



Comptroller General
of the United States

Washington, D.C. 20548

C. Sklarew

Decision

Matter of: Booz-Allen & Hamilton Inc.

File: B-246919

Date: April 14, 1992

James A. Flynn for the protester.

Buel White, Esq., and Brian Mizoguchi, Esq., Verner, Liipfert, Bernhard, McPherson and Hand, for Coopers & Lybrand, an interested party.

D. Susan Spiegelman-Boyd, Esq., Naval Warfare Center, for the agency.

Christina Sklarew, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency is not required to make an award to an offeror that submitted the low cost technically acceptable offer where the solicitation provided that cost was the least important evaluation factor and expressly established that the award would be based on the greatest value to the government, with technical merit being significantly more important than cost.
2. Protest that agency failed to conduct meaningful discussions because it refused to identify the specific resumes determined to be unacceptable is denied where solicitation contained specific descriptions of the qualifications that would be required for key and non-key personnel, and agency reasonably was evaluating offerors' understanding of personnel requirements by their ability to decide how they would satisfy the personnel requirements without further guidance.
3. Protest alleging organizational conflict of interest on the part of awardee is dismissed as untimely filed where protester was informed of agency's decision to allow the challenged firm to compete and protester failed to protest this decision within 10 days.

DECISION

Booz-Allen & Hamilton Inc. protests the Navy's award of a contract to Coopers & Lybrand under request for proposals (RFP) No. N00164-90-R-0636, which was issued by the Crane Division, Naval Surface Warfare Center (Navy) for certain

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professional, consultant, technical and management services to support the Navy's Business Improvement Program. Booz-Allen contends that the agency's award decision was inconsistent with the terms of the RFP, that the agency failed to hold meaningful discussions, and that the awardee should have been disqualified from the competition because of an alleged organizational conflict of interest. We deny the protest in part and dismiss it in part.

The solicitation contemplated the award of a cost-plus-award-fee contract for a base term of 3 years, with two 1-year options for advisory and assistant support services. The RFP established the total number of hours of direct labor to be proposed for each year of the contract and disclosed the government estimate for the required labor mix. The RFP listed "Technical/Management" and "Cost" as the two evaluation factors that would be considered in evaluating proposals, and provided that the technical factor was significantly more important than the cost factor. The technical factor included four subfactors, listed in descending order of importance as personnel, sample delivery orders, corporate management plan/capability, and corporate experience. The cost factor included the subfactors of cost realism and cost reasonableness. In the initial RFP, offerors were advised that award would be made to the responsible offeror whose proposal conformed to the requirements of the solicitation, had a high degree of realism and credibility, and whose performance could be expected to best meet the government's objectives at a realistic and reasonable cost. The agency later clarified the "evaluation factors for award" and "basis for award" sections of the RFP by amendment, adding that "the award will be based on overall assessment of the 'greatest value' to the Government," and stating that the award might be made to other than the low offeror.

Three firms submitted initial proposals by the closing date of February 6. The Source Selection Evaluation Board (SSEB) evaluated the proposals and submitted its report to the Source Selection Advisory Committee (SSAC). The SSAC recommended that the proposal of one firm be eliminated from the competitive range, leaving only Booz-Allen (whose proposal was rated marginal) and Coopers & Lybrand (whose proposal was rated satisfactory with certain weaknesses and deficiencies) in the competition. The contracting officer agreed. The agency conducted oral discussions with the two firms and provided them with a list of the weaknesses and deficiencies in their proposals.

Both firms submitted best and final offers (BAFOs) by the deadline of August 28. The SSEB evaluated the BAFOs and revised the firms' scores based on the additional information provided, and submitted its report to the SSAC. The

SSAC prepared a report summarizing the contents of the SSEB report and applying the weights developed by the SSAC for the various evaluation factors. Booz-Allen's final total technical score was 62 percent of the available points, and Coopers & Lybrand's was 80 percent. Booz-Allen's proposed price of \$13,518,575 became \$16,424,819 when evaluated and adjusted for cost realism, while Coopers & Lybrand's adjusted price was \$19,087,718. The SSAC recommended that the contract be awarded to Coopers & Lybrand on the basis that it offered the greatest value to the government, technical and cost factors considered.

The Source Selection Authority selected Coopers & Lybrand for award, and this protest followed.

Booz-Allen protests that it was unreasonable for the Navy to determine that Coopers & Lybrand's proposal offered the greatest value to the government, contending that the awardee's price was excessive and that because its own offer met the agency's technical requirements at a significantly lower cost, its offer represented the greatest overall value. Under the protester's analysis, no consideration or credit was to be given for capabilities exceeding the government's minimum requirements, and thus award to Coopers & Lybrand on the basis of technical superiority was inconsistent with the evaluation factors established in the RFP.

We disagree. In a negotiated procurement, there is no requirement that award be made on the basis of lowest cost unless the RFP so specifies. Spectra Technology, Inc.; Westinghouse Elec. Corp., B-232565; B-232565.2, Jan. 10, 1989, 89-1 CPD ¶ 23. Here, the solicitation did not state that the award would be based on the lowest cost technically acceptable offer; rather, it established quite clearly that technical merit would be given greater weight than cost. This basis for award is consistent with Federal Acquisition Regulation (FAR) § 15.605(c) (FAC 90-7), which provides that:

"while the lowest price or lowest total cost to the Government is properly the deciding factor in many source selections, in certain acquisitions the Government may select the source whose proposal offers the greatest value to the Government in terms of performance and other factors. This may be the case, for example, in the acquisition of research and development or professional services, or when cost-reimbursement contracting is anticipated."

Awards to offerors with higher technical scores and higher costs are proper so long as the result is consistent with the established evaluation criteria, and the procuring agency has reasonably determined that the technical differences are sufficiently significant to outweigh the cost differences. Bendix Field Eng'g Corp., B-241156, Jan. 16, 1991, 91-1 CPD ¶ 44.

Under the terms of this RFP, since award could properly be made on the basis of technical superiority, we find that the Navy adhered to the stated RFP evaluation scheme; in addition, our review of the record supports the view that the agency reasonably determined that Coopers & Lybrand's proposal was sufficiently superior technically to justify its higher cost.¹ For example, for the most important technical subfactor, personnel, Booz-Allen's proposal only achieved a final rating of marginal. Only 64 percent of the personnel Booz-Allen proposed were considered satisfactory or better, with only 20 percent rated highly satisfactory and none rated as excellent. Two of the resumes failed to meet the RFP requirements, and the agency concluded that there was a moderate to high risk the firm would not have sufficiently qualified personnel available over the life of the contract. Under the sample delivery orders subfactor, Booz-Allen's rating was satisfactory, although portions were considered marginal. The evaluators believed Booz-Allen's proposed approach relied too heavily on government personnel to complete some of the sample delivery orders, which generated an indirect government cost and raised questions about the firm's ability to provide an independent assessment as required. The overall technical risk for Booz-Allen's proposal was assessed as moderate.

In contrast, Coopers & Lybrand's proposal was rated satisfactory in the personnel subfactor and highly satisfactory in each of the other technical subfactors; its overall technical risk was rated as very low. Overall, Coopers & Lybrand's proposal received higher scores for each of the technical subfactors except corporate experience (the least important of the subfactors under the RFP's evaluation scheme), with more strengths, fewer weaknesses, and a lower risk factor. Specifically, the agency found the awardee's proposal contained a high percentage of personnel that satisfactorily met requirements and that its sample delivery approach demonstrated a sound understanding of the

¹We point out, in this regard, that Booz Allen has not specifically challenged the technical evaluation of the proposals. Nonetheless, we have reviewed the technical evaluation in the context of determining the reasonableness of the agency's finding that Coopers & Lybrand's proposal represented the greater value to the government.

activities with appropriate personnel assigned. Under management, the awardee satisfactorily had identified and addressed start-up problems and persuasively described its capabilities to retain qualified personnel. After reviewing the record, we conclude that the agency's determination that Coopers & Lybrand's proposal offered the greatest value to the government was reasonable, and deny this portion of the protest.

Regarding Booz-Allen's allegation that the award was made at an inflated cost, we point out that proposed costs are not considered as good a basis for judging the likely contract cost as are evaluated costs under a cost-reimbursement procurement. See Booz, Allen & Hamilton, B-213665, Sept. 24, 1984, 84-2 CPD ¶ 329. While the difference between the proposed costs was 36 percent, the evaluated cost difference was 16 percent. We have no basis to question the reasonableness of the agency's cost-realism analysis that resulted in an upward adjustment of Booz-Allen's proposed costs and a determination that Coopers & Lybrand's cost as adjusted was reasonable and realistic. There is no evidence that the agency's award to Coopers & Lybrand was at an inflated cost.

Booz-Allen also contends that the agency failed to hold meaningful discussions because it refused to give the protester more specific information regarding the deficiencies or weaknesses that were found under the personnel subfactor during the evaluation of Booz-Allen's initial proposal. The agency's record of discussions shows that the evaluators believed that the firm had not proposed top quality personnel in its proposal and could not assemble the number of quality personnel called for in the personnel qualification requirements, and that the firm in any event had not adequately described how its proposed personnel met the minimum qualification requirements as set forth in the RFP. During discussions, Booz-Allen was encouraged to propose top quality personnel and was told that 19 of the 64 resumes it had submitted with its proposal failed to meet the requirements of the RFP. By letter dated August 7, 1991, the protester asked the contracting officer to identify the resumes considered unacceptable as well as the resumes which the Navy considered to contain deficiencies. Booz-Allen maintained that this information would help in preparing its response to the Navy's concerns and would not afford it a competitive advantage. Booz-Allen argued that it would otherwise have no alternative other than to revise or replace all resumes. By letter dated August 9, the contracting officer refused to identify the specific resumes, contending that to do so would provide too much guidance. The contracting officer advised Booz-Allen to review the specific requirements in the RFP against the resumes it had submitted in order to determine for itself

where revisions were needed. The protester complains that the agency's refusal to provide more specific information was unreasonable, and points out that the firm then had to revise all 64 resumes, some of which were 12 pages long.


The requirement for discussions with offerors is satisfied by advising them of weaknesses, excesses, or deficiencies in their proposals, unless doing so would result either in disclosure of one offeror's technical approach to another or in technical leveling. FAR §§ 15.610(c)(2), (5); Miller Bldg. Corp., B-245488, Jan. 3, 1992, 92-1 CPD ¶ 21; The Scientex Corp., B-238689, June 29, 1990, 90-1 CPD ¶ 597. Agencies are not, however, obligated to afford offerors all-encompassing discussions, or to point out every area where an acceptable proposal may have received less than the maximum technical score. Id.

Here, the Navy identified the deficient or weak areas in Booz-Allen's proposal during discussions. The agency did not disclose more specific information because one purpose of the RFP was to allow the selection of a contractor that could provide high quality personnel with minimal guidance from the government, and thus to specifically identify the deficient resumes, or tell the protester how to correct its proposal, would defeat this aspect of the competition. In other words, the evaluators considered the offeror's choice of personnel to be a direct reflection of the offeror's understanding of the requirements of the RFP, and to provide more specific guidance would hinder the evaluation of the firm's understanding in this regard. In our view, the agency's position was reasonable. The RFP contained specific descriptions of the qualifications that would be required for key and non-key personnel, and, where the RFP detailed the specific qualifications of required personnel, it was reasonable for the agency to evaluate offerors by their ability to decide how they would satisfy the requirements without further guidance.

Booz-Allen also challenges the award to Coopers & Lybrand on the basis of an alleged organizational conflict of interest. However, the record shows that this issue is also untimely raised. Booz-Allen had protested Coopers & Lybrand's participation in the competition and had requested that the firm be excluded during the early stages of the procurement. The contracting officer responded to Booz-Allen's concerns in writing on February 6, 1991, the initial closing date, informing the protester that the firm would be permitted to compete and the reasons for the agency's determination. A protester is charged with knowledge of the basis of protest at the point where agency personnel convey to the protester the agency's intent to follow a course of action adverse to

the protester's interests. Kimmins Thermal Corp.,
B-238646.3, Sept. 12, 1990, 90-2 CPD ¶ 198. Since
Booz-Allen was informed of the agency's refusal to exclude
Coopers & Lybrand from the competition on February 6, 1991,
its protest of this issue, filed in our Office on December
6, is untimely because it was filed more than 10 days after
the basis for protest was known or should have been known.
4 C.F.R. § 21.2(a)(2).

The protest is denied in part and dismissed in part.


for James F. Hinchman
General Counsel