



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Global Associates

File: B-244367.3

Date: February 26, 1992

Jeffrey H. Smith, Esq., and Justin M. Dempsey, Esq., Arnold and Porter, for the protester.
Robert M. Turner, Esq., and Mia Darbonne Farber, Esq., Fogel, Feldman, Ostrov, Ringler & Klevens, for Pacific Architects and Engineers Inc., an interested party.
Herbert F. Kelley, Jr., Esq., and Bobby G. Henry, Jr., Esq., Department of the Army, for the agency.
Paula A. Williams, Esq., and Paul I. Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that agency failed to perform adequate cost realism analysis of awardee's cost proposal is denied where the agency reasonably assessed the realism of the awardee's proposed costs, including an evaluation of the extent to which its labor rates and costs were consistent with the various elements of its technical and management approach.
2. Agency was not required to discuss with an offeror its proposed relatively higher manning levels when these levels were considered to be acceptable rather than deficient.

DECISION

Global Associates protests the award of a cost reimbursement contract to Pacific Architects and Engineers, Inc. (PAE) under request for proposals (RFP) No. DAHC92-89-R-0058, issued by the Department of the Army to provide base operations and support services at Soto Cano Air Base in Honduras. Global contends that the Army did not perform a proper cost realism analysis of PAE's proposal and failed to conduct meaningful discussions with Global because it did not advise the firm that its proposed manning level was unreasonably high.

We deny the protest.

This acquisition is for base operations and support services for approximately 1,200 U.S. personnel stationed at Soto Cano and to support various Joint Chiefs of Staff and Southern Command-directed exercises throughout Honduras. The base operations and support services must be adequate to accommodate current missions and must increase or decrease as required by changing missions and exercises.

The RFP contemplated the award of a cost-plus-award-fee contract for phase-in, base, and option periods not to exceed 5 years. The contractor is to provide support services in the following functional areas: laundry operations, full food services, supply operations, facility engineering services, transportation services, maintenance operations, class 1 operations (subsistence) and morale, welfare and recreation. The solicitation did not establish manning levels for any of the required services.

The RFP provided for award to the offeror whose proposal conformed to the solicitation and represented the best overall value to the government when evaluated on the basis of the following factors: technical, management, quality control, and cost. With respect to cost, the RFP provided that proposed costs would be evaluated using the following subfactors: cost variance, cost control experience, fee structure, cost allocation, balance of proposed cost and offeror's total estimated contract cost.

Four firms including Global, the incumbent contractor, submitted initial proposals, all of which were determined to be in the competitive range. Global's and PAE's initial proposals were the two highest scored in the non-cost areas. PAE submitted the lowest-cost proposal, including options, of \$13,953,450 and Global was the high offeror with a cost proposal of \$15,680,711.

Discussions were held with each firm and best and final offers (BAFOs) were requested and evaluated. PAE's proposed total cost was reduced to \$10,429,242; Global's increased to \$15,714,259. The weighted scores (out of 100 maximum points) that were given to the Global and PAE proposals in the non-cost areas were:

	Initial Proposal	Final Proposal
Global	90.96	93
PAE	90.50	92

The results of the SSEB's final evaluation of proposals were presented to the Source Selection Authority (SSA). The SSA determined, based on the RFP's stated evaluation criteria,

that PAE's offer provided the best overall value to the government. The SSA stated that while all proposals in the competitive range were adequate when measured against the evaluation factors, PAE's proposal would accomplish the required level of work at a price most advantageous to the government. The source selection decision document states, in relevant part:

"Although PAE's offer provides the lowest overall cost, it is a credible offer that can be substantiated by both the level of proposed effort and the efficiency with which the work is to be accomplished in all functional areas."

The agency awarded a contract to PAE on May 29, 1991, and this protest followed. The two principal allegations of Global's protest concern the cost realism analysis of PAE's proposal and the conduct of discussions with Global. Contract performance was not suspended based upon the agency's determination that continued performance was in the best interest of the government.

COST ANALYSIS

Global points out that Federal Acquisition Regulation (FAR) § 15.608 requires, in pertinent part, that the contracting officer perform a cost analysis to determine the offeror's understanding of the work to be performed and the offeror's ability to perform the contract. Global argues that PAE's proposed costs, which Global considers unreasonably low, reflect PAE's failure to understand the fundamental, technical, and operational requirements of the contract. The protester's position is that PAE's proposed manning level and labor rates were unreasonably low for a contract in which labor constitutes a substantial portion of the cost of performance; thus, Global asserts, PAE had submitted a below-cost proposal which represented a "buy-in."¹ Global also questions such matters as whether the Army considered the potential diminution in morale that a dramatic lowering of salaries paid to Honduran workers would create, the risk of possible lawsuits under the Honduran labor code for

¹In its initial protest, Global alleged that Article 28 of the Honduran Labor Code required PAE to pay the same wages and benefits that had been paid by Global. The Army and PAE refuted this allegation and, in its subsequent comments, Global withdrew this allegation, recognizing that PAE was not so obligated under applicable Honduran law.

readjustments of salaries, and whether the agency adequately examined the "glaring" difference (34 percent) between its offer and PAE's.

When an agency evaluates proposals for the award of a cost reimbursement contract, an offeror's proposed estimated cost of contract performance and proposed fees are not considered controlling since an offeror's estimated costs may not provide valid indications of final actual costs that the government is required, within certain limits, to pay. See FAR § 15.605(d); Arthur D. Little, Inc., B-243450, July 31, 1991, 91-2 CPD ¶ 106. Consequently, a cost realism analysis must be performed by the agency to determine the extent to which an offeror's proposed costs represent what the contract should cost, assuming reasonable economy and efficiency. This determination essentially involves an informed judgment of what costs actually would be incurred by acceptance of a particular proposal. Science Applications Int'l Corp., B-232548; B-232548.2, Jan. 23, 1989, 89-1 CPD ¶ 52. Because the contracting agency clearly is in the best position to make this cost realism determination, our review is limited to a determination of whether the agency's cost realism analysis is reasonably based and not arbitrary. Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 CPD ¶ 325.

Here, in its most probable cost analysis, the agency's cost realism committee (CRC) made various adjustments to the offerors' proposed costs based upon a comparison of each firm's cost proposal with its proposed technical, management and quality control performance. The agency's cost adjustments resulted in the following probable cost determination:

	Proposed BAFC Cost	Probable Cost
Global	\$15,714,259	\$14,135,498
PAE	\$10,429,242	\$10,693,575
Independent Government Estimate (IGE)		\$13,669,712

The contracting officer was concerned with the disparity between the two cost proposals and between the cost proposals and the IGE. As explained below, the contracting officer determined, in part relying upon the legal advice from the agency attorney and the CRC, that PAE understood the RFP requirements and that PAE and Global had selected different methods of meeting the RFP requirements, and that this difference in approaches explained the disparate cost proposals. The contracting officer further concluded that PAE's offer was not unbalanced and did not represent a "buy-in."

The CRC concluded that despite the apparent cost difference, Global's and PAE's BAFO proposals were substantially similar and that the cost difference was the result of differences in total personnel, hourly wage rates, and fees. For example, using an independent Honduran minimum wage schedule, the CRC did an hourly wage rate comparison of randomly selected positions and found that PAE had the lowest overall Honduran hourly wage rates and Global the second lowest. The agency did not find, and nothing in the record suggests, that the wages proposed by PAE were below the Honduran minimum wage rates. In addition, PAE's proposed direct labor and indirect rates were analyzed and verified by the Defense Contract Audit Agency (DCAA), and the DCAA's findings were reviewed by the CRC and the contracting officer. No discrepancies were found to preclude acceptance of PAE's proposed direct labor and indirect rates. Essentially, PAE was proposing to pay lower wages than Global was able to pay because of Global's obligations to its employees arising from their employment during Global's incumbency.

In analyzing total cost and total personnel proposed by each offeror, the CRC used the IGE² and the technical committee's estimate of personnel required to perform the contract services as a baseline to compare the different proposals. In its BAFO, Global proposed a manning level of 572 and PAE proposed a manning level of 435.³ When measured against the agency's estimated manning level of 442, PAE's manning level was 7 less and Global's was 130 more than that estimated by the agency. The CRC noted that Global's manning level of 572 included 43 temporary hires to cover surge conditions during exercise periods. Although PAE indicated that they would handle surge periods either by using overtime or temporaries, the firm did not include this cost in its BAFO. However, after the CRC factored out Global's use of temporary hires to cover surge conditions in order to make a consistent determination of Global's probable cost, it concluded that Global's higher personnel levels combined with their wage rates accounted for most of the cost difference between the two competing proposals.

²The IGE was developed using manpower estimates obtained from approved staffing standards. Honduran salary rates were developed by using Panama salary costs which were then adjusted by a relative cost factor to produce an estimate of Honduran salary costs. Salaries for positions to be filled by U.S. citizens were also calculated.

³The manning levels proposed in Global's and PAE's initial proposals were 568 and 444, respectively.

Another significant difference in cost identified by the CRC was the offerors' proposed fees. The dollar difference between Global's and PAE's base and award fees is \$0.27 million and between the firms' general and administrative rates is \$0.47 million.

We find that the record demonstrates that the Army did perform an adequate analysis of each offeror's proposal. This analysis clearly shows that the Army was reasonably satisfied that PAE's proposed manning level was sufficient and realistically reflected a technically adequate approach to meeting the RFP requirements, and that the major cost differences between Global and PAE reflect their different technical and management approaches rather than on unrealistically low costs proposed by PAE. We find no basis to disagree with the conclusions reached by the Army.⁴

MEANINGFUL DISCUSSIONS

Under the Competition in Contracting Act of 1984, 10 U.S.C. § 2305(b)(4) (1988), discussions must be held with all responsible sources whose proposals are within the competitive range. Such discussions must be meaningful; that is, agencies must point out weaknesses, excesses, or deficiencies in the offeror's proposal, Mikalex & Co., 70 Comp. Gen. 545 (1991), 91-1 CPD ¶ 527, unless doing so would result in disclosure of one offeror's approach to another--technical transfusion--or would result in technical leveling through successive rounds of discussions, such as pointing out inherent weaknesses resulting from the offeror's lack of diligence, competence, or inventiveness. FAR § 15.610(d); see B.K. Dynamics, Inc., 67 Comp. Gen. 45 (1987), 87-2 CPD ¶ 429.

⁴Global also contends that a post-award cost proposal submitted by PAE for the first option period of the contract "proves" that PAE had underbid the contract and the Army failed to perform an adequate cost realism analysis. Global alleges that this cost proposal seeks funding that is substantially higher than that which PAE had submitted in its BAFO and this increased funding request is not due to the Army's increase in its contract requirements. However, PAE's cost proposal was rejected by the agency because "it contained cost information and proposal recommendations neither requested nor [at that time] envisioned." Since this cost proposal was submitted in response to the agency's request to price contract modifications which represented substantially increased performance requirements, we do not believe that it substantiates Global's argument.

Global maintains that the size of its workforce is a major deficiency or uncertainty which the contracting officer was required to bring to its attention during discussions. Because the agency did not apprise Global that its proposed staffing level was excessive, Global contends that the agency failed to conduct meaningful discussions concerning this perceived weakness in its proposal.

The record shows, however, that Global's proposed manning level under its initial proposal was never considered excessive nor was its proposed cost considered unreasonably high. As stated above, Global's higher staffing level was viewed simply as a reflection of its particular approach to meeting the agency's functional requirements. That approach was not seen as deficient--in fact, Global's technical score was higher than PAE's. Under these circumstances, the agency was not required to apprise Global that its proposed manning level was too high.

The protest is denied.


for James F. Hinonma
General Counsel