



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Barnes & Reinecke, Inc., and FMC Corp.
File: B-236622; B-236622.2
Date: December 20, 1989

DIGEST

1. Failure to specify the government/contractor share ratio in cost proposal for fixed-price incentive contract renders the offer ambiguous as to a material term. Where such material term is first omitted from the best and final offer, procuring agency is not required to reopen discussions.
2. Where offeror identifies itself as an independent cost center within a greater corporate structure and does not clearly commit the resources of the "parent" corporation in its proposal, contracting agency may restrict its evaluation to the independent resources it reasonably finds committed by the offer.

DECISION

Barnes & Reinecke, Inc., and FMC Corp., Defense Systems Group, protest the award of a contract to VSE Corporation under request for proposals (RFP) No. DAAE07-88-R-R106, issued by the Army Tank-Automotive Command, Warren, Michigan, for system technical support to the Bradley Fighting Vehicle program. Both protesters contend that their proposals were improperly evaluated. We deny the protests.

BACKGROUND

The Bradley is an armored, tracked vehicle for infantry battlefield use. It is intended to provide infantry support for the Army's main battle tanks. This contract was awarded to provide system technical support for the Bradley family of vehicles, such as systems engineering, integrated logistics support, engineering change proposals, quality assurance and related efforts not provided for under the Bradley production contract.

The RFP contemplated the award of a fixed-price incentive level-of-effort contract for 1 year plus 2 option years. For the first year, 25,000 hours of work were projected, with 100,000 hours projected for the second year and 150,000 hours for the third year. Actual performance would be initiated by the issuance of a work directive providing for a given number of hours at the hourly rate negotiated under the contract. The RFP set forth three major areas of evaluation: technical (which was significantly more important than the other two areas), management, and cost (which were approximately equal to each other in importance).

Five firms submitted proposals, which were reviewed and scored by a proposal evaluation board (PEB). The agency conducted discussions with each offeror. The discussion process included: error, omission, clarification, and deficiency worksheets that the Army issued, to which the offerors responded in writing. At the close of discussions, the five offerors submitted best and final offers (BAFOs), which were also reviewed by the PEB. The PEB's evaluation was then reviewed by the source selection authority (SSA).

Barnes' proposal was ranked third best technically, with an overall management assessment of "good." Its price was second low. FMC's offer was evaluated as fourth best technically, its management was rated as "adequate," and its price was the lowest. VSE Corporation received the highest technical assessment, its management was rated as "superior," and its price was third low. The SSA concluded that VSE's proposal was the most advantageous to the government, and the contract was therefore awarded to VSE. These protests followed.

BARNES' PROTEST

Barnes contends that the Army inaccurately evaluated its technical abilities and past performance on similar programs. The protester also alleges that the contract was not issued to the contractor whose performance best meets the government's technical and management requirements at a reasonable cost, suggesting that the agency could not justify paying VSE's higher price. The Army argues that Barnes did not submit an acceptable cost BAFO.

In its initial cost proposal, Barnes submitted a target price that was approximately \$82,000 lower than the ceiling price it submitted, and completed the "share ratio" in the proposal form as "70% government, 30% contractor." (Under the terms of the RFP, the government's share ratio for underruns could be no lower than 70 percent.) In its BAFO,

however, Barnes submitted identical target and ceiling prices and filled in the cost ratio space with the notation "N/A".

In fixed-price incentive contracts, the amount of the contractor's profit is determined by the "share ratio" formula established in the contract, which rewards the contractor with additional profit for efficient performance (resulting in a cost lower than the proposed target cost), and penalizes the contractor for inefficient performance (resulting in a cost higher than the proposed target). The share ratio determines the government's and contractor's relative share in the overrun or underrun amount. The final price is limited under this type of contract to the agreed ceiling price. See Federal Acquisition Regulation (FAR) §§ 16.403 and 16.403-1.

In our view, the agency reasonably has determined that Barnes' failure to provide a share ratio in its BAFO created an ambiguity. The share ratio is material to the acceptability of an offer because it significantly affects the government's payment obligations in the event of an underrun under the resulting contract. Since Barnes did not specify its proposed ratio, we find that its offer was reasonably considered by the agency to be ambiguous as to a material term. Further, since Barnes did not omit the share ratio until it submitted its BAFO, the agency was not required to reopen discussions or to allow the firm further opportunity to revise its proposal. See AddSCO Indus., Inc., B-233693, Mar. 28, 1989, 89-1 CPD ¶ 317.

Moreover, we have examined the issues raised by Barnes which essentially challenge the agency's decision to award to a technically higher rated offeror with a higher cost than Barnes. The awardee received the highest technical score and a superior rating for management. While Barnes was technically acceptable, the record shows that the awardee submitted a superior proposal which the agency reasonably viewed as worth the additional cost. Accordingly, we deny the protest.

FMC'S PROTEST

FMC protests that the proposal submitted by FMC Defense Technical Systems Unit (DTSU) was improperly evaluated.^{1/} FMC designed the Bradley under a contract with the Army, and

^{1/} While FMC is the nominal protester, DTSU was the offeror under the solicitation.

has been producing and providing engineering services for this vehicle since 1980. As its primary ground of protest, FMC asserts that the Army failed to properly consider the resources available to DTSU from FMC's Ground Systems Division (GSD) and other units of FMC's Defense Systems Group. FMC asserts in its protest that the Army improperly considered DTSU to be an entity separate from FMC, and that the Army should have understood that the resources of FMC would be made available for the performance of the contract.

The Army contends that the issue is whether the proposal and BAFO that DTSU submitted offered a contractual commitment of FMC's complete resources or only promised the separate resources of DTSU and, therefore, whether the agency could reasonably limit its evaluation to only considering the independent resources of DTSU. We agree.

Where an offeror represents in its proposal that the resources of its parent company will be committed to the contract, an agency properly may consider the experience of the parent company in evaluating the offeror's proposal. J.A. Jones Constr. Co., B-227296, Sept. 1, 1987, 87-2 CPD ¶ 215. However, it is fundamental that an offeror must demonstrate affirmatively the merits of its proposal, and it runs the risk of rejection if it fails to do so. Vista Videocassette Servs., Inc., B-230699, July 15, 1988, 88-2 CPD ¶ 55. Here, we need not examine the relationship between DTSU and FMC so much as the actual commitment of resources DTSU's offer represented, since the resulting contract would only bind the parties to the extent they had agreed to be bound. Therefore, our review is limited to considering whether the Army could reasonably conclude that only the independent resources of DTSU were actually offered and, if so, whether the Army's evaluation of DTSU's offer was reasonable.

The record shows that in its proposal the protester presents itself as DTSU, an independent operating unit within the FMC corporate structure. The proposal further describes DTSU as "a recently formed engineering organization . . . reporting to FMC's Defense Systems Group;" and states that "FMC has formed its DTSU in Detroit for the express purpose of providing an improved, streamlined system technical support process, in proximity to the Army's Tank Automotive Command, at the lowest possible cost." The proposal listed "FMC Corporation Defense Systems Technical Unit" as the offeror, and was signed by Frances Raborn, who was identified as "Controller, Defense Systems Group."

DTSU's proposal also stated that DTSU would obtain GSD resources by issuing an interdivisional purchase order. According to the proposal, six engineering services would reside at GSD during the contract base period. Where DTSU did not have the required engineering expertise to perform certain functions, detailed specialty engineering tasks would be subcontracted to GSD. The initial cost proposal included a relatively moderate amount to cover support from GSD.

During discussions, the Army issued an Error, Omission, Clarification and Deficiency worksheet requiring DTSU to "provide the type and amount of work, as it relates to the technical area, that GSD will perform." DTSU responded that it did not plan to have GSD perform or deliver any direct labor hours required under the contract; that it anticipated that GSD would perform consulting services in a variety of specialty engineering areas; that GSD consultants would be used occasionally, and gave as examples of GSD consulting services, advice on material selection, retrieval of drawings and other historical data, informal reviews of safety issues, and occasional use of GSD field service personnel to better understand field problems. The agency states that it also asked during discussions whether it had any written agreements with GSD for planned work, and that DTSU responded that it did not.

In its BAFO, DTSU seemed to emphasize its independence from GSD. In the Summary of Pricing Changes submitted with the BAFO, it states, "Based on our 8 months experience in performing Bradley STS work we have significantly reduced our support from FMC-GSD. A review of the sample work directives for the base year gives us increased confidence that minimal technical assistance will be required from GSD." The amount allotted for support from GSD was reduced to an insignificant amount, approximately 7 percent of the amount designated for this support in the initial proposal, or slightly more than 1 percent of the total contract price.

In our view, it was reasonable for the Army to conclude that the proposal essentially only offered the independent resources of DTSU, and to refuse to rely on any vague or general assurances that GSD's experience and resources would be utilized as needed. At best, the proposal of DTSU reflected an arrangement which gave DTSU discretion to involve or not involve GSD as it saw fit; it clearly did not represent an unequivocal commitment of GSD's resources. We emphasize that the Army had to evaluate DTSU's offer on the basis of the information DTSU submitted. If the protester intended to commit the resources of its parent corporation,

it should have made this clear in its proposal or at least during discussions, when the agency indicated that the relationship between DTSU and GSD required clarification. Instead, DTSU gave the impression in its BAFO that it was distancing itself from GSD. In these circumstances, we have no basis to object to the Army's considering only DTSU's own resources in the evaluation.

FMC also protests that the agency did not disclose the deficiencies in FMC's proposal during discussions, which would have allowed FMC to satisfy the agency's requirements in its BAFO.

A contracting agency must conduct discussions with all offerors in the competitive range, advising them of deficiencies in their proposals. Varian Assocs., Inc., B-228545, Feb. 16, 1988, 88-1 CPD ¶ 153. However, agencies are only required to lead offerors into areas of their proposals that are considered to be deficient. Where a proposal is considered acceptable and within the competitive range, the agency is not obligated to discuss every aspect of the proposal that receives less than the maximum possible score. Id.

Here, the agency explains that FMC's proposal was acceptable, and that there were no actual deficiencies. Rather, there were relative weaknesses or "disadvantages" that were not raised during discussions but were discussed during FMC's debriefing. Although these flaws lowered the proposal's score, they were not serious enough to render the proposal unacceptable. In response, the protester in its comments does not dispute this explanation by the agency. We, therefore, will not consider the matter further except to note that the Army issued 43 written questions to FMC and conducted oral discussions with the protester.

FMC also contends that the Army based its evaluation of FMC's proposal in part on factors other than the evaluation factors disclosed in the RFP. The protester argues that there was no requirement in the RFP to provide examples of past design efforts, yet its proposal was downgraded on this basis. It also was downgraded because it failed to "demonstrate a sound knowledge and capability for planning, managing and executing an Integrated Logistics Support (ILS) program," yet FMC alleges that the RFP did not disclose this as an evaluation factor.

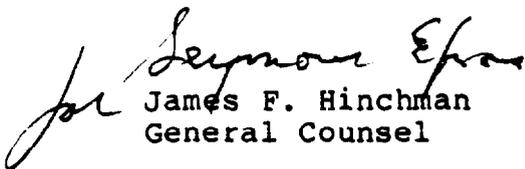
While it is a fundamental principle of federal procurement policy that all proposers must be advised of the basis on which their proposals will be evaluated, the contracting agency is not precluded from considering matters not

expressly identified as evaluation factors in the solicitation as long as the matters considered are logically and reasonably related to the stated criteria. Schneider, Inc., B-214746, Oct. 23, 1984, 84-2 CPD ¶ 448.

The RFP listed three evaluation areas: technical, management, and cost. The technical area included the element of background and knowledge, which included the factor "knowledge of Tracked Armored Vehicles." This was to "be assessed based on the offeror's experience in providing engineering services," among other things. In addition, the RFP's instructions section stated that offerors "shall submit a resume demonstrating [their] ability to comply with the scope of work as it pertains to engineering services," specifically including "engineering calculations and design." While there was no explicit requirement that examples of past design efforts be submitted, we believe it was reasonable for the Army to view these as logically related to the stated criteria, since they would be an obvious way to demonstrate the offeror's background, knowledge, and experience in the area of engineering design.

Regarding FMC's objection to the ILS evaluation, the RFP required offerors to submit "a resume indicating . . . knowledge and capability relative to the government ILS system and scope of work requirements as they pertain to . . . ILS management." The RFP further specified that the offeror's knowledge of ILS would be assessed based on its experience in overall ILS management." We, therefore, find that the Army's evaluation in this area was consistent with the RFP's stated criteria.

The protests are denied.


James F. Hinchman
General Counsel