

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-186192

DATE: July 1, 1976

MATTER OF: DOT System Inc. ⁶³²

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DIGEST:

1. Discussions with an offeror should be as meaningful as possible consistent with rules of competitive negotiated procurement. This standard was not met by agency where offeror was not advised of agency's concern with offeror's proposed wage rates prior to submission of its revised proposal. Therefore, rejection of offeror's revised proposal was improper, and agency is advised to reconsider competitive range.
2. Agency is advised that in determining competitive range an offeror should not be excluded from that range solely because its proposal does not meet a predetermined passing grade.

DOT Systems Inc. (DOT) has protested the rejection of its proposal and the proposed award of a contract to another offeror by the Department of the Army (Army), Edgewood Arsenal, Aberdeen Proving Ground, Maryland. The proposal was submitted in response to RFQ DAAA15-76-Q-0117, which contemplated the award of a cost-plus-fixed-fee contract for preparing, editing and processing technical reports using data and information compiled by the Army. Since this is a negotiated procurement and award of a contract has been withheld pending our decision on the protest, our recitation of the facts will be limited.

The 14 proposals received by January 14, 1976, the closing date for receipt of initial proposals, were submitted to a Technical Committee (Committee). The proposals were then evaluated and an initial ranking determined. To aid in the

technical evaluation, Committee representatives conducted site visits on February 26 and 27, 1973, at the facilities of the five highest scored offerors. DOT, which was considered to be second best qualified, was among the offerors surveyed.

Following the site visits, the Committee reevaluated the five proposals. The reevaluation considered the information acquired at the site visits, as well as a revised cost estimate (DD Form 633-4) that had been submitted by DOT. While the ranking of DOT's proposal was unaltered by the second evaluation, DOT's technical score decreased from 66 to 55 points, while the proposal of the first ranked offeror, John F. Holman and Company (Holman), increased from 71 to 73 points. The maximum score for technical factors was 75 points. Since the "passing grade" for the technical evaluation was predetermined to be 75 percent of the maximum score, or 56.25 points, the contracting officer determined that Holman's proposal alone was in the competitive range and, therefore, award should be made to it without formal discussions with the other offerors.

DOT protests the proposed award to Holman. It claims to be a proven, qualified source for these highly specified services sought by the Army, and states that it was told it had been selected as a "finalist" for the award. Moreover, during the Army site visit to its facility, DOT states that one of the members of the site visit team indicated to the DOT representative that: "he was impressed with our facilities, however, he wanted to see additional hours on our best and final offer." DOT reportedly maintained that the job could be accomplished at its lower estimate but, "[i]t was indicated again, that additional hours might be required." DOT believes that it submitted a best and final offer with the additional hours requested, and contends that a subsequent determination of technical unacceptability is unreasonable in light of these facts. DOT also states that the Army evaluators encouraged it "to raise its estimated hours to a specified government estimate for the sole purpose of guaranteeing the award to another company."

We believe that improprieties did occur in the course of the award selection for the reasons set forth below.

The RFQ set forth the following evaluation scheme in descending order of importance with the last two criteria of equal weight: (1) Caliber of Personnel, (2) Background Experience, (3) Cost Realism, and (4) Facilities Available. The technical evaluation was independent of and preceded the cost evaluation.

The evaluation of Holman's proposal indicated it had no deficiencies; that it would utilize excellent management, technical, professional and clerical personnel; that its facilities and equipment conformed exactly to the agency's requirements; that it has extensive experience in providing the services required, and that its cost proposal was lowest and realistic.

With regard to DOT's proposal, the evaluators concluded that DOT did not fully understand the scope of the work. The record shows that DOT's technical proposal was initially considered to be acceptable based in part on the personnel listed in the proposal. The evaluators assumed that the individuals who were described in the proposal would participate actively in any resulting award. However, when DOT's cost proposal was evaluated, it was observed that DOT proposed a total contract cost significantly less than all the other offerors. Closer examination revealed that the effort proposed by DOT for editing and for composition (technical typing) was well below the Army estimates of 1400 hours and 1100 hours, respectively, for these tasks. In addition, the Army considered the labor wage rates indicated by DOT for senior staff to be below the qualifications of the personnel whose resumes were submitted with the proposal and low in relation to the Army labor rate estimates. In view of this, the Chief of the Evaluating Group states that:

"It now became apparent that DOT Systems did not intend to use their senior staff, only their less qualified staff. Salaries were quite low in comparison to all other offerors. Hours were definitely too low. The cost proposal said the typist would do the proofreading in addition to typing the final camera-ready copy for the offset press. It is physically impossible for a typist to type final copy and proofread 2000 manuscript pages in [the time set forth in the proposal]. Quality of the finished product would have to suffer. DOT's proposed hours did not come anywhere near our standards or the standards of the other offerors. Their original bid could not be considered realistic for this type of service. The low wage scales for editors and typists do not support DOT's submitted descriptions (resumes) of the levels of capability of their personnel. A site visit was recommended to further evaluate the caliber of personnel, facilities, and background experience."

As indicated, representatives of the Committee visited the DOT facility on February 26, 1976. They report that only two of the seven persons whose resumes were included in the DOT proposal were presented to them, and that one of these two individuals was not considered to have much experience relating to the required work. During the visit and because of the small number of labor hours which DOT proposed to use, the president of DOT and the proposed project director were asked if they fully understood the task. At this point, the Army representatives revealed that the Army's estimate for the job was 4390 man-hours. Thereupon, according to the Army's report, DOT "agreed to review the estimate for accuracy" and the Army representatives "requested that in the-event a change in the estimate is necessary a revised contract Pricing Proposal Form DD 633-4 should be submitted within a week * * *." The agency, however, denies that its representatives insisted that DOT increase its proposed man-hours; that they told the protester that it had been selected as a finalist; that they solicited a best and final offer, and that they stated that they were impressed with DOT's "facilities".

In any event, on March 2, 1976, DOT submitted a revised DD Form 633-4 significantly increasing its proposed price. The cover letter submitted with the revised cost estimate stated that the initial DOT estimate was considered to be appropriate, but that in view of the site visit discussions "we now feel obliged to accept the Government's estimate of 4390 hours."

Despite the revised cost proposal, the Committee held to its opinion that less qualified personnel than those whose resumes were included in the technical proposal "would be working on the proposed contract as the hourly rates were not changed." Furthermore, the evaluators believed that the cost increase was a definite indication that DOT recognized that its initial estimated cost was too low. It is the Army's position that DOT's proposal properly was rejected in the circumstances.


We do not agree. DOT's initial "passing grade" of 66 points was based in part on the quality of the personnel included in the resumes furnished with its proposal. At the same time, the evaluators were concerned with DOT's low estimate of man-hours and low wage rates, which indicated to them that DOT intended to use insufficiently qualified personnel for the contract work notwithstanding resumes submitted with its proposal. During the course of the site visit discussions, the Army representatives pointed out to DOT that its man-hour estimate was low, but the record is devoid of any indication that the wage rate or personnel aspect of its proposal was raised with the offeror.

Yet the record shows that DOT's proposed wage rates ultimately were the basis for the Army's determination that DOT's proposal was unacceptable. It seems to us that once the Army undertook to engage in discussions with DOT and allowed DOT to submit a revised proposal, those discussions should have touched upon the Army's concern with DOT's wage rates, particularly since DOT's proposal indicated that the offeror's organization included qualified personnel. Discussions with an offeror should be as meaningful as possible, consistent with the rules of competitive negotiated procurement. As stated in ASPR § 3-805.3(a), "all offerors selected to participate in discussions shall be advised of deficiencies in their proposals and shall be offered a reasonable opportunity to correct or resolve the deficiencies and to submit such price or cost, technical or other revisions to their proposals that may result from the discussions * * *."

Although DOT was afforded an opportunity to submit a revised proposal, the discussions which preceded the submission of this proposal were not as meaningful as they should have been. As a result, we think that DOT's exclusion from the competitive range on the basis of its revised proposal was improper.

Therefore, we are recommending that the Army redetermine the competitive range. In this regard, we point out that the established predetermined passing grade of 75 percent for this procurement should not be used to exclude an offeror otherwise determined suitable for competitive range discussions. 50 Comp. Gen. 59 (1970).

Protest sustained.


Deputy Comptroller General
of the United States