



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: University of Dayton Research Institute

File: B-227115

Date: August 19, 1987

DIGEST

1. Protest by incumbent contractor that agency improperly evaluated incumbent and competing firm as having essentially equal relevant past performance experience is denied. Although incumbent has several years experience performing under related contracts, the agency's current requirements involve efforts significantly different than those previously performed by the incumbent. Competing firm, although a relatively new company, has specific experience performing the functions currently required.

2. In negotiated procurements, the agency has broad discretion in determining the manner and extent to which it will make use of the technical and cost evaluation results and award need not be made to the offeror who proposes the lowest cost. Award to higher priced, higher technically ranked offeror is not objectionable where the solicitation award criteria made technical considerations more important than cost and agency reasonably concluded that protester's lower proposed cost did not outweigh the technical advantages demonstrated in competitor's higher cost proposal.

3. Protest that agency improperly failed to inform offeror that it "questioned the realism" of some of protester's proposed costs is denied where the record shows that the agency raised these concerns in discussions conducted with the protester.

DECISION

The University of Dayton Research Institute (UDRI) protests an award of a cost-plus-fixed-fee contract to Beecher Research Company (BRC) under request for proposals (RFP) No. F33615-87-R-0530, issued by the Air Force.

We deny the protest.

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The RFP called for engineering support services for the biodynamic modeling research program at the Armstrong Aerospace Medical Research Laboratory. This laboratory investigates the effects of flight associated stress on safety and on the performance of aircraft crew personnel. The biodynamic models are computer based models such as head-spine models and other mannequin type models.

On September 10, 1986, the Air Force issued 35 solicitations to prospective offerors. Two firms, UDRI and BRC submitted proposals by the October 10, closing date for receipt of initial proposals. Both proposals were determined to be within the competitive range and the Air Force conducted discussions with both firms. Best and final offers (BAFOs) from UDRI and BRC were received by the March 9, 1987, closing date. On April 29, the Air Force awarded the contract to BRC, the higher cost, higher technically rated offeror.

The RFP advised offerors that source selection would be based on, in descending order of importance: (1) technical acceptability, (2) cost reasonableness, realism and completeness and (3) management capabilities. Under technical acceptability, the solicitation provided that "primary consideration will be given to those proposals demonstrating the highest competence for the specific R&D [research and development] effort involved" under the RFP.

The solicitation further advised offerors that in determining technical competence, proposals would be ranked on the basis of the following four technical factors: (1) understanding the problem, (2) soundness of approach, (3) compliance with [RFP] requirements, and (4) special technical factors such as approaches proposed by an offeror which will result in a more effective program. These factors are listed in descending order of importance with understanding the problem and soundness of approach of equal importance. The RFP also provides that "past performance, as it pertains to prior relevant contracts, will be considered in the evaluation of each [technical] criterion."

BRC received a technical score approximately 65 percent higher than UDRI's technical score. BRC's and UDRI's cost proposals were \$552,520 and \$424,685 respectively.

UDRI argues that the Air Force lacked a rational basis to determine BRC technically superior to UDRI and, therefore, the award to BRC at a higher cost was unjustified. UDRI maintains that the Air Force improperly considered BRC's past performance on relevant contracts "virtually identical" to UDRI's past performance. UDRI states that it has been the incumbent contractor on related Air Force contracts for 20 years and that BRC has no prior corporate experience on relevant contracts. UDRI points out that BRC was only recently established by a former UDRI employee, who is currently BRC's "principal investigator" for this contract. 1/ Since BRC's principal investigator is a former UDRI employee, UDRI states that it is "in a unique position to know his qualifications." UDRI maintains that BRC's principal investigator has only "limited technical experience" as UDRI's former principal investigator for its most recent prior Air Force contract, and that the Air Force unfairly credited UDRI's corporate experience for that contract to its former employee. UDRI believes that the Air Force circumvented competitive procedures to award the contract to BRC so that BRC's principal investigator could continue to perform the current requirement.

The Air Force responds that while UDRI has held contracts for related efforts for a number of years, the current requirement is significantly different from all previous contracts performed by UDRI, other than UDRI's most recent contract. Prior to that contract, the engineering support required for this program involved relatively straight forward traditional anthropometric data statistical analysis. 2/ Currently, a more sophisticated and complex function is required which involves not only statistical analysis but also, for instance, the capability to provide professional anthropometric methods, measurement strategies and techniques. The Air Force states that since the transition to a more complex support function began under UDRI's prior contract, BRC's principal investigator, in his capacity as UDRI's principal investigator, obtained significant training and experience to perform the present contract. Therefore, UDRI and BRC received virtually the same evaluation for "relevant" past performance. Further,

1/ The principal investigator is the primary technical expert for this project, responsible for essentially all technical matters. The solicitation required that offerors provide the name and qualifications of their principal investigator.

2/ Anthropometry is the science of measuring the human body and its parts and functional capabilities.

while UDRI and BRC were considered to have essentially equal relevant past performance experience, BRC's technical proposal was determined superior to UDRI's technical proposal and, therefore, BRC received a higher technical score.

In a negotiated procurement, the government is not required to make award to the firm offering the lowest cost unless the RFP specified that cost will be the determinative factor. Pelavin Assocs., Inc., B-222556, July 24, 1986, 86-2 CPD ¶ 104; Stewart & Stevenson Services, Inc., B-213949, Sept. 10, 1984, 84-2 C.P.D. ¶ 268. We have upheld awards to higher rated offerors with significantly higher proposed costs where it was determined that the offerors' cost premium involved was justified considering the significant technical superiority of the selected offeror's proposal. Pelavin Assocs., Inc., B-222556, supra. In this regard, it is not our function to reevaluate technical proposals, since the determination of the government's needs and the best method of accommodating those needs is primarily the responsibility of the procuring agency. In assessing the relative desirability of proposals and determining which offer should be accepted for award, the procuring agency has the discretion to select a more highly rated technical proposal if doing so is in the government's best interest and is consistent with the evaluation scheme set forth in the solicitation. Comarco, Inc., B-225504, B-225504.2, Mar. 18, 1987, 87-1 CPD ¶ 305; Pelavin Assocs., Inc., B-222556, supra.

Our review of the record reveals that the agency's award decision comported with the solicitation evaluation criteria. The solicitation indicated that past performance as it pertains to prior relevant contract experience would be considered under each technical evaluation criterion. The protester argues that the Air Force improperly considered BRC's past performance on relevant contracts equal to UDRI's past performance because UDRI has been an incumbent contractor on related Air Force contracts for 20 years and BRC is a new company. However, the record shows that the current requirement involves different and more complex technical tasks than required under previous UDRI contracts, except for UDRI's most recent prior contract. Under that contract, BRC's principal investigator, while employed by UDRI, acquired the precise training and technical experience needed to perform the current requirement. UDRI does not challenge the validity of the Air Force's assertion that the current contract involves different tasks than those required under all but UDRI's most recent prior contract or that BRC's principal investigator while employed by UDRI acquired "hands-on" experience performing the more complex technical functions

currently required. UDRI also does not allege that its proposed principal investigator has specific experience performing the technical functions currently required by the Air Force.

While UDRI argues that the Air Force unfairly credited UDRI's past corporate experience to its former employee, corporate experience is not an evaluation criterion under this solicitation. Past performance on relevant contracts is to be considered as it relates to the four stated technical evaluation criteria. In this regard, offerors were required to include the name and qualifications of the principal investigator for this project. Thus, the RFP did not limit experience to corporate experience, but solicited information concerning the principal investigator's prior experience for evaluation purposes. Based on this record, we cannot conclude that the Air Force acted unreasonably in determining the two firms relevant experience equal.

UDRI also maintains that the higher technical score received by BRC under all technical evaluation criteria is not supported by the record. UDRI alleges that the Air Force ignored the technical evaluation criteria in making the award selection.

We find that the record supports BRC's higher technical score.^{3/} The record shows that the technical evaluation panel reviewed offerors' proposals based on each solicitation evaluation criterion. The technical evaluation panel compared and analyzed each offeror's approaches to tasks stated in the RFP, reviewed compliance with RFP requirements and offerors' understanding of those requirements as demonstrated in their technical proposals, as well as any unique procedures and insights presented in proposals which could make the project more effective and efficient. In all these areas, the technical evaluation panel found BRC's technical proposal superior to UDRI's technical proposal. For example, the record indicates that the technical panel found that BRC's proposal presented "detailed and some exceptional approaches to each task in the RFP and also demonstrated methods of implementing each technique which the firm presented." Specifically, under soundness of approach, the technical evaluators found that

^{3/} The Air force has not released any detailed information to the protester concerning the evaluation of proposals because it believes this information to be privileged. Accordingly, we will limit our discussion to the major findings of the Air Force technical evaluation panel. Our decision, however, is based on review of all relevant documents submitted to our Office by the Air Force.

BRC's offer contained exceptional approaches to improving user friendliness of the computer system, to expanding a particular data base used in the program and to displaying three-dimensional data for the models used. Further, BRC's proposal demonstrated methods of implementing each approach that it presented. In contrast, the technical evaluation panel found that UDRI's proposal "often restated requirements in the statement of work without addressing how the tasks would be implemented."

With regard to the firms' responsiveness to the tasks stated in the statement of work, the technical evaluation panel found that UDRI's proposal emphasized statistical analysis and "human" engineering design approaches--that is, the type of work UDRI had performed under prior contracts, while BRC's proposal stressed biodynamic modeling which was more consistent with the current solicitation requirements. While the solicitation stated a preference for new and innovative approaches to the tasks, UDRI's technical proposal relied on its previous performance rather than offering new or innovative approaches to make this project more effective. UDRI's proposal frequently recited UDRI's prior experience without explaining how this experience would be applied to the tasks under the new contract. Thus, while UDRI was rated technically acceptable, the technical evaluation panel found BRC's proposal more responsive to current agency needs.

Where, as here, the solicitation provided that technical consideration would be more important than cost and the agency after detailed review of each offeror's proposal determined that BRC's proposal showed superior technical competence to satisfy the agency's needs, we cannot conclude that the contracting officer decision to award to a 65 percent higher technically rated proposal at a 30 percent cost premium was unreasonable. CACI, Inc.-Federal, B-225444, Jan. 13, 1987, 87-1 CPD ¶ 53.

UDRI also complains that the Air Force failed to inform UDRI that some of its proposed technical personnel lacked experience to perform this contract. The record indicates that the Air Force determined UDRI's proposed personnel were acceptable. However, the Air Force states that it questioned the realism of some of UDRI's proposed costs given the lack of "specific experience" of some of its personnel in performing required contract functions. The Air Force believed that initially there would be a "lack of productivity due to this lack of experience" and a need for training for these personnel. The Air Force states that UDRI was advised of these concerns during discussions. UDRI disputes that these matters were discussed with the firm.

The agency report does not contain a record of the discussions conducted with offerors. However, the report does contain a copy of the Air Force's February 23, 1987, letter to UDRI requesting BAFOs, which states:

"Pursuant to discussions held on February 19, 1987, your BAFO should consider the following . . . the buying office's and auditors exceptions to proposed costs for the total program and task order 0001 [a specific task offerors were required to address in their proposals], in the areas direct labor and escalation, travel, materials and services as discussed by the government contract negotiator"

It is apparent from this letter that the Air Force discussed cost concerns with UDRI. This letter indicates that the Air Force advised UDRI that it had numerous concerns with the firm's proposed costs for this project and specifically requested that these concerns raised during discussions be addressed the firm's BAFO. The Air Force was not required to do more than that. See Contraves Goerz Corp., B-218585, July 22, 1985, 85-2 CPD ¶ 66.

The protest is denied.

for *Raymond S. Van Cleve*
Harty R. Van Cleve
General Counsel