Decision

Matter of: Research Analysis and Maintenance, Inc.

File: B-272261; B-272261.2

Date: September 18, 1996

William L. Walsh, Jr., Esq., J. Scott Hommer III, Esq., Wm. Craig Dubishar, Esq., and Paul N. Wengert, Esq., Venable, Baetjer and Howard, for the protester.
Gerard F. Doyle, Esq., Alexander T. Bakos, Esq., Doyle and Bachman, an intervenor.
Jeffrey I. Kessler, Esq., and Gary Theodore, Esq., Department of the Army, for the agency.
Guy R. Pietrovito, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. In a negotiated procurement for computer system and software engineering support services, protest that the contracting agency was required to consider Capability Maturity Model software process assessments under various technical evaluation factors is denied where the solicitation only provided for the use of the Capability Maturity Model in the evaluation of proposals under one evaluation subfactor.

2. Protest that the contracting agency misapplied the Capability Maturity Model in assessing the protester's and awardee's software process risk is denied where the protester merely disagrees with the agency's risk assessment and does not show the agency's judgment to be unreasonable.

3. In a procurement for the award of a time-and-materials contract with fixed-price burdened labor rates, the contracting officer reasonably evaluated the realism of the offerors' proposed labor rates, in accordance with the solicitation, where the agency assessed the offerors' ability to attract, hire, and retain qualified personnel during the contract at the proposed rates.

4. The contracting agency did not coerce or mislead the protester into raising its proposed labor rates, where the agency was reasonably concerned with the protester's ability to hire and retain qualified personnel due to its low proposed labor rates and asked the protester during discussions to substantiate how it intended to hire and retain qualified personnel at the rates proposed; the protester's

354101

decision to increase its proposed labor rates reflected the exercise of the firm's business judgment.

5. Protest that the awardee's proposed small business and small disadvantaged business subcontracting plan does not satisfy the solicitation requirements is denied where the solicitation required offerors to subcontract at least 20 percent of the contract value to small business concerns and to make a good faith effort to subcontract at least 5 percent of the contract value to small disadvantaged business concerns; the awardee proposed subcontracting more than 20 percent of the contract value to two subcontractors, a small business concern and a small disadvantaged business concern; and the protester has not shown that the agency's determination that the awardee made a good faith effort to meet the small disadvantaged business subcontracting goal was unreasonable or not in accord with the solicitation requirements.

6. The contracting agency reasonably determined that any potential organizational conflict of interest involving a proposed subcontractor of the awardee would be avoided or mitigated through the assignment of work under contract task orders.

DECISION

Research Analysis and Maintenance, Inc. (RAM) protests the award of a contract to Ilex Systems, Inc. under request for proposals (RFP) No. DAAB07-95-R-H601, issued by the U.S. Army Communications-Electronics Command for "system and software engineering support services for Mission Critical Defense Systems." RAM challenges the agency's technical and cost evaluations, asserts that the agency conducted misleading discussions that caused the protester to increase its proposed labor rates, claims that Ilex's proposed level of subcontracting did not comply with the RFP requirements, and argues that a proposed Ilex subcontractor has an organizational conflict of interest (OCI).

We deny the protest.

The RFP provided for the award of a time-and-materials, indefinite delivery, indefinite quantity contract for system and software engineering support services. The statement of work (SOW) detailed the services that could be ordered under the contract, including support services for system and software acquisition, for the establishment and maintenance of a software support environment, and for software maintenance and enhancement. Offerors were informed that delivery orders would be issued for the various contract tasks and that the total estimated level of effort was 300 man-years. The RFP, as amended, also provided that offerors were required to subcontract at least 20 percent of the contract value to small business concerns, and to make a good faith effort to subcontract at least an additional 5 percent of the contract value to small disadvantaged business concerns.

The RFP provided for award on a best value basis, and stated the following evaluation factors and subfactors:

1. Technical

    a. Technical approach
    b. Technical management of software activities
    c. Qualifications and availability of personnel

2. Sample Task Orders
(5 sample tasks provided)

3. Management

    a. Hiring and staffing plan
    b. Management techniques and controls
    c. Small business and small disadvantaged business subcontracting proposal

4. Performance Risk

    a. Software process risk evaluation (SPRE)
    b. Technical, management, schedule, and cost risk

5. Cost

    a. Cost proposal
    b. Labor rate realism

The RFP provided that the technical and sample task evaluation factors were equal in weight and together were significantly more important than the remaining evaluation factors combined. The management, performance risk, and cost evaluation factors were stated to be of equal weight. With regard to the performance risk factor's SPRE subfactor, the RFP stated that:

"The [g]overnment will use the [SPRE] to evaluate the process capability of each offeror. The SPRE methodology is consistent with the Software Engineering Institute's Software Capability Evaluation methodology. The [o]fferor's process will be evaluated against the Capability Maturity Model as defined in the CMU/SEI-93-TR-24 and CMU/SEI-93-TR-25 to determine the risks associated with the ability of

the [o]fferor's process, when followed, to produce quality software on schedule and within budget."[1]

As amended, the RFP required offerors to complete a "Software Process Maturity Questionnaire" to aid the agency's SPRE. Offerors were informed that while proposal risk would be assessed under each factor and subfactor "in terms of overall potential performance," the "performance risk factor shall be separately evaluated so that a level of confidence can be determined."

The RFP required offerors to provide fixed hourly rates, fully burdened with all indirect expense rates, based upon labor classifications and estimated man-years set forth in the solicitation. Offerors were informed that the agency would evaluate the realism of the offeror's proposed rates in relationship to the contract requirements, and to ascertain the offeror's ability to attract, hire, and retain qualified personnel during the contract. The RFP also provided that the award fee was fixed for all offerors and would not be evaluated, and that other direct costs (such as materials, travel, facility leases, and equipment rental) were fixed at $750,000 per year for evaluation purposes.

The Army received proposals from three offerors, including RAM and Ilex (the incumbent contractor). Technical and cost discussions were conducted with each offeror, and proposal revisions received. Ilex's and RAM's best and final offers (BAFO) were evaluated as follows:[2]

---

[1]The Capability Maturity Model was developed by the Carnegie-Mellon Software Engineering Institute to provide a tool for assessing and evaluating the maturity of an organization's software processes. The model, which identifies five levels of maturity, provides for software process assessments--or self-assessments--that allow organizations to implement improvement programs and for software capability evaluations that allow evaluators to identify the risks of selecting among different contractors for award.

[2]"Good" was defined as being a beneficial approach that satisfies all the government's requirements with a low degree of risk, while "acceptable" was defined as an approach that satisfies all the government's requirements with a moderate degree of risk. Under the performance risk factor, "moderate" risk was defined as the existence of some doubt, based on an offeror's performance record, that the offeror can perform the proposed effort.

	Ilex	RAM
Technical	[DELETED]	[DELETED]
Sample Tasks	[DELETED]	[DELETED]
Management	[DELETED]	[DELETED]
Performance Risk	[DELETED]	[DELETED]
Cost	$82.6M[3]	[DELETED]

Ilex's and Ram's proposed costs were determined to be reasonable and realistic for the proposed contract.

The source selection authority was briefed on the evaluation findings, and determined that Ilex's proposal was the most advantageous to the government, as follows:

> "In summary, [Ilex] presented the highest rated Technical and Sample Tasks Proposals. Each of the offerors were rated [DELETED] in the Management Proposals and were rated [DELETED] in the Performance Risk factor. [Ilex] clearly represents the best overall value to the Government since the proposal received the best rating in the most heavily weighted factors, Technical and Sample Tasks, at the lowest evaluated cost."

Award was made to Ilex, and this protest followed.

RAM first challenges the Army's evaluation of RAM's and Ilex's technical proposals under the technical, sample tasks, and performance risk evaluation factors. RAM's complaint is grounded upon its argument that the maturity of an offeror's software development processes, as determined using the software process assessment of the Carnegie-Mellon Software Engineering Institute's Capability Maturity Model, is intrinsically related to an offeror's potential performance under the contract, and must be considered under each of the various RFP evaluation factors and subfactors. RAM alleges that it has achieved a higher maturity level evaluation than Ilex under software process assessments conducted by the Army during the performance of other contracts and that the Army unreasonably did not consider this information in its technical evaluation.

---

[3]"M" means million.

Specifically, RAM notes that the technical approach subfactor to the technical evaluation factor provided for the evaluation of an offeror's "demonstrated ability" to develop and especially maintain application software, operating systems, and support software for tactical systems. In RAM's view, the evaluation of an offeror's "demonstrated ability" under this subfactor necessarily must include consideration of software process assessments performed by the agency under other contracts. Also, RAM complains that it was unreasonable for the Army to rate Ilex's proposal as [DELETED]--as compared to RAM's proposal's [DELETED] rating--for the sample tasks factor, given RAM's allegedly more mature software development process; in this regard, RAM complains that its proposal was downgraded under Sample Task [DELETED] because of its reference to its [DELETED]. Finally, RAM challenges the agency's evaluation scores for RAM and Ilex under the performance risk evaluation factor on the basis of RAM's allegedly better and more mature software process assessments.

The Army responds that, as provided for by the RFP, it used the Capability Maturity Model in its evaluation of the proposals under the SPRE subfactor of the performance risk factor. In addition, the Army and Ilex dispute RAM's assertion that the RFP required the agency to consider prior software process assessments in the evaluation of proposals under the technical and sample tasks factors. The agency and Ilex also dispute RAM's allegation that RAM was previously rated as having a more mature software development process than Ilex; in this regard, the agency states that the software process assessment to which RAM points was actually an informal practice exercise conducted in 1992 at Fort Huachuca as training for a software capability evaluation team to use in an upcoming procurement and was not documented.

In considering a challenge to a particular evaluation conclusion, we examine the record to determine whether the judgment was reasonable and in accord with the evaluation criteria listed in the solicitation. Abt Assocs., Inc., B-237060.2, Feb. 26, 1990, 90-1 CPD ¶ 223. A protester's mere disagreement with the agency's evaluation determination does not demonstrate that the evaluation was unreasonable. Brunswick Defense, B-255764, Mar. 30, 1994, 94-1 CPD ¶ 225.

Here, we agree with the Army and Ilex that the RFP only required the use of the Capability Maturity Model in the evaluation of proposals under the performance risk factor's SPRE subfactor, inasmuch as it is the only evaluation factor or subfactor that explicitly provides for the use of the Capability Maturity Model in the evaluation of proposals under the RFP. While the RFP's technical evaluation factor concerns whether an offeror's approach satisfies the SOW requirements, and the offeror's ability to utilize process improvement principles, this does not reasonably suggest that the agency would employ software process assessments from the Capability Maturity Model in evaluating offerors' proposals with respect to those evaluation factors and subfactors other than the SPRE subfactor. Rather, the RFP

clearly informed offerors that their technical approach, understanding, and capabilities would be evaluated under the technical and sample tasks evaluation factors, but did not specify the particular methodology or evaluation tool or tools to be used.

It is also true, as RAM notes, that the SOW references the use of the Capability Maturity Model for a number of contract services, e.g., that the contractor, as a part of its contract support services, would support the agency's evaluations, using the Capability Maturity Model, of other contractor's software development and maintenance processes; would assist the agency in evaluating various continuous improvement activities, such as "total quality management" and the Capability Maturity Model; and would assist in reviewing and evaluating "generic software development methodologies," such as the Capability Maturity Model. However, these SOW provisions also do not reasonably suggest to offerors that their proposals will be evaluated using the Capability Maturity Model, but merely state the contract requirements that the contractor will be required to meet.

In sum, we find that the RFP did not require the use of Capability Maturity Model's software process assessments in the evaluation of proposals under the technical and sample tasks evaluation factors.[4] Given this determination and the fact that RAM's challenge to the Army's evaluation under the technical and sample tasks evaluation factors was limited to the agency's failure to use the Capability Maturity Model to assess offerors' proposals under these evaluation factors, we have no basis to question the agency's evaluation ratings under the factors.[5] We further note that

---

[4]We also disagree with RAM's argument that the Capability Maturity Model was required in the evaluation of proposals under the performance risk factor's technical, management, schedule, and cost risk subfactor. This subfactor specifically provided for the evaluation of the degree to which offerors and their major subcontractors had met technical, schedule, and cost objectives on contracts within the past 5 years for related efforts.

[5]RAM in its comments complained that the agency's evaluation of proposals was inadequately documented. Where an agency fails to document or retain evaluation records, it bears the risk that there is inadequate supporting rationale in the record for its evaluation and source selection decision and that we will not conclude that there is a reasonable basis for the agency's evaluation or decision. Southwest Marine, Inc.; American Sys. Eng'g Corp., B-265865.3; B-265865.4, Jan. 23, 1996, 96-1 CPD ¶ 56. However, we will not disrupt an agency's procurement merely because the agency has failed to adequately document its evaluation or source selection decision, where the record otherwise shows the evaluation or source selection decision to be reasonable. Id. Here, even assuming the evaluation was not

(continued...)

the underlying premise on which RAM's protest allegation is based--that RAM's software process has been assessed as more mature than Ilex's--is both undocumented and unsupported in the record. Accordingly, this part of RAM's protest is denied.[6]

RAM also challenges the agency's use of the Capability Maturity Model in the evaluation of RAM's and Ilex's proposals under the performance risk factor's SPRE subfactor. RAM's and Ilex's proposals were each evaluated as being of [DELETED] risk under the SPRE subfactor and overall under the performance risk evaluation factor.[7] RAM argues that its [DELETED] risk rating is unreasonable and reflects a misapplication of the Capability Maturity Model; specifically, RAM complains that the agency apparently required "institutionalized" software processes before an offeror's software process would be deemed low risk and that this is contrary to the Capability Maturity Model. RAM also complains that the agency overlooked the information RAM provided in response to the agency's discussion questions, which assertedly was sufficient either to demonstrate a mature software process or to alleviate evaluated weaknesses.

The record shows that the agency evaluated the information provided by RAM in its proposal, as well as information obtained by the agency in an on-site visit to RAM's plant, where the agency reviewed RAM's organizational-level and specific project documentation and interviewed various RAM personnel in accordance with the Capability Maturity Model procedures. As a result of this evaluation, RAM's proposal received a [DELETED] risk rating under the SPRE subfactor and the Army notified RAM of [DELETED] weaknesses identified in its software development process. In response to the agency's discussions concerning RAM's software development process, RAM provided detailed information addressing the evaluated weaknesses and stating how RAM intended to improve its process; RAM also provided documentation to show its established software process. Despite RAM's

---

[5](...continued)
adequately documented, we do not find on this record that the agency's evaluation under these factors was unreasonable.

[6]RAM also challenged the agency's evaluation of its response to Sample Task [DELETED] as [DELETED]. We need not address this allegation because the record establishes that, even if true, the allegation would not change the relative competitive standing of the offerors. That is, Ilex's proposal would remain higher rated with a lower evaluated cost than RAM's and, on this basis, Ilex would remain entitled to award.

[7]RAM's and Ilex's proposals both received low risk ratings under the technical, management, schedule, and cost risk subfactor.

lengthy and detailed response to the agency's discussions, the Army again evaluated RAM's proposal as [DELETED] risk under the SPRE subfactor because although RAM had provided adequate methods to correct or mitigate most of the perceived weaknesses, the firm did not establish dates or a specific schedule for its offered improvements. The Army concluded, based on the SPRE, that some risk remained regarding RAM's performance of the contract work.

We find reasonable the Army's evaluation of RAM's proposal as [DELETED] risk under the SPRE subfactor. Although RAM offered a plan to correct or mitigate weaknesses identified in its software development process, the agency was reasonably concerned that RAM's software process was not well established, and that this indicated some risk in the performance of the contract. While RAM complains that the more "institutionalized" software process the agency required before it would find the firm's software process to be low risk is inconsistent with the Capability Maturity Model, RAM has not established why this is so. Moreover, from our review of the Capability Maturity Model, we find, contrary to RAM's arguments, that the assessment of an organization's maturity level under a software process assessment does not necessarily govern the assignment of risk in a software capability evaluation.[8] Rather, the Capability Maturity Model specifically provides for the exercise of informed professional judgment in conducting both software process assessments and software capability evaluations, and recognizes that "the results of a software process assessment or software capability evaluation may differ, even on successive applications of the same method."

RAM also argues that the agency's evaluation of its and Ilex's proposals as [DELETED] risk under the SPRE subfactor is unreasonable because RAM allegedly has a more mature and less risky software process than Ilex. As noted above, we find no support in the record for RAM's unsubstantiated assertions concerning the relative maturity of RAM's or Ilex's software processes. Rather, the record establishes that the Army evaluated the two firms' software processes based upon the information provided in the proposals, the agency's on-site visits to the firms' offices, and the offerors' responses to the agency's discussions questions. RAM has not shown the agency's evaluation judgment to be unreasonable.

---

[8]The Capability Maturity Model provides for software process assessments, which "focus on identifying improvement priorities within an organization's own software process," as well as software capability evaluations, which focus "on identifying the risks associated with a particular project or contract for building high-quality software on schedule and within budget." As recognized in the model, these assessment and evaluation processes are different; they "differ in motivation, objective, outcome, and ownership of the results."

RAM next challenges the agency's cost evaluation of Ilex's proposal. Specifically, RAM argues that the Army, contrary to the RFP requirement for a cost realism evaluation of offerors' proposed loaded labor rates, did not evaluate Ilex's more than $[DELETED] decrease in its total proposed cost from that proposed in the awardee's initial proposal.[9]

The record does not support this protest allegation. The Army verified both RAM's and Ilex's proposed loaded labor rates (base direct labor rates and indirect cost rates) with the Defense Contract Audit Agency, and also compared the two firms' proposed rates with the Independent Government Estimate (IGE). Because both firms proposed some rates that were below those of the IGE, the agency conducted cost discussions with RAM and Ilex seeking additional support for the proposed fixed rates. In response to discussions, Ilex reduced its proposed costs by approximately [DELETED] percent by (1) [DELETED]; (2) [DELETED]; and (3) [DELETED]. Although the Army found that, overall, Ilex's proposed costs, based upon its fixed-price rates, were reasonable and realistic, some of Ilex's proposed rates were considered low; on this basis, the Army assessed, under the technical evaluation factor's qualifications and availability of personnel subfactor, the risk that Ilex could obtain and retain qualified personnel.

We find that the agency's cost realism evaluation was reasonable and consistent with the RFP requirements.[10] Where, as here, a solicitation provides for the award of a time-and-materials contract with fixed-price burdened labor rates and no-cost reimbursable elements, there is no requirement that the agency assess the cost realism of the proposed rates. See Research Management Corp., 69 Comp. Gen. 368 (1990), 90-1 CPD ¶ 352; SYS, B-258700, Jan. 31, 1995, 95-1 CPD ¶ 57. The RFP provided, however, that the agency would assess offerors' proposed rates to ascertain the offerors' ability to attract, hire, and retain qualified personnel during the contract. The record demonstrates that the agency did exactly that.[11]

---

[9]RAM initially argued that Ilex had failed to include subcontractor costs in its cost proposal. This allegation was without merit and was not pursued by RAM after its receipt of the agency report.

[10]RAM speculates that during contract performance Ilex may attempt to charge as direct labor cost elements that are properly accounted for as indirect costs. There is no evidence to support RAM's supposition in this regard, and we will not presume that an agency will improperly administer its contracts.

[11]Although RAM complains that the agency did not sufficiently document its cost realism evaluation of Ilex's proposal, the record shows that the agency did consider Ilex's proposed rates and assess Ilex's ability to hire and retain qualified personnel. In the context of this procurement, we find this record adequate for our review.

B-272261; B-272261.2
                                                                                       354101

RAM also protests that it was misled during discussions to raise its proposed labor rates such that its final proposed price was approximately $[DELETED] higher than that of Ilex.

An agency may not consciously coerce or mislead an offeror into raising its price. See Eagle Technology, Inc., B-236255, Nov. 16, 1989, 89-2 CPD ¶ 468. Here, however, the record establishes that the agency did not coerce or mislead RAM into raising its proposed labor rates. Rather, the record shows that the agency found that a number of RAM's proposed labor rates in its initial proposal were low and, as a result, asked RAM in discussions to substantiate how it intended to hire and retain qualified personnel at the rates proposed. In response to the agency's discussions, RAM raised its proposed labor rates to reflect the rates currently being paid employees. Rather than establishing coercion or misleading discussions as RAM asserts, the agency's discussions merely reflected the agency's reasonable concern, in accordance with the RFP's provisions, that RAM's low proposed labor rates may affect its ability to hire and retain qualified personnel. RAM was given the opportunity either to substantiate its initially proposed rates or to propose different rates. That RAM chose to raise its proposed labor rates reflects the exercise of the firm's business judgment, not improper conduct by the agency.

RAM also protests that Ilex's offer was not compliant with the RFP's mandatory subcontracting requirements. We disagree. The RFP, as amended, provided that:

> "[o]fferors are required to subcontract at least 20 (twenty) [percent] of the contract value to small business concerns, and to make a good faith effort to subcontract at least an additional 5 (five) [percent] of the contract value to small disadvantaged business concerns."

In its BAFO, Ilex proposed two subcontractors: a small business concern and a small disadvantaged business concern--together the subcontracts to these two concerns totaled more than 20 percent of the contract value. As the Army reasonably found, Ilex's proposed subcontracting plan satisfied the RFP requirement that offerors subcontract at least 20 percent of the contract value to small business concerns. The Army also found that the amount Ilex proposed to subcontract above 20 percent represented the awardee's good faith effort to subcontract with its proposed small disadvantaged business subcontractor. While RAM apparently disagrees with this determination, it does not show why this determination was unreasonable or not in accordance with the RFP requirements.

RAM finally protests that one of Ilex's proposed subcontractors has an OCI, which should have disqualified Ilex from award. The Army responds that it is true that one of Ilex's subcontractors is also a subcontractor under another task order contract to provide software development and maintenance support on some of the systems to be supported under the contract to be awarded here. The contracting

officer for that contract is the same person assigned as contracting officer for this procurement. The Army disputes that Ilex's subcontractor has an actual OCI because the subcontractor has not done any work under the other contract. In addition, the Army states that any potential OCI will be avoided or mitigated through the negotiation of delivery orders under the two contracts or the tasking of potential OCI work to another contractor.

A contracting officer is required to avoid, neutralize, or mitigate a significant potential OCI before contract award. Federal Acquisition Regulation §§ 9.504, 9.505. We will not overturn an agency's determination regarding the existence of an actual or potential OCI, or whether that OCI can be avoided, neutralized, or mitigated, except where the determination is shown to unreasonable. D.K. Shifflet & Assocs., Ltd., B-234251, May 2, 1989, 89-1 CPD ¶ 419. Here, the Army states, reasonably we find, that any potential OCI will be avoided by the careful assignment of work to the subcontractor under the two task order contracts. See Deloitte & Touche, 69 Comp. Gen. 463 (1990), 90-1 CPD ¶ 486. RAM does not contend that any potential OCI involving the subcontractor cannot be so avoided.

The protest is denied.

Comptroller General
of the United States