Westfall / McGrail

Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: SRS Technologies

File: B-238403

Date: May 17, 1990

Lawrence M. Farrell, Esq., McKenna, Conner & Cuneo, for the protester.
Joseph D. West, Esq., Ronald A. Schechter, Esq., and Jeffrey M. Villet, Esq., Jones, Day, Reavis & Pogue, for Engineering & Economic Research, Inc., and Walter R. Andrews, for RMS Technologies, Inc., the interested parties.
Craig E. Hodge, Esq., and Peggie L. Roberson, Esq., Office of Command Counsel, Department of the Army, for the agency.
Jennifer Westfall-McGrail, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency may rely on the recommendations of the Defense Contract Audit Agency concerning direct labor and indirect cost rates in analyzing cost proposals.

2. Agency does not have a duty to verify the availability of prospective employees proposed by an offeror for whom offeror has submitted letters of commitment.

DECISION

SRS Technologies protests the U.S. Army Missile Command's (MICOM) award of a contract for software engineering support services to Engineering & Economics Research, Inc. (EER), under request for proposals (RFP) No. DAAH01-89-R-0007. SRS contends that MICOM failed to make certain adjustments required by the solicitation to offerors' cost proposals and that it failed to perform an adequate cost realism analysis. The protester also argues that EER submitted misleading documentation of its ability to secure qualified personnel to work on the contract.

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

The RFP, which was set aside for small disadvantaged businesses, anticipated the award of a cost-plus-award-fee contract for basic and option performance periods extending through September 1993. Offerors were advised that in the evaluation of proposals, technical factors would be significantly more important than cost, which would in turn be significantly more important than management. As part of their technical proposals, offerors were required to define the technical personnel mix that they would use to perform the contract tasks and to identify the particular individuals that they would employ. For individuals not currently in their employ, offerors were required to submit letters affirming the individual's intent to accept full-time employment with the offeror if it were awarded the contract. The RFP also provided that for purposes of evaluating cost, the agency would develop a most probable cost assessment for each proposal based on the offeror's technical and management approach.

Four proposals were submitted in response to the RFP. The agency determined that EER's proposal, which was second low in evaluated cost, represented the best value to the government and selected it for award. SRS' protest to our Office followed.

SRS argues first that the agency failed to adjust offerors' cost proposals to standardize evaluation on a 40-hour workweek or to reflect government-provided space, as required by the solicitation.

The RFP provided that in determining most probable cost, offers would be evaluated on the basis of a 40-hour workweek standard regardless of whether or not the offeror had proposed to use uncompensated overtime. The RFP also provided that cost proposals would be adjusted, as appropriate, for government-furnished property, transportation, rent-free use of government property and other such factors.

The agency denies the protester's first allegation, explaining (with supporting documentation) that although the labor rates that EER offered included uncompensated overtime, it had based its assessment of the most probable rates on a 40-hour workweek standard. SRS, in commenting on the agency report, did not take exception to the agency's response; we therefore consider it to have abandoned this issue and will not consider it further. Vista Scientific Corp., B-231966.2, Dec. 27, 1988, 88-2 CPD ¶ 625.

In response to the protester's second allegation, MICOM contends that it was not required to adjust offerors' cost proposals for government-furnished office space since all offerors would have use of the same government-provided space.

The RFP, as amended, provided under section H-10 that the government would furnish a total of 2,400 square feet of office space at Redstone Arsenal, Alabama, for use by the contractor in the performance of the proposed contract. The solicitation also provided, under section M, a formula to be used to adjust proposals to eliminate any competitive advantage that might accrue to a contractor possessing government production and research property other than that listed in section H of the RFP. In response to an offeror's request for clarification of the difference between the government-furnished property referenced in section H-10 and the government-owned production and research property referenced in sections M-2 and M-3, the agency explained in amendment 2 to the RFP that:

> "The Government Furnished Property (GFP) set out in Paragraph H-10 is that property which will be used in performance of the effort described in the Statement of Work, and is available to all offerors with no adjustment to the most probable cost. Under Paragraphs M-2 and M-3, any offeror can request additional Government-owned production and research property for which an evaluation to determine most probable cost will be made in accordance [with] Section M."

Thus, contrary to the protester's contention, the solicitation did not require that proposals be adjusted to take into account the government-furnished office space provided in section H-10; rather, it clearly informed offerors that cost proposals would not be adjusted on that basis since the same office space would be available to all offerors.

In commenting on the agency report, the protester argues that despite the fact that the same office space would be available to all offerors, proposals should have been adjusted to take into account the government-furnished space since not all offerors may have made the same assumptions regarding its use in determining their overhead rates. SRS contends that it bid its full overhead rate, which assumes performance in its own, as opposed to government-furnished, offices for all personnel to be provided under the contract since it was unsure whether the government-furnished office space would be available for permanent (as opposed to transitory) location of employees. The protester maintains

that if it had reflected the use of government-furnished office space in its overhead rate, that rate would have been reduced by approximately 37 percent for those employees who could be located in the government-furnished offices, and that this reduction in overhead could have had an overall impact on its price of between 7 and 10 percent. SRS asserts that if EER assumed that the government-furnished space would be available for permanent location of employees, the two proposals could not have been evaluated on an equal basis without adjustment.

The protester is now arguing in essence that the RFP was ambiguous as to whether the government-furnished office space would be available for permanent location of the contractor's employees. This ground of protest is untimely, since any such ambiguity was apparent prior to the closing date for receipt of initial proposal, and should therefore have been protested prior to that date. 4 C.F.R. § 21.2(a)(1) (1989). In any event, EER denies that its overhead rate reflected the use of government-furnished office space, and thus SRS' premise that the two offerors based their proposals on differing assumptions regarding the use of government-furnished space is without foundation.

The protester next argues that MICOM failed to conduct an adequate cost realism analysis of offerors' proposals. SRS contends that the contracting officer had a duty to conduct her own analysis of the direct labor and indirect cost rates proposed in determining the most probable cost of offerors' proposals and that she instead relied entirely on the computations of the Defense Contract Audit Agency (DCAA). The protester also argues that in determining most probable cost, the agency should have formulated its own estimate as to the number of hours in each labor category that would be required to perform the contract tasks and then compared this estimate with the breakdown of hours by labor category proposed by each offeror.1/

1/ The protester also alleged in its initial protest that the agency had failed to perform an adequate cost realism analysis by failing to consider all of the elements set forth in Federal Acquisition Regulation (FAR) § 15.805-3(a). In its report, the agency pointed out that the FAR did not require consideration of all of the elements set forth in that section, but rather provided that the agency should consider the elements, "as appropriate," in performing cost analysis. The agency further noted that it had, in any event, taken all of the elements into consideration. Since the protester did not attempt to rebut the agency's response

(continued...)

With regard to the protester's first contention, we see nothing inappropriate in the agency's having relied on the rate recommendations of the DCAA in performing its cost analysis of proposals. See NKF Eng'g, Inc., et al., B-232143, B-232143.2, Nov. 21, 1988, 88-2 CPD ¶ 497; Allied Maritime Management Organization, Inc., B-222918, B-222918.2, Aug. 26, 1986, 86-2 CPD ¶ 227. As far as SRS' second argument is concerned, we think that it reflects a misunderstanding of the purpose of cost realism/most probable cost analysis. The protester's argument, as we understand it, is that to assess most probable cost the agency should have determined the appropriate labor mix for performing the contract tasks and then applied the labor and indirect cost rates proposed by each offeror to this labor mix. The purpose of cost realism analysis is not to determine what an offeror price's would be using a technical approach prescribed by the agency; rather, it is to determine what, in the government's view, it would realistically cost the offeror to perform given the offeror's own technical approach.2/ Gary Bailey Eng'g Consultants, B-233438, Mar. 10, 1989, 89-1 CPD ¶ 263.

SRS finally argues that EER submitted misleading documentation of its ability to secure qualified personnel to work on the contract. According to the protester, EER could not have obtained commitments from certain individuals currently employed by Teledyne-Brown whom it proposed to employ since all Teledyne-Brown employees had committed either to retain their positions with Teledyne Brown, with whom SRS proposed to subcontract, or to work for the protester if it received the award. The protester also argues that the agency had a duty to verify that the employees whom EER indicated it would hire were in fact available.

We question the foundation of the protester's first argument, which appears to be that any employee who had committed to work for it (either directly or as an employee of a subcontractor) if it received the award could not also have entered into a commitment to work for EER in the event that that firm received the award. We know of nothing that

---

1/(...continued)
in commenting on the report, we consider it to have abandoned this issue.

2/ This is not to say that labor mix was an irrelevant consideration in the evaluation of proposals of course. The adequacy of the labor mix proposed was considered in the technical evaluation of proposals.

would prevent an individual from entering into a contingent commitment for employment with more than one offeror under a solicitation provided that each commitment was made conditional upon the offeror receiving award of the contract. We therefore see no reason to assume, as SRS suggests we should, that because certain Teledyne-Brown employees had committed to work for SRS if it received the award that they could not also have entered into a contingent commitment to work for EER if it were selected for award. We are furthermore aware of no authority--and SRS has cited none--that would support the protester's assertion that the agency had a duty to verify independently the availability of individuals not currently in EER's employ for whom EER had submitted letters of commitment.

The protest is dismissed in part and denied in part.

James F. Hinchman
General Counsel