



The Comptroller General
of the United States

Washington, D.C. 20548

CORCIO

Decision

Matter of: URS International, Inc., and Fischer Engineering
& Maintenance Co., Inc.

File: B-232500.5

Date: June 15, 1989

DIGEST

1. Protest that discussions agency held with the protester were inadequate is dismissed as untimely since it was filed more than 10 working days after the protest basis was learned.
2. Protest that agency improperly awarded a contract to an offeror that submitted a technically equal but higher cost proposal is denied where the record demonstrates that the agency determined that the awardee's proposal was technically superior to the protester's proposal and the technical merit of the awardee's proposal warranted its higher cost.
3. Protest that agency failed to conduct a proper cost analysis of the awardee's proposal is denied where the agency based its cost analysis on an independent government cost estimate and an audit conducted by the Defense Contract Audit Agency.

DECISION

URS International, Inc., and Fischer Engineering & Maintenance Co., Inc. (URSI/FEMCO), a joint venture, protest the award of a cost reimbursement contract to Pacific Architects & Engineers, Inc. (PA&E), under request for proposals (RFP) No. DAJB03-88-R-3505, issued by the U.S. Army Korea Contracting Agency for management, operation, maintenance, and repair of real property facilities at U.S. Air Force installations throughout Korea.

We deny the protest in part and dismiss it in part.

The RFP required the submission of technical and cost proposals with each to be separately evaluated. The RFP set out the following major technical evaluation criteria: (1) general management, (2) comprehension of the requirement, (3) organization and staffing, (4) offeror's

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experience in contract support services, and (5) phase-in plan. Criteria (2) and (3) were deemed approximately equal in weight and considered more important than criteria (1), (4) and (5), which also were approximately equal in weight. Subcriteria, which were equal in weight, were listed following each factor. The technical proposals were to be evaluated by a technical evaluation team and offers were to be assigned an adjectival rating of excellent, good, average or poor under each criterion. The cost proposals were to be evaluated by the Korea Contracting Agency for accuracy, reasonableness and realism. The RFP further provided that "technical and cost are approximately equal in importance with cost maybe slightly more important in that if two or more offerors are found to be equal technically cost will be the deciding factor for award." The contract was to be awarded to the offeror whose proposal was judged to be the most advantageous to the government based upon the evaluation criteria.

Four offerors responded to the RFP and after an initial technical evaluation all four were included in the competitive range with PA&E ranked first and URSI/FEMCO ranked third. After oral discussions were held and best and final offers (BAFOs) submitted, the technical evaluation panel reevaluated and revised the evaluations to account for new information. However, the offerors' summary technical ratings and their overall ranking remained unchanged, with PA&E first and URSI/FEMCO third.

With regard to cost, URSI/FEMCO's proposed cost of \$33,254,471 was low, with PA&E's cost of \$33,603,337, third low. The Army determined that PA&E's superior technical proposal was worth the additional cost and on August 26, 1988, awarded the contract to PA&E. URSI/FEMCO was notified of the award on August 29.

On September 6, URSI/FEMCO filed a protest with our Office challenging the contract award to PA&E. URSI/FEMCO argued that the Army: (1) did not evaluate proposals in accordance with the stated criteria; (2) did not hold meaningful discussions with the firm; (3) failed to conduct a proper cost realism analysis of PA&E's proposal; and (4) failed to consider URSI/FEMCO's status as the incumbent in evaluating the firm's phase-in plan and company background.

We sustained URSI/FEMCO's protest on the basis that the Army failed to hold meaningful discussions with the firm. URS International, Inc., and Fischer Engineering & Maintenance Co., Inc.; Global-Knight, Inc., B-232500, B-232500.2, Jan. 10, 1989, 89-1 CPD ¶ 21. Specifically, the Army found URSI/FEMCO's proposal deficient under a subcriterion of

criterion (1) general management, entitled "resource and work force (security, safety, accountability)," and during discussions did not point out this deficiency to the firm. We found that URSI/FEMCO was prejudiced by the agency's failure to point out the deficiency because, given the firm's \$350,000 cost advantage, if the firm had been given the opportunity to correct the undisclosed deficiency and had been able to raise its score for general management from average to excellent, it would have had a reasonable chance at receiving the award.

We recommended that a new round of discussions be held with URSI/FEMCO limited to addressing the noted deficiency in the resource and work force subcriterion of general management, followed by the submission of a new BAFO. We advised that if, following discussions, the Army concluded that URSI/FEMCO is entitled to award, the award to PA&E should be terminated for the convenience of the government and award made to URSI/FEMCO. Because of our finding and recommendation, we found it unnecessary to consider the other protest issues raised by URSI/FEMCO.

In accordance with our decision the Army held discussions with URSI/FEMCO on February 7, 1989; the firm submitted its revised BAFO on February 17. The technical evaluation team reviewed the BAFO and determined that it was no longer deficient in the resource and work force subcriterion, but still scored URSI/FEMCO's proposal average for criterion (1) general management. URSI/FEMCO's proposal also was still rated as average overall. Subsequently, the contracting officer confirmed his initial determination that PA&E's technically superior, higher cost proposal was more advantageous to the government and sustained the award to that firm.

On April 3, URSI/FEMCO filed its current protest with our Office. URSI/FEMCO complains that the discussions which the Army held with URSI/FEMCO as a result of our decision were inadequate. URSI/FEMCO also requests that we consider the other protest grounds that were raised but not decided during the initial protest. URSI/FEMCO requests that it be awarded the contract and be allowed to recover the costs it incurred in pursuing this protest.

As a preliminary matter, we dismiss as untimely URSI/FEMCO's contention that the discussions the Army held with the firm in response to our recommendation were inadequate. Under our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (1988), a protest that is based on other than an apparent solicitation impropriety must be filed within 10 working days after the protester knows or should know of its protest basis. Here,

the Army held discussions with URSI/FEMCO on February 7, and URSI/FEMCO's protest on this issue is based on the Army's actions at that time. Since the sole topic to be raised during the discussions was specifically set out in our decision on the initial protest, URSI/FEMCO clearly was on notice of any alleged inadequacy in the discussions once they were completed. Since URSI/FEMCO did not raise this issue until April 3, approximately 2 months after discussions were held, it is untimely and will not be considered on the merits. See American Indian Business & Technologies Corp., B-224476, July 23, 1986, 86-2 CPD ¶ 101.

Nor will we consider URSI/FEMCO's complaint, raised in its initial protest, that the Army failed to consider URSI/FEMCO's incumbency in evaluating the firm's phase-in plan and company background. In its report in response to URSI/FEMCO's initial submission the Army addressed this issue, responding that it did, in fact, consider the firm's incumbency. In its reply to the report URSI/FEMCO did not dispute the agency's position. We, therefore, consider this issue abandoned. SPM Manufacturing Corp., B-229844, Apr. 13, 1988, 88-1 CPD ¶ 363.

Turning to the other issues URSI/FEMCO raised in its initial protest, the firm first argued that the Army did not evaluate its proposal in accordance with the stated evaluation criteria. Specifically, URSI/FEMCO complained that since the evaluation criteria provide that cost will be the deciding factor for award if two or more proposals are rated equal technically, the Army did not have discretion to award the contract to a higher-priced, technically equal offeror. URSI/FEMCO argues that since PA&E and URSI/FEMCO submitted technically equal proposals, the Army improperly awarded the contract to PA&E at a cost higher than that proposed by URSI/FEMCO.

In a negotiated procurement, there is no requirement that award be made on the basis of the lowest cost. Agency officials have broad discretion in determining the manner and extent to which they will make use of the technical and cost evaluation results. Cost/technical tradeoffs may be made, and the extent to which one may be sacrificed for the other is governed only by the test of rationality and consistency with the established evaluation factors. The judgment of the procuring agency concerning the significance of the difference in the technical merit of offers is accorded great weight. We have consistently upheld awards to offerors with higher technical scores and higher costs so long as the result is consistent with the evaluation criteria and the procuring agency has determined that the technical difference is sufficiently significant to outweigh

the cost difference. Antenna Products Corp., B-228289, Jan. 19, 1988, 88-1 CPD ¶ 43; Dalfi, Inc., B-224248, Jan. 7, 1987, 87-1 CPD ¶ 24.

Here, the record shows that the Army found that URSI/FEMCO submitted an acceptable proposal. Contrary to the protester's position, however, the Army did not consider the proposals of PA&E and URSI/FEMCO technically equal but, instead, found the proposal of PA&E technically superior. In this regard, both firms received the same adjectival ratings for criterion (3) organization and staffing (average); criterion (4) offerors' experience in contract support services (excellent); and criterion (5) phase-in plan (good). However, with regard to the two remaining criteria, while PA&E received ratings of excellent for criterion (1) general management and criterion (2) comprehension of the requirement, one of the two most important criteria, URSI/FEMCO received average ratings for these criteria. The Army also specifically determined that PA&E's superior technical proposal was worth the additional 1.2 percent cost over URSI/FEMCO's proposal. The protester has not challenged the agency's technical evaluation or the cost/technical trade-off. Under these circumstances, we have no basis on which to question the Army's decision to award the contract to PA&E.

URSI/FEMCO also protested that the Army failed to conduct a proper cost analysis of PA&E's proposal. Specifically, URSI/FEMCO believes that PA&E understated its direct costs for items such as labor and vehicles. URSI/FEMCO also speculates that PA&E either underestimated its total labor costs for Korean employees or provided unrealistically low cost figures for such items as overtime, temporary over-hires, and other anticipated costs. URSI/FEMCO requests that we review PA&E's cost proposal to determine whether PA&E understated these items.

The award of a cost reimbursement contract requires that procurement officials make informed judgments as to the extent to which an offeror's proposed costs represent what the contract should cost, assuming reasonable economy and efficiency. Such informed judgments are properly within the administrative discretion of the procuring agency, and its judgment is entitled to great weight since it is in the best position to assess the realism of the proposed costs and must bear the repercussions of any difficulties or expenses that may result from a defective analysis. Our review of the agency's cost realism analysis is, therefore, limited to a determination of whether the evaluation was reasonable and not arbitrary. PRC Kentron, B-225677, Apr. 14, 1987, 87-1 CPD ¶ 405.

In conducting a cost realism analysis of competing proposals, an agency is not required to conduct an in-depth analysis or to verify each item, but rather, to exercise informed judgments as to whether cost proposals are realistic in light of the contract requirements and proposed technical approaches. Ferguson-Williams, Inc.; Hawk Management Services, Inc., B-232334; B-232334.2, Dec. 28, 1988, 88-2 CPD ¶ 630. We have approved the use of government cost estimates in evaluating cost realism, Sterling Services, Inc.; Trim-Flite, Inc., B-229926.5; B-229926.6, Oct. 3, 1988, 88-2 CPD ¶ 306, as well as the contracting officer's reliance on Defense Contract Audit Agency (DCAA) advice. NKF Engineering, Inc.; Stanley Assocs., B-232143, B-232143.2, Nov. 21, 1988, 88-2 CPD ¶ 497.

Here, the record demonstrates that in assessing the cost realism of PA&E's proposal the Army relied on an independent government cost estimate (IGCE) as well as an audit report provided by the DCAA. Concerning the IGCE, because the majority of the contract cost involves the salary and benefits of Korean national employees, which are set by Korean law, over 80 percent of the total cost of the contract was known. Concerning the DCAA audit, our review of the audit report shows that DCAA looked at both the indirect and direct costs proposed by PA&E, including labor costs for Korean national employees such as salary, holidays and other benefits, and the cost of vehicles and insurance. DCAA found no significant unsupported or unresolved items which would preclude acceptance of PA&E's proposal as submitted and specifically found that, as required by the RFP, PA&E's labor rates complied with the Korean National Pay Scale. Under these circumstances we have no basis to question the contracting officer's determination that the cost proposal submitted by PA&E was realistic. We, therefore, deny this protest basis.

Since we have found the protest to be either untimely or without merit, URSI/FEMCO is not entitled to recover its protest costs. Bell Industries, Inc., B-233029, Jan. 25, 1989, 89-1 CPD ¶ 81.

The protest is dismissed in part and denied in part.


James F. Hinchman
General Counsel