



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Unified Industries Inc.

File: B-237868

Date: April 2, 1990

Sean P. Morgan, Esq., Saul, Ewing, Remick & Saul for the protester.
Edward J. Tolchin, Esq., Ginsburg, Feldman and Bress, for RGI, Inc., an interested party.
Peter D. Butt, Esq., Office of the General Counsel, Department of the Navy, for the agency.
Scott H. Riback, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, assisted in the preparation of the decision.

DIGEST

1. Protest is sustained where, due to improper cost evaluation, the record does not clearly demonstrate that agency made award on initial offers to low cost offeror.
2. Agency improperly accepted initial offer from firm which proposed to compensate certain employees at an hourly rate which was less than the minimum rate prescribed by the Department of Labor's wage rate determination.

DECISION

Unified Industries Inc. (UII) protests the award of a contract to RGI, Inc., under request for proposals (RFP) No. N00600-89-R-1017, issued by the Department of the Navy for the acquisition of automatic data processing support services for the Naval Military Personnel Command. UII generally argues that the Navy improperly evaluated offers.

We sustain the protest.

The RFP contemplated the award of an indefinite quantity, indefinite delivery, time and materials contract. Offerors were required to submit separate cost and technical proposals. Firms were required in their cost proposals to provide direct labor rates, overhead rates, general and

administrative rates and burdened labor rates for both the prime contractor and subcontractors.

The RFP provided estimates of the number of hours for six lots. Lot 1 was the base period for the contract and represented an abbreviated period of performance and included estimated hours for 11 types of contractor employees. The RFP described this period as an indoctrination period which was estimated to require a 3 month effort on the part of the contractor and was designed to allow a new contractor an opportunity to prepare its staff for full performance. The other five lots listed 17 types of contractor employees, each of these lots representing approximately 1 year of performance under the contract. Firms were thus required to submit hourly rates for various types of employees and each type of employee was governed by an applicable Service Contract Act (SCA) wage rate determination issued by the Department of Labor (DOL) and incorporated into the RFP.

As to the technical proposals, offerors were required to submit a thorough description of their approach concerning staffing, corporate experience and technical problem solving, and were also required to submit 50 resumes which would serve to establish the qualifications of a firm's offered personnel. The RFP provided extensive descriptions of the personnel qualifications required for each of the various types of contractor employees.

The RFP contained evaluation criteria which were listed in descending order of importance and included (in order): (1) technical approach; (2) personnel; (3) corporate experience; (4) staffing and training plan; and (5) price. The solicitation further provided that the technical considerations were approximately one and one half times more important than price and that price would be evaluated for realism. In addition, the agency informed prospective offerors by amendment that all firms would be evaluated using the same number of labor hours. Award was to be made to the firm submitting the proposal offering the greatest value to the government. The RFP also advised that award could be made on the basis of initial proposals without discussions.

The Navy received five proposals. After evaluation of these proposals, the agency concluded that only UII and RGI were in the competitive range. The Navy performed a cost realism analysis on each firm's cost proposal and assigned a "greatest value score" to each of the proposals which was a weighted average score based upon each firm's technical and cost raw scores and expressing each firm's raw score as a

percentage of the total points available in each evaluation area. On the basis of these scores, the Navy made award on initial proposals to RGI as the technically superior low priced offeror. This protest followed.

The protester argues that the Navy improperly waived the awardee's failure to adhere to certain DOL wage rates as required under the RFP. The protester further argues that the agency failed to evaluate RGI and UII on an equal basis for cost purposes because it did not use the same number of labor hours for evaluation as required by the RFP. The protester also challenges the Navy's evaluation of the two firms' resumes, and the awardee's proposal's cost realism and compensation for professional employees' plan.

Under the Competition in Contracting Act of 1984 (CICA), 10 U.S.C. § 2305(b)(4)(A)(ii) (1988), agencies may make awards on the basis of initial proposals without discussions only when it can be clearly demonstrated from the existence of full and open competition or accurate prior cost experience with the product or service that acceptance of an initial proposal without discussions would result in the lowest overall cost to the government. Based on the record in this case, the agency has not demonstrated clearly that award was made to the low cost offeror.

UII asserts that the Navy failed to properly determine the low cost offeror in accordance with the RFP, as amended. Specifically, it objects to the Navy's evaluation of indoctrination costs for both competitive range offerors. In this regard, amendment No. 2 incorporated questions raised by offerors and the Navy's responses. The Navy was asked, since the incumbent would not incur indoctrination costs, "how is the costing of the indoctrination period to be evaluated so as not to provide the incumbent with an unfair cost advantage." The Navy responded that all contractors, including the incumbent, would be evaluated on the same number of hours. The RFP, as amended, thus required the Navy to evaluate all cost proposals on the basis of the same number of labor hours. The Navy advises, however, that it did not evaluate the labor hours for the indoctrination period contained in lot 1 of the RFP for RGI, except for certain indoctrination labor hours which the firm specifically stated it would incur. The Navy also states that it did not adjust RGI's proposal upward. The Navy did, however, evaluate UII's lot 1 costs.

Offers must be evaluated on the basis of the evaluation plan stated in the RFP. Once offerors are informed of the basis on which their proposals will be evaluated, the agency

must adhere to this basis or inform all offerors of any changes made. See Kaufman Caseman Assocs., Inc., B-229917.9, Oct. 21, 1988, 88-2 CPD ¶ 381. Here, the amended RFP informed offerors that costs would be evaluated on the basis of the same labor hours. Therefore, it was reasonable for the parties to expect that costs would be evaluated on the basis of identical labor hours.

The Navy argues that it would have been "irrational and unrealistic" to evaluate RGI for hours it would not perform. Therefore, only RGI's stated indoctrination period costs, which were minimal, were evaluated.

Regardless of the Navy's argument, the Navy's evaluation was not in accordance with the evaluation method. The record shows that, had the Navy evaluated consistent with the stated method, the difference between the two proposals would have been reduced to approximately \$81,658.

The protester also argues that the agency improperly waived certain applicable SCA wage rates in evaluating the RGI proposal. In particular, UII argues that RGI proposed hourly wage rates which were below the mandatory wage rates prescribed for certain classifications of employees and the agency failed to consider this fact in performing its cost realism analysis.^{1/}

The Navy concedes that RGI did in fact fail to propose hourly wage rates for at least one category of employees which were equal to or greater than the applicable wage rate determination which results in an understatement of costs in

^{1/} The Navy argues this issue is untimely because it was not filed within 10 working days of when the protester knew or should have known its basis of protest. See 4 C.F.R. § 21.2(a)(2) (1989). Although UII may have had certain information regarding how RGI paid its employees under the prior contract, it was unaware until the Navy's filing of the agency report that RGI had proposed rates of compensation which were less than required under the applicable wage rate determination for the subject acquisition. Consequently, we find that UII timely raised the issue within 10 working days of its receipt of the agency report.

the amount of \$107,718.2/ However, the Navy submits that its cost realism analysis took cognizance of this fact and its evaluators determined that RGI could afford to pay the wage determination rates given the overall cost proposed by the firm. For example, the Navy argues that RGI might reduce its first year fee to absorb the "entire contract's [wage] shortcoming," and not impact RGI's ability to perform. The Navy also reports that the SCA wage rate determinations have been incorporated into the contract and, thus, the firm is legally obligated to pay its employees in accordance with the applicable rates.

We conclude that the Navy erred in failing to adjust RGI's proposed hourly rates upward for those categories of employees who RGI had proposed to compensate at less than the prescribed SCA wage rates. In this connection, we point out that, although the administration and enforcement of the SCA, 41 U.S.C. §§ 351 et seq. (1982), rests with the DOL, our Office will review the question of whether a contracting agency properly evaluated proposals in light of a solicitation's SCA provisions since this question involves whether firms have competed on an equal basis. See Education Serv. Dist. of Washington County, 60 Comp. Gen. 77 (1980) 80-2 CPD ¶ 379. Here, the Navy admits that RGI submitted hourly rates for at least one classification of employees which were below the SCA-mandated wage rates contained in the RFP and this fact resulted in the firm's cost proposal being \$107,718 less than it would have been had the firm based its proposed rates on the minimum hourly rate prescribed in the wage rate determination. We therefore find that the Navy in effect waived the SCA wage rates for RGI in its cost evaluation of that firm's proposal. This impropriety deprived the protester of an opportunity to compete on a common basis. Id.

As stated previously concerning indoctrination costs, had the agency evaluated in accordance with the stated evaluation scheme, there would have existed a difference of only \$81,658 between RGI and UII. The wage rate deficiency involves a cost of at least \$107,718. Thus, the agency has not demonstrated clearly that award on initial offers was

2/ Our in camera review of the record shows that the evaluators questioned rates in two additional labor categories proposed by RGI as "appear[ing] to be below this [prescribed] minimum wages" and recommended these proposed rates be subject to discussions as deficiencies. Although in a subsequent submission, the Navy claims this original cost evaluation document was in error, it provides no explanation as to the error.

made to the low cost firm as required by CICA, and we sustain the protest.^{3/}

We are by separate letter of today recommending to the Secretary of the Navy that discussions be opened in this procurement and the agency follow the stated evaluation criteria in selecting the successful offeror. We also recommend that if, at the conclusion of those discussions, the Navy determines that RGI is no longer properly in line for award, it terminate, for the convenience of the government, the contract awarded to RGI and make award to UII if otherwise proper. Finally, we find UII to be entitled to the costs of filing and pursuing its bid protest, including attorneys' fees. 4 C.F.R. § 21.6(d)(1).

Milton J. Fowler
for Comptroller General
of the United States

^{3/} We view UII's remaining arguments concerning the Navy's allegedly improper evaluation of both firms' proposed personnel and its allegedly improper evaluation of RGI's proposed compensation for its professional employees as academic, since there will be discussions and a new evaluation that we have no basis to believe will be conducted improperly. See Federal Acquisition Regulation 15.610(c) (FAC 84-16). We therefore dismiss as academic these remaining allegations. Steel Circle Bldg. Co., B-233055, B-233056, Feb. 10, 1989, 89-1 CPD ¶ 139.