



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Becon Construction Company, Inc.

File: B-222649

Date: August 18, 1986

DIGEST

Procuring agency's rejection of protester's proposal was reasonable where the protester's best and final offer made significant reductions in its proposed staffing from levels that were agreed to during discussions, and that the agency had informed the protester were only marginally acceptable.

DECISION

Becon Construction Company, Inc. (Becon), protests the award of a contract to Logistics Support Group (LSG) under request for proposals (RFP) No. DAAA08-85-R-0053, issued by the Department of the Army. The RFP was part of a cost comparison under Office of Management and Budget (OMB) Circular A-76 to determine whether for a 5-year period it would be more economical to perform in-house with government employees the base support services at Rock Island Arsenal, Rock Island, Illinois, or to contract out for the work. We deny the protest.

BACKGROUND

The RFP specified that the contractor was responsible for the operation, maintenance, repair, and services related to the various base support functions set forth in the solicitation. The major areas were equipment management, transportation services, administrative support, and facilities engineering such as the operation of the base's electric plant, heating plant, water plant, and sewage and waste treatment plant. The RFP further specified that in order to be considered for cost comparison and possible award, all factors in the management and technical portion of the offeror's proposal first had to be judged to be technically acceptable. The cost comparison was to be made between the lowest priced proposal of a technically acceptable and responsible offeror and the government's price proposal.

Becon and LSG were the only two offerors who submitted proposals. After the initial evaluation revealed several deficiencies in the two offerors' proposals, the Army decided to conduct negotiations. The areas of concern with regard to Becon's proposal were the quantity of materials to be used in performing the work and the staffing levels for

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certain categories of work. Following written and oral discussions, Becon submitted a revised proposal which slightly increased staffing for some of the work but failed to add anything for the cost of the materials.

Because questions remained regarding the adequacy of the cost of Becon's proposed materials, the Army sent government personnel to Becon for an on-site review of the supporting documentation Becon used to estimate its material cost. The review revealed that the cost Becon proposed for its materials was unverifiable because of insufficient supporting documentation. The Army considered rejecting Becon's proposal as being technically unacceptable at this juncture for failure to adequately explain how the work would be accomplished without sacrificing the RFP's quality standards. However, after a study of the government's own estimated material cost raised some questions about its accuracy, the Army determined that any doubts about the acceptability of Becon's proposal should be resolved in favor of Becon and the company should be allowed to submit a best and final offer.

Best and final offers were received from Becon and LSG. The proposed prices were \$52,508,880 for Becon and \$58,881,624, for LSG. In reviewing the best and final offer submitted by Becon, the Army found changes which it believed raised serious doubt about Becon's ability to meet the RFP's requirements. In particular, the Army found that Becon had further reduced the cost of proposed materials and that Becon had also made significant reductions in staffing levels. Consequently, the Army concluded that Becon's proposal should no longer be considered and that LSG's proposal would be used for the cost comparison to the government in-house proposal.

The cost comparison showed that the government's in-house price was \$81,576,256, and LSG's price, after the addition of the various price adjustment factors provided for under the OMB Circular A-76 Cost Comparison Handbook, was \$66,119,742. Since LSG's offered price represented the lower cost to the government, an award was made to the company. Shortly following the award to LSG, Becon protested the elimination of its lower priced offer to our Office.

Becon contends that its best and final offer was technically acceptable and that the Army erroneously found that Becon had introduced significant deficiencies that did not exist in its earlier revised proposal; Becon asserts that its best and final offer included only some "minor pricing adjustments" with no technical significance. In Becon's view, these adjustments could not be considered grounds for reversal of the Army's earlier conclusion that Becon's proposal was technically acceptable.

STAFFING

The Army states that Becon's best and final offer reduced its manpower levels by as much as 33 percent in performance areas which had been found to be barely adequate in Becon's earlier revised proposal. The Army found particularly significant the fact that Becon's best and final offer

for the first time introduced a 3 percent employee vacancy factor (described as the lag in hiring that occurs between the termination of an employee and the replacement of that employee). While not opposing the vacancy factor concept itself, the Army objected to the manner in which Becon applied it: instead of increasing proposed staffing to assure full staffing in the face of vacancies, Becon reduced the manhours for accomplishing the RFP's facilities engineering work by 3 percent, thereby reducing the cost of performance. According to the Army, Becon's across the board application of the vacancy factor to all the RFP's facilities engineering functions resulted in a net reduction of approximately 12,000 manhours of effort in the first year of the contract alone.

The Army also found that Becon's best and final offer had substantially changed the application of the employee learning curve concept from that which Becon had presented during negotiations. The Army states that, whereas Becon originally portrayed the concept as a percentage reduction through job experience in the total number of manhours necessary to perform all RFP functions, in its best and final offer, Becon accumulated these manhour savings to eliminate several staff positions. The Army takes the position that it was inappropriate to eliminate certain positions because the principle of the learning curve should be applied only to work that is highly repetitive in nature, and some positions Becon eliminated involved work that was nonrepetitive in nature.

In response, Becon asserts that neither the application of the vacancy factor nor the application of the learning curve introduced any significant staffing changes in the company's best and final offer. Becon states with respect to the vacancy factor that it did not propose reducing its staff by so much as one person and, in fact, increased overall staffing for the first contract year in the best and final offer. According to Becon, the vacancy factor merely recognized that certain of its proposed staff positions—an average of 3 percent at any given time—would be vacant for periods because of unavoidable delays in obtaining replacements. Therefore, the company claims that the sole effect of its application of the vacancy factor was to pass on to the government the savings in the salary of the vacant position.

Becon alleges it applied the learning curve in the same manner in its best and final offer as it had in its original offer. Becon concedes that productivity gains using a learning curve were applied to the total number of proposed manhours in its original proposal, but points out that its original proposal stated that such an application was simply an interim solution until more data could be obtained, i.e., until it could identify specific positions which could be eliminated. Becon further emphasizes that it stated in its original offer that the final application of the learning curve would involve applying the increased efficiency that its personnel would gain as the contract was performed to specific job areas to reduce overtime staffing in those areas. Becon alleges that in obtaining more specific information on the project from the Army during the course of negotiations, Becon identified 11 positions out of a total proposed staff of 225 that could be reduced beginning in

the second year of the contract. Therefore, Becon argues that it did not, as indicated by the Army, merely accumulate the manhours saved by the learning curve and apply them to a few functional work areas but, rather, identified the specific personnel that could be deleted because of increased efficiencies.

The determination of the relative merits of proposals, particularly with regard to technical considerations, is primarily the responsibility of the contracting agency, not our Office, since the agency must bear the burden of any difficulties resulting from a defective evaluation. Litton Systems, Inc., Electron Tube Division, 63 Comp. Gen. 585 (1984), 84-2 C.P.D. ¶ 317. In light of this standard, we consistently have held that procuring officials enjoy a reasonable degree of discretion in the evaluation of proposals, and that their judgments as to the quality of proposals will not be disturbed unless shown to be arbitrary or in violation of the procurement laws and regulations. Vibra-Tech Engineers Inc., B-209541.2, May 23, 1983, 83-1 C.P.D. ¶ 550. We have specifically held that rejection of an offeror's proposal is proper where it is found to depart significantly from the government's own determination as to the manhours of effort needed to perform the contract. See A. T. Kearney, Inc., B-205025, June 2, 1982, 82-1 C.P.D. ¶ 518.

The RFP here specified that any variance from the historic average manhours of staffing set out in the solicitation had to be thoroughly documented by the offeror, and the record shows that the Army cautioned Becon during discussions that its proposed staffing for many functional work areas was significantly below these historic manhour averages. Becon's application of the vacancy factor and learning curve had the effect of reducing Becon's staffing in several areas significantly below levels the Army considered minimally acceptable. The Army found Becon had reduced staffing for seven different areas by from 10 to 33 percent below the levels Becon had agreed to during negotiations.

For example, the Army originally had estimated a minimum level of 11 manyears under the Buildings and Structures statement of work. Becon initially proposed 6.86 manyears but, after the Army challenged this level as too low during negotiations, raised the level to 8.8 manyears in its revised proposal. Becon's best and final offer then, without explanation, reverted to the unacceptable 6.86 level and reduced that level by still another manyear based on the learning curve. Becon's final proposed level was 33 percent below the minimally acceptable 8.8 manyear level on which Becon's technical acceptability had been based.

Given that Becon's best and final offer made significant reductions in levels of staffing already considered marginal by the Army, we find that it was reasonable for the Army to determine Becon's best and final offer to be technically unacceptable. The fact that Becon's overall staffing level may have increased somewhat in its best and final offer does not

change our conclusion. Organization structure and proposed staffing were RFP evaluation factors for determining the technical acceptability of an offeror's proposal, and the RFP provided that a "Go/No Go" technical determination would be made for each work area under the solicitation. Thus, an offeror's failure to propose adequate staffing for any single work area was cause for a finding of unacceptability under the terms of the RFP. The Army determined that Becon's proposed staffing was unacceptable in several areas.

By arguing that the Army misunderstood the application of the vacancy factor and the learning curve, Becon is implying that it did provide an adequate explanation to justify the degree to which it reduced staffing in its best and final offer, but that the Army failed to consider the explanation properly before rejecting its proposal. Regardless of the Army's understanding of these concepts, however, their application to materially reduce already marginal staffing for some work functions in itself gave the agency sufficient cause to reject Becon's best and final offer. As for Becon's assertion that the use of a vacancy factor merely passed along cost savings to the Army, we agree with the Army that this view neglects the fact that Becon's already marginal staffing simply would be unable to perform all the required work during the period of delay in the hiring of staff replacements. We find the Army's position on the matter reasonable: that rather than reduce the bare minimum of manhours it had proposed, Becon instead should have proposed increased staffing to assure that all work would continue to be performed even in the face of the anticipated temporary losses of manpower.

Because we find that the Army reasonably determined Becon's proposal to be unacceptable based on inadequate proposed staffing, we need not consider the issue of the adequacy of Becon's cost of materials.

The protest is denied.

for 
Harry R. Van Cleve
General Counsel