



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Pan Am Support Services, Inc.--
Request for Reconsideration
File: B-225964.2
Date: May 14, 1987

DIGEST

1. Prior decision holding that the Competition in Contracting Act of 1984 prohibits contracting agencies conducting a negotiated procurement from making an award on the basis of initial proposals without discussions to other than the "lowest overall cost" offeror where there would be at least one lower-priced proposal within the competitive range is affirmed. The statutory language clearly precludes the making of discretionary cost/technical tradeoffs before discussions are held by requiring the selection of the most favorable initial proposal which is lowest in terms of cost and cost-related factors specified in the solicitation.

2. The General Accounting Office finds no reason to alter its prior recommendation that competitive range discussions be opened where, despite awardee's claim that such action would be prejudicial, contract performance is not substantially completed and the need to preserve the integrity of the competitive procurement system by taking appropriate corrective action to remedy the defective procurement outweighs any concerns that implementation of the recommendation will lead to technical leveling or transfusion and a prohibited auction situation.

DECISION

Pan Am Support Services, Inc., requests reconsideration of our recent decision in Aviation Contractor Employees, Inc., B-225964, Mar. 30, 1987, 87-1 CPD ¶ _____. We sustained a protest filed by Aviation Contractor Employees, Inc. (ACE), against the Department of the Army's award of a contract to Pan Am under solicitation No. DABT01-86-R-3005 for flight training services at Fort Rucker, Alabama. We objected to the award because it was made on the basis of initial proposals without discussions, Pan Am was not the lowest priced offeror, and although Pan Am's technical proposal was judged to be superior to ACE's, there was no showing that ACE's proposal was so technically deficient relative to Pan Am's proposal and the other higher-ranked proposal that it had no reasonable chance of being selected for award if competitive range discussions were held. We recommended

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that the Army conduct discussions with all offerors whose proposals were within the competitive range, and that Pan Am's contract be terminated for convenience if Pan Am was not the successful offeror at the conclusion of these discussions.

We affirm our decision and the recommendation for corrective action.

The prior decision reflects our view regarding the discretion afforded to contracting agencies to make an award on the basis of initial proposals without discussions, under the Competition in Contracting Act of 1984 (CICA). That law allows a limited exception to the general requirement that agencies conduct discussions in a negotiated procurement by providing that this requirement need not be met "when it can be clearly demonstrated from the existence of full and open competition or accurate prior cost experience with the product or service that acceptance of the most favorable initial proposal without discussions would result in the lowest overall cost to the Government." 10 U.S.C. § 2305(b)(4)(A)(ii) (Supp. III 1985). In Hall-Kimbrell Environmental Services, Inc., B-224521, Feb. 19, 1987, 66 Comp. Gen. _____, 87-1 CPD ¶ 187, and Training and Information Services, Inc., B-225418, Mar. 9, 1987, 87-1 CPD ¶ _____, we held that the CICA language, by its express use of the term "lowest overall cost," prohibits an agency from accepting for award an initial proposal that is not the lowest, considering only cost and cost-related factors specified in the solicitation, where at least one lower-priced initial proposal would be in the competitive range. Therefore, even though Pan Am's proposal might have been viewed favorably by the Army from an initial technical standpoint, the firm could not receive an award on the basis of initial proposals because it was not the lowest-priced offeror. Pan Am now requests reconsideration of our March 30 decision on the principal ground that our interpretation of the term "lowest overall cost" is in error. Pan Am asserts that the term and, significantly, the all-inclusive word "overall," permits agencies to make those cost/technical tradeoffs that are usually made in a negotiated procurement to determine the most advantageous offer, even when awarding on the basis of initial proposals without discussions.

Essentially, Pan Am urges that the use of the word "overall" is a clear indication that the CICA provisions should be read as contemplating the inclusion of quality or performance considerations as well as cost in any source selection decision made on an initial proposal basis. Pan Am contends that the concept of "lowest overall cost" is, in effect, the same as a "best value" determination, in which

the government may reasonably find than an offer's technical superiority more than offsets its associated price premium.

Pan Am points out that its offer was found to represent the best overall value to the government as the result of a price-per-technical point analysis made during the Army's evaluation of initial proposals. In this regard, it is true that Pan Am's technical score was 16 percent higher than ACE's score and that this score significantly offset Pan Am's 3 percent higher evaluated price. Hence, Pan Am argues, it properly received the award on the basis of initial proposals without discussions because, by offering the most advantageous offer in price-per-technical point terms, it was in fact the "lowest overall cost" offeror.

This Office has long recognized that cost/technical trade-offs are properly made by contracting agencies in selecting the successful offeror under a negotiated procurement, subject only to the test of rationality and consistency with the solicitation's established evaluation and source selection scheme. See Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 CPD ¶ 325. Thus, for example, in Q. Earl Yancey, CPA, B-223931, Nov. 18, 1986, 86-2 CPD ¶ 577, a recent case cited by Pan Am in support of its reconsideration position, we found nothing improper in an agency's decision to award to a higher-priced offeror where the firm's proposal received a higher technical score than the protester's, and the agency's technical evaluation was fully consistent with the solicitation's evaluation scheme which made technical considerations paramount.

However, cost/technical tradeoffs cannot be utilized in situations where award is to be made on the basis of initial proposals without discussions because the statutory language, which requires selection of the "lowest overall cost" offeror, clearly precludes such judgmental determinations. 10 U.S.C. § 2305(b)(4)(A)(ii), supra. Contrary to Pan Am's view, we believe the modifier "overall," preceding the word "cost" in the CICA language, only refers to those cost-related factors listed in the solicitation directly affecting total offered cost, and not to any form of price/quality analysis.

Meaningful discussions are a general requirement for negotiated procurements so that offerors in the competitive range can be advised of deficiencies in their proposals and provided an opportunity to satisfy the government's requirements by submitting revised proposals. Sperry Corp., 65 Comp. Gen. 195 (1986), 86-1 CPD ¶ 28; Price Waterhouse, B-222562, Aug. 18, 1986, 86-2 CPD ¶ 190. Accordingly, a cost/technical tradeoff made before discussions are held would be improper because the technical rankings and offered

prices of the initial proposals submitted could be significantly altered upon the conduct of discussions. In other words, the parameters of any tradeoff made would not necessarily remain the same if those offerors with a reasonable chance of award were given the opportunity to revise their proposals as the result of such discussions. For example, in the present matter, Pan Am's initial proposal may have enjoyed a superior price-per-technical point rating, but we perceived that ACE, if it had been advised of the informational deficiencies existing in its proposal, with the attendant opportunity to revise its already lower-priced offer, could have supplanted Pan Am as the "best value" offeror under the RFP's selection criteria.

Accordingly, we affirm our prior decision that the award to Pan Am on the basis of initial proposals without discussions was improper because Pan Am's offer was not the lowest.

Pan Am also objects to our recommendation for corrective action in this matter. The firm contends that an opening of competitive range discussions at this point will be prejudicial because: (1) the particular management and organizational features which gave its proposal technical superiority are now known to most of its employees, many of whom are former employees of ACE who continue to communicate with ACE's representatives; and (2) Pan Am's price has been revealed as the result of being incorporated into its Fort Rucker contract, and the firm will have to take a loss in order to remain competitive. Thus, Pan Am essentially urges that implementation of our recommendation will result in technical transfusion or leveling and create an impermissible auction situation.

We see no basis to withdraw our recommendation. Unlike the situations in Hall-Kimbrell Environmental Services, Inc., B-224521, supra, and Training and Information Services, Inc., B-225418, supra, contract performance is not substantially completed here since the flight training services are for a 2-year period. To the extent Pan Am fears that its employees may give inside information to ACE if discussions are conducted, Pan Am would appear to be the party responsible for exercising control over its own employees and to protect that business information it deems confidential. In any event, concerns as to technical leveling or technical transfusion do not necessarily overcome the need to remedy a procurement which has failed to satisfy the statutory requirement for full and open competition. See Roy F. Weston, Inc.--Request for Reconsideration, B-221863.3, Sept. 29, 1986, 86-2 CPD ¶ 364. Similarly, the risk of an auction is generally viewed as secondary to the preservation of the integrity of the

competitive procurement system through the taking of appropriate corrective action. Environmental Tectonics Corp.--Reconsideration, B-225474.2 et al., Apr. 9, 1987, 87-1 CPD ¶ ____.

Our prior decision, with its recommendation that competitive range discussions be opened, is affirmed.



Acting Comptroller General
of the United States