



Comptroller General
of the United States

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Washington, D.C. 20548

Decision

Matter of: Calspan Corporation

File: B-255268

Date: February 22, 1994

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Aldo A. Benejam, Esq., and Ralph O. White, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest contention that agency should have downgraded awardee under the personnel evaluation factor for failing to meet solicitation's requirement for a letter of commitment from key personnel is denied where, even if the awardee had received no points under the relevant subfactor, given the virtually insignificant effect on the awardee's overall technical score, the award decision would not change.

2. Allegation that agency conducted flawed cost realism analysis of awardee's proposal is denied where the record shows that the agency had no reason to question audit report on awardee's proposal obtained from the Defense Contract Audit Agency which concluded that awardee's proposed costs were acceptable as a basis for the agency's negotiation position; agency conducted independent analysis of awardee's cost proposal; and agency was reasonably assured that awardee's cost estimate reflected the costs entailed in its technical approach. Fact that incumbent proposed higher rates than awardee provides no basis for finding awardee's proposed rates unreasonable.

3. Award to technically lower-rated, lower-cost offeror is unobjectionable where, although solicitation emphasized technical factors over cost, it did not provide for award solely on the basis of the highest technical point score, and the technical evaluation board and the source selection authority considered the relative strengths and weaknesses in the protester's and awardee's proposals and could not

identify strengths in the protester's higher-rated proposal sufficient to justify paying its higher costs.

4. Allegation that the source selection authority (SSA) improperly directed or otherwise influenced the technical evaluation board (TEB) to reverse its initial recommendation of award to the protester, a 20-year incumbent, is denied where there is no evidence in the record of bias in favor of the awardee; the TEB's initial recommendation, supported only by generalized conclusions regarding potential effect of award to non-incumbent offeror, reasonably led the SSA to conclude that the TEB unduly emphasized protester's long-term incumbency while discounting awardee's technical capability; and the SSA reasonably asked the TEB to identify strengths in the protester's higher-rated proposal sufficient to justify paying higher costs, and the TEB concluded that it could not.

DECISION

Calspan Corporation protests the award of a contract to Orion International Technologies, Inc., under request for proposals (RFP) No. MDA903-93-R-0029, issued by the Department of the Army for countermeasures analyses support to the Precision Guided Weapons Countermeasures Test and Evaluation Directorate, White Sands Missile Range, New Mexico. Calspan contends that the agency improperly evaluated technical proposals; conducted a flawed cost realism analysis of the awardee's proposal; and improperly awarded this contract to an offeror with a lower-rated technical proposal than Calspan.

We deny the protest.

BACKGROUND

The agency issued the RFP on March 31, 1993, seeking proposals to provide susceptibility/vulnerability countermeasures (CM) and counter-countermeasures (CCM) analyses of precision guided weapons systems. The Directorate's mission is to coordinate, support, and conduct CM/CCM activities related to precision guided weapons systems, subsystems, and related components worldwide. The RFP required the successful offeror to provide management, personnel, and technical capability to perform systems analyses, define requirements, test directives, and render detailed performance evaluations. Calspan has been the incumbent providing these services for more than 20 years.

The RFP contemplated award of a cost-plus-fixed-fee contract for a 1-year base period, with up to four 1-year options. Offerors were required to submit separate technical and cost proposals. Section M of the RFP stated that technical

proposals would be rated in accordance with the following three evaluation factors, listed in descending order of importance: soundness of the technical approach; personnel qualifications/corporate experience; and management and organization.¹ The RFP explained that cost would not be numerically rated and was subordinate to technical considerations. Award was to be made to the responsible offeror whose proposal conformed to the solicitation requirements and was most advantageous to the government considering cost and technical factors.

Of the 35 firms requesting a copy of the solicitation, only the protester and the awardee submitted proposals by the May 6 closing date. A technical evaluation board (TEB) rated the initial technical proposals by assigning numerical scores to each evaluation factor and subfactor for a total maximum score of 1,800 points. The TEB also assigned overall adjectival ratings to each proposal as follows: 1,501-1800 points (superior); 1,101-1,500 points (good); 801-1,100 points (poor); and 800 points or less (unacceptable).

Orion's proposal earned an initial score of 1,299 points (good), while Calspan's proposal earned a score of 1,658 points (superior). The TEB documented strengths and weaknesses associated with the proposals and generated clarification questions for both offerors. The agency evaluated proposed costs separately, and the Defense Contract Audit Agency (DCAA) also provided an audit report for each offeror's cost proposal.

By letters dated July 6, the agency submitted technical and cost discussion questions to both offerors and requested best and final offers (BAFO). The TEB reevaluated proposals based on BAFOs, and raised Orion's score to 1,377 points, earning the firm's proposal a "good" rating. Calspan's score remained essentially unchanged after BAFOs at 1,657 points (superior). Orion's total evaluated costs were \$7,486,506, while Calspan's were \$8,999,328. Based on Calspan's higher score, the TEB recommended Calspan for award.

After reviewing the TEB's report, the contracting officer concluded that the TEB had unduly emphasized Calspan's incumbency in its scoring and recommendation. The contracting officer stated that under the TEB's rationale for award, it appeared that only the incumbent could perform the required services. Accordingly, the contracting officer questioned the TEB's recommendation. In a second report,

¹Under each evaluation factor were several subfactors which need not be set forth here.

the TEB continued to recommend award to Calspan. When the contracting officer again questioned the recommendation and asked the TEB to identify specific strengths in Calspan's proposal that would justify its higher costs, the TEB was unable to identify specific advantages in Calspan's proposal and unanimously recommended award to Orion. In a memorandum dated September 17, the contracting officer documented his reasons for concurring with the TEB's recommendation, and on September 27, awarded the contract to Orion. This protest followed.²

PROTESTER'S CONTENTIONS

Calspan contends that the TEB improperly evaluated Orion's technical proposal by failing to downgrade Orion for not providing adequate letters of commitment from its proposed key personnel. Calspan also argues that Orion's failure to provide the required commitment from its proposed key personnel resulted in an unrealistic analysis of Orion's cost proposal. The protester further argues that the contracting officer improperly directed or otherwise influenced the TEB to recommend award to Calspan.

DISCUSSION

Evaluation of Orion's Technical Proposal

Calspan argues that Orion's proposal did not meet the requirements set forth in section L.001 of the RFP, which provided as follows:

"The [g]overnment requires that the proposed professional key personnel, including the Project Manager, Principal Research Engineer/Scientist and Engineer/Scientist, devote at least seventy (70) percent of their effort specifically to this contract. Offers are required to include letters of commitment for each of the proposed professional key personnel in this regard."

Calspan argues that the Army should have downgraded the awardee's proposal under the evaluation factor related to personnel because Orion did not provide letters of commitment from all of its proposed key personnel.

²Calspan filed this protest in our Office on October 6. Since the agency received notice of the protest within 10 calendar days after award, the agency suspended performance of the contract pending resolution of the protest. See 31 U.S.C. § 3553(d)(1) (1988).

Orion provided a signed memorandum of understanding (MOU) between Orion and its proposed program manager, and between Orion and one of the three principal/engineer scientists designated as key personnel in its proposal. With respect to one individual for whom Orion provided no letter of commitment or MOU, the individual in question is a career Orion employee. Both Orion's proposal and its response to discussion questions explained in detail this individual's extensive experience, current duties at Orion, and specific responsibilities under the contract. In response to the TEB's concern that one of the proposed employees might be unavailable for health reasons, Orion replaced him with another individual. Orion provided a signed letter from this individual expressing his interest in negotiating employment with Orion, and a copy of this individual's resume. In its BAFO Orion specifically reaffirmed its commitment to providing the personnel identified in its proposal.

The TEB concluded that Orion's detailed explanation concerning its personnel sufficiently addressed the TEB's concern regarding Orion's personnel. Although the TEB raised Orion's final score in various other areas, Orion's scores under the personnel subfactor remained unchanged, resulting in an overall final rating of 1,377 (good).

Prejudice is an essential element of a viable protest, and where no prejudice is shown, or is otherwise evident, we will not disturb an award, even if some deficiency in the award process arguably may have occurred. Merrick Eng'g, Inc., B-238706.3, Aug. 6, 1990, 90-2 CPD ¶ 130. Here, while Calspan argues that the MOUs and other documents provided by Orion fail to offer the level of commitment required by the RFP, we conclude that Calspan was not prejudiced by the agency's decision to accept these documents.³ The

³Calspan also argues that the evaluation was unreasonable because the resume of one engineer was submitted under the pseudonym "Jane Doe" (at that individual's request), and because the TEB initially could not verify her references. Our review of the record shows, however, that following the evaluation of initial proposals, the TEB chairperson verified this individual's employment and qualifications, and was able to assess her fitness for this position.

In addition, Calspan alleges that Orion engaged in improper bait-and-switch tactics because Orion allegedly attempted to recruit certain Calspan employees soon after award. Calspan provides no evidence, and there is no indication in the record, that Orion did not intend to provide the personnel it listed in its proposal at time of award. Accordingly, we will not question the award to Orion on this basis.

personnel evaluation subfactor under which the TEB considered the letters of commitment was worth a maximum of 150 points; Orion initially earned 100 points under this subfactor and its score was not changed following BAFOs. Even if the TEB had remaining concerns about Orion's proposed personnel following BAFOs, it is highly unlikely that such concerns would have caused Orion to receive no points at all under this subfactor. In any case, although the record is not clear as to how the TEB factored the MOUs and letter of commitment into the scoring, even if the TEB had concluded that the commitment documents submitted by Orion for the proposed key personnel were insufficient and awarded the firm no points in this area, the effect would have been to lower Orion's overall final technical score 7 percent to 1,277 points. Orion's proposal thus would have retained an overall rating of "good" (1101-1500 points). Under these circumstances, we see no basis to conclude that the award decision--which was based on a tradeoff between Orion's lower-cost, "good" proposal and Calspan's higher cost, "superior" proposal--would change. See Textron Marine Sys., B-243693, Aug. 19, 1991, 91-2 CPD ¶ 162.

Evaluation of Orion's Cost Proposal.

Calspan argues that the Army's cost realism analysis of Orion's proposal was flawed because, absent the required letters of commitment from all of its proposed key personnel, the agency could not determine whether Orion realistically could hire professional personnel at the lower wages it proposed, especially its proposed program manager. Calspan contends that had the Army conducted a proper cost realism analysis, it would have found Orion's cost proposal unrealistically low.

When agencies evaluate proposals for the award of a cost reimbursement contract, the offerors' proposed estimated costs of contract performance are not considered controlling, since they may not provide valid indications of the actual costs which the government is required to pay. FAR § 15.605(d); Bendix Field Eng'g Corp., B-230076, May 4, 1988, 88-1 CPD ¶ 437. Consequently, an agency's evaluation of estimated costs should consider the extent to which an offeror's proposed costs represent what the contract should cost, assuming reasonable economy and efficiency. Arthur D. Little, Inc., B-229698, Mar. 3, 1988, 88-1 CPD ¶ 225. Because the contracting agency is in the best position to make this cost realism determination, we limit our review of these matters to determining whether the agency's cost evaluation was reasonable. General Research Corp., 70 Comp. Gen. 279 (1991), 91-1 CPD ¶ 183. We have reviewed the protester's allegations here and conclude that the agency's evaluation of Orion's costs was reasonable.

DCAA submitted an audit report based on Orion's initial cost proposal, in which it concluded that approximately \$280,000 of Orion's proposed costs attributable to direct labor and related overhead expenses were higher than DCAA's audit-determined rates. With respect to direct labor, DCAA found that Orion's rates for the position of principal research engineer/scientist were higher than determined by DCAA's audit for the base and option periods by approximately \$169,000. For the program manager position, Orion used the actual rate for one employee from its senior engineer labor category, while DCAA used an average rate for all employees in Orion's senior engineer category. DCAA did not question Orion's proposed rate for the program manager position for the base or option periods. DCAA also found that Orion's proposed rates for the position of engineer/scientist were nearly identical to DCAA's audit-determined rates for all contract periods. DCAA did not question Orion's proposed escalation costs nor its proposed costs for travel, supplies, or other support. The balance of the questioned costs were attributable to overhead, and general and administrative costs. Overall, DCAA concluded that Orion's proposed costs were acceptable as a basis for the agency's negotiation position.

The agency conducted a separate review of each individual cost element of Orion's proposal, and based its negotiation position on the DCAA report as well as on its own analysis. The agency then generated discussion questions concerning Orion's cost proposal. During discussions the agency specifically indicated that, contrary to the DCAA's report, "labor rates for staff and principal engineer/scientists appear to be low, at least ten (10) percent, for the caliber of personnel required, even considering the typical lower labor rates for this geographical area."

Orion responded by explaining, by labor category, the basis for each of its proposed rates. With respect to the program manager position, Orion stated that the labor rate proposed was the actual rate it paid for an employee with a minimum of 10 years of experience in program management, with relevant educational experience. Orion also explained how it arrived at the rate proposed for the principal research engineer/scientist position. The awardee further provided a detailed explanation of exceptions it had taken with respect to the DCAA audit report.

Based on our review of the record, we conclude that the agency reasonably decided it had no basis to question the awardee's ability to hire and retain its professional personnel at the rates proposed. The protester explained during discussions how it arrived at its proposed rates, and based on its own cost analysis and the DCAA report, the agency had no reason to question Orion's explanation. In

sum, the agency was reasonably assured that Orion's cost estimate accurately reflected the costs entailed by that firm's technical approach. Contrary to the protester's allegations, the fact that some of the rates Calspan proposed for professional personnel were higher than Orion's proposed rates does not provide a basis for the agency conclude that Orion's rates were unreasonable.

Selection Decision

As stated above, the TEB initially recommended award to Calspan. Upon reviewing the TEB's initial recommendation, however, the contracting officer, who was the source selection authority (SSA) for this procurement, was not convinced that Calspan's proposal was most advantageous to the government. In particular, the SSA concluded that the TEB had overemphasized Calspan's incumbency. Consequently, the SSA asked the TEB to reexamine its position. In response to the SSA's request, the TEB again recommended award to Calspan. The SSA then asked the TEB to identify specific strengths in Calspan's proposal that would justify paying a premium for Calspan's higher-rated technical proposal. Unable to identify such strengths, the TEB unanimously recommended award to Orion.

The protester argues that after the TEB decided that Calspan's proposal was the most advantageous to the government, the SSA improperly directed or otherwise influenced the TEB to reverse its initial recommendation.

Based on our review of the evaluation documents, including the TEB's initial recommendations of award to Calspan and the individual evaluators' sheets, we find that the SSA reasonably concluded that the TEB unduly emphasized Calspan's incumbency. For example, in its initial report, the TEB stated its general belief that "a contractor rated 'superior' would minimize/eliminate lost time and extra expense involved in a transition from one contractor to another;" that while a contractor rated "good" could perform the contract, the government would incur additional costs over the first 6 to 12 months of performance related to "training/coming up to speed;" and that award to Orion would require terminating on-going tasks, which would cause the loss of work already completed. The TEB report also states that the experience of Calspan's employees could not be easily duplicated without "significant program delays." Except for its generalized conclusions, however, there is no evidence in the record that the TEB reasonably explained the bases for its conclusions regarding any of the costs, losses, or delays upon which it based its initial recommendation.

The TEB's second report underscores the SSA's concern that the TEB unduly emphasized Calspan's incumbency. In this report, the TEB concluded that Calspan's technical superiority resulted "primarily from [20] years of specific [program] analysis support," and provided little discussion of Orion's evaluated technical competence. While this report reiterates the TEB's general belief that award to Orion would result in "substantial program delays," and would have "near-term effects," the TEB's report fails to identify any reasonable bases for those conclusions. In fact, in its final report generated in response to the SSA's request that the TEB identify specific strengths that warrant paying Calspan's higher price, the TEB could not identify any such strengths and recommended award to Orion.

The protester's allegation that the SSA improperly influenced the TEB's technical evaluation and ultimate recommendation to award to Orion, and implicit assumption that the SSA was biased in favor of the awardee, is not supported by the record. The record does not reflect any bias in favor of Orion,⁴ and there is no evidence that the SSA directed or otherwise improperly influenced the TEB's recommendation. It is clear from our review of the record, including the SSA's hand-written notes on the TEB's initial report, that the SSA was reasonably concerned with the lack of specific details in support of the TEB's initial conclusions, and with the TEB's emphasis on Calspan's incumbency over Orion's technical competence.

In view of the lack of supporting details in the TEB's narrative assessment of proposals, the SSA reasonably concluded that the evaluation documents did not adequately support the TEB's view that Calspan's technical superiority was worth the cost premium, and asked the TEB to provide support for its recommendation. We fail to see how the SSA's request that the evaluation panel explain its decision and provide empirical support for its rationale, without more, is improper, especially in the context of a best value procurement. In our view, the SSA's request to the TEB to identify specific strengths in Calspan's proposal that would justify paying the higher costs was a reasonable attempt to ensure that proposals were evaluated in accordance with the

⁴On the contrary, in revising his recommendation to select Orion for award, one TEB member expressed sympathy for the incumbent's personnel with whom he had apparently developed a close personal and professional relationship over the course of Calspan's 20-year incumbency. Specifically, the evaluator stated that "[i]t is very difficult to separate out personal feelings and to be objective--our decisions impact people we know and who may be our friends--that makes it very difficult!"

evaluation factors announced in the solicitation, and that any recommendation resulting therefrom was reasonably based. See, e.g., Wyle Labs., Inc.; Latecoere Int'l, Inc., 69 Comp. Gen. 648 (1990), 90-2 CPD ¶ 107; Latecoere Int'l., Inc.-- Advisory Opinion, B-239113.3, Jan. 15, 1992, 92-1 CPD ¶ 70.

Calspan's allegation that selection of Orion's lower-rated proposal was improper because the solicitation emphasized technical considerations over cost, is misplaced. In a source selection decision, numerical point scores and adjectival ratings are merely guides to intelligent decisionmaking; they do not mandate automatic selection of a particular proposal. See Harris Corp.; PRC Inc., B-247440.5; B-247440.6, Aug. 13, 1992, 92-2 CPD ¶ 171. Source selection officials are not bound by the recommendations of evaluators. Gray Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 CPD ¶ 325. Even where cost is the least important evaluation criterion, an agency may properly award to a lower-rated, lower-cost offeror if the agency reasonably determines that the cost premium involved in awarding to a higher-rated, higher-cost offeror is not justified. Tracor Applied Sciences, Inc., B-253732, Oct. 19, 1993, 93-2 CPD ¶ 238.

After two separate opportunities, the TEB here was unable to provide any specific information to the SSA to justify award to Calspan. Thus, the TEB unanimously recommended award to Orion, and the SSA concurred with that recommendation, concluding that paying a premium for Calspan's higher-rated technical proposal was not warranted in light of Orion's meritorious proposal and lower evaluated costs. Under these circumstances, we find nothing improper in the SSA's selection decision.

The protest is denied.

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