



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Capstone Corporation

File: B-247902

Date: July 9, 1992

David R. Smith, Esq., Reed, Smith, Shaw & McClay, for the protester.

Kenneth S. Kramer, Esq., Fried, Frank, Harris, Shriver & Jacobson, for Technology Management Corporation, an interested party.

David H. Turner, Esq., Department of the Navy, for the agency.

John M. Melody, Esq., and David Ashen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that agency misled protester during discussions into not trying to improve its proposal is without merit where (1) record does not support protester's assertion that it was told by the agency's contract negotiator not to change its technical proposal; (2) agency's letter requesting protester's best and final offer encouraged protester to review its proposal and make any improvements it deemed appropriate; and (3) protester's belief that no improvements were required was based in part on its unwarranted assumption that its proposal's "acceptable" rating under comparative evaluation meant that its proposal was of such high quality that no improvements were necessary.

2. There is nothing improper in an agency's using adjectives such as "acceptable" and "highly acceptable" to express the relative quality of proposals as determined through the evaluation process; such adjectives have no impact on the evaluation itself, but are merely one means by which an agency may choose to express its evaluation findings.

DECISION

Capstone Corporation protests the Department of the Navy's award of a contract to ManTech Services Corporation, under request for proposals (RFP) No. N00140-91-R-1464, for manpower analysis and automated data processing support services. Capstone argues that the evaluation and cost

realism analysis were flawed, and that it was misled during discussions.

We deny the protest.

The RFP contemplated award of a cost-plus-fixed-fee, level-of-effort type contract for an estimated 378,000 hours of technical services over a 1-year base period and two 1-year option periods. Award was to be made to the responsible offeror whose proposal, conforming to the RFP, was determined to be most advantageous to the government, cost and other factors considered. The evaluation of technical proposals was to be based on four factors which were listed, in descending order of importance, as follows: personnel resources, technical approach, corporate experience, and management plan. Cost proposals were to be evaluated for cost realism, and offerors were instructed to include specific cost information and supporting data in their proposals for this purpose. The RFP advised offerors that the technical factors were more important than cost, and that award would not necessarily be made to the low cost offeror.

Three proposals were received, including Capstone's and ManTech's. Following the initial technical evaluation, Capstone and ManTech were rated unacceptable, but susceptible of being made acceptable through discussions, due to their submission of unacceptable resumes under the personnel resources factor; 3 of Capstone's 13 required resumes were rated unacceptable, as were 2 of Mantech's. Capstone was evaluated as acceptable under the remaining three factors; ManTech was evaluated as highly acceptable under technical approach and corporate experience, and acceptable under management plan. After technical discussions were held with both offerors, both submitted acceptable or highly acceptable replacement resumes (Capstone was given a second opportunity to replace one of its resumes). Based on these resumes, Capstone's personnel resources and overall ratings were raised to acceptable, while ManTech's personnel resources and overall ratings were increased to highly acceptable.

The initial cost evaluation was based on cost information already on hand for ManTech. The Navy had no current information on Capstone, however, and therefore requested an audit from the Defense Contract Audit Agency (DCAA). Based on the information furnished by DCAA, Capstone's proposed cost of \$7,238,143 was increased to a realistic evaluated cost of \$9,046,674, and ManTech's proposed cost of \$8,660,922 was increased to an evaluated cost of \$8,716,880. During cost negotiations, both firms were advised of the areas where their costs were considered unrealistic.

Following negotiations, the firms were sent letters requesting their best and final offers (BAFO). Although Capstone was asked to address some technical concerns, the BAFO letters principally focused on cost. The letters discussed the cost elements of the proposals that were deemed unrealistic; advised offerors to provide additional supporting data if the offeror disagreed with the rates used in the realism analysis; reminded offerors that the cost evaluation would include consideration of updated cost figures from DCAA or other sources; and invited the offerors to upgrade their cost and technical proposals in their BAFOs.

Both offerors submitted timely BAFOs with no technical changes; the final technical ratings thus remained unchanged, that is, acceptable for Capstone and highly acceptable for ManTech. Although Capstone in its BAFO proposed a cost of \$8,596,854, the likely cost of award to Capstone was determined to be \$8,927,908. While ManTech proposed a cost of \$8,278,618, the likely cost of its proposal was determined to be \$8,621,610. After adjusting the costs for a 10 percent small disadvantaged business (SDB) preference provided for in the RFP (Capstone is an SDB), Capstone's final evaluated cost was determined to be \$8,927,908, and ManTech's was evaluated as \$9,483,771. The contracting officer then determined that Capstone's 6 percent lower evaluated cost was insufficient to offset ManTech's technical advantage, given the greater weight accorded technical considerations in the RFP and ManTech's higher ratings under the three most important evaluation factors. The contracting officer further concluded that ManTech's extensive experience would benefit the agency through the avoidance of costs and inefficiencies, while its superior technical approach would result in the timely and accurate production of the required products at the least cost. Upon learning of the subsequent award to ManTech, Capstone filed this protest.

DISCUSSIONS

Capstone argues that discussions were inadequate because the Navy misled it into believing that, since its technical proposal had been rated acceptable, the award decision would be based on cost alone. In this regard, Capstone states that it interpreted the term "acceptable," as applied to its proposal, as meaning the agency had determined that its technical proposal "met or exceeded all criteria and expectations." This interpretation was supported, according to Capstone, by purported statements by the Navy's contract negotiator during negotiations to the effect that "it would be better if Capstone did not make any changes to the technical portion as that would require personnel, and the technical evaluation of Capstone's proposal was already overly subjective." Capstone claims it thus concluded that

there was no reason to try to improve its technical proposal in its BAFO; it states that, if it had any "inkling" that there was reason to improve the proposal, it would have done so.

Contracting agencies are required to hold meaningful written or oral discussions with offerors in the competitive range; this obligation would not be satisfied if the agency misled an offeror into believing that its proposal was of such high quality that changes in its BAFO would serve no purpose. See generally MSI, a Div. of the Bionetics Corp., B-243974 et al., Sept. 17, 1991, 91-2 CPD ¶ 254. However, we find that the record does not establish that discussions were misleading. First, the Navy's contract negotiator specifically denies in the agency report that he ever told Capstone that it should not make any changes in its technical proposal at the BAFO stage. He states that he told Capstone only that, if it did choose to submit new or revised technical information, it must also furnish with its BAFO sufficient documentation for the evaluation panel to evaluate it; he indicated that the failure to furnish sufficient documentation could result in the BAFO being rated unacceptable and Capstone being found ineligible for the award. While this is inconsistent with Capstone's account, we note that Capstone did not refute the agency's version in its comments on the report or in additional comments that were invited in response to a supplemental report submitted by the Navy.

In any case, the BAFO request letter sent to Capstone was unequivocal and was consistent with the negotiator's account of his conversation with Capstone. As indicated above, that letter specifically reminded the firm that technical factors were more important than cost, and stated further that the firm was "encouraged to review [its] entire technical proposal and provide any additional information [that] will enhance the technical merits of [its] proposal while not detracting in other areas." The letter also stated that "[y]our firm is being afforded the opportunity to update all aspects of your proposal." This letter contained no statement suggesting that Capstone's proposal was of such high quality that there was no need to adjust it. Thus, notwithstanding any impressions to the contrary Capstone may have gathered from its conversation with the negotiator, the BAFO letter was more than sufficient to put Capstone on notice of its opportunity to change its technical proposal in its BAFO as it saw fit.

Further, Capstone's interpretation of the term acceptable was unwarranted. The RFP clearly indicated--by reference, for example, to the most advantageous proposal to the government and the listed evaluation factors--that the contractor selection process would be based on a comparative evaluation of the offers, with technical factors being the

most important. It is implicit in such a comparative evaluation that satisfying, or even exceeding, RFP requirements is not a basis for assuming that no further proposal improvements need be made, or that the award decision will come down to a cost comparison. This is because the ultimate, determinative consideration is not whether a proposal simply satisfies the RFP requirements, but which proposal best satisfies those requirements. This being the case, we fail to see how the agency's assigning Capstone's technical proposal an adjectival rating of acceptable--which clearly indicated only that the proposal met, not exceeded, all of the RFP requirements and in no way revealed the firm's relative standing--reasonably could be interpreted as a signal that there was no reason for Capstone to improve its proposal or that the award decision would be based solely on cost. We conclude that the Navy did not mislead Capstone during discussions.

ADJECTIVAL RATINGS

Capstone complains that the RFP failed to advise offerors of the utilization of an adjectival rating method and also failed to state that it would be a determining factor in making the award. Capstone asserts, moreover, that it was improper to use an adjectival rating system; it concludes that the Navy used adjectival ratings "to attempt to justify an award to ManTech."

Capstone's argument is based on the premise that the agency's choice of an adjectival rating system in lieu of, for example, a numerical one could have had some improper impact on the outcome of the evaluation. This premise is incorrect. The adjectives used to describe the relative merit of the proposals were not evaluation factors and had no bearing on the evaluation itself; the terms acceptable and highly acceptable were no more than descriptions of the results of the evaluation carried out under the four factors specified in the RFP. Using adjectives to describe evaluation results is not prohibited under applicable laws and regulations. See Ferguson-Williams, Inc., B-231827, Oct. 12, 1988, 88-2 CPD ¶ 344. Further, Capstone does not explain, nor is it apparent to us, how the use of adjectival ratings benefited ManTech in the evaluation. Capstone does not specifically challenge the evaluation of either its own or ManTech's proposal, and absent such a challenge, we have no basis to question the Navy's conclusions as to the relative merits of the proposals.

COST REALISM

Capstone asserts in its comments that "it appears that conflicting directions may have been given to Capstone by the DCAA and the Navy" as to the overhead rate that would be used in evaluating its BAFO cost. Capstone states in this regard that while the request for BAFOs indicated that a 61.25 percent overhead rate would be used, it contacted DCAA before submitting its BAFO, agreed with that agency that a 49.2 percent overhead rate should be used, and then included that rate in its BAFO. Capstone believes the lower rate should have been used, which would have increased its cost advantage.

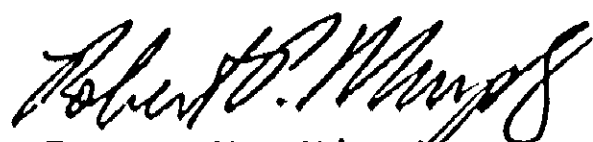
The fact that DCAA and the Navy may have advised Capstone differently as to the rate that would be applied did not result in prejudice to the firm, since Capstone used the lower overhead rate in its BAFO. Further, while Capstone fails to explain why its proposed 49.2 percent rate should have been used in the cost evaluation, the record clearly shows why the higher rate was used. DCAA found that Capstone's BAFO did not include a sufficient cost breakdown showing how Capstone's indirect rates were developed; as a result, DCAA could not evaluate the reasonableness of the 49.2 percent rate in Capstone's BAFO. Under an audit of Capstone being conducted at that time in connection with another procurement, DCAA determined that Capstone was experiencing a 61.25 percent overhead rate. The Navy considered this determination a valid indication of the firm's current overhead, and adopted for use in the BAFO cost evaluation. In the absence of any showing, that a different rate would apply under the proposed contract here, we see nothing improper in the Navy's using Capstone's current overhead rate.

BIAS

Capstone suggests that there may have been bias in the evaluation in favor of ManTech, the incumbent. Capstone however has furnished no evidence that the evaluation results did not accurately reflect the merits of the proposals. In its comments on the agency report, Capstone acknowledges that it "did not, in the initial protest, nor does it state here, that it has actual evidence of any bias by the contracting officer." We will not find bias in the

evaluation of proposals on the basis of inference or supposition. TLC Sys., B-243220, July 9, 1991, 91-2 CPD ¶ 37. Based on the record, Capstone's and ManTech's proposals were properly evaluated and the award was made to ManTech on the basis of the evaluation results.

The protest is denied.


for James F. Hinchman
General Counsel