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DECISION



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

FILE: B-203786

DATE: November 2, 1981

MATTER OF: Research, Analysis & Management Corporation

DIGEST:

1. Protest that evaluation criteria were unduly restrictive is dismissed as untimely, since it was filed after the closing date for the receipt of proposals.
2. Subcontracting with large business under service contract set aside for small business is not legally objectionable.
3. GAO will not question an agency's evaluation of technical proposals unless the protester shows that the agency's judgment lacked a reasonable basis, was an abuse of discretion, or violated procurement statutes or regulations.
4. There is nothing improper in an agency extending an incumbent's contract to cover the period after the contract is to expire until a new contract can be awarded.
5. The critical test to show bias in an agency's evaluation of proposals is whether all offerors in fact were treated fairly and equally. That test is not met simply by alleging that the same agency improperly awarded a sole-source contract in a different procurement to the subcontractor proposed by the successful offeror in this one.
6. In negotiating a cost reimbursement type contract, lowest estimated cost is not necessarily the determining factor in making an award. An agency therefore may select a highly rated technical proposal instead of a lower rated, lower estimated cost one if the agency reasonably determines that the superior performance expected from the higher rated offeror justifies the potential additional costs involved. The extent to which such a cost/technical trade-off may be made is governed by the RFP's evaluation scheme.

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Research, Analysis & Management Corporation (RAM) protests the Department of the Navy's award of a contract to SEMCOR, Inc. under request for proposals (RFP) N00024-81-R-7042Q. The solicitation, which was set aside for small business, sought offers for engineering and technical services to support certain radar programs. It contemplated a cost-plus-fixed-fee, level of effort contract. The bases for protest are:

- (1) the RFP's evaluation criteria were unduly restrictive;
- (2) despite the fact that the procurement was set aside for small business, the contract was awarded to a firm that proposed a "teaming arrangement" in which most of the work allegedly would be performed by a large business, EG&G, Washington Analytical Services Corp., which was the incumbent contractor for the service;
- (3) RAM's single-contractor approach should have been found so superior to SEMCOR's teaming arrangement that award to SEMCOR cannot be justified;
- (4) the original RFP was amended to delete certain work so that sole-source contracts for the work could be awarded to EG&G; and
- (5) the contract was awarded at a higher estimated cost to the Government than that proposed by RAM.

We dismiss the protest on the first issue and deny the protest on the others.

FACTS

The RFP was issued on February 6, 1981, and initial proposals were due by March 10. By notice of March 10, however, the proposal due date was extended indefinitely because the Navy's requirements were going to be revised. A copy of the notice, or at least oral advice as to its contents, evidently was available to firms as they arrived to deliver offers.

Amendment 0003, issued on March 12, reduced the number of man-hours required under the contract from 35,150 to 24,200 and revised the evaluation criteria in part to add a minimum experience standard. The new proposal due date was April 9.

Four proposals were received. The Navy decided that SEMCOR, which estimated the cost plus fee for the work as \$624,827, had submitted the best technical proposal, and awarded the contract to that firm. SEMCOR's technical score was 6.1 percent higher than RAM's, which received the second highest technical score and estimated that the cost plus fee would be \$597,567.63. Most of the contract services are to be completed by December 31, 1981.

DISCUSSION

(1) Evaluation criteria

We will not consider RAM's protest that the RFP's evaluation criteria unduly restricted competition. Section 21.2(b)(1) of our Bid Protest Procedures, 4 C.F.R. part 21 (1981), requires that a protest against an alleged impropriety in an RFP which is apparent from the RFP as issued be filed before the closing date for the receipt of initial proposals. The provision also requires that if the alleged impropriety does not exist in the original RFP, but subsequently is incorporated into it, the protest must be filed before the next closing date for the receipt of proposals.

Clearly then, RAM's protest against the RFP's evaluation criteria should have been filed before April 9, the date set in amendment 0003 for the receipt of proposals. The protest, however, was not filed in our Office until July 1, after RAM learned of the award to SEMCOR. Therefore, it is untimely under our Bid Protest Procedures and will not be considered on the merits.

(2) SEMCOR's use of EG&G as a subcontractor

RAM protests that the award to SEMCOR under this small business set-aside was improper because EG&G, a large business, will be performing much of the work. In this respect, the Navy reports that EG&G will perform 37 percent of the engineering hours under the contract, under the supervision of SEMCOR engineers. RAM complains that this arrangement is the reason that SEMCOR received a high technical score.

The RFP "Notice of Small Business Set-Aside" stated that:

"* * * a manufacturer or a regular dealer submitting offers in his own name must agree to furnish in the performance of the contract end items manufactured or produced by small business concerns: Provided, That this additional requirement does not apply in connection with construction or service contracts."

Thus, where an RFP is for services, as this one is, the "end item" limitation does not apply. In such case a small business bidder under a small business set-aside may subcontract with a large business firm. Engineering Computer Optecnomics, Inc., B-203508, June 22, 1981, 81-1 CPD 516. The fact that SEMCOR proposed to subcontract work to a large business therefore does not provide a basis to object to the award.

Further, the RFP's evaluation section clearly advised offerors that the technical evaluation would include consideration of the capabilities of any proposed subcontractors. Accordingly, it was proper for the Navy to consider EG&G's capabilities in evaluating SEMCOR's proposal. See Practical Concepts, Inc., B-190279, May 12, 1978, 78-1 CPD 367.

(3) Evaluation of the firms' approaches to performance

RAM suggests that the evaluators should have found RAM's proposed single-contractor approach so superior to SEMCOR's proposed teaming arrangement that award to SEMCOR cannot be justified. In this respect, RAM points out that the record is not entirely clear on how the Navy evaluators actually viewed the relative merits of RAM's and SEMCOR's approaches. At one point in the Navy's report on the protest, the agency states that "the evaluation factors did recognize the advantages of a single cohesive contractor over a teaming arrangement (crediting RAM and downgrading SEMCOR)." At another point, the Navy reports that in considering whether SEMCOR's technical superiority offset RAM's cost advantage, the contracting officer "determined that such teaming arrangement was beneficial to the government, in terms of the two companies' [SEMCOR and EG&G] combined prior corporate experience."

The RFP, as amended by amendment 0003, listed six evaluation factors in descending order of importance. The

first four factors and the sixth related to the technical aspects of an offeror's proposal. The fifth factor was "cost and cost realism." (The sixth was "geographical location," and was described as a "minimum standard of acceptability.")

The fourth evaluation factor, "Management Aspects," was the factor relevant to the merits of a teaming approach as opposed to a single-contractor one. Subfactor A, the most important of the six subfactors noted, concerned the ability of the offeror's organizational structure and office systems to ensure effectiveness and efficiency in dealing with the contracting activity and in performing and coordinating the work. It required that an offeror contemplating teaming or subcontracting describe the nature and extent of the arrangement, the management/coordination structure, a point of contact, and the bearer of the ultimate responsibility for performance.

The Navy advises that what it meant in its report about the relative merits of the teaming and single-contractor arrangements was that the evaluators actually preferred RAM's approach and scored the proposals accordingly under the relevant evaluation factor. The Navy states that this preference therefore is reflected in RAM's overall technical score. The Navy advises that the contracting officer also recognized that SEMCOR's teaming arrangement was the cause of the firm's higher price. Essentially, the contracting officer decided that SEMCOR's overall technical superiority--its technical score was 6.1 percent higher than RAM's--warranted award to SEMCOR.

RAM's only point about the Navy's technical evaluation is that the Navy should have found a single-contractor approach more beneficial than a teaming arrangement, a factor which the Navy evaluators recognized. Still, the full evaluation of the proposals resulted in a higher overall score for SEMCOR. In this respect, the award in a negotiated procurement must be based on the evaluators' judgment of the relative merits of proposals under the entire evaluation scheme, not one particular evaluation subfactor. See New Jersey Association on Correction, B-199680, April 9, 1981, 81-1 CPD 272. We therefore have no basis to question the award on this issue.

(4) Sole-source awards to EG&G

RAM complains that work was deleted from the original RFP so that a sole-source contract for the portion of the work deleted could be awarded to EG&G, SEMCOR's subcontractor and the allegedly favored incumbent. As already stated, amendment 0003 to the RFP reduced the number of man-hours required under the contract from 35,110 to 24,800.

The Navy reports that this alleged sole-source contract was an extension of EG&G's contract for radar support to insure uninterrupted critical service after the expiration of that contract until a contract could be awarded under the competitive RFP. We see nothing improper in an interim measure which is found necessary to insure that the Navy's radar support needs are met on a continuing basis. See Honolulu Disposal Service, Inc.--Reconsideration, B-200753.2, August 12, 1981, 81-2 CPD 126.

RAM also complains that the award of another sole-source contract to EG&G for work similar to that required by the RFP in issue is further proof of the Navy's bias in favor of that firm. The contract involved 12,023 man-hours of engineering and technical support services for the continuation of studies, analyses, investigations, and reviews begun under EG&G's expiring contract.

It is not apparent from the record why this requirement could not have been the subject of a negotiated competition, since the issue was not fully developed in the Navy's report. It may well be that the sole-source procurement was justified; it is also possible that a directed procurement was inappropriate. Nonetheless, we do not see how the sole-source award establishes that the evaluation under this procurement was biased. In this respect, RAM's complaint is intended to show a general bias in favor of EG&G, rather than as a protest against the sole-source award to that firm.

The critical test to show bias in an agency's evaluation of proposals is whether all offerors in fact were treated fairly and equally, and that test is not met by showing a potential impropriety involving another procurement even though the parties may be the same. See Alan-Craig, Inc., B-202439, September 29, 1981, 81-2 CPD 263. RAM's complaint of a general bias in favor of SEMCOR's subcontractor, allegedly evidenced by the sole-source award to EG&G, in itself is not sufficient to persuade us that the award to SEMCOR was not justified.

(5) Award at a higher cost than proposed by RAM

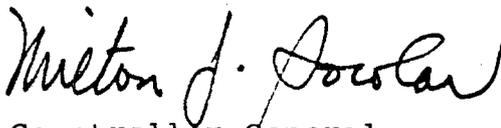
RAM protests that the contract's estimated total cost is \$624,827, whereas RAM's proposed total cost was \$597,567.63.

In negotiating a cost reimbursement type contract, lowest estimated cost is not necessarily the determining factor in making an award. An agency therefore may select a highly rated technical proposal instead of a lower rated, lower cost one if the agency reasonably determines that the superior performance expected from the higher rated offeror justifies the potential additional cost involved. See Olin Corporation, Energy Systems Operations, B-187311, January 27, 1977, 77-1 CPD 68. In making this determination, agency officials necessarily are given a considerable range of discretion, and their judgment therefore will not be disturbed by our Office unless clearly without a reasonable basis. University of New Orleans, B-184194, May 26, 1978, 78-1 CPD 401.

The extent to which such cost/technical trade-offs may be made is governed by the RFP's evaluation scheme. David A. Clary, B-200877, April 28, 1981, 81-1 CPD 326. The evaluation scheme advises offerors whether a procurement is intended to achieve a minimum standard at lowest cost, whether cost is secondary to technical quality, or whether the two are equally important. Law Engineering Testing Company, B-200814, August 3, 1981, 81-2 CPD 82.

Here, the RFP clearly advised offerors of the paramount importance of technical considerations as opposed to cost. SEMCOR's technical score was 6.1 percent higher than RAM's; RAM's proposed total cost was 4.6 percent lower. There is no legal basis to object to award to SEMCOR simply because the contract's estimated total cost is slightly higher than the total cost proposed by RAM, since the selection decision was consistent with the RFP's advice as to the relative merits of cost and technical factors. See Communications Corps Incorporated, B-195778, February 20, 1980, 80-1 CPD 143.

The protest is dismissed in part and denied in part.

for 
Comptroller General
of the United States