



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Dynamic Energy Corporation
File: B-235761
Date: October 6, 1989

DIGEST

1. Contracting agency's life-cycle cost 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.
2. Protest that agency's acceptance of fixed escalation rate for fuel cost proposed by awardee was not in accordance with solicitation requirement that offeror's fuel costs be escalated by the Department of Energy regional industrial fuel price indices is denied. Although amendment of the solicitation to indicate that fixed rates were acceptable would have been appropriate, the protester has not shown that the outcome of the competition would have been different if an amendment had been issued.
3. Protest that awardee is unlikely to obtain the permits required to operate the coal-fired power plant that it proposed concerns a matter of responsibility. Our Office will not review a affirmative determination of responsibility absent a showing of possible fraud or bad faith on the part of procurement officials or that definitive responsibility criteria were misapplied.

DECISION

Dynamic Energy Corporation protests the award of a contract to Slana Energy, Inc., under request for proposals (RFP) No. F65517-87-R0001, issued by the Air Force for electrical power for the Alaska portion of the Over the Horizon Backscatter Radar System, a part of the United States early warning radar system. Dynamic Energy contends that the agency improperly evaluated the proposals.

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The RFP was issued on August 11, 1987. It provided for the award of a requirements contract for a 1-year test period plus a 20-year operation period. In order to supply the electrical power required, offerors had to construct a power plant that would satisfy the Air Force requirement for 99.99 percent reliability. There were three major evaluation areas: technical, management and life-cycle cost. Life-cycle cost was of primary importance. Award was to be made to the offeror with the lowest evaluated life-cycle cost whose proposal was also acceptable in the technical and management areas, provided the offeror's cost was lower than the cost of a government constructed and operated plant. No specific energy source for the power plant was required.

On the March 10 closing date, the Air Force received seven proposals. Discussions were conducted with all offerors and all seven submitted best and final offers on June 24. The agency rejected one proposal as technically unacceptable and another proposal was withdrawn. The remaining five proposals were determined to be acceptable in the technical and management areas. After analyzing the life-cycle cost of each proposal, the agency made an award to Slana based on its evaluated life-cycle contract cost of \$52,628,205. Slana proposed to provide power with a combination of coal and butane and also offered as a secondary system a tie into the power system of a local utility company. The firm proposed to provide coal from its own mine for the duration of the project and offered a fixed escalation rate for the cost of the coal. The protester's proposed diesel fuel system had an evaluated life-cycle contract cost of \$57,130,404, the second lowest cost proposal.

The protester believes the agency's analysis of the awardee's life-cycle cost was incorrect. Dynamic Energy argues that the agency did not properly calculate the cost of coal, the awardee's primary fuel source, and the cost of constructing the power lines necessary for Slana to tie into the utility company's power system. The protester also believes that the agency could not have performed a cost analysis on the awardee's butane system since Slana does not have the turbine engine required for the use of this fuel as a backup system. In addition, the protester questions whether the awardee can obtain the necessary environmental permits.

In conducting a life-cycle cost analysis, procurement officials must make informed judgments as to the extent to which proposed prices represent a reasonable estimation of future costs. 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 impact of various factors on future 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 analysis is, therefore, limited to a determination of whether the evaluation was reasonable and consistent with the terms of the RFP. See Corporate Air Servs. Inc., B-215053, Oct. 18, 1984, 84-2 CPD ¶ 417.

COAL-FIRED SYSTEM

Dynamic Energy contends that because Slana intends to use coal as the primary fuel source for its generation of power and the coal mine it intends to use is not yet developed, the cost of the coal cannot properly be calculated or indexed. It also complains that the Air Force's use of the fixed escalation rate proposed by Slana for the cost of coal is contrary to the RFP and gave the company an unfair competitive advantage since the other offerors' fuel rates were escalated in accordance with Department of Energy (DOE) industrial escalation tables.^{1/} Additionally, the protester believes that it is unlikely that Slana could obtain the permits necessary to operate a coal-fired generating plant in Alaska.

The agency responds that the development of the mine, including random testing of coal samples, has been underway for some time. Therefore, according to the agency, it found the BTU content and the estimated cost of the coal from Slana's mine to be as accurate as those for an operational mine. The agency also states that it did not apply the DOE escalation rate to Slana's coal cost since Slana owned the coal mine and could consequently guarantee a fixed escalation rate.

Our review of the record shows that the coal is coming from an existing mine which is being reopened. The mine's reserves and the quality of the coal have already been documented. It appears that the reserves far exceed the agency's estimate of the coal required for this plant. Under the circumstances, we see no reason why the Air Force

^{1/} Offeror's cost proposals were broken out into three categories: Levelized Fixed Charge-A constant monthly amount not adjusted for inflation to reimburse the contractor for its facility construction cost; Operations and Maintenance Charge-An amount indexed to the rate of inflation to cover the cost of operations and maintenance, and Energy Charge-Cost of fuel adjusted by DOE's regional industrial fuel price indices.

could not calculate the cost of coal from the awardee's mine with almost as much certainty as that from an operating mine. Consequently, there is no reason for us to object to the cost analysis on this basis.

With respect to the agency's use of the escalation rate proposed by Slana, we find nothing unreasonable in the agency's recognizing the cost savings inherent in the awardee's ability to supply coal from the firm's own mine. In this instance, we do not think it makes sense to require the agency to escalate the awardee's coal costs by a standard index when the awardee has complete control over the fuel source and will be contractually bound to its proposed escalation rate. Moreover, although the RFP provides that DOE indicies will be used, the agency's reason for using the index was to obtain a realistic estimate of the cost of fuel for the contract term. By proposing a fixed escalation rate for the fuel price that is totally within its ability to control, the awardee has provided a price that is certain while the fuel prices of the protester are subject under the contract to whatever escalation is caused by the market price of the fuel.

The protester states that it too would have proposed a fixed fuel rate had it known that the rate would be considered. The protester, who proposed diesel fuel, has not, however, provided us with any evidence of its ability to secure a source of supply for diesel fuel at a fixed escalation rate that would not be prohibitively high for the 21-year term of the contract, nor has it indicated it has the ability to control its fuel source. We consequently, conclude that the agency acted reasonably in accepting and evaluating the awardee's proposed coal price escalation rate. While it would have been appropriate for the agency to have amended the solicitation to inform offerors that such an arrangement was acceptable, see Development Assocs., Inc., B-233221, Feb. 10, 1989, 89-T CPD ¶ 140, nevertheless, the protester has made no credible showing that it could have benefited from such an amendment. We therefore do not think that the protester was prejudiced by the agency's use of the escalation rate proposed by the awardee.

The protester also contends that Slana is unlikely to obtain the permits required to operate a coal-fired power plant. The record shows that the agency evaluated that portion of Slana's proposal which pertained to its compliance with all environmental regulations and found it acceptable. We have no basis upon which to disagree with the agency's conclusion in this regard. Morey Machinery, Inc., B-234124, May 10, 1989, 89-1 CPD ¶ 440. To the extent that the protester is arguing that Slana will not be able

to obtain the permits as it has promised, the protest involves the firm's apparent ability to perform and therefore concerns Slana's responsibility. Great Lakes Dredge & Dock Co., B-221768, May 8, 1986, 86-1 CPD ¶ 444. Where, as here, an agency has made an affirmative determination of responsibility, this Office will not review that determination absent a showing that such determination may have been made fraudulently or in bad faith or that definitive responsibility criteria in the solicitation were not met. Bid Protest Regulations, 4 C.F.R. § 21.3(m)(5) (1989); Everpure, Inc., B-231732, Sept. 13, 1988, 88-2 CPD ¶ 235. The protester has not alleged either of these exceptions. In any case, the record shows that in a preaward survey conducted on Slana by the agency it made a preliminary investigation concerning the required permits, and it specifically determined that Slana would be able to obtain them in time to meet the contract delivery dates. While it is clear that the protester disagrees with the agency's conclusions, it has not provided us with a basis upon which to question that determination.

INTERTIE

The protester also contends that the agency did not take into account the awardee's cost of constructing the 37 miles of transmission lines needed for it to tie into the power system of a nearby utility company. Dynamic Energy believes it is unreasonable to expect that the utility company will construct the lines at its own expense since the minimal amount of power that Slana will be purchasing from it would not justify the enormous cost of constructing the lines. Dynamic Energy argues that the cost of the intertie should have been included in Slana's cost as a levelized fixed charge as were the other facility construction costs and concludes that if these costs were properly characterized in the evaluation the awardee's life-cycle cost would have increased significantly.

In response, the agency initially notes that it found Slana's system met the 99.99 percent reliability requirement without the intertie. According to the agency the intertie was an additional desirable feature of Slana's proposed system, but was not required for the system to be considered acceptable under any of the RFP requirements. Further, the agency states that the local utility company has agreed to finance and build the interconnecting power lines and notes that since Slana proposes to use the excess power from the intertie only in emergencies or during scheduled maintenance, its cost, which does not include building costs, was properly included in the operations and maintenance (O&M) charge.

We find nothing unreasonable in the agency's evaluation of this aspect of the protester's proposal. There is nothing in the record which contradicts the agency's position that the necessary interconnection facilities will be provided by the utility company. In this regard, we understand that Slana and the utility company contemplate using the intertie to allow the exchange of excess power between the two companies. Slana may sell its excess power to the utility company during the winter in exchange for the utility company's excess power during the summer. Such an exchange may account for the power company's willingness to construct the power lines at its own expense. Since there are no construction costs involved in the intertie, we see no reason why the cost which will be incurred if the power from the utility company is used should not be charged to the O&M account.

Dynamic Energy also argues that the awardee's proposal is unacceptable since the proposed intertie is only a 5 megawatt power system, and the RFP requires a 10 megawatt system. The RFP provides that the offeror must furnish 10 megawatts of power on demand with a 99.99 percent reliability. It is apparent from the record that the intertie is only a backup power source. The primary power source is a combination coal and butane system. The agency has concluded that Slana's total system does have a 10 megawatt capacity with the required reliability without the additional intertie power. Since the RFP does not require that each component of the system be capable of providing 10 megawatts and in view of the agency's conclusion concerning Slana's basic system, we do not think that it is relevant whether the proposed intertie has a 10 or a 5 megawatt capacity.

BUTANE

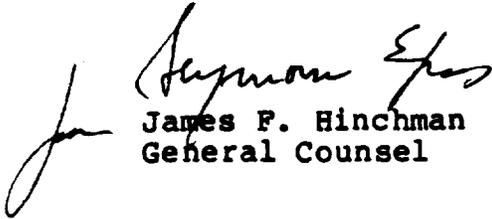
Dynamic Energy contends that the agency could not have performed a life-cycle cost analysis on Slana's use of butane. The protester believes that Slana proposes to use butane as fuel for an emergency generator and is attempting to acquire the turbine engine needed for this from the utility company. Dynamic Energy contends that since there is currently no agreement between the two companies for the use or acquisition of the turbine engine, the Air Force could not have accurately calculated the cost of Slana's use of butane.

The report shows that Slana intends to use butane as part of the primary system and not for a backup emergency generator. The agency indicates that consequently, no quick start

turbine engine is required and states that the estimates of butane use were clearly stated in the awardee's proposal, which permitted it to perform the required cost analysis. Dynamic Energy has given us no reason to question this determination.

In sum, we have reviewed the record and found nothing unreasonable in the agency's technical or cost analysis of the awardee's proposal. There is therefore, no basis for us to question the agency's decision to award to Slana.

The protest is denied.


James F. Hinchman
General Counsel