The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Metron Corporation

File: B-227014

Date: June 29, 1987

DIGEST

1. In negotiated procurements, agencies must generally conduct written or oral discussions with all responsible offerors within the competitive range before awarding a contract. In limited circumstances, award may be made on the basis of initial proposals. However, even where the circumstances are present, award on the basis of initial proposals is permissive, not mandatory.

2. Where an agency found no uncertainties in those offers included in the competitive range and determined that no technical discussions were necessary because of the high level of acceptability of offers, the agency's request for "cost only" best and final offers was sufficient to satisfy the requirement for discussions in a negotiated procurement.

3. Where a protester fails to offer any evidence that the agency disclosed proposed prices to other offerors, its contention in this regard is mere conjecture and provides no basis to sustain a protest.

DECISION

Metron Corporation protests the award of a contract to DALFI, Inc. (DI), under request for proposals (RFP) No. N00123-86-R-0757, issued by the Naval Regional Contracting Center, Long Beach, California. The RFP was a total small business set-aside for support services consisting of the preparation, review, and revision of technical documents required for calibration of Navy test and monitoring equipment for a period of 1 year with options for two additional years. Metron, the incumbent, contends that it should have received the award based on initial proposals, that the award was improper due to the Navy's failure to conduct technical discussions, that the Navy improperly permitted DI to reduce its direct labor rates in its best and final offer, and that the source selection process was otherwise flawed.

We deny the protest.

039335

The RFP, issued on August 11, 1986, provided that the government would award a contract to the responsible offeror whose offer conforming to the solicitation is the most advantageous to the government, cost or price and other factors considered. The RFP contemplated the submission of separate technical and cost proposals. For award purposes, the solicitation stated that technical quality was substantially more important than cost in determining the most advantageous proposal. In descending order of importance, the solicitation listed the following evaluation criteria: (1) capability to perform (with four equal subfactors); (2) understanding of requirements (with three equal subfactors); and (3) technical approach (with two equal subfactors). The solicitation also cautioned offerors that as proposals become more equal in technical merit, the evaluated cost becomes more important. In this regard, the solicitation stated that the government would evaluate offers by adding the total price for all options to the total price for the base year.

The solicitation contained total estimated hours of required effort for the base year and two option years of 87,080, 94,440, and 102,620 hours, and also included minimum qualifications for certain labor categories--such as electronics engineer, mechanical engineer, technical writer, and draftsman. However, the offerors were free to propose their own distribution of the various labor categories. Thus, the offeror's proposed labor rate times the estimated proposed man-hours for each labor category, plus the offeror's proposed fee, as well as certain other direct costs and travel expenses, essentially provided the basis for cost evaluation.

Two firms submitted proposals on October 20, 1986, the closing date for receipt of initial proposals. The Navy evaluated the initial technical and cost proposals, and both offerors were determined to be "well-qualified" to provide the services. The scoring and cost results based on initial proposals were as follows:

Offeror	Technical Score (10 point Scale)	Cost
Metron	7.8663	$8,268,093
DI	8.2575	9,371,775

The contracting officer states that the Navy did not find any technical uncertainties or deficiencies in either proposal and that the proposals were generally rated, except by one evaluator, as outstanding to excellent. However, while Metron stressed its in-house expertise in its proposal, DI stressed work assignments based on best outside available expertise which was considered preferable by the

Navy. Nevertheless, based on the superior technical scores of both offerors and the evaluation panel comments, the contracting officer determined that both offerors were essentially technically equal, with no technical deficiencies. The Navy's contract negotiator, after reviewing a DCAA audit that only questioned $249,864 of Metron's proposed costs of $8,268,093, recommended that award be made to Metron based on initial proposals without discussions.1/ However, the Navy's contract review board rejected this recommendation and determined that best and final offers should be received.

By letter dated February 4, 1987, the Navy requested best and final offers "on costs only," because "all technical proposals are. . . considered essentially technically equal," so that cost was now "the main factor for award." On February 10, "limited costs discussions" were orally conducted by telephone between the contract negotiator and Metron. The contract negotiator essentially informed Metron that changes in technical proposals were not requested and cost revisions should be made in indirect rates (overhead and G&A) and fee. Both offerors submitted timely best and final cost proposals. In its best and final offer, Metron reduced its overhead rate and increased its G&A rate, in compliance with the DCAA audit, and also reduced its fee. Best and final results were as follows:

Offeror	Best and Final Offer
Metron	$7,748,966
DI	$7,313,901

According to Metron, DI, in its best and final offer, made substantial reductions in direct labor costs from its initial proposal. The Navy states, and we have confirmed, that there were no changes during best and final offers to either offeror's technical proposal. The contracting officer determined that DI's proposal represented the greatest value to the government and therefore awarded the contract to that firm. After an unsuccessful size protest by Metron and after a debriefing, Metron filed this protest. We consider individually below the arguments advanced by Metron.

1/ DCAA essentially found that Metron's overhead was excessively high and that its G&A expenses were understated. These were the only costs questioned.

First, Metron contends that award should have been made to it on the basis of initial proposals. Metron notes that its initial proposal was $1.1 million less that DI's initial proposal; since the proposals were essentially technically equal, Metron states that cost should have been the deciding factor. Further, Metron contends that there was no rational reason not to award based on initial proposals since the Navy's contract review board, based on facts available at that time, could not have known that DI would substantially reduce its estimated cost as a result of best and final offers. Metron concludes that the Navy arbitrarily, without any basis or reason, refused to exercise its discretion to award on the basis of initial proposals.

Generally, in negotiated procurements, agencies must conduct written or oral discussions with all responsible offerors within the competitive range before awarding a contract. These offerors must be given an opportunity to revise their proposal, including cost or price, by a common cutoff date. Federal Acquisition Regulation (FAR), 48 C.F.R. § 15.609-15.611 (1986). In limited circumstances, award may be made on the basis of initial proposals, without discussions and final offers. Id. § 15.610. However, even where the circumstances are present, award on the basis of initial proposals is permissive, not mandatory. Joseph L. De Clerk and Associates, Inc., B-221723, Feb. 10, 1986, 86-1 CPD ¶ 146. While recognizing this rule, Metron stresses that here there were no known facts for the Navy not awarding a contract based on initial proposals so that the Navy abused any discretion it may have had for not awarding based on initial proposals. We do not agree. An award based on initial proposals precludes technical and price revisions favorable to the government that may be made in the regular course of the procurement cycle. We think that if an agency determines that there is even a remote chance of obtaining a better price by conducting discussions and requesting best and final offers, it should do so. Accordingly, we deny this protest ground.

Second, Metron contends that the Navy's request for "cost only" best and final offers, without conducting meaningful technical discussions, was improper. Metron argues that it should have been provided the opportunity to correct any perceived deficiencies in its proposal. Metron points to its technical score, which was lower than DI's, and to certain "weaknesses" in its proposal revealed by the Navy during the debriefing, as areas where its proposal could have been improved. Metron believes that its proposal was downgraded by the Navy while DI was awarded "bonus points" for certain "innovative methods," i.e., use of outside expertise.

Generally, we consider that discussions have taken place if an offeror is given the opportunity to revise its initial proposal, either in terms of price or technical approach. The Aerial Image Corp., Comcorps, B-219174, Sept. 23, 1985, 85-2 CPD ¶ 319. However, we have held in this regard that an agency's decision not to engage in technical discussions is unobjectionable where a proposal contains no technical uncertainties. Weinschel Engineering Co., Inc., 64 Comp. Gen. 524 (1985) 85-1 CPD ¶ 574; Information Management Inc., B-212358, Jan. 17, 1984, 84-1 CPD ¶ 76. Therefore, the Navy's decision to request best and final offers on the basis of price and cost revisions alone would not be subject to question if in fact the initial technical proposals contained no significant uncertainties or deficiencies. We believe this is the case here.

Our review of both technical proposals shows that they were very thorough and very well written. Further, with the exception of one evaluator, both proposals received outstanding ratings and the contracting officer determined that there were no significant deficiencies. The contracting officer states that at the debriefing, Metron was told that its proposal was outstanding and, in response to questions raised by Metron, was told that her comments about the "weaknesses" related purely to "minor and insignificant detail." These included some lack of detail in Metron's proposal and Metron's emphasis on in-house expertise.

Based on this record, we find that Metron has not shown that its proposal contained significant or major deficiencies, the correction of which could have appreciably improved its technical rating. Moreover, even if there were some minor areas in which Metron could have improved its score, the contracting officer's determination to treat both proposals as essentially technically equal eliminated any technical advantage either firm may have enjoyed. Accordingly, we uphold the contracting officer's determination to limit the Navy's request for best and final offers to revisions in the cost proposals only without also affording the offerors the opportunity to submit revised technical proposals as well. See Sperry Corporation, 65 Comp. Gen. 195 (1986), 86-1 CPD ¶ 28. Moreover, we have held that a request for best and final offers itself constitutes appropriate discussions where a proposal contains no technical uncertainties. Information Management, Inc., B-212358, supra. Consequently, we also deny this protest ground.

Next, Metron contends that it was treated unequally by the Navy inasmuch as DI, in its best and final offer, was permitted by the Navy to reduce its direct labor costs, while Metron was not allowed to do so. While the Navy's letter of February 4, 1987, requesting best and final

offers, simply states the "[b]est and [f]inal [o]ffers are now required on costs only, this now being the main factor for award," and does not preclude offerors from reducing any item of cost, Metron, in a telephone conversation with the contract negotiator, initiated by the protester on February 10, 1987, was allegedly advised as follows:

> "I [Metron] advised [her of my doubts concerning a cost only best and final offer] and also my interpretation [that] a 'cost only' [best and final offer] meant that Metron could only change indirect costs or fee, because to change labor costs would necessarily entail a change to our technical proposal, which was forbidden by the request for [best and final offers]. [She] confirmed my understanding that the [best and final offer] was to be based only on indirect costs and/or fee and no changes to technical were permitted."

The Navy, in its agency report on the protest, states that the contract negotiator, based upon DCAA results and upon fee calculations, told Metron in this conversation that changes in technical proposals were not requested and "cost revisions should be made in indirect rates (i.e., overhead, G&A) and fee." The Navy further states that, in fact, both offerors were "advised that cost revisions should be made in indirect rates and fee."

Metron also contends that DI's best and final offer was unrealistic (from a cost standpoint) on its face and should have been subject to a cost realism analysis after best and final offers were received (DCAA audits were conducted on initial proposals), because Metron questions whether DI's proposed direct labor costs in its best and final offer were realistic after a reduction of $920,000 in direct labor costs from its initial proposal. Metron emphasizes that only reductions in indirect rates should have been permitted by the Navy.

After reviewing DI's initial best and final cost proposals, we are not persuaded that DI made any reductions in its direct labor rates. In both its initial and best and final offers, DI proposed "loaded rates" for labor hours which included substantial indirect costs. This is apparently because DI has an accounting system which does not have separate G&A or material/handling pools. The record shows that DI explained to the contract negotiator that since its senior personnel were working on several contracts, DI was able to decrease the loaded hourly rates for the personnel proposed on this contract. According to DI, this same consideration, that is, that the present work is "additive" to DI's regular work, permitted the firm to reduce its overhead substantially. We emphasize that there were no

changes in DI's technical proposal or in the number of labor hours proposed for each category of labor originally proposed. DI's explanations of its cost reductions to the agency is consistent with our own conclusion that its reductions appear to have occurred in indirect costs which, even according to the protester, was permitted by the request for best and final offers. Accordingly, since Metron's arguments are based on an incorrect premise that direct labor rates were reduced by DI, we also deny this protest ground.

Finally, Metron also alleges that there may have been a "leak" of information in its proposal to DI. Metron offers no evidence in support of its position but merely points to coincidences in the two proposals, e.g., allegedly virtually identical proposed direct labor costs, from which we are called upon by Metron to infer that there was disclosure of information contained in Metron's proposal. A protester has the burden of proving its case, and our Office will not find improper action by an agency based on conjecture or inference. Beech Aerospace Services, Inc., B-219362, Aug. 20, 1985, 85-2 CPD ¶ 203. We therefore consider Metron's allegations as pure speculation. See R.P. Sita, Inc., B-217027, Jan. 14, 1985, 85-1 CPD ¶ 39.

We deny the protest.

for Seymour Efros
Harry R. Van Cleve
General Counsel