



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Ouachita Mowing, Inc.

File: B-276075; B-276075.2

Date: May 8, 1997

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Alan M. Grayson, Esq., and Michael A. Lewis, Esq., Alan M. Grayson & Associates, for R&D Maintenance, Inc., an intervenor.

Larry E. Beall, Esq., Department of the Army, for the agency.

Mary G. Curcio, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that agency improperly determined that protester proposed too few hours to perform contract satisfactorily is denied where protester merely asserts that its approach would permit it to perform with the number of hours it proposed, and does not explain what that approach is, or how it would enable the protester to complete all required tasks satisfactorily with the hours proposed.
2. Agency held meaningful discussions with protester regarding low proposed man-hours where agency pointed out during discussions its concern that protester's man-year was based on 1,992 hours rather than the standard 2,080 hours; this was sufficient to indicate agency's general concern that proposed hours were too low, and when protester reduced its proposed hours further in its best and final offer, agency was not required to reopen discussions and address the problem again.
3. Agency properly awarded contract to higher cost offeror with technically superior proposal, where it reasonably determined that low cost protester might not be able to perform satisfactorily with the number of man-hours it proposed.

DECISION

Ouachita Mowing, Inc. protests the award of a contract to R&D Maintenance Services, Inc. under request for proposals (RFP) No. DACW01-96-R-0065, issued by the Army Corps of Engineers for the operation and maintenance of recreational facilities at Lake Sidney Lanier in Buford, Georgia.

We deny the protest.

The RFP, which contemplated award of a cost-plus-award-fee contract, provided that proposals would be evaluated against technical, management and cost criteria, and that the award decision would be based on the best value to the government. The Corps received and evaluated initial offers, held discussions with R&D and Ouachita, the two offerors whose proposals were included in the competitive range, received and evaluated best and final offers (BAFO), and awarded the contract to R&D after determining that R&D's higher-priced, but technically superior proposal offered the best value to the government. Ouachita protests that the Corps improperly evaluated its proposal, failed to conduct meaningful discussions with the firm, and performed an unreasonable cost/technical tradeoff.

PROPOSED MAN-HOURS

The solicitation listed a number of tasks that contractors would be required to perform, including, for example, road repair, maintenance of picnic and camp areas, lawn care, and maintenance and repair of showers and electrical hookups, road signs, and navigation buoys. Offerors were required to provide the personnel to perform all services. The government estimated that it would require 109,734 man-hours to perform the contract satisfactorily. In its BAFO R&D proposed to perform with 105,348 man-hours. Ouachita initially proposed to perform with 102,348 hours, but in its BAFO reduced that number to 97,937. The technical evaluation team (TET) was concerned that Ouachita would be unable to perform the contract with the reduced staffing. The source selection official (SSO) balanced this concern against his finding that R&D's proposal demonstrated a thorough understanding of the requirements, and was superior to Ouachita's under the technical and management factors, and concluded that R&D's proposal represented the best value despite its \$800,000 higher cost (\$9,136,417 versus \$8,320,365).

Ouachita maintains that the agency's determination that its proposed man-hours were inadequate is unreasonable because it is based solely on a comparison with the government estimate, with no consideration given to whether the proposed hours were adequate in light of Ouachita's proposed approach.

The Corps's conclusion regarding the adequacy of Ouachita's proposed hours was reasonable. While neither the TET's award recommendation nor the SSO's decision document details the analysis of Ouachita's proposed hours in the context of its approach, this is not a situation where the agency simply decided that any proposal offering fewer hours than the government estimate was unacceptable. See, e.g., The Jonathan Corp.; Metro Mach. Corp., B-251698.3; B-251698.4, May 17, 1993, 93-2 CPD ¶ 174 at 11-12. Rather, the record shows that the agency finds no support for the low man-hours proposed. In this regard, in responding to Ouachita's protest, the contracting officer reports:

"After review of Ouachita's proposal, technical evaluators concluded that the number of manhours proposed, which were low in their initial proposal, were further reduced to such a level that it was felt Ouachita could not perform minimum required services. . . . A proposal utilizing lower manhours would be desirable if the technical plan showed an innovative approach that would assure performance of required services with less effort and less cost."

"Ouachita's proposal contained no such innovations, and was basically a rehash of the methods used by Ferguson-Williams [the incumbent] for the last eight years."

Ouachita asserts that it did in fact base its proposed level of effort on performance efficiencies developed by Ferguson-Williams in its last year of contract performance, and that it proposed man-hours equivalent to Ferguson-Williams's in that last year of performance. However, Ouachita's proposal did not explain the performance efficiencies on which its proposed hours were based. Moreover, the agency explains that Ferguson-Williams's hours during the last year of its contract were low, not because of some unique approach, but because funding had been reduced that year such that the full scope of services at Lake Lanier could not be utilized; the agency therefore reduced the services that Ferguson-Williams was required to perform. The record contains no evidence refuting the agency's explanation.

Ouachita also argues that the agency's man-hour estimate is inaccurate. The agency reports that the estimate is based on the hours under Ferguson-Williams's most recent contract for the services, which covered the past 5 years, as well as the knowledge of Corps personnel familiar with the project and local contractor personnel. Ouachita maintains that the estimate should have been based solely on Ferguson-Williams's last year of performance.

There is no requirement that an agency use only the most recent year of an incumbent contractor's performance when it is estimating the number of hours it will take to perform a contract. Rather, when formulating estimates, procuring agencies are required to utilize the best information available; the estimate need not be absolutely correct, but must be a reasonably accurate representation of the agency's anticipated needs. L.K. Comstock, Inc., and Liebert Fed. Sys., Inc., B-261711.5; B-261711.6, Dec. 14, 1995, 96-1 CPD ¶ 4 at 4. Given the potential fluctuations in performance requirements in a recreational facility from year to year, based on use, weather conditions, and the number and types of repairs required in any year, we think it arguably is more reasonable to base such a man-hour estimate on more than 1 year of performance. This rationale applies directly to the circumstances here. As discussed, services were reduced under Ferguson-Williams's final contract year as a result of reduced funding; an estimate based on that year alone therefore would be an inaccurate measure of the hours necessary to perform

where, as here, the Corps does not expect to order reduced services. We conclude that there is no basis for questioning the estimate.

DISCUSSIONS

Ouachita asserts that the agency did not provide it with meaningful discussions regarding its man-hour concern. In a negotiated procurement, agencies are required to conduct meaningful discussions with all competitive range offerors. While this generally requires agencies to advise offerors of proposal deficiencies and to afford them an opportunity to submit a revised proposal, it does not mean that agencies must conduct all-encompassing discussions; rather, agencies are only required to lead offerors into those areas of their proposal needing amplification, given the context of the procurement. In this regard, the content and extent of discussions are within the discretion of the contracting officer. Creative Management Tech., Inc., B-266299, Feb. 9, 1996, 96-1 CPD ¶ 61 at 4.

Discussions here were adequate. Based on the evaluation of Ouachita's initial proposal, the Corps had no overriding concern that the total proposed hours were inadequate. The Corps did note that Ouachita's proposed hours were excessive in certain areas and deficient in others, and that Ouachita's proposal of 1,992-hour man-years--instead of the standard 2,080--had the effect of reducing the total hours offered. As Ouachita acknowledges, however, the Corps specifically raised these points during discussions, and specifically asked Ouachita to review its proposed hours per man-year. These discussions brought the agency's actual concerns to the firm's attention. While the Corps did not advise Ouachita that its hours were too low to perform adequately, again, this is because the Corps did not have this concern at the time of discussions; the Corps's ultimate determination that Ouachita's hours were too low was based on the reduced number of man-hours in its BAFO. The agency was not required to reopen discussions to permit Ouachita to remedy this deficiency introduced in its BAFO. Anderson Dev. Co., B-261112, Aug. 18, 1995, 95-2 CPD ¶ 72 at 4.

USE OF SUBCONTRACTOR

Ouachita maintains that the agency improperly downgraded its proposal based on an unstated evaluation factor--use of a subcontractor. It also challenges the evaluation conclusion and argues that the agency improperly failed to raise this matter during discussions.

The propriety of the evaluators' consideration of Ouachita's proposed subcontracting is irrelevant given the manner in which the selection decision was made. In recommending R&D for award to the SSO, the TET did not mention its concerns about Ouachita's subcontracting approach; rather, as indicated above, it focused on its belief that Ouachita's reduced man-hours could cause performance

problems. The source selection document shows that the SSO focused on the same concern in the tradeoff which led him to select R&D for award. Thus, this aspect of the evaluation would not provide a basis for disturbing the award. Scientific Research Corp., B-260478.2, July 10, 1995, 95-2 CPD ¶ 8 at 7 (protest will not be sustained where there is no showing of competitive prejudice).

COST/TECHNICAL TRADEOFF

Ouachita challenges the tradeoff decision on the basis that the 1.5 man-year difference between its and R&D's proposals did not warrant paying R&D's \$800,000 higher cost.

In a negotiated procurement, there is no requirement that award be made on the basis of lowest price/cost; a cost/technical tradeoff may be made, and the extent to which one may be sacrificed for the other is governed by the tests of rationality and consistency with the established evaluation factors. Hellenic Technodomiki S.A., B-265930, Jan. 3, 1996, 96-1 CPD ¶ 2 at 3. We will uphold award to offerors with higher technical ratings and higher costs so long as the results are consistent with the evaluation criteria and the contracting agency reasonably determines that the cost premium involved is justified given the technical superiority of the selected offeror's proposal. Id. Here, while Ouachita is correct that R&D proposed only 1.5 more man-years (50.65 versus 49.17), this understates the difference in the proposals, since Ouachita's proposed man-year consisted of only 1,992 hours, compared to R&D's 2,080-hour man-year. The actual hourly difference in the proposals was 7,411 hours (105,348 versus 97,937), which equates to a 3.5-man-year difference in the proposals (using the standard 2,080-hour man-year). Given the labor intensive nature of this contract and the fact that the noncost factors were more important than cost under the evaluation scheme, we find nothing unreasonable in the SSO's determination that, in light of the concerns about its proposed man-hours, Ouachita's lower proposed cost was not sufficient to offset R&D's proposal's superiority under the noncost factors.

The protest is denied.

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