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**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

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Decision

Matter of: Resource Consultants, Inc.

File: B-293073.3; B-293073.5; B-293073.6

Date: June 2, 2004

John S. Pachter, Esq., Jonathan D. Shaffer, Esq., Sophia R. Zetterlund, Esq., Erin R. Karsman, Esq., and Richard C. Johnson, Esq., Smith Pachter McWhorter & Allen, for the protester.

Agnes P. Dover, Esq., Todd R. Overman, Esq., and Gary A. Campbell, Esq., Hogan & Hartson, an intervenor.

Robert L. Duecaster, Esq., Department of the Army, for the agency.

Ralph O. White, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protester's contention that the awardee's final revised price effectively altered its technical approach, even though offerors were not allowed to make changes to their technical proposals, is sustained where the record shows that the awardee's final price proposal shifted the mix of personnel used to perform the contract, and significantly decreased the staffing it proposed to use for one type of work covered by the contract.

DECISION

Resource Consultants, Inc. (RCI) protests the award of a contract to Titan Corporation, Enterprise Services and Solutions Sector, by the Department of the Army under solicitation No. DASW01-03-R-0040, for desktop support services to the Army's Information Management Support Center. RCI argues that the Army's evaluation of Titan's revised price proposal was unreasonable.

We sustain the protest.

BACKGROUND

The RFP here was issued on May 23, 2003, and covered six separate lots of effort designed to consolidate desktop service support operations for approximately 80 agencies within Headquarters, Department of the Army. Lot I of the solicitation, the portion of the work at issue in this protest, contemplated a single-award,

indefinite-delivery/indefinite-quantity contract for desktop support services for a base period of 2 years, plus five 1-year options. RFP at 2.

The solicitation sought performance-based solutions to providing desktop support services to the Army, and requested that offerors submit fully-burdened hourly labor rates for their employees. The solicitation also stated that all task and delivery orders under the Lot I contract would be issued on either a fixed-price or time-and-materials (T&M) basis.

For reasons discussed in greater detail below, the particular pricing requirements of this solicitation—both as initially issued, and as ultimately amended—are relevant to this protest. Initially, offerors were required to submit five discrete components of price for the Lot I work (and for each of the option years within Lot I). These were:

- (1) a fixed price for the work (see, e.g., CLIN 0001AA);
- (2) a T&M price for the work (CLIN 0001AB);
- (3) an amount for other direct costs associated with performing the work on a fixed-price basis (CLIN 0001AC);
- (4) an amount for general and administrative (G&A) costs to be added to other direct costs associated with performing the work on a fixed-price basis (CLIN 0001AD); and,
- (5) a price for performing after-hours work on a fixed-price basis (CLIN 0001AE).

RFP at 6-8. Because the solicitation’s pricing schedule requested both fixed and T&M prices for the work, the total obtained by adding the prices submitted for each of these CLINs was roughly twice the total expected price for this effort.

The RFP advised potential offerors that award would be “based on a best value analysis” of three factors: management/technical, past performance, and cost/price. RFP amend. 3, at 6. The RFP also advised that the management/technical factor was more important than the past performance factor, and that management/technical and past performance combined were more important than cost/price. Id. at 9.

Seven proposals were received by the initial due date of June 23, 2003, and five of them were included in the competitive range. After discussions, and submission of final proposal revisions (FPR), the total prices, and overall technical ratings, for the offerors were as follows:

Offeror	Overall Rating	Total Price
RCI	Excellent	\$202.8 million
Titan	Excellent	\$233.1 million
Offeror A	Very Good	\$540.7 million
Offeror B	Very Good	\$187.7 million
Offeror C	Very Good	\$168.9 million

Contracting Officer's (CO) Statement at 3. Based on these results, the agency awarded a contract to RCI on September 30, 2003, after concluding that the benefits of the RCI proposal justified paying a cost premium over the price proposed by Offerors B and C, in their slightly lower-rated proposals. Agency Report (AR), Tab 13, at 3.

After the initial award to RCI was challenged in two protests—one filed with the agency, and one filed with our Office—the Army decided to take corrective action to clarify conflicting information in the solicitation about the number of users to be supported by this contract.¹ The agency also agreed to request revised price proposals from the five offerors in the competitive range, and make a new selection decision. CO's Statement, supra.

In its request for revised price proposals, the agency advised offerors to base their proposals on an estimate of 7,000 customers for the base period, with an estimated growth in customers of 5 percent per year, for each of the 5 option years. RFP amend. 5, at 2. Offerors were also directed to use 2,080 hours per staff year for their proposals, and to plan to provide customer support 24 hours per day, 7 days per week. In addition, the offerors were asked to submit five separate prices for the work, as follows:

- (1) a fixed price for performing all the work on-site;
- (2) a fixed price for providing all the work off-site;
- (3) a T&M price for providing all the work on-site;
- (4) a T&M price for providing all the work off-site; and
- (5) a fixed price for work performed after regular hours.

¹ The record shows that in some places the solicitation advised that 10,000 users would be supported (RFP, Performance Work Statement, at 3), while at other places, the solicitation advised that as many as 12,000 users would be supported (RFP amend. 2, questions 21, 108, 113).

Id. In this regard, the amendment expressly advised that the total price would be determined by adding the amount offered for each of the five categories identified above. Id. Thus, the total prices proposed were roughly four times the total expected price for this effort (plus any amount for after-hours work). Finally, the amendment advised:

The purpose of this amendment is to request revised price/cost proposals for Lot I (desktop support services) from those offerors for Lot 1 that are in the competitive range, and not for requesting revised technical proposals for Lot 1. Technical discussions will not be conducted.

Id.

The agency received revised price proposals from each offeror in the competitive range by the December 8, 2003 closing date. As the agency did not receive revised technical proposals, it made no revisions to the technical ratings used in the initial selection decision. Thus, as before, both RCI's and Titan's technical proposals were rated excellent. The prices proposed by the two offerors were, however, changed significantly--Titan's total price fell from \$233.1 million to \$217.3 million, while RCI's total price increased from \$202.8 million to \$239.3 million.

The record shows that RCI and Titan took different approaches to preparing and submitting their final revised prices, and these differences are material to the current dispute. RCI provided no narrative whatsoever with its final submission, and instead submitted a series of pricing tables showing the number of hours by labor category, the fully-burdened labor rates, and the resulting totals for performing the work on a fixed-price basis on-site, a fixed-price basis off-site, a T&M basis on-site, and a T&M basis off-site. AR, Tab 21. Within these tables, the fully-burdened labor rates for each labor category varied depending on whether the work was priced on a fixed-price or T&M basis, and on whether the work was being performed on- or off-site. Although RCI's final prices are based on using fewer labor hours than it used prior to the time the Army reduced the estimated number of users to be supported, the relative mix of experienced versus inexperienced personnel remained essentially the same. Compare AR, Tab 11B (RCI's final price proposal prior to corrective action) with AR, Tab 21 (RCI's final price proposal in the reopened competition). In addition, the number of labor hours used to generate its final revised price is the same under each of the four pricing approaches. AR, Tab 21.

In contrast, Titan's final submission begins with an 8-page narrative that purports to explain the changes to its previously submitted price proposals. For example, Titan displays two staffing profiles--analogous to RCI's display of the number of hours by labor category--showing different approaches to staffing work based on whether the work will be performed on-site or off-site. AR, Tab 22, at 3. Titan explains that its

new staffing profiles are based on “another detailed analysis of the requirements, using the reduced number of users required by the Government for bidding purposes.” Id. at 4. Following the narrative, Titan provides pricing tables showing, as did RCI, the number of hours by labor category, the fully-burdened labor rates, and the resulting totals for performing the work under each of the four pricing approaches requested by the agency. Id. at 9-32. Within these tables, the fully-burdened labor rates for each labor category appear to be the same under all four of the pricing approaches. However, the relative mix of experienced versus inexperienced personnel was significantly changed from the proposals submitted prior to the time the Army reduced the estimated number of users to be supported. Compare AR, Tab 11A (Titan’s final price proposal prior to corrective action) with AR, Tab 22 (Titan’s final price proposal in the reopened competition). In addition, as indicated in its narrative, Titan proposed to perform off-site work (on both a fixed-price and T&M basis) with significantly fewer full time equivalent (FTE) personnel than used in its earlier proposals, and with significantly fewer FTEs than it proposed for on-site work in its final offer here. Id.

A summary of the results of the reopened competition, with the total prices and technical ratings (unchanged from the earlier evaluation), is set forth below:

Offeror	Overall Rating	Total Price
Titan	Excellent	\$217.3 million
RCI	Excellent	\$239.3 million
Offeror A	Very Good	\$396.3 million
Offeror B	Very Good	\$200.5 million
Offeror C	Very Good	\$270.1 million

CO’s Statement at 4-5. Given these results, the agency selected Titan for award after concluding that the benefits of the Titan proposal justified paying a cost premium over the price proposed by Offeror B, and concluding that there was no basis upon which to justify paying the higher price associated with RCI’s proposal. AR, Tab 24, at 9-10.

On February 13, 2004, the agency advised RCI that it was awarding to Titan. This protest followed.

DISCUSSION

Although RCI initially raised a series of general contentions—including that the agency failed to perform a proper price analysis of Titan’s final revised price proposal—its initial general complaints have been supplemented with a series of specific complaints about the way in which Titan lowered its price for this work. In

this regard, RCI argues that Titan's final revised price² effectively altered its technical approach by: (1) shifting the mix of personnel used to perform the contract; (2) significantly decreasing the number of FTEs used to perform off-site work; and (3) disproportionately decreasing the number of FTEs in the option years. RCI argues that Titan should have been disqualified due to these changes, or alternately, that the agency should have recognized that these changes were so significant that the previous technical evaluation no longer accurately reflects Titan's offer. Finally, RCI argues that certain changes in Titan's price proposal suggest a procurement integrity violation--i.e., that Titan must have received inside information about RCI's proposal--that should have led the agency to reject Titan's proposal.

In answer, the Army and Titan argue that the requirement for a review of price realism was met by comparing the proposed prices received in the competition. With respect to the more specific allegations regarding Titan's price reduction, both point out that there was nothing in the agency's request for revised prices that prohibited reductions in the number of hours proposed in any labor category, in the number of senior staff offered, in an offeror's hourly rates, in profit levels, or in any other component of an offeror's total price. Instead, the agency argues that Titan was simply making the adjustments expected to reflect the changes associated with a reduction in the number of users from 10,000 to 7,000.³ Finally, both the Army and

² Since, in the course of this procurement, the agency twice called for FPRs--once prior to the corrective action, once in the reopened competition--and since this protest requires a comparison of the prices of those FPRs, for ease of reference, we will refer to Titan's earlier price and its final revised price. Any reference to Titan's earlier price, however, will be a reference to its first FPR price, not the initial offer price in that earlier stage of the competition.

³ Although the Army argued that Titan's proposal before corrective action was based on supporting 10,000 users (Agency Report, Mar. 31, 2004, at 3; Agency Supp. Report, Apr. 17, 2004, at 5), Titan has disputed this assertion. Specifically, during the course of this protest (Titan's Comments, Apr. 16, 2004, at 12), and in its Final Revised Cost Proposal (AR, Tab 22, at 2), Titan has represented that the earlier versions of its proposal were based upon an estimate of users higher than 10,000. We note for the record, however, that prior to the time the depth of its cuts was an issue--i.e., at the time of its agency-level protest, which led to the Army's decision to take corrective action to clarify its estimated number of users to be supported--Titan stated that it based its earlier proposals on an estimate of 10,000 users. AR, Tab 17, at 6-8 (Titan's Agency-Level Protest). In fact, Titan argued in that protest that to the extent other offerors did not propose to support 10,000 users, they "did not meet the material solicitation requirements and their proposals should be considered nonresponsive." *Id.* at 8. Now that the agency has amended the solicitation to advise that offerors should base their proposals on an estimate of 7,000 users, Titan's final proposal states that this represents "an approximate 44 [percent] reduction from the number of users assumed in Titan's original submission and our subsequent BAFO response."
(continued...)

Titan deny that Titan improperly received information about RCI's proposal, and both argue that none of RCI's allegations supports a conclusion that such a violation occurred.

Before turning to the specifics of this protest, we note as a preliminary matter that the decrease in anticipated computer users that will be supported by this contract complicates this dispute. As indicated above, the solicitation as initially issued was ambiguous about the number of users to be supported by the contract; the solicitation provided support for estimates of both 10,000 and 12,000 users. In revising the solicitation, the Army reduced its estimate of users to 7,000. As a result of this reduction in estimated users, it was clearly appropriate for offerors to reduce their staffing (and hence their prices) in response to the reduction. Nonetheless, while the estimate reduction is a complicating factor for some areas of this discussion, there are certain areas of Titan's proposal where its reductions appear unrelated to the Army's reduction in estimated users.

With respect to RCI's general contention that the Army failed to perform a proper price analysis here, we disagree. The agency explains that it compared the proposed prices to each other and to the government estimate of the cost for this work, and compared the proposed labor rates to the rates contained in existing contracts for the same work. The several approaches used by the agency are consistent with the price analysis techniques identified at Federal Acquisition Regulation (FAR) § 15.404-1(b). In addition, absent specific requirements in the solicitation imposing additional requirements, the nature and extent of an agency's price analysis are matters within the agency's discretion. See AllWorld Language Consultants, Inc., B-291409, B-291409.2, Dec. 16, 2002, 2003 CPD ¶ 13 at 2 (fixed-price contracts); Resource Consultants, Inc., B-290163, B-290163.2, June 7, 2002, 2002 CPD ¶ 94 at 3 n.1 (T&M contracts). Our review provides no basis for questioning the adequacy of the agency's price analysis.

We turn next to the heart of RCI's complaint--that Titan's final revised price effectively altered its technical approach, even though Titan did not submit a revised technical proposal. It is a fundamental principle of competitive procurement that offerors be provided with a common basis for the submission and evaluation of proposals. Pasco Realty, B-245705, Jan. 8, 1992, 92-1 CPD ¶ 39 at 5. To the extent that the agency allowed Titan to submit a revised price that effectively altered its underlying technical proposal--without allowing any other offeror to do so--the agency abandoned one of the stated ground rules of the reopened competition, to the prejudice of RCI and other offerors who were not given a similar opportunity. See

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AR, Tab 22, at 4. The final proposal explained that this is the reason the number of FTEs in its final revised price proposal decreased approximately 48 percent overall. Id.

DynaLantic Corp., B-234035, May 3, 1989, 89-1 CPD ¶ 421 at 3-4, recon. denied, MicroSim Inc.—Recon., B-234035.2, B-234035.3, Oct. 11, 1989, 89-2 CPD ¶ 336; Emerson Elec. Co., B-213382, Feb. 23, 1984, 84-1 CPD ¶ 233 at 4. Based on our review, we agree with RCI's contentions. For the reasons set forth below, we conclude that Titan's final revised price was based on calculations of staffing costs that were so materially inconsistent with its previously identified (and evaluated) technical approach that the agency was required to take steps to rectify the situation.

As a starting point—and as a baseline for this discussion—the record shows that prior to the Army's corrective action in this case, Titan's price was based on performing this effort using **[deleted]** FTEs in the base period of performance, dropping to **[deleted]** FTEs by the last option year. AR, Tab 11A, at 5. In the reopened competition, Titan reduced its FTEs for on-site performance in the base year by approximately 28 percent, to **[deleted]** FTEs (commensurate with a 30 percent reduction in estimated users). AR, Tab 22, at 3. By the final option year, though, the number of FTEs dropped approximately 43 percent from the earlier proposed level, to **[deleted]**. *Id.* Although we recognize that Titan has accelerated its reduction of FTEs over the life of the contract—and we acknowledge RCI's complaints about this approach—we think this reduction alone could be viewed as a de minimis departure from the 30 percent reduction one would anticipate given the agency's change to its estimate of users.⁴

More troubling, however, are Titan's changes to the mix of employees it offered, and the difference between the number of FTEs proposed to perform off-site work, as opposed to the on-site work. With respect to the mix of employees, our review shows that prior to the Army's corrective action, Titan offered a significantly more experienced (and hence more expensive) mix of staffing than the mix it proposed after the corrective action.

For example, when one examines the number of FTEs identified in Titan's five most expensive labor categories⁵ (other than the program manager category, which is the

⁴ In addition, we think the issue of the amount by which Titan reduced its FTEs (including Titan's accelerated reduction in FTEs in the option years) is clouded by the dispute over the number of Army users Titan thought it would need to support when it wrote its earlier proposals. In our view, this issue need not be definitely resolved in this protest since we conclude that Titan's shift in the mix of FTEs and its changed staffing for off-site work leads us to conclude that the company altered its technical approach.

⁵ Our review indicates that the five most expensive labor categories for which Titan proposed FTEs, other than program manager, are: **[deleted]**. AR, Tab 7, app. C, Table C-5. We have used the price of the labor categories as an indicator of the

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same in both versions of the Titan proposal, and other than the two categories in which Titan offers [deleted] FTEs), versus the number of FTEs identified in its five least expensive labor categories,⁶ the difference between the staffing used to calculate Titan's earlier price and its final revised price is stark. Specifically, out of [deleted] total FTEs in Titan's earlier offer, [deleted] were in the five highest-priced labor categories, while [deleted] were in the five lowest-priced labor categories. A proportional 30 percent cut to these numbers yields approximately [deleted] FTEs overall, with roughly [deleted] FTEs in the five highest-priced labor categories, and [deleted] FTEs in the lowest-priced labor categories.⁷ Instead, out of [deleted] total FTEs, Titan's final revised price was based on [deleted] FTEs in the five highest-priced categories, and [deleted] FTEs in the five lowest-priced categories. See AR, Tabs 7, 11E, and 22. Indeed, as RCI points out, in Titan's lowest-priced labor category, [deleted], Titan increased the number of FTEs from [deleted] to [deleted], while making a 28 to 43 percent cut in the total FTEs offered. Id. This significant shift in the mix of FTEs essentially reflects a reversal in approach for Titan—from one based on using a greater proportion of higher-priced labor categories (reflecting higher levels of experience and expertise) relative to lower-priced labor categories (reflecting less experience and expertise) to an approach using a greater proportion of lower-priced categories. In our view, this shift leads inescapably to a conclusion that Titan has changed its technical approach to performing this effort.

We are also troubled by Titan's use of a different number of FTEs to price the off-site work than it used to price the on-site work. As discussed above, the solicitation here, as initially issued, did not require offerors to submit separate prices for performing this work off-site versus on-site. Instead, offerors were required only to provide a price for performing the work on a fixed-price basis and on a T&M basis. In the earlier competition, both RCI and Titan used the same staffing approach—i.e.,

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experience and expertise required to be included in that category, although we recognize that the correlation may not be exact.

⁶ Our review indicates that the five least expensive labor categories for which Titan proposed FTEs are: [deleted]. Id.

⁷ For the record, we are not concluding that a straight 30 percent cut in staffing was required here. Rather, this sentence is included to provide insight into the depth of the cut Titan made, versus what one might have expected. It is the difference between the numbers that leads to our conclusion that Titan changed its technical proposal, not the fact that the cut was not 30 percent. As discussed above, we think that even Titan's 44 percent cut in FTEs in the last option year might not require a conclusion that the company was changing its technical approach.

their respective approaches--to generate both of these prices. Neither company prepared a separate staffing approach applicable to only one of these prices.

In the reopened competition, Titan--for the first time--developed a separate and unique staffing approach applicable only to its fixed and T&M prices for performing the work off-site. We need not set forth a detailed analysis of this separate staffing approach, as it appears that there is no dispute between the parties that this approach was significantly leaner than the staffing approach Titan used for the on-site work, and significantly different from the staffing approach Titan offered in the initial competition--and upon which its technical evaluation was based. Again, we conclude that Titan has changed its technical approach to performing this effort when performance will occur off-site.

Before leaving this topic, we recognize that the agency and Titan argue that since this was a performance-based procurement the agency was evaluating technical solutions, not staffing levels. They also point out, correctly, that there was no requirement for any particular staffing approach, and that this means the changes made by Titan in response to the reopened competition should not be seen as affecting the nature of Titan's performance-based offer. We cannot agree with this assertion. The solicitation's evaluation scheme contained a management/technical evaluation factor which was supposed to include a review of the evidence of an offeror's technical proficiency. RFP amend. 3, at 6. In addition the final memorandum of the source selection evaluation board (SSEB)--which was based on Titan's earlier technical proposal, since revised technical proposals were not submitted here--expressed the view that Titan's approach allowed "[reduced] staffing levels in the out years while maintaining a highly skilled technical staff." AR, Tab 23, at 25. Given the changes Titan made to the mix of technical staff in its final FRP, we are not sure this observation remains valid for this proposal.

In our view, the situation here is similar to the situation we encountered in DynaLantic Corp., *supra*. In DynaLantic, after originally making award, but then finding it necessary to terminate that contract for default, an agency requested an additional round of best and final offers (BAFO) from the remaining offerors, limiting them to price and delivery schedule revisions. The successful offeror in the recompetition included in its revised BAFO a list of six changes which allowed it to reduce its earlier price by 48 percent. In our decision, we concluded that the awardee's reduced price, in fact, reflected changes to its technical proposal, contrary to the ground rules established for the submission of revised BAFOs.

Here, we think Titan has essentially done the same thing. In changing the staffing mix of labor categories overall, and in offering a completely different staffing approach for off-site work, Titan did not follow the ground rules set by the agency in this reopened competition. As a result, offerors that followed the agency's instructions were placed at a disadvantage, and did not have the same opportunity to achieve the price reduction Titan was able to achieve.

We turn last to RCI's allegation that certain of the changes made to Titan's final revised prices suggest that a procurement integrity violation has occurred during this competition. These changes include: (1) Titan's decision to segregate, for the first time in its FRP, the base contract into two base periods, which RCI did in all its proposals; (2) Titan's suggestion that all its work be performed on-site, which suggests--in RCI's view--that Titan may have known that RCI had an advantage in off-site overhead rates; and (3) Titan's decision to significantly decrease the number of FTEs in its option years, which--again, in RCI's view--suggests that Titan may have known that both companies proposed similar decreases for the option years in their earlier proposals.

In response, the agency argues that RCI's unsupported contentions do not demonstrate that such a violation occurred here. We agree. Without more concrete evidence that the integrity of this procurement has been compromised, we will not reach such a conclusion based only on these changes to Titan's proposal.

RECOMMENDATION

We sustain RCI's protest in light of our conclusion that Titan's final price proposal effectively changed its technical approach to performing this effort, even though offerors were not allowed to make changes to their technical proposals. As a result, we recommend that the agency reopen this competition and request revised technical proposals and prices from all offerors in the competitive range. If Titan is not the successful offeror based on the evaluation of the revised offers, its contract should be terminated for the convenience of the government, and award made to the offeror whose proposal provides the best value to the government. Alternatively, and in the event that the agency wants to proceed based on the results of the previously reopened competition, we think the agency has no choice but to reject Titan's offer, and make a new selection decision based on the remaining offers in the competitive range. We also recommend that RCI be reimbursed the costs associated with filing and pursuing its bid protest, including reasonable attorneys' fees. 4 C.F.R. § 21.8 (d)(1) (2004). RCI should submit its certified claim, detailing the time spent and the costs incurred, directly to the agency within 60 days of receiving our decision. 4 C.F.R. § 21.8 (f)(1).

The protest is sustained.

Anthony H. Gamboa
General Counsel