



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

Matter of: IT Facilities Services

File: B-279585

Date: June 29, 1998

Dorn C. McGrath III, Esq., Richard L. Moorhouse, Esq., and Christopher R. Yukins, Esq., Holland & Knight, for the protester.
Thomas J. Madden, Esq., John J. Pavlick Jr., Esq., and Johana A. Reed, Esq., Venable, Baetjer, Howard & Civiletti, for Rust Constructors, Inc., an intervenor.
Maj. Jonathan C. Guden, Department of the Army, for the agency.
Paula A. Williams, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest alleging that agency failed to conduct meaningful discussions with protester concerning its proposed staffing level is denied where written discussion questions reasonably apprised protester of the areas of staffing that were deficient, and it is clear from protester's responses to discussion questions that it understood the concerns being raised by the agency.
2. Agency reasonably adjusted protester's cost proposal upward for cost realism to reflect understaffing in protester's technical proposal in accordance with the solicitation.

DECISION

IT Facilities Services, a joint venture,¹ protests the award of a contract to Rust Constructors, Inc. under request for proposals (RFP) No. DABT31-97-R-0002, issued by the Department of the Army for facilities maintenance support services. ITFS alleges that it was not afforded meaningful discussions and challenges other aspects of the technical and cost evaluations.

We deny the protest.

¹ITFS's joint venture partners are IT Corporation and J&J Maintenance, Inc.; IT is the managing partner.

As amended, the RFP provided for award of a cost-plus-award-fee contract for facilities maintenance support services at Fort Leonard Wood and the Lake of the Ozarks Army Recreation Area for a base period with four option periods. The RFP performance work statement (PWS) described the specific services to be performed and the contractor was required to provide all supervision, labor, equipment, and supplies necessary to perform these services.² RFP § C at 1-179. The solicitation requirements were divided into 16 major functional areas (MFA) for evaluation purposes and offerors were required to organize their proposals by MFAs.³ The RFP included, as technical exhibit (TE) 31, historical workload data and related information for labor (excluding supervisor/management categories), material, and equipment costs incurred by the previous contractor during fiscal years 1994, 1995, and 1996. For fiscal year 1997, copies of that contract with all modifications, and printouts of the data from which the information in TE 31 was derived were made available to all offerors. The RFP advised prospective offerors that it was their responsibility to review all of this data to determine what effect each of these changes would have on the work requirements for this solicitation in relation to the historical workload data shown for the prior contracts. As relevant here, paragraph 2.1 of TE 31 cautioned that:

Prospective bidders should be aware that the data shown is labor, material and equipment expenditures incurred and reported by [the previous contractors] IAW [in accordance with] contract specifications and contract modifications in existence at that time. The previous Facilities Maintenance Support Services contract is available for review in the Technical Library and should be used by bidders in the correlation of the data shown and the work requirements of the previous Facilities Maintenance Support Services contract. In addition to the specifications a summary of changes which occurred to the Real Property Inventory during the time frame for which workload data is provided is also available for review as part of the Technical Library. The prospective bidders should also be aware that the

²As amended, the RFP recognized that the Service Contract Act of 1965 (SCA), 41 U.S.C. §§ 351-358 (1994) is applicable to this procurement by including the applicable wage determinations and the collective bargaining agreement (CBA) which set forth the minimum wages and fringe benefits to be paid for certain covered labor categories.

³The MFAs identified in the solicitation include mechanical, electrical, hospital support, and environmental services. The agency's equipment needs were also listed by MFA.

specifications in this solicitation differ from the specifications used by the previous [contract].⁴ [Emphasis added.]

The RFP stated that award would be made to the offeror whose proposal represented the best overall value to the government, cost and other factors considered. RFP § L at 6. It listed the significant non-cost evaluation factors as: technical/management and staffing; past performance; quality control; small, small disadvantaged and women-owned businesses (SSDWOB) participation; and phase-in and phase-out. RFP § M at 2-3. Cost was to be evaluated, but not scored, on the basis of whether proposed costs were realistic, complete, and reasonable in relation to the RFP requirements. Costs had to be compatible with the technical proposal and adjustments could be made to obtain a most probable cost (MPC) using the results of the cost realism evaluation.⁵ RFP § L at 24, 28 n.5.

The Army received proposals from four offerors. Those submitted by ITFS, Rust (the incumbent contractor), and two other offerors (not relevant here) were evaluated by a three-member technical evaluation committee (TEC).⁶ All offerors' proposals were included in the competitive range and written discussions were held using the discussion questions compiled by the evaluation members. By letter of December 17, 1997, the agency provided ITFS with detailed written questions, consisting of 44 questions in the non-cost areas and 6 in the cost area. In addition to the written discussion questions, ITFS was provided with a copy of the Defense Contract Audit Agency (DCAA) audit report concerning its cost proposal for information, correction, or to provide an explanation of the audit findings. Revised proposals were received by January 6, 1998, and best and final offers (BAFO) were

⁴For example, unlike the prior solicitations, section C.5.7.3.3 of the PWS for this RFP requires a minimum staffing level for MFA 11 (hospital services), of 10 employees (including 1 supervisor) and 4 operators for the hospital boiler plant. In addition, MFA 15 (environmental services) is a new requirement that was not included in the TE 31 workload data, and the CBA included in the RFP changed the productive staff-hours for a full-time equivalent (FTE) from 1,900 to 1,820 for all employees subject to the CBA.

⁵Evaluated probable cost was equal in weight to the aggregate values of the non-cost factors; the technical/management and staffing factor and the past performance factor were both of equal weight and were each more important than the quality control factor which was worth more than the SSDWOB and phase-in/phase-out factors.

⁶Proposals were rated on a color/adjectival basis: "green/best" if they exceeded the minimum requirements under the MFAs; "blue/good" if they were acceptable; "yellow/marginal" if they required substantial changes; and "red/poor" if they failed to meet the minimum requirements.

received by February 3. The final technical evaluation for the protester's and the awardee's proposals were as follows:

Factor	Rust	ITFS
Technical/Mgmt/Staffing	Green	[DELETED]
Past Performance	Green	[DELETED]
Quality Control	Blue	[DELETED]
SSDWOB	Green	[DELETED]
Phase in/Phase out	Green	[DELETED]
Overall Tech. Rating	Green	[DELETED]
Proposed Cost	\$45,014,360	[DELETED]
Most Probable Cost	[DELETED]	[DELETED]

The upward MPC adjustment to ITFS's proposed costs was based on the evaluated difference between the total staffing hours of approximately [DELETED] FTEs proposed by ITFS and the total staffing hours of approximately 153 FTEs in the government estimate; upward adjustments were also made to the protester's equipment and supply costs. [DELETED]. In making his source selection decision, the contracting officer relied on the final technical and cost evaluation reports, which identified the strengths and weaknesses in each proposal. The contracting officer determined that Rust's proposal represented the best value to the government based on its best overall technical rating and MPC and award was made to Rust. Price Negotiation Memorandum at 7. After receiving a debriefing, ITFS filed this protest.

ITFS contends that discussions held with it were not meaningful because the firm was never advised that its proposed staffing level was deficient.⁷ The protester states that not one of the Army's discussion questions asked ITFS how it was using the workload data set forth in TE-31 to calculate staffing, although it was evident in its initial and revised proposals that ITFS "scrupulously used the TE-31 data to calculate the necessary staffing level for this contract but did not come close to [the independent government estimate (IGE)]." Protester's comments on the agency's report, May 4, 1998 at 2. ITFS argues that, if it had "unknowingly" misinterpreted the workload data in TE 31, the agency should have continued discussions with it

⁷ITFS has raised other issues in conjunction with its protest. We have reviewed them all and find that none has merit.

and given the firm an opportunity either to justify its approach or revise its proposal to increase its staffing level.

Agencies are required to conduct meaningful discussions with all offerors whose proposals are within the competitive range but they are not required to conduct all-encompassing discussions or discuss every element of a proposal receiving less than the maximum rating. Volmar Constr., Inc., B-270364, B-270364.2, Mar. 4, 1996, 96-1 CPD ¶ 139 at 4; DAE Corp., B-259866, B-259866.2, May 8, 1995, 95-2 CPD ¶ 12 at 4-5. Agencies are obligated only to lead offerors generally into those areas of their proposal needing amplification within the context of the particular procurement. Creative Management Tech., Inc., B-266299, Feb. 9, 1996, 96-1 CPD ¶ 61 at 4. As discussed below, we find that discussions here were adequate.

The record indicates that in the December 17 discussion letter to ITFS, the agency advised ITFS of the evaluators' concerns regarding various aspects of its proposal, including staffing. For example, under the mechanical MFA evaluation factor, the protester was specifically asked:

Explain the rationale for performing scheduled maintenance on mechanical equipment contained in C.5.3 and the pertinent technical exhibits.

What position (with accompanying man-hours) will perform inspection, testing, and maintenance on cranes and hoists.

Agency discussion letter to ITFS, December 17, 1997, at 2.

Under the electrical MFA, the protester was asked, among other things, who would perform the sprinkler system maintenance. Id. Under the utility plants MFA, 14 discussion questions were posed to the protester, including:

There seems to be several discrepancies in the Technical Proposal concerning how and who will perform scheduled maintenance for the Water and Wastewater Plants and Systems. In various places, it is indicated that everyone from the 'Equipment O&M Section', ITFS O&M personnel, Maintenance Mechanics from the Mechanical Section, operators, shift responsible operators, plumbers from the Mechanical Section, mechanical equipment mechanic, swimming pool maintenance mechanics will perform scheduled maintenance. Explain the staffing rationale for performing the scheduled maintenance for the wastewater plant and water and intake plants?

Who will perform the scheduled maintenance requirements for the Water Distribution Systems and Wastewater Collection Systems?

How much of the 5.3 man-years of Boiler Mechanic will be used to perform scheduled maintenance of unattended boilers contained in TE 9.

Who will perform the work in C.5.5.2.4.2.4.1. of the PWS?

Id. at 2-3.

Although the protester contends that the discussion questions, such as those quoted above, did not adequately advise it of the agency's concerns about its staffing approach, the record shows otherwise. It is clear from the December 17 discussion letter that the agency did bring to the protester's attention the concerns the agency had with ITFS's proposal, including the areas of staffing. While ITFS asserts that the agency's use of the phrase "explain the rationale" did not reasonably convey the agency's staffing concerns, we find no merit to this allegation. In our view, the phrase "explain the rationale" within the context of the specific questions was clearly asking ITFS to provide staffing information concerning the labor categories that would perform specific services, and a review of the protester's responses to the discussion questions shows that the protester understood it was being asked about the adequacy of its proposed level of staffing. For example, ITFS's January 5, 1998 response to the discussion questions contained the following:

Question: Explain the rationale for performing scheduled maintenance on mechanical equipment contained in C.5.3 and the pertinent technical exhibits?

Answer: We have evaluated the work load data contained in TE 31 for all categories of mechanical service orders, scheduled maintenance, etc. To accomplish these levels of work we will have a total of 23.3 HVAC mechanics and plumbers as discussed in the technical approach for mechanical section

Protester's response to agency discussion questions, January 6, 1998, at 1-2.

Similarly, the protester's response to another discussion question was:

Question: Part II, Tech/Mgmt Proposal, Section A.2(b)(9), Construction. Support Branch: This element is not shown in

Productive Hour matrix or costed. Provide information for this effort IAW L.37e(4).

Answer: The RFP provided no specific Level II work or specific projects on which to base a notational construction program and productive man hour estimate. We were also directed not to cost these performance areas. The rationale below provides the concept we will employ to execute the construction work.

In short, it is clear from these and other ITFS's responses to the discussion questions that the protester reasonably understood that the agency had staffing concerns. The record shows that the agency reasonably apprised the protester during discussions that its proposed staffing was inadequate to successfully perform the contract requirements.⁸

ITFS also contends that the agency's failure to disclose its desired staffing level in the RFP provided Rust with an unfair competitive advantage. According to the protester, the modifications to Rust's fiscal year 1997 contract do not provide "intelligible workload data to supplement TE-31 and the RFP" such that non-incumbent offerors could determine an estimated staffing.

We disagree. As previously stated, except for the mandatory staffing requirements for the medical complex, the agency did not establish a desired staffing level that it required or expected offerors to provide. Instead, the solicitation expressed the agency's staffing requirements in terms of the 16 MFAs to be performed and the standards of quality to be maintained, and detailed information was provided in order to prepare an estimated staffing level. Specifically, offerors were instructed to prepare their staffing proposal based on their own analyses of the RFP's PWS, the historical workload data in TE 31, printouts of the data from which the information in TE 31 was derived, other TEs included in the RFP, the lists of equipment that would require maintenance, and the 1997 contract and

⁸In a related argument, ITFS claims that the evaluators ignored the innovations offered by the protester which significantly reduced its staffing needs. However, the record shows that the innovations proposed by ITFS--using cross-trained workers and an automated maintenance management system--were in fact evaluated. In the judgment of the evaluators, these innovations did not justify the firm's understaffed proposal and the protester's disagreement with the evaluators' judgment does not establish that the judgment was unreasonable. McShade Enters., B-278851, Mar. 23, 1998, 98-1 CPD ¶ 90 at 2.

modifications.⁹ RFP §§ TE 31 at 1; 40-41. Offerors were also encouraged to schedule site visits in order to familiarize themselves with the facilities. RFP § L at 14-15. The RFP clearly placed the burden on offerors to assess the available data and other information concerning these services and to propose staffing levels to ensure successful contract performance. We think the availability of such extensive data--in conjunction with the RFP's explicit instructions to prospective offerors that they were responsible for reviewing and analyzing this data in order to develop their staffing proposals since the current RFP requirements differed from the requirements in TE 31--was sufficient to permit a reasonably competent offeror to prepare its staffing proposal. Thus, we find no basis to question the agency's decision not to disclose its desired staffing level in the solicitation. An agency is permitted to evaluate the adequacy of an offeror's staffing by comparison with an undisclosed staffing estimate, where, as here, the RFP puts offerors on notice that staffing will be evaluated. Intelcom Support Servs., Inc., B-257037, Aug. 23, 1994, 94-2 CPD ¶ 77 at 6.

Further, the record here belies the protester's assertion that the modifications to the fiscal year 1997 contract did not provide intelligible workload data that non-incumbent offerors could readily use to update the workload data in TE 31. For example, in preparing the government staffing estimate for the Mechanical MFA, the evaluators used the 24 FTEs provided in TE 31 (which is a 3-year compilation of prior facilities contracts); added 5 FTEs (which represent the modifications to the fiscal year 1997 contract, the new requirements in the RFP, and the tasks transferred from MFA 7 to the Mechanical MFA); and also added 3 FTEs for management personnel for a total of 32 FTEs for this MFA. ITFS's proposed staffing for this MFA was [DELETED] FTE, which included both labor and management personnel, and there was nothing in its proposal to indicate that in estimating the number of FTEs required, the protester took into account the additions/deletions which they reasonably should have been aware of to the TE 31 workload data. It appears that ITFS did not reasonably consider the new and additional work in its estimates.

Alternatively, the protester contends that the workload data in TE 31 must have been outdated or incorrect to result in the agency's determination that its staffing was inadequate. In support for its position, ITFS merely states that in preparing its initial and revised proposals, the firm "scrupulously" relied on the data in TE 31 to

⁹The record shows that each prospective offeror had equal access to this information from which it could then estimate the necessary staffing and equipment to perform the contract services. While there was a delay in making some of the backup data available to prospective offerors in the agency's technical library, the contracting officer extended the due date for receipt of initial proposals by 1 week to give all offerors additional time to prepare their initial proposal. RFP, amendment No. 0002.

calculate the firm's total staffing level. We find no merit to these allegations. First, there is no indication whatsoever in the record that the information in TE 31 was outdated or incorrect and the protester has not shown otherwise. In this regard, the RFP explicitly cautioned prospective offerors not to solely rely on the workload data in TE 31 to calculate the staffing or equipment requirements for the current RFP; rather, as previously discussed, the RFP described the manner in which offerors should analyze the historical data provided to calculate the staffing needs for this solicitation. If the protester chose to ignore this caution in the RFP and chose to "scrupulously" rely on partial, rather than complete, workload data, it did so at its peril.

To the extent ITFS now complains that the TE 31 data was somehow defective, such a protest ground is untimely and will not be considered further, since protests based upon alleged improprieties in a solicitation which are apparent prior to the time set for receipt of initial proposals must be filed prior to the time set for receipt of initial proposals. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1998). In fact, it is clear from the record that ITFS believed early on that the information furnished by the agency for preparing staffing estimates was inadequate. (For example, its response to the question concerning Level II work quoted in part above shows it believed that the information for Level II work was not adequate.) Thus, ITFS should have raised its objections to the solicitation, if any, prior to the October 10, 1997 extended due date for receipt of initial proposals, rather than waiting until the agency had selected another contractor based on the terms of the solicitation as issued.¹⁰

Finally, ITFS contends that the agency improperly double-counted the agency's concerns regarding the firm's alleged staffing deficiencies by downgrading its proposal in the technical area and then adjusting its proposed costs upward for purposes of performing the MPC analysis. The RFP advised offerors that the cost realism evaluation would assess, among other things, an offeror's understanding of the contract requirements and the degree to which the cost proposal reflects information in the technical proposal. Here, the agency concluded that, because ITFS's technical proposal did not adequately provide for successful performance, the protester's cost proposal was understated and needed to be adjusted upward to

¹⁰Moreover, the protester has not rebutted the other evaluated weaknesses in its proposal involving equipment, supplies, and quality control, which provided additional bases for the overall evaluation rating of yellow. The record supports the agency's technical evaluation as reasonable and consistent with the solicitation's evaluation factors.

determine the MPC for ITFS's performance. Accordingly, we have no reason to question the agency's consideration of ITFS's staffing deficiencies under both evaluation factors.¹¹

The protest is denied.

Comptroller General
of the United States

¹¹ITFS also complains that the agency improperly evaluated Rust's past performance. According to the protester, Rust should not have received a rating of green because [DELETED]. Our review of the record discloses nothing objectionable in the agency's judgment.