



Comptroller General
of the United States

Washington, D.C. 20548

415169

Decision

Matter of: Technical Resources, Inc.

File: B-253506

Date: September 16, 1993

John A. Taylor, Esq., Carr, Goodson & Lee, P.C., for the protester.

Thomas A. Darner, Esq., Environmental Protection Agency, for the agency.

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DIGEST

1. Contention that technical evaluation was unreasonable because agency considered experience of awardee's management personnel under the corporate experience evaluation factor is denied because the experience of supervisory personnel may properly be considered as part of a corporate experience review when the offeror is a new business and there is no other way to assess prior corporate experience.

2. Protester's claim that agency cost realism analysis was flawed because awardee's proposed indirect rates in its best and final offer (BAFO) were lower than the rates recommended by government auditors after review of the awardee's initial proposal is denied where the awardee raised its rates as suggested but made decreases in certain discretionary costs which slightly decreased those rates from the levels recommended, and where the record shows that the agency expressly considered whether the BAFO rates should be accepted, concluded that they were reasonable, and imposed a cap on the rates to protect the government from cost growth.

3. Contention that agency abandoned evaluation scheme providing that technical factors were more important than cost by selecting a technically lower rated, lower cost offeror, instead of a higher cost, higher technically rated offeror, is denied where the contracting officer reasonably decided that the small technical difference between the two proposals was not worth the protester's higher proposed costs.

4. Error in Source Selection Determination document reversing the standing of the protester and awardee regarding the proposed direct labor costs of the two offerors does not

invalidate the agency's selection decision where: (1) the difference between the direct labor costs of the two offerors is minor; (2) the difference in direct labor costs was not one of the bases repeated in the conclusion supporting the selection decision; and (3) the error at issue is limited to the source selection document while other documents in the record show that the agency did, in fact, properly evaluate the relative difference between the two firms' proposed direct labor costs.

DECISION

Technical Resources, Inc. (TRI) protests the award of a contract to Avanti Corporation under request for proposals (RFP) No. C200025T1, issued by the Environmental Protection Agency (EPA) for on-site technical support services at the Gulf Breeze Environmental Research Laboratory in Gulf Breeze, Florida. TRI, the incumbent contractor, argues that EPA's selection of Avanti was improper because the agency miscalculated Avanti's technical and cost proposals, conducted an unreasonable cost/technical tradeoff, and wrongly concluded that Avanti was a responsible offeror.

We deny the protest.

BACKGROUND

The solicitation, issued December 21, 1992, as a total small business set-aside, sought offers for a cost-plus-award fee level-of-effort contract for technical laboratory support services for the Gulf Breeze Environmental Research Laboratory. This laboratory studies the ecosystems of coastal wetlands, estuaries, and other near-coastal areas to increase scientific understanding of such areas and to help solve their unique environmental problems. The solicitation anticipated award of a 17-month contract followed by four 1-year option periods. The solicitation also included options to increase the anticipated level-of-effort in some areas.

The RFP advised that award would be made to the offeror "whose offer conforms to the solicitation and is most advantageous to the Government, cost or price and other factors considered." RFP § M.3. The RFP also advised that technical quality would be considered more important than proposed costs, but cautioned that evaluated costs would increase in importance as proposals became more equal in technical merit. Id.

Attachment E to the RFP set forth the technical evaluation criteria and total available point scores. These criteria and the associated point values are shown below:

Corporate Management Experience	150 points
Quality of Program Management Plan	450 points
Demonstrated Qualifications of Key Personnel	300 points
Quality Assurance Program Plan	50 points
Health and Safety Program Plan	<u>+ 50 points</u>
TOTAL	1,000 Points

EPA received four offers in response to the RFP, including the offers from TRI and Avanti. Upon review of the initial proposals, the Source Selection Official (SSO) agreed with the evaluation panel's recommendation that only the TRI and Avanti proposals should be included in the competitive range, based on the relatively higher technical scores and lower proposed costs of both firms compared to the scores and costs of the other two offerors.

After holding discussions with both TRI and Avanti, EPA received best and final offers (BAFO) on April 20. Upon review of the BAFO proposals, the total technical scores and evaluated costs were as follows:

	<u>Technical Rating</u>	<u>Proposed Cost plus Fee</u>
TRI	872.5	\$11,526,652
Avanti	820.0	10,660,990

As shown above, while TRI's technical score was 52.5 points higher than Avanti's score (out of 1000 points available), Avanti's proposed costs were \$865,662 lower than TRI's proposed costs. Thus, the SSO concurred with the contracting officer's conclusion that TRI's slightly higher-rated proposal was not worth the additional cost. On May 13, EPA awarded the contract to Avanti, and this protest followed.

DISCUSSION

TRI argues that award to Avanti was improper on several fronts. First, TRI challenges EPA's evaluation of technical proposals on the grounds that EPA improperly considered the experience of Avanti's management in evaluating its corporate experience. Second, TRI argues that the cost evaluation was flawed because EPA failed to reevaluate the overhead rates included in Avanti's BAFO, thus failing to notice that Avanti used lower overhead rates than recommended by

Defense Contract Audit Agency (DCAA) after evaluating Avanti's initial proposal. Third, TRI challenges EPA's cost/technical tradeoff decision generally, and specifically argues that EPA's selection decision was improper because the Source Selection Determination document reversed the conclusions of the evaluators regarding the direct labor rates proposed by Avanti and TRI. Finally, TRI argues that Avanti lacks sufficient financial resources to successfully perform this contract.

Evaluation of Corporate Experience

In its initial protest, TRI argued that since Avanti had been in business for only two years it should not have been able to receive an acceptable score under the Corporate Management Experience evaluation factor (worth 150 of 1,000 available points). In addition, TRI argued that its own extensive experience should have resulted in a high score in this area.

In response, EPA explained that TRI's prior experience did merit a high rating, but that Avanti received a strong score as well. EPA stated that Avanti was able to receive its favorable score in part because of the substantial experience of its management personnel, as set forth in detail in Avanti's proposal. According to TRI, it was unreasonable for the agency to consider Avanti's management personnel under this factor because: (1) there was a separate evaluation factor for considering an offeror's personnel--i.e., Demonstrated Qualifications of Key Personnel (worth 300 points of 1,000 points available); and, (2) Avanti's management personnel gained their applicable experience while working for TRI, not Avanti.

In considering protests against an agency's evaluation of proposals, we will examine the record to determine whether the agency's judgment was reasonable and consistent with stated evaluation criteria and applicable statutes and regulations ESCO, Inc., 66 Comp. Gen. 404 (1987), 87-1 CPD ¶ 450. A protester's disagreement with the agency's judgment, without more, does not show the agency's judgment was unreasonable. Id.

Here, our review of the record indicates that the evaluators were well aware of the significant difference in the corporate experience levels of the two offerors, but also recognized that nearly all of the management team proposed by Avanti had significant relevant experience performing these services for TRI. As a result, even though the evaluators candidly expressed doubts about how to credit Avanti with the experience of its management team--including whether

Avanti should be able to list previous TRI contracts as relevant experience--they ultimately concluded that the management team's prior experience should be considered given that Avanti is a newly formed company. Our Office has previously considered this issue and has decided that even though it is generally improper to consider personnel experience under a corporate experience factor where there are separate evaluation factors for each, see Washington State Comm'n for Vocational Educ.--Recon., 64 Comp. Gen 681 (1985), 85-2 CPD ¶ 59, an agency may properly consider the experience of supervisory personnel in evaluating the experience of a new business. General Offshore Corp., B-246824, Apr. 1, 1992, 92-1 CPD ¶ 335; see also Aumann, Inc., B-251585.2; B-251585.3, May 28, 1993, 93-1 CPD ¶ 423. Thus, we conclude that EPA properly considered the extensive experience of Avanti's management team in awarding Avanti a relatively high score under the corporate experience evaluation factor.

With respect to TRI's claim that Avanti should not be credited with experience its proposed management team gained while working for TRI, we find irrelevant the fact that Avanti's managers gained their experience working for TRI, rather than some other firm. Although we did not expressly consider this issue in our prior decision in General Offshore Corp., supra, the facts there were identical--the awardee's president gained related experience while working as General Offshore Corporation's project manager, and we concluded that the agency's consideration of that experience under a corporate experience subfactor was reasonable. Therefore, for the reasons stated above, we deny TRI's argument that Avanti should not be credited with experience its personnel gained while working for TRI.¹

Reevaluation of BAFO Overhead Rates

TRI argues that EPA failed to perform a proper cost realism analysis because the agency allowed Avanti to include in its BAFO slightly lower overhead rates than recommended by the DCAA after its review of Avanti's initial proposal. According to TRI, Avanti should be required to use the rates recommended by DCAA. (Since the DCAA-recommended rates were

¹Likewise, we are unpersuaded by TRI's claim that Avanti's management group should not be considered a management group unless its members served in a financial management capacity while employed at TRI. Indeed, we fail to understand how TRI can claim that these individuals lack management experience given that TRI admits that two of Avanti's corporate managers served as vice presidents while employed by TRI.

higher than the rates in Avanti's BAFO, the effect of this change would be to increase Avanti's proposed costs, and make it less likely that EPA would continue to conclude that TRI's higher-rated proposal was not worth its additional cost.)

During the evaluation of initial proposals, the record shows that DCAA recommended significant upward adjustments to the indirect rates used by Avanti in its initial proposal. The record also shows, however, that EPA discussed the recommendations with Avanti and agreed that Avanti would be allowed to decrease certain discretionary items--i.e., employee tuition assistance benefits and the amounts budgeted for pensions and professional development--included in Avanti's indirect costs. In addition, the record shows that EPA decided to impose ceilings on Avanti's proposed indirect rates. According to TRI, our Office should conclude that these actions were unreasonable.

When agencies evaluate proposals for the award of a cost-reimbursement contract, an offeror's proposed estimated costs are not dispositive, because regardless of the costs proposed, the government is bound to pay the contractor its actual and allowable costs. Federal Acquisition Regulation (FAR) § 15.605(d). Consequently, a cost realism analysis must be performed by the agency to determine the extent to which an offeror's proposed costs represent what the contract should cost, assuming reasonable economy and efficiency. CACI, Inc.-Fed., 64 Comp. Gen. 71 (1984), 84-2 CPD ¶ 542. Because the contracting agency is in the best position to make this cost realism determination, our review of an agency's exercise of judgment in this area is limited to determining whether the agency's cost evaluation was reasonably based and not arbitrary. General Research Corp., 70 Comp. Gen. 279 (1991), 91-1 CPD ¶ 183; aff'd, American Mgmt. Sys., Inc.; Department of the Army--Recon., 70 Comp. Gen. 510 (1991), 91-1 CPD ¶ 492; Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 CPD ¶ 325.

Our review of the record in this case reveals nothing unreasonable about EPA's actions with respect to its analysis of Avanti's proposed indirect costs. First, despite TRI's initial contention, the record clearly shows that EPA did not overlook the changes to Avanti's overhead rates in its BAFO. Rather, the agency expressly considered which discretionary costs had been reduced, and considered the impact of those reductions on the cost proposal and on Avanti's ability to perform the contract. In addition, as a measure of caution, even after concluding that the proposed costs were reasonable, EPA requested that Avanti accept caps on its indirect rates in order to protect the government from

unexpected cost growth over the life of the contract. In our view, such caps are a powerful tool for agencies to address concerns about potential cost growth in a cost-reimbursement environment. See generally, Vitro Corp., B-247734.3, Sept. 24, 1992, 92-2 CPD ¶ 202. Given EPA's express consideration of the minor variation between Avanti's indirect rate as recommended by DCAA and as proposed in Avanti's BAFO, together with the decision to cap Avanti's indirect rates to stem future cost growth, we find the agency's evaluation of Avanti's indirect costs was well-reasoned and appropriate.

Cost/Technical Tradeoff Decision

TRI raises two challenges to the agency's decision to select Avanti over TRI: (1) that the cost/technical tradeoff decision in general was unreasonable; and, (2) that the cost/technical tradeoff decision was improperly based on an erroneous understanding of TRI's and Avanti's proposed direct labor costs. In its general challenge, TRI argues that it was unreasonable to select Avanti's lower-priced proposal over TRI's higher-rated proposal because the RFP advised offerors that technical merit was more important than price. According to TRI, the agency's decision to reject an offeror with proposed costs only 8.1 percent higher than the awardee's proposed costs, while its technical score was 6.4 percent higher than the awardee's technical score, was not in accordance with the stated evaluation criteria. In its specific challenge, TRI argues that the selection of Avanti was improper because the Source Selection Determination document mistakenly indicates that Avanti's direct labor salaries are higher than those proposed by TRI.² According to TRI, since the document contains this mistake, the decision it purports to justify is unreasonable.

In a negotiated procurement, even if cost is the least important evaluation criterion, an agency may properly award to a lower-cost, lower-rated offeror if it determines that

²This error, contained in the section of the document entitled "Cost Realism/Price Reasonableness," reverses Avanti and TRI in its discussion of direct labor rates, and states that Avanti, rather than TRI, has the highest direct labor rates. The result of this error is that the Source Selection document--on page 5 of 8--contains a conclusion that is not supported by the record--i.e., the Source Selection Official's conclusion that since Avanti is paying higher wages than TRI "Avanti[']s proposal] offers more realistic assurance of [employee] retention than does TRI."

the cost premium involved in awarding to a higher-rated, higher-cost offeror is not justified given the acceptable level of technical competence available at the lower cost. Carrier Joint Venture, B-233702, Mar. 13, 1989, 89-1 CPD ¶ 268, aff'd, B-233702.2, June 23, 1989, 89-1 CPD ¶ 594. The determining element is not the difference in technical merit per se, but the contracting agency's judgment concerning the significance of the difference. Dayton T. Brown, Inc., B-229664, Mar. 30, 1988, 88-1 CPD ¶ 321. Cost/technical tradeoffs may be made, and the extent to which one may be sacrificed for the other is governed only by the test of rationality and consistency with the established evaluation criteria. Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 CPD ¶ 325.

With respect to TRI's general challenge to the cost/technical tradeoff decision, TRI's argument, on its face, fails to suggest that the agency's selection decision was improper. As TRI explains, the difference between the technical merit of the two proposals (6.4 percent) is relatively smaller than the difference between the proposals' proposed costs (8.1 percent). Thus, despite TRI's claims to the contrary, EPA's selection of Avanti does not mean the agency abandoned its stated preference that technical merit was more important than proposed cost. In addition, as stated above, we have held that acceptance of lower-cost, lower-scored offerors is appropriate provided the agency determines that accepting a higher-cost, higher-scored offeror is not justified. Carrier Joint Venture, supra. Here, the agency expressly concluded that TRI's proposal was not worth the additional cost, and none of TRI's general arguments support a conclusion that this decision was unreasonable.

With respect to the error in the Source Selection Determination document, we note that Avanti proposed to increase the salaries of TRI's employees at the time of initial hiring, but proposed smaller salary increases over the life of the contract, resulting ultimately in a lower sum for total direct labor. Thus, as TRI argues, and as the agency admits in its report to our Office, the Source Selection Determination document does, in fact, contain an error in its description of Avanti's proposed direct labor costs. According to TRI, this error invalidates the selection of Avanti, and should be remedied by adding to Avanti's cost proposal an amount equal to at least the difference between TRI's and Avanti's proposed labor costs. We disagree.

While there is no disagreement about the error in the agency's Source Selection document, there is no other

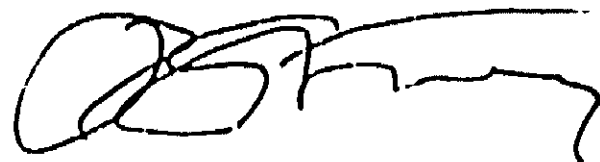
evidence in the record to suggest that the agency's cost realism analysis of these two proposals misevaluated the proposed direct labor costs of the two offerors, or was otherwise unreasonable or improper. Rather, the most detailed document in the record, the Pre/Post Negotiation Memorandum, correctly analyzes the proposed direct labor costs of TRI and Avanti.

In addition, the Source Selection document otherwise correctly identifies the parties and their proposed costs, and bases the selection decision on a correct statement of the technical and cost differences between Avanti and TRI. The section of the Source Selection document entitled "Summary/Conclusions" sets forth a detailed summary of the findings elsewhere in the document to support the conclusion that the technical margin between the two offerors is not great and is mainly due to the greater corporate resources and expertise of TRI. On the other hand, the erroneous conclusion that Avanti proposed higher sums for direct labor is but a minor conclusion found in one section of the document and not repeated again.

Given that the error appears to be an isolated mistake that does not reflect a true failure by EPA to accurately assess the differences between the two proposals, we conclude that TRI has not been prejudiced in this regard. Accordingly, we conclude that the agency's selection decision here was reasonable.

Finally, we note that TRI argues throughout its protest that Avanti may lack the financial resources to perform this contract and should not have been considered a responsible offeror. We will not consider this issue because an agency's affirmative determination of a contractor's responsibility will not be reviewed by our Office absent a showing of possible fraud or bad faith on the part of procurement officials, or that definitive responsibility criteria in the solicitation may have been misapplied. 4 C.F.R. § 21.3(m)(5) (1993).

The protest is denied.



James F. Hinchman
General Counsel