



Comptroller General
of the United States
Washington, D.C. 20548

534301

Decision

Matter of: Hornet Joint Venture
File: B-258430.2
Date: January 27, 1995

Jacob B. Pompan, Esq., and Neil Ruttenberg, Esq., Pompan, Ruffner & Werfel, for the protester.
William B. Barton, Jr., Esq., and William T. Welch, Esq., Barton, Mountain & Tolle, for Rail Company, an interested party.
William T. Mohn, Esq., Department of the Navy, for the agency.
Paul E. Jordan, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Where solicitation provided for evaluation of cost realism, agency properly found protester's proposal to represent a high performance risk due to its proposing wages below those paid on other Navy contracts for similar work and for comparable civil service wages.
2. Where resumes included in protester's technical proposal failed to establish that all proposed personnel met solicitation experience requirements, agency properly evaluated personnel as marginal or unsatisfactory.
3. Agency properly awarded contract on the basis of initial proposals to offeror with higher technically rated proposal and higher price, where remaining proposals were technically marginal and reflected unrealistically low pricing.

DECISION

Hornet Joint Venture protests the award of a contract to Rail Company under request for proposals (RFP) No. N00019-93-R-0045, issued by the Department of the Navy for support services for the F/A-18 aircraft program office. Hornet raises a number of issues generally challenging the agency's evaluation of its proposal and the decision to award the contract without conducting discussions.

We deny the protest.

The RFP, issued March 13, 1994, contemplated award of an indefinite delivery, indefinite quantity, time-and-materials contract for a base year with four 1-year options. The successful contractor is to provide support services for the F/A-18 aircraft program office including support for the production program, F/A-18 E/F development program, and foreign military sales. The RFP advised that award could be made on the basis of initial proposals without discussions, but that discussions could be held if the contracting officer determined them to be necessary. Award was to be made to the offeror whose proposal was most advantageous to the government, price and other factors considered.

Four offerors, including Hornet and Rail, submitted proposals by the May 23 closing date. The proposals were evaluated on the basis of three factors of equal importance: technical, management, and cost. Under the technical factor, the evaluators reviewed the resumes of proposed personnel and salary levels, as well as offeror's responses to sample tasks. Under the management factor, proposals were evaluated on the basis of the adequacy of the proposed personnel and their planned utilization. Under the cost factor, price was evaluated on the basis of the maximum contract labor cost proposed for the base and all option years.

Based on the evaluation of initial proposals, Rail's proposal was rated as highly satisfactory in the technical and management factors, with low performance risk in all areas. Hornet's proposal was rated as marginal under the technical factor and satisfactory under the management factor, with a high performance risk rating for cost realism, and a medium performance risk rating for its management plan and corporate experience. Hornet's proposed price was approximately \$6 million less than Rail's.

The performance review board (PRB) discussed the advantages and disadvantages of all proposals and determined that Rail provided the most advantageous proposal and was the only proposal which could be considered for award without discussions. The PRB determined that it was highly unlikely that discussions would increase the scores of the other offerors' proposals to highly satisfactory without the offerors totally rewriting their proposals and substantially increasing their prices. The PRB recommended award to Rail, on the basis of the initial proposals.

The source selection authority (SSA) considered the technical and cost evaluations performed by the PRB and concluded that Rail's proposal posed a low performance risk and was vastly superior to the other proposals. While

Rail's proposed price was higher than the others, the SSA considered this to be offset by the other proposals' evaluated high performance risk based upon the lack of realism in their proposed prices. The SSA determined that Rail's proposal was most advantageous to the government, and the contracting officer awarded Rail the contract on September 1. When Hornet learned of the award and received a debriefing, it filed these protests.¹ After initially suspending contract award, the Navy determined that it was in the best interest of the United States to proceed with contract performance.

Hornet's protests raise a number of issues concerning the evaluation of its proposal, the failure to conduct discussions, the award determination, and the analysis of certain aspects of Rail's proposal. The agency report provided detailed explanations supporting the reasonableness of all evaluations and the award basis. In response, Hornet offered no rebuttal to the agency's report and requested our Office decide the matter on the existing record. We have reviewed the record, and find that all issues raised by the protester are without merit.

THE EVALUATION OF HORNET'S PROPOSAL

Where an evaluation is challenged, we will examine the agency's evaluation to ensure that it was reasonable and consistent with the evaluation criteria and applicable statutes and regulations, since the relative merit of competing proposals is primarily a matter of administrative discretion. Information Sys. & Networks Corp., 69 Comp. Gen. 284 (1990), 90-1 CPD ¶ 203. Mere disagreement with the agency's evaluation does not itself render the evaluation unreasonable. Litton Sys., Inc., B-237596.3, Aug. 8, 1990, 90-2 CPD ¶ 115. Based on our review of Hornet's proposal and the agency's evaluation, we find that the Navy reasonably evaluated Hornet's proposal.

Hornet contends that in evaluating its pricing proposal for realism, the agency improperly downgraded it for failing to offer realistic wages for all employees. According to Hornet, the agency failed to consider its total compensation plan including bonuses. Hornet states that it offers its employees better benefits than those offered to civil servants and, when bonuses are figured in, certain of its employees could be paid up to 40 percent more. Since a

¹Hornet has also filed two other protests of this procurement (B-258430.3 and B-258430.4) based on information it allegedly obtained from reviewing documents provided by the agency. We will resolve these protests in a separate decision.

"significant number" of its employees would be expected to receive at least a 10-percent bonus, the agency should have considered this as well.

As relevant to this protest, the RFP advised that offerors' price proposals would be evaluated for realism based on consideration of actual salaries paid for similar work on other Navy contracts, salaries paid for comparable civil service employees, Defense Contract Audit Agency (DCAA) audit information, and evaluation of compensation for professional employees. With regard to professional employees, the RFP advised offerors that recompensation of service contracts sometimes resulted in lowered compensation which could be detrimental to obtaining the quality of professional services needed to perform the contract. Thus, professional compensation was evaluated in terms of its impact on recruiting and retention, its realism, and its consistency with a total plan for compensation. The RFP warned that unrealistically low professional compensation may be viewed as evidence of an offeror's failure to comprehend the complexity of the contract requirements. In this regard, the RFP also warned that unrealistic salaries would result in a reduced technical rating.

The record establishes that the Navy fully analyzed Hornet's price proposal and reasonably concluded that it was unrealistic. The evaluators considered Hornet's compensation plan and found it adequate, but, contrary to Hornet's claims, found that it was simply comparable to or lower in every aspect to the benefits provided a GS-12 civil servant. The evaluators also obtained a DCAA verification of Hornet's indirect rates and found no unique observations. With regard to realism, the evaluators found that in comparison to similar Navy contracts, less than 64 percent of key hours and less than 39 percent of nonkey hours were at rates equal to or above the rates being paid. Further, in comparing Hornet's proposed rates for wages, the evaluators found a significant percentage to be less than comparable wages paid to civil servants. For example, with regard to key labor categories, more than 20 percent of the proposed direct rates were two grades below the civil service equivalent and more than 12 percent were three grades or more below the civil service equivalents. In comparing technically acceptable proposed hours to be performed at or above civil service equivalent salaries, less than 35 percent of Hornet's key hours and less than 45 percent of its nonkey hours were at or above the equivalent civil service level.

The Navy also considered the bonuses offered by Hornet in its evaluation of the proposed compensation package, but properly concluded that the speculative nature of bonuses made it inappropriate to consider them in comparing wage

rates. Even Hornet's protest acknowledges that not all employees would receive bonuses. Based on its evaluation of Hornet's generally low labor rates, the Navy reasonably concluded that Hornet's price proposal was not realistic and properly evaluated the proposal to present a high performance risk.²

Hornet also contends that the agency failed to properly evaluate 18 of its proposed personnel (17 evaluated as "marginal" and 1 as "unsatisfactory").³ According to Hornet, all of its personnel met or exceeded the experience requirements set forth in the RFP and in support, has attached resumes for the 18 employees which Hornet generally contends demonstrate the required qualifications for each employee.

Under the technical factor, the evaluators considered each offeror's proposed personnel, including the extent to which the submitted resumes satisfied the education and experience requirements. The agency report contains a detailed analysis of each resume of the challenged employees to establish the reasonableness of the agency's evaluation. We have reviewed the resumes, the agency's evaluation, and its report and find all evaluations were reasonable. In general, the resumes either failed to demonstrate the years of experience required by the RFP or failed to demonstrate specific relevant experience as required.

For example, an employee proposed for program manager was required to have a minimum of 10 years of recent experience in the area of aerospace program management/support and or project coordination for aerospace programs, as well as

²The protester asserted in its initial protest that the agency had improperly considered payment problems encountered by one of the joint venturers in an unrelated contract. The agency explains, without contradiction, that this matter was not considered in the evaluation of Hornet's performance risk.

³In a related argument, Hornet challenges the agency's evaluation of Rail's personnel proposal because two of its proposed key personnel had been hired by Hornet. The agency explains that one of the identified employees was not proposed by Rail and the other, though proposed, did not resign from the awardee until 2 months after the submission of initial proposals. As to the second employee, clause H.7 of the contract allows the substitution of key personnel for compelling reasons such as an individual's termination of employment. The agency also explains that the loss of one proposed employee would have had a negligible impact on the evaluation of Rail's proposal.

experience in a number of specifically identified areas such as aircraft weapon systems, assessing and implementing program changes, and systems integration requirements. In determining the proposed employee unsatisfactory, the agency found that the employee only had 4 years of applicable experience. Two years of the remaining time was spent working on a master's degree and 10.5 years were spent as a Navy aviator, including experience flying the F/A-18. We agree with the agency that these remaining years do not qualify as experience in aerospace program management/support. Thus, the agency properly evaluated this employee as unsatisfactory.

Another employee, proposed for senior systems engineer, was required to demonstrate 8 years of recent experience in the development, planning, and evaluation of aircraft weapon systems, including 5 years in aircraft weapon system engineering, or developmental test and evaluation. The proposed employee's resume showed 4.5 years of applicable experience, 8 years of experience in positions for which there was no description of the duties or accomplishments, and 8.5 years as "assistance maintenance, personnel, and safety officer" (from 1973 to 1981) which the agency found not to be sufficiently recent. Again, the agency reasonably found that this employee's experience was "marginal."

Hornet also contends that the agency improperly downgraded its proposal based on the protester's status as a joint venture and upon a perception that it had proposed a large number of subcontractors. The RFP required the submission of a detailed management plan and required joint ventures to provide detailed documentation on the relationship of the venturers. Offerors were warned that a poorly defined management approach, a large number of subcontractors, or a poorly structured partnership/joint venture would result in the assessment of increased risk rating and/or a reduced evaluation rating. The agency evaluated Hornet's management plan and found it satisfactory, but assigned a medium performance risk to the proposal. This rating was based on the large number of subcontractors, confusion over who is in charge of the joint venture in accordance with the Hornet organizational structure, a confusing chain of command outlined in the work chart, and the lack of linkage and control among the prime contractor, subcontractors, and project teams. While the protester may disagree with this evaluation, that alone does not make it unreasonable.
Litton Sys., Inc., supra.

Hornet argues that the agency's questions concerning its proposal could easily be resolved in discussions. However, the RFP clearly warned offerors that award could be made on the basis of initial proposals without discussions, and advised offerors to include their best terms from a price

and technical standpoint. An offeror must demonstrate affirmatively the merits of its proposal and runs the risk of rejection if it fails to do so. InterAmerica Research Assocs., Inc., B-253698.2, Nov. 19, 1993, 93-2 CPD ¶ 288. Since the agency reasonably concluded that Rail's initial proposal represented the greatest advantage to the government, the agency reasonably concluded that discussions were unnecessary.

THE AWARD DECISION

Hornet challenges the award decision as an abuse of discretion.⁴ Hornet argues that it, not Rail, should have been awarded the contract because it allegedly submitted a "superior" technical proposal that was "fully compliant" with the RFP's requirements, at a lower proposed price. We disagree.

In a negotiated procurement, the government is not required to make award to the lowest-cost, technically acceptable offeror unless the RFP specifies that cost will be the determinative factor for award. General Servs. Eng'g, Inc., B-245458, Jan. 9, 1992, 92-1 CPD ¶ 44. Agency officials have broad discretion in determining the manner and extent to which they will make use of technical and cost evaluation results. Cost/technical tradeoffs may be made; the extent to which one may be sacrificed for the other is governed by the test of rationality and consistency with the established evaluation factors. Id. Award to offerors with higher technically scored proposals and higher costs are unobjectionable, so long as the result is consistent with the evaluation criteria and the agency has determined that the technical difference is sufficiently significant to outweigh the cost difference. Kelsey-Seybold Clinic, P.A., B-217246, July 26, 1985, 85-2 CPD ¶ 90.

Here, the SSA found that Rail's proposal was vastly superior to all the others received. Its proposal had an overall technical evaluation of highly satisfactory with low risk and was evaluated as having 94 percent acceptable key personnel. In contrast, the other proposals, including Hornet's, were evaluated as marginal with a high performance risk. In this regard, Hornet proposed only 77 percent

⁴Hornet also challenges the agency's failure to consider making multiple awards. However, the RFP did not provide for the agency to consider multiple awards and specifically advised offerors that it intended to award the contract to a single offeror. To the extent Hornet is protesting the failure to provide for multiple awards, its protest is untimely, having been made long after the closing time for receipt of proposals. 4 C.F.R. § 21.2(a)(1) (1994).

acceptable key personnel. In the management area, Rail's proposal was rated highly satisfactory with low risk while Hornet's proposal was rated as satisfactory with medium risk.

Although Rail's proposed price was higher than Hornet's, the SSA observed that Hornet's price was evaluated as unrealistic and rated as a high performance risk. The SSA reasoned that realism is critical in an indefinite delivery, indefinite quantity contract since the government would have to pay for the actual hours required to perform the tasks covered by the delivery orders. The best technically qualified contractor is expected to perform tasks in the most efficient and effective manner, thereby requiring fewer hours, resulting in less overall cost to the government. A related consideration is the tendency of underpaid key personnel to result in high turnover rates and diminished productivity. In the SSA's judgment, Rail's proposal represented the best overall value to the government and ultimately would result in lower overall costs due to performance efficiencies.

The protester has offered nothing to rebut the findings of the SSA or to establish why Hornet's proposal should have been evaluated as equal to or superior to Rail's. Further, the fact that the award was made on the basis of initial proposals to an offeror with a higher-priced proposal is unobjectionable. The Navy was not required to award to the offeror with the lowest overall cost proposal. Macro Serv. Sys., Inc., B-246103; B-246103.2, Feb. 19, 1992, 92-1 CPD ¶ 200. Accordingly, we have no basis to disturb the SSA's award decision.

Finally, Hornet complains that the agency's affirmative determination regarding Rail's financial condition was defective. Hornet bases its complaint on its understanding that the RFP was originally to be set aside for small businesses, but was subsequently made unrestricted because the Navy determined that the program was too large for a small business. Since Rail was a small business, Hornet believes that the financial analysis was "less than adequate." Hornet's allegation constitutes a challenge to the agency's affirmative determination of Rail's

responsibility, a matter which we do not review absent conditions which are not present in this case, 4 C.F.R. § 21.3(m)(5); King-Fisher Co., B-236687.2, Feb. 12, 1990, 90-1 CPD ¶ 177.

The protest is denied.


 Robert P. Murphy
General Counsel