

Quibner



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Quadrex HPS, Inc.

File: B-223943

Date: November 10, 1986

DIGEST

1. Agency may not award a contract with the intention to modify significantly the contract specifications. However, award is proper where agency contemplated possible modifications but determined to award on the basis of existing specifications.
2. Contracting agency's cost realism analysis involves the exercise of informed judgment, and the General Accounting Office will not question such an analysis unless it clearly lacks a reasonable basis. Reasonable basis is provided by determination that awardee's technical approach is feasible, Defense Contract Audit Administration analysis of awardee's rates, and reconciliation of awardee's estimated costs with the independent government cost estimate, making adjustments for less complex technical approach utilized by awardee.
3. Neither technical leveling nor transfusion can be shown where awardee's offer was always technically acceptable and was tied for highest technical score initially, and this technical rating dropped slightly over the course of negotiations. Additionally, record reveals no evidence that agency conveyed protester's technical approach to awardee during the course of discussions.

DECISION

Quadrex HPS, Inc. (Quadrex), protests the award of a research and development contract for a nonaqueous equipment decontamination system (NAEDS) to GA Technologies, Inc. (GA), under request for proposals (RFP) No. DAAA15-86-R-0033, issued by the Army. Quadrex asserts that the Army intended to change the specifications at the time it made the award, that the Army failed to conduct a proper cost realism analysis of GA's cost proposal, and that the Army engaged in technical leveling or transfusion during discussions with GA.

037369

We deny the protest.

In response to the RFP, four companies submitted initial proposals. Three of the offerors, including GA and Quadrex, were found technically acceptable and were requested to submit best and final proposals by June 20, 1986. Award was made to GA on July 30 on the basis that the Quadrex and GA proposals were technically equal, but GA's estimated cost for the cost-reimbursement contract was substantially lower than that of Quadrex. After an August 4 debriefing, Quadrex protested to our Office.

Quadrex's primary basis for protest concerns a specification modification which it alleges the Army has planned to implement for some time and will implement during the performance of the contract by GA. Quadrex points out that our Office has held that the integrity of the competitive procurement system is undermined by an agency's award of a contract competed under one specification with the intention to change to a different specification after award. Moore Service Inc., B-200718, Aug. 17, 1981, 81-2 C.P.D. ¶ 145. As evidence of the Army's intention to modify the contract, Quadrex points to the contracting officer's statement in the agency report which indicates that:

"(a) The present contract calls for the delivery of nine mobile units. The Government is contemplating a modification to the contract to design a mobile item which could be setup without the use of a vehicle, i.e., use of the exact same glove box for mobile or fixed site. The design would be the same except the fixed site system would not require a vehicle or generator. . . .

"(b) The Scope of Work would be modified to change Chamber size from 60 in. deep x 24.5 in. high x 24.5 in. wide at bottom x 16.5 in. wide at top to a size sufficient to handle items 6 ft. x 3 ft. x 2.5 ft. The system must fit through a 40 in. wide doorway. The system will be designed to be mounted on a HMMWV with trailer instead of a 5-ton trailer.

"(c) The anticipated modification will have no impact on basic technology employed or delivery schedule. The modification would require a slight change in parts with minimal cost impact."

The Army contended that changes are normal in the context of a research and development contract for which no definite specifications exist, and asserted that because of this

indefiniteness, the general rule against intended modification should not apply. American Air Filter Co.--DLA Request for Reconsideration, 57 Comp. Gen. 567 (1978), 78-1 C.P.D. ¶ 443. Quadrex contends that it could have competed on the basis of a different, less costly, and smaller unit, which it had previously developed as a subcontractor under a prior Army contract, had it known of the contemplated change.

However, in its written comments in response to a question raised at the conference on the protest, the Army has stated that it has no intent to change the present contract to include the development of the mobile system or a combined mobile and fixed-site system. In our view, this is dispositive. While the Army may have contemplated design changes at one time, it has now unequivocally stated that it does not intend to change the mobility specifications.

Quadrex next alleges that the Army failed to conduct a proper cost realism analysis of GA's cost proposal. Quadrex points out that the RFP provides that the offeror's proposed cost and fee will be evaluated and adjusted for magnitude and realism and that this probable cost will be used for final evaluation purposes. Since the RFP provided that technical factors were more important than cost, but cost became determinative after the two offerors were rated technically equal, Quadrex asserts that the agency's failure to make a proper cost realism adjustment violated the RFP and was prejudicial to Quadrex. Quadrex's allegation is based primarily on the fact that GA's cost proposal is approximately \$1.3 million less than its proposal, and \$850,000 less than the independent government cost estimate (IGCE) for the procurement. Quadrex asserts that this differential is not credible in view of the fact that Quadrex has produced a freon-based decontamination unit, while GA has no such experience. Therefore, Quadrex alleges it is illogical to believe that GA will not have higher development and test costs.

An agency is not required to conduct an in-depth cost analysis or to verify each and every item in conducting its cost realism analysis. Rather, the evaluation of competing cost proposals requires the exercise of informed judgment by the contracting agency involved, since it is in the best position to assess "realism" of cost and technical approaches and must bear the major criticism for the difficulty or expenses resulting from a defective cost analysis. Since the cost realism analysis is a judgment function on the part of the contracting agency, our review is limited to a determination of whether an agency's cost evaluation was reasonably based and was not arbitrary. In view of the broad discretion

vested in the agency procurement officials to make cost realism evaluations, we will accept the agency's judgment even where the record does not provide a full explanation or rationalization for cost differences between proposals. Grey Advertising, Inc., 56 Comp. Gen. 1111 (1976), 76-1 C.P.D. ¶ 325; Raytheon Support Services Co., B-219389.2, Oct. 31, 1985, 85-2 C.P.D. ¶ 495.

Here, after determining that GA offered a feasible and acceptable technical approach, the Army verified GA's rates and those of its subcontractors on the basis of the Defense Contract Audit Agency's audit report, from which the contracting officer concluded that the rates were reasonable. In addition, the Army compared the GA proposal with the IGCE, taking into consideration both GA's relative inexperience in the technical field and the impact of the less complex technology involved in GA's approach, compared to Quadrex's, on which the IGCE had been based. The contracting officer performed a reconciliation of the differential approved by the head of the procurement division, which showed that the lesser degree of design complexity had an across the board impact. GA utilized approximately 40 percent fewer direct labor hours to perform the work than was estimated by the government, and applied a lower overhead rate to these hours. In addition, the government estimate was based on an approach in which much of the work would be performed by a subcontractor. GA's less complex design reduced these costs and shifted them to the prime contractor, resulting in significantly lower subcontractor costs. These factors, along with GA's acceptance of a lower fee than estimated, accounted for the vast majority of GA's lower cost estimate.

We find that the agency reasonably concluded that GA's less complex design justified its lower cost. Since the Army determined that GA's cost estimate was reasonable, the Army had no basis or obligation to adjust GA's estimate in order to arrive at a probable cost for evaluation purposes--rather, the GA cost estimate properly could be used as the probable cost. See Norfolk Ship Systems, Inc., B-219404, Sept. 19, 1985, 85-2 C.P.D. ¶ 309.

Finally, Quadrex alleges that the Army engaged in technical leveling or transfusion. The Federal Acquisition Regulation (FAR), 48 C.F.R. § 15.610(d)(1) (1985), defines leveling as helping an offeror to bring its proposal up to the level of other proposals through successive rounds of discussion, such as by pointing out weaknesses resulting from the offeror's lack of diligence, competence, or inventiveness in preparing

the proposal. While GA's technical score varied over the course of the negotiations, its original score was 97 out of a possible 100, which tied with Quadrex. GA's final technical score dropped to 90. In view of GA's proposal's high initial score and the fact that it was always considered technically acceptable, we find the concept of leveling inapplicable here.

FAR, 48 C.F.R. § 15.610(d)(2), proscribes the contracting officer from engaging in technical transfusion, which is defined as: "Government disclosure of technical information pertaining to a proposal that results in improvement of a competing proposal." We believe that the concept is inapplicable for the same reason that leveling is.

In any event, we have reviewed, in camera, the four letters from the Army to GA which constitute the discussions, and we do not find any evidence of disclosure of technical material from Quadrex's proposal. On the contrary, GA's technical design, as indicated above, is substantially different from and less complex than Quadrex's, and the Army's discussions focused on aspects of the design which were particular to GA. Thus, we cannot conclude that the agency engaged in technical transfusion. TEK, J.V. Morrison-Knudsen Harnischfeger, B-221320 et al., Apr. 15, 1986, 86-1 C.P.D. ¶ 365. In addition, Quadrex has not met its burden of proving by clear and convincing evidence that its proprietary rights have been violated. C&W Equipment Co., B-220459, Mar. 17, 1986, 86-1 C.P.D. ¶ 258.

The protest is denied, as is the claim for proposal preparation and attorney's fees.

fu *Seymour Efron*
Harry R. Van Cleve
General Counsel