on notice that its project management plan required amplification beyond that provided in compliance with the request for the first final offer.

In reply, the Bureau argues that it did conduct meaningful discussions with Miller because the company was given three direct opportunities to improve its project management proposal by Bureau letters of November 21, 1985, January 16 and March 21, 1986, which communicated first a deficiency and later a weakness in this area.

Specifically, after initial technical evaluations of proposals, by letter of November 21, 1985, the Bureau pointed out technical and informational deficiencies to offerors. Miller was specifically advised that program management was considered an informational deficiency and that:

> "You need to think out the approach to managing this program and provide the Bureau with a plan that shows an understanding of the management and technical problems involved. The philosophy of the firm in solving these problems, how the resources available will be employed to manage, coordinate, produce and start up the press need to be discussed."

Miller was requested to address this matter and the response was evaluated. In a January 16, 1986 letter, the Bureau advised Miller that

> "Your response [concerning Miller's project management plan] was acceptable, but weak. Please provide any additional information you deem appropriate."

Finally, in the Bureau's letter of March 21, 1986, requesting a best and final offer, the Bureau stated that:

> "In regard to your Project Management Plan, clarify your proposed project leader's, Mr. Barman, position within your company, including to whom he is responsible for reporting."

The Bureau states that Miller's initial proposal was considered deficient in the area of program management and the above-quoted statement of the Bureau's November 21 letter to Miller clearly identified this area as a deficiency. In contrast, the Bureau states that its January 16 letter showed that, while Miller's proposal had improved, the proposal was still considered weak. Although the Bureau's second and third calls for best and final offers in March and September of 1986, did not explicitly state whether Miller's proposal in the area of project management was weak as opposed to deficient, the Bureau states that Miller's proposal was still rated weak and it should have been so understood.

We agree with the Bureau. This is not a case where the area of weakness was never pointed out to the offeror during the course of discussions. Clearly, Miller was advised during the course of the initial discussions that its management plan was "acceptable, but weak. Please provide any additional information you deem appropriate." Subsequently, Miller was asked to clarify its proposed project leader's position within the company.

While discussions must be meaningful, the content and extent of competitive negotiations is a matter of judgment to be exercised by the contracting officer based on the particular facts of the case at hand. Federal Acquisition Regulation (FAR), 48 C.F.R. § 15.610 (1986). Our cases and the cited regulation provide that the contracting officer should advise an offeror of deficiencies in its proposal so that they may be corrected. The FAR provides, however, that the contracting officer should not engage in technical leveling, that is, help an offeror to bring its proposal up to the level of the other proposals through successive rounds of discussions, such as by pointing out weaknesses resulting from the offeror's lack of diligence, competence, or inventiveness in preparing the proposal.

With these rules in mind, we find that the contracting officer adequately advised Miller that its proposal was weak in the area of management. While Miller faults the contracting officer for not continuing to point out this weakness during the successive rounds of discussions, we think Miller essentially expected the contracting officer to engage in technical leveling. Once the Bureau pointed out to Miller that its management proposal was weak, it was then Miller's responsibility to improve that aspect of its proposal. See Technical Serv. Corp., B-216408.2, June 5, 1985, 85-1 C.P.D. ¶ 640, where we stated:

> "The protester seems to be objecting to the fact that after receiving its response, the agency did not ask further questions about its management information system. . . . However, an agency is not required to help an offeror along through a series of negotiations so as to improve its technical rating until it equals that of other offerors. Decilog, Inc., B-206901, Apr. 5, 1983, 83-1 C.P.D. ¶ 356."

III. INTEGRITY ISSUE

Miller argues that the award to Hamilton resulted from "strong political influence" to award to a 100 percent domestic manufacturer. Miller also contends this pressure caused the removal of one Bureau employee who was dedicated to a fair award. Moreover, Miller requests that we investigate certain allegations involving two auditors who allegedly work for either the Defense Contract Audit Agency or the Inspector General's Office of the Department of the Treasury. These individuals are stated to have information on the contracting process.

The record shows that while the Bureau received many congressional inquiries concerning the status of the contracting process, it does not show that the award resulted from political pressure. As to the Bureau employee who was removed, according to Miller, because of political pressure, the Bureau points out that the employee in question was not removed, and that she was only acting as the contracting officer's subordinate up to the time of the selection of the successful offeror by the contracting officer. Our review of the record indicates that the award was made to Hamilton based on the evaluation scheme in which Hamilton scored higher technically than Miller and Hamilton's price was lower. There is no showing that the award resulted from political pressure.

Miller also suggests that the Bureau's employee who had "project responsibility" for this contract award chose a "close personal friend," who was known to be prejudiced against Miller, to attempt to negatively influence the Bureau's proposal evaluation panel against Miller during the onsite evaluation of Miller. However, it is the position of the Bureau that the proposal evaluation was made on the basis of the information submitted with the Miller proposal and the on-site visit and not on the basis of extraneous materials. In any event, the record shows that Miller's final technical score--including the specific score for project management--improved after the on-site visit. Therefore, the record contradicts Miller's suggestion that the individual in question detrimentally influenced the company's technical score. Finally, with regard to Miller's request that we investigate the role of the two auditors, the record simply does not indicate they had any role in the selection process and we decline to consider the matter further.

IV. SALE OF HAMILTON

With regard to the sale of Hamilton's business, the Bureau states that although this sale was completed on December 31, 1986, Hamilton's operating management, including its president and key technical personnel, are the same so that the Bureau is of the opinion that the "management and technical terms are still in place and are expected to remain so." In any event, since the sale occurred after award, the issue is one of contract administration which our Office does not review. See Development Alternatives, Inc., B-217010, Feb. 12, 1985, 85-1 C.P.D. ¶ 188.

We therefore deny the protest as to each of the four grounds raised by Miller.

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