The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Dayton T. Brown, Inc.

File: B-229664

Date: March 30, 1988

DIGEST

1. Decision to select lower-scored technical, lower-cost, proposal was reasonable where protester's higher score was based on advantages of incumbency that the agency reasonably determined did not indicate a significant technical advantage that would warrant paying substantially more for it.

2. Protest that the agency engaged in technical leveling is denied where there is no evidence that agency personnel gave any improper help to the awardee to bring its proposal up to a higher technical level.

3. Unsupported allegation that the contracting agency did not conduct a proper cost realism analysis of the awardee's proposal, because a proper cost realism analysis would have revealed that the awardee underestimated its material costs, is denied, where there is no evidence that the awardee's material costs were too low or that the agency's cost realism analysis was unreasonable, and the contracting agency reasonably relied upon two Defense Contract Audit Agency audits which examined, but took no exception to, the awardee's proposed costs.

DECISION

Dayton T. Brown, Inc. (Brown), protests award of a cost-plus-fixed-fee contract to Harry Kahn Associates, Inc. (Kahn), by the Department of the Navy pursuant to request for proposals (RFP) No. N62269-86-R-0288. The contract is for a variety of services (including writing, illustrating and publishing) in connection with preparing and revising technical manuals for Aviation Life Support Equipment

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(ALSE).1/ Brown contends that the Navy improperly proposes to award the contract to Kahn, in spite of the RFP's evaluation scheme which states that technical factors are more important than cost. Brown also argues that the Navy engaged in "technical leveling," and that the Navy did not evaluate Kahn's proposal for cost realism as required by the RFP.

We deny the protest.

Background

The work required under the RFP consists primarily of taking raw data supplied by the Navy and incorporating that data into a specified Navy format to produce new manuals or to revise existing manuals. The manuals are used by sailors who operate and maintain the safety equipment. From 1966 until 1984, Brown performed this work for the Navy under a series of sole-source contracts. In 1982, the first competitively procured contract was awarded to Jana, Inc. The present RFP, a total small business set-aside issued on July 2, 1986, is a level-of-effort procurement, requiring offers based on the number of hours set forth in the RFP for 7 different labor categories--a total of 39,602 labor hours each year for the base year as well as the 2 option years.

Nine proposals were submitted by the August 15, 1986, closing date. The technical evaluation team determined that only three of the offers were acceptable and worthy of inclusion in the competitive range. Of these 3 offers, Brown's was considered fully acceptable and was given a perfect technical score of 100 points; its proposed price was $2,517,514. The other two offers in the competitive range were submitted by Jana and Kahn; both were considered only marginally acceptable. Kahn received a technical score of 65.57, and its proposed price was $1,705,001. Jana received a technical score of 66.11 at its proposed price of $1,992,406.

The Navy initiated discussions with the three offerors in the competitive range in December of 1986. Technical weaknesses were pointed out to Jana and Kahn and, as a result, both firms submitted revised proposals. As there were no perceived weaknesses in Brown's technical proposal, Brown was merely notified that discussions had begun. Nonetheless, Brown used the opportunity to submit what it termed an

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1/ ALSE equipment includes all safety and survival equipment worn by or provided to air crewmembers to protect them from the environmental stresses of normal flight and in emergencies (for example, ejection seats and oxygen masks).

"enhancement" to its technical proposal based upon use of a computerized illustration system Brown had purchased after initial proposals were submitted. Brown determined that due to the increased efficiency of its computerized illustration system it would use less labor hours than the number set forth in the RFP, and, consequently, Brown revised its cost proposal downward. The Navy reevaluated the proposals based upon these technical revisions and, on April 22, 1987, determined that Jana's proposal was unacceptable, while Kahn's proposal was considered acceptable with an upgraded technical score of 72.03.

The Navy requested that Kahn and Brown submit revised cost proposals. Kahn's revised cost proposal totaled $1,519,938 for the 3-year period of the contract (base year plus 2 option years). Brown submitted alternate cost proposals. The first alternate cost proposal submitted by Brown, totaled $2,179,997 for the 3 years, and was based upon the labor hours specified by the RFP. The second alternate cost proposal submitted by Brown was based upon its use of a computer-aided illustration system and incorporated the efficiencies it expected to realize from the system; this alternate cost proposal totaled $1,852,517 for the 3-year period.

The evaluators had some concerns about the offerors' proposals. However, the Navy evaluators ultimately accepted the large reduction in Brown's cost proposal based on Brown's assertion that its computerized illustration system would result in savings of 26.4 percent in labor costs. The evaluators also were concerned that Kahn possessed limited knowledge of ALSE maintenance requirements, and the agency believed the Navy would have to provide extra efforts of its own to fill in for Kahn's weaknesses during Kahn's learning period. Thus, the evaluators tried to factor out Kahn's lesser ALSE experience and other technical weaknesses by adding to Kahn's total proposed costs the expected cost of the additional Navy man-hours required if Kahn were awarded the contract. The evaluators initially estimated this cost to be $276,214. With the addition of this effort and the attendant amount to Kahn's costs, the evaluators considered the offerors essentially equally capable, and recommended that the contract be awarded to Kahn. They reported:

> "[Kahn has] a good understanding of the tasks required and [has] demonstrated a thorough background and knowledge of the format and content requirements of our manuals. The quality of their work submitted has been excellent throughout. However, their most primary weakness is that their proposed personnel possess limited knowledge of ALSE maintenance requirements."

After the Navy received an audit report on each proposal from the Defense Contract Audit Agency (DCAA), the Navy requested best and final offers (BAFO) on October 5, 1987. Brown's BAFO--based on using the computer-aided illustration system--proposed a total cost of $1,816,101.2/ Kahn's BAFO proposed a cost of $1,418,384. The lead technical evaluator reviewed both BAFOs, and added $291,577 (up from $276,214) to Kahn's proposed costs to account for the Navy's anticipated additional costs to fill in for Kahn's lack of ALSE experience. The lead evaluator concluded that, with the differences in technical quality thus effectively factored out, and since Kahn's proposal would represent a savings of $106,140 to the Navy, the contract should be awarded to Kahn. The Navy's Contract Review Board approved the proposed award to Kahn on November 12, and Brown filed its protest in our Office on November 23.

Award Decision--Cost/Technical Trade-Off

Basically, Brown argues that its proposal was so technically superior to Kahn's proposal that, under the evaluation criteria set forth in the RFP, Brown should have been awarded the contract. Brown points out that its BAFO received a perfect technical rating of 100 points, while Kahn's BAFO was rated at only 72.03 points by the technical evaluation panel. Since technical factors were more important than cost under the RFP evaluation scheme, Brown believes that its higher cost should not have precluded it from receiving the contract award. Brown charges that the contracting officer improperly considered its proposal to be essentially technically equal to Kahn's proposal so that cost became the determinant factor.

In a negotiated procurement, even if cost is the least important evaluation criterion, an agency properly may award to a lower-priced, lower-scored offeror if it determines that the cost premium involved in awarding to a higher-rated, higher-priced offeror is not justified given the acceptable level of technical competence available at the lower cost. AMG Associates, Inc., B-220565, Dec. 16, 1985, 85-2 CPD ¶ 673. The determining element is not the difference in technical merit, *per se*, but the contracting agency's judgment concerning the significance of that

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2/ Brown revised only its computerized alternate proposal and, apparently, abandoned the noncomputerized approach it had proposed initially.

difference, TEK, J.V. Morrison-Knudsen/Harnischfeger, B-221320 et al., Apr. 15, 1986, 86-1 CPD ¶ 365; the question in such case is whether the award decision was reasonable in light of the RFP evaluation scheme. Lockheed Corp., B-199741.2, July 31, 1981, 81-2 CPD ¶ 71.

The present RFP stated that award would be made to the offeror whose conforming offer was determined to be most advantageous to the government, cost and other factors considered. The evaluation factors were divided into two categories: technical factors (with five subfactors) and cost. Regarding the cost category, the RFP stated:

> "The evaluation of the offeror's cost plus fixed fee or price proposal shall be of secondary importance to the evaluation of technical proposals in making award under this solicitation. Although cost is of less importance than the technical factors, taken as a whole, it is an important factor and should not be ignored. The degree of its importance will increase with the degree of equality of the proposals in relation to the other factor on which selection is to be based. Furthermore, costs will be evaluated on the basis of cost realism. Cost realism pertains to the offeror's ability to project costs which are realistic and reasonable and which indicate that the offeror understands the nature and scope of work to be performed."

In our opinion, the Navy's decision to award to Kahn was reasonable and consistent with the RFP's evaluation scheme.

While the technical evaluation showed Brown's best and final proposal to be superior to Kahn's on technical merit alone, Brown's cost plus fee as proposed was $397,717 more expensive than Kahn's proposed cost plus fee, and still was $106,140 more with the addition of the extra labor hours required of Navy personnel. The contracting officer determined that the 28-point difference in technical scores greatly exaggerated the actual difference between proposals and that the technical difference would be inconsequential in view of the extra effort reflected in the $291,577 added to Kahn's proposal. The contracting officer noted that the only real weakness the evaluators had found in Kahn's proposal was Kahn's lack of experience with ALSE. The contracting officer, however, recognized that "Kahn's people are talented, and they have extensive experience with technical manuals themselves (indeed probably more experience than Brown's in the work package concept)." The contracting officer agreed with the evaluators' recommendation that Kahn be awarded the contract because, given the extra Navy effort in working with Kahn, he concluded that there would be very little difference in either the quantity or the quality of the work produced whether Brown or Kahn were awarded the contract.

Our review of the evaluation reports, including the individual evaluators' scoresheets, shows that they support the award decision and that it was reasonable. We recognize that there was a 28-point differential in technical evaluation scores. In this respect, we consistently have stated that evaluation scores are merely guides for the use of the selection official, who must use his judgment to determine what the technical difference between competing proposals might mean to contract performance, and who must consider what it would cost to take advantage of it. Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 CPD ¶ 325. However, we think the contracting officer reasonably concluded that the proposals were much closer in quality, from a technical standpoint, once the evaluators calculated the approximate cost of the extra Navy effort required to factor out Brown's experience as the ALSE contractor. We have held that a selection official properly may consider a numerical scoring advantage which is found to be based primarily on the technical advantages of incumbency as not indicating a significant technical advantage that would warrant paying substantially more for it. See Master Security, Inc., B-221831, May 9, 1986, 86-1 CPD ¶ 447. In this regard, the evaluation materials are replete with comments showing that Kahn's lack of ALSE experience permeated the evaluation scoring and might well have resulted in exaggeration of Brown's scoring advantage. The record also shows that the evaluators were certain that Kahn would be able to step in and do an adequate job with little difficulty in spite of its inexperience with ALSE.

We note here that in our decision, DLI Engineering Corp. B-218335, June 28, 1985, 85-1 CPD ¶ 742, aff'd, 65 Comp. Gen. 34 (1985), 85-2 CPD ¶ 468, we sustained a protest of the acceptance of a lower-scored, lower-cost proposal submitted under an RFP with an evaluation scheme much like the one used here, and after a similar "normalization" exercise by the Navy. An essential difference between DLI and this case is that in DLI the evaluators and the contracting officer recognized that the lower-rated offer's technical inferiority would not be obviated by the added agency efforts. Instead, they concluded that while DLI's recognized 26 percent technical superiority would have been worth an adjusted cost premium of up to 40 percent (representing hundreds of thousands of dollars), it was not worth the evaluated premium of 59 percent. Here, however, and as indicated above, the evaluators and the contracting officer found the technical scoring difference exaggerated, because of Brown's incumbency; that it did not reflect any actual significant advantage; and that, in sum, Kahn was just as capable as Brown was in terms of performance quality.

Thus, we see no basis to object to the contracting officer's conclusion that Brown's technical advantage was not worth Brown's extra cost.3/

Technical Leveling

Brown argues that the contracting officer ignored the technical ratings and recommendations of the technical evaluation panel and engaged in technical leveling by considering Kahn's "merely acceptable" proposal to be essentially equal to Brown's "highly acceptable" proposal. Brown further asserts that technical leveling is evident because Kahn's original proposal was given a technical score of only 65.57 points, but after several rounds of negotiations and proposal revisions, Kahn's technical score had risen to 72.03 points.

Technical leveling involves helping an offeror to bring its proposal up to the level of other proposals through successive rounds of discussion, such as by pointing out weaknesses resulting from the offeror's lack of diligence, competence, or inventiveness in preparing the proposal. See Federal Acquisition Regulation § 15.610(d)(1) (FAC 84-5). There is nothing in the record to indicate that the contracting officer or other Navy representatives engaged in that activity. Instead, the record reflects what appear to be normal discussions between the Navy and Kahn concerning technical deficiencies in its initial proposal as required by FAR § 15.610(c). We also note that some of the discussions and revisions were occasioned by Brown's introduction of its alternative proposal using a computer-aided illustration system. Finally, we point out that Kahn's initial proposal was already considered marginally acceptable, and the deficiencies in Kahn's initial proposal

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3/ We recognize that the evaluators may have encouraged Brown to abandon its initial offer and pursue its alternate proposal. No prejudice accrued to Brown in this connection, however, because the firm maintained its perfect technical rating yet enjoyed the benefit of having its drastically reduced costs used in the selection decision. The cost plus fee proposed in the last offer Brown submitted that was not based upon a computerized illustration system was significantly more than the alternate, so that it is obvious that had Brown been encouraged to submit its BAFO using this approach the firm could not have reduced its cost plus fee sufficiently to change the award decision.

were not caused by lack of diligence or competence. There is no indication of any improper help by the Navy to Kahn to correct those deficiencies. See Southwest Regional Laboratory, B-219985, Dec. 16, 1985, 85-2 CPD ¶ 666.

Cost Realism

Brown contends that Kahn "grossly underestimated" material costs because Kahn does not understand the nature and the scope of the work to be performed. Brown states that, as it successfully performed the program as the contractor between 1966 to 1984, it is in a unique position to know what the material costs should be. Brown charges that the Navy did not evaluate Kahn's proposal for cost realism as required by the RFP and that the Navy does not understand the impact that Kahn's unrealistically low estimate of material costs had on Kahn's total estimated cost.

We have held that the analysis of cost proposals entails the exercise of informed judgment, and that we will not disturb a cost realism determination unless it is shown to be unreasonable. Hardman Joint Venture, B-224551, Feb. 13, 1987, 87-1 CPD ¶ 162. Moreover, the extent to which proposed costs are examined is a matter of agency discretion. Id.

Brown has provided no evidence that the material costs proposed by Kahn are too low, and there is nothing in the record to show that the Navy's cost realism assessment was unreasonable. The primary materials needed to perform this work are paper, vellum, photographic supplies, and related minor items such as ink, staples, binding, etc. The Navy reports that it is common practice in this field of business for offerors to include the costs for these materials as part of overhead, and the Navy points out that both Brown and Kahn included material costs in their proposals as part of their overhead rates rather than listing the costs separately. Furthermore, the Navy received input from the DCAA, which audited Kahn's cost proposal on two separate occasions and which found no flaws in and took no exception to Kahn's proposed overhead rate. We think it was reasonable for the Navy to rely on the DCAA audits in judging the cost realism of Kahn's proposal. Informatics General Corp., B-224182, Feb. 2, 1987, 87-1 CPD ¶ 105.

The protest is denied.

for Seymour Efros

James F. Hinchman
General Counsel