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

(Corrected Copy)

Decision

Matter of: TAMS/Fluor Daniel
File: B-251068; B-251068.2
Date: March 2, 1993

Edward V. Gregorwicz, Jr., Esq., Cotten & Selfon, for the protester.
Harold I. Rosen, Esq., Seltzer and Rosen, P.C., for CRSS Constructors, Inc., an interested party.
Robert J. McCall, Esq., and Amy J. Brown, Esq., General Services Administration, for the agency.
Scott H. Riback, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that agency improperly conducted cost-realism analysis is denied where record shows that no cost-realism analysis was performed during price evaluation.
2. Protest that agency improperly revised independent government estimate (IGE) after reviewing initial offers is denied where IGE was not disclosed in solicitation such that protester could have been misled, and there is no argument or evidence that the IGE as revised did not reflect statement of work in solicitation.
3. Protest that agency failed to conduct meaningful discussions is denied where record shows that agency brought to protester's attention all significant areas of weakness identified by evaluators.
4. Protest that agency evaluated proposals using undisclosed evaluation criteria is denied where record shows that all matters taken into consideration during evaluation were encompassed by or reasonably related to stated evaluation criteria.

DECISION

TAMS/Fluor Daniel protests the award of a contract to CRSS Constructors, Inc. under request for proposals (RFP) No. GS-03P-91-DXC-0015, issued by the General Services Administration (GSA) for construction quality management services in connection with the building of a new facility for the Health Care Finance Agency in Baltimore, Maryland.

TAMS argues that GSA improperly evaluated its price proposal, failed to conduct meaningful discussions with it, and improperly downgraded its technical proposal using undisclosed evaluation criteria.

We deny the protest.

The RFP called for fixed, lump-sum prices to perform construction quality management services beginning with the design phase of the new facility and ending with post-construction claims settlement activities. Essentially, the requirement involves oversight of the project, including the review of drawings, inspection and approval of work during construction, negotiation of change orders to the construction contracts, and performance of claims avoidance and settlement work. The RFP did not specify any particular labor mix or level-of-effort, and required offerors to develop their own proposals (in terms of organization, staffing and management of the project) for meeting the requirements of the statement of work. For evaluation purposes, the RFP contained the following five technical criteria, in descending order of importance: Experience on Similar Projects; Past Performance on Similar Projects; Preliminary Management Plan; Personnel; and Management Approach/Capabilities of the Offeror. Proposals were point scored under each of the criteria and the scores then were weighted to arrive at a single technical score for each firm based on a 100-point scale. Price was to be less important than the technical criteria in the award decision.

GSA received 14 proposals, 5 of which were determined after initial evaluation to be within the competitive range. The agency sent clarification requests to the competitive range offerors to cure various informational deficiencies. Thereafter, GSA conducted written and oral discussions with the competitive range offerors and solicited best and final offers (BAFO). GSA then evaluated the BAFOs and awarded CRSS the highest technical score while awarding TAMS the third highest technical score. GSA made award to CRSS, the third lowest priced offeror, concluding that the firm had submitted the proposal representing the best overall value to the government. TAMS, the low priced offeror after BAFOs, protested to our Office after learning of the agency's award decision.

PRICE EVALUATION

TAMS argues that the agency improperly evaluated price proposals by conducting an improper cost-realism analysis. According to TAMS, GSA improperly arrived at an "hourly cost of services" for each offeror in determining which proposal reflected the greatest overall value for award purposes, even though the RFP did not provide for such an analysis.

TAMS alleges that this analysis distorted the nature of its proposal because it failed to take cognizance of its technical approach of using multidisciplinary professionals capable of performing more than one function, and thereby reducing the overall manhours necessary to perform the contract. TAMS maintains that, although its hourly cost of services may have been higher than the awardee's as a result of its fewer proposed hours, its proposal nonetheless represented the best overall value to the government.

The protester is factually incorrect regarding GSA's alleged cost-realism analysis. In particular, the record does not support TAMS' allegation that GSA conducted a cost-realism analysis to arrive at an "hourly cost of services" figure for each offeror, or that such an analysis was used to support the agency's source selection decision. In fact, there is nothing in the agency's evaluation or source selection materials evidencing such an analysis, and the source selection evaluation board's (SSEB) report to the source selection official specifically states that a complete cost analysis based on hourly cost of services was not performed. The record shows instead that the agency made a determination of price reasonableness based upon a comparison of the prices received from the competing firms, as well as the government estimate, and that it determined from that comparison that CRSS' price was reasonable. Given the fixed price nature of this requirement, a price reasonableness evaluation taking such information into account was proper and in accordance with Federal Acquisition Regulation § 15.805-2. We therefore have no basis to object to GSA's evaluation of price proposals for this reason.

TAMS also argues that the price evaluation was improperly applied by the agency during its technical evaluation. According to TAMS, its technical proposal was downgraded because the agency did not think its proposal was realistic in terms of cost. The record also does not support this allegation. GSA did not use the results of its price evaluation when reviewing technical proposals to downgrade TAMS for offering an unreasonably low price. Indeed, the agency's technical evaluation materials contain no reference to any firm's pricing or any indication that prices were even used as an indicator of technical understanding. Rather, TAMS was downgraded during the agency's technical evaluation principally for offering insufficient staffing (as discussed in detail below). This was not improper since the protester's proposed level-of-effort could properly be considered by the agency under the Preliminary Management Plan evaluation criterion, which took into consideration the adequacy of the offerors' staffing. TAMS' lower proposed manhours enabled it to have a significantly lower price, but the record shows it was the low number of manhours, not the

resultant low price, that led the agency to downgrade the proposal.

Finally, TAMS argues that GSA improperly revised the independent government estimate (IGE) after receiving initial offers, even though there was no real change in the statement of work. According to the protester, this was improper because GSA's determination of CRSS' price reasonableness then was based on a comparison of that firm's offer with the revised IGE. TAMS believes the estimate was developed in light of the staffing offered by CRSS.

IGEs are, by their nature, inexact and agencies may change them after the receipt of bids or proposals where a review of the bids or proposals shows that the initial IGE was incorrect in its assessment of the level-of-effort necessary to perform the requirement or in its prediction of fair and reasonable prices as compared to the actual pricing disclosed by competition. See Adams Elec. Co., Inc., B-207782, Dec. 27, 1982, 82-2 CPD ¶ 576; Decilog, Inc., B-206901, Apr. 5, 1983, 83-1 CPD ¶ 356.

We find nothing improper in GSA's revision of the IGE even if, as TAMS alleges, it was prompted by GSA's review of the initial offers. The original IGE, not disclosed in the RFP, was based on the assumption that slightly more than 17,000 manhours would be necessary to perform the requirement. After reviewing the initial offers, the revised IGE was prepared using a figure of slightly more than 33,000 manhours. Although TAMS' proposed manhours were more in line with the original estimate, the revised figure was in line with the level-of-effort proposed by most of the competitive range offerors, and apparently was viewed as reflecting more accurately GSA's actual requirements for the contract. Indeed, this is confirmed by the discussions process, during which GSA made it clear to TAMS that it was concerned that the firm's relatively low proposed staffing was inadequate. Under these circumstances, since TAMS does not allege that the revised estimate is inconsistent with the amount of work required under the RFP, and since the estimates were not disclosed in the RFP such that TAMS or other offerors may have been misled in preparing their proposals, we have no basis to object to GSA's upward revision of the IGE.

DISCUSSIONS

TAMS argues that the agency improperly failed to conduct meaningful discussions with it. In this regard, the SSEB found that TAMS had proposed an insufficient level-of-effort, particularly for its quality control supervisor (QCS) and assistant QCS, and also found that TAMS' proposal to have these two individuals share the responsibilities of the single QCS position referenced in the RFP was less

desirable than having one full-time QCS. TAMS maintains that the adequacy of the hours offered for its QCS and assistant QCS should have been, but were not, raised during discussions. TAMS also contends in this respect that GSA improperly failed to discuss the structure of its proposed team, which did not include separate employees for each of the contract's possible functions (for example, TAMS proposed to use its assistant QCS to perform a number of different functions instead of offering separate individuals for each function). TAMS maintains that the agency's failure to discuss the structure of its proposed team deprived it of an opportunity to improve its technical score in the area of its preliminary management plan.

In order for discussions to be meaningful, an offeror must be advised of the weaknesses, excesses or deficiencies in its proposal, unless doing so will result in the disclosure of another offeror's technical approach or in technical leveling. General Servs. Eng'g, Inc., B-245458, Jan. 9, 1992, 92-1 CPD ¶ 44. Agencies are not required to conduct all encompassing discussions, however, or to discuss every element of a technically acceptable proposal receiving less than the maximum possible score. Id.

We find that GSA engaged in adequate discussions with TAMS. The record shows that the evaluators' primary concern with the TAMS proposal was the nature of the firm's approach of using a minimum number of multidisciplinary professionals, resulting in what the evaluators viewed as an inadequate level-of-effort. GSA brought this perceived problem to TAMS' attention through numerous questions during discussions. For example, it specifically asked about the proposed level-of-effort for TAMS' QCS during the construction phase of the project, noting that the proposed number of hours for the QCS appeared low, especially in view of the fact that the QCS was also assigned the responsibilities of field mechanical engineer. Similarly, TAMS was informed that the evaluators considered the proposed manhours for its assistant QCS low in view of the fact that he was to serve as civil and structural engineer, civil and structural inspector, project cost controller and project estimator, as well as the assistant QCS. We think these questions were sufficient to convey the agency's concern that TAMS' multidisciplinary cost-saving approach might have a negative impact on contract performance.¹

¹TAMS also contends that GSA failed to conduct discussions with it regarding certain negative feedback obtained by GSA about TAMS' proposed QCS. However, TAMS' score was reduced only 3.3 points because of the negative reference, so the protester still would have scored lower than CRSS even if it
(continued...)

TAMS also alleges that GSA failed to point out during discussions that its proposed price was considered unreasonably low. According to TAMS, although this was a major factor in the agency's decision not to select it for award, the matter was never brought to its attention during negotiations.

As discussed above, the principal deficiencies in TAMS' proposal related to low staffing rather than low price. To the extent that the evaluation focused at all on TAMS' price, it was due only to the direct relationship between price and staffing; the agency was fully aware that increasing TAMS' staffing would result in an increase in its price. The discussion questions to TAMS specifically noted this relationship, pointing out that a number of the technical matters raised could have an impact on the firm's pricing, and requested that TAMS review and reevaluate its pricing in light of the technical issues raised. We therefore conclude that the agency adequately discussed TAMS' pricing during negotiations.

UNDISCLOSED EVALUATION FACTORS

TAMS argues that GSA improperly applied two unstated evaluation criteria in reviewing its proposal: lack of previous experience with GSA--TAMS maintains that this was improper because the RFP only required offerors to demonstrate their previous experience generally, without referring to GSA experience--and failure to show that it had thoroughly reviewed the developer RFP (the developer RFP is the solicitation for the actual construction work to be overseen by the construction quality contractor).

Solicitations must inform offerors of the basis for proposal evaluation, and the evaluation of proposals must be based upon the factors set forth in the solicitation. While agencies must identify the major evaluation criteria, they are not required to identify the areas of each factor which might be taken into consideration, provided that the unidentified areas are reasonably related to or encompassed by the stated evaluation factors. Institute for Human Resources, B-246893, Apr. 13, 1992, 92-1 CPD ¶ 360.

We find that GSA properly considered GSA experience and familiarity with the developer RFP as matters encompassed within the stated evaluation criteria. Regarding GSA experience, the RFP required offerors to discuss their familiarity with government procurement policies and

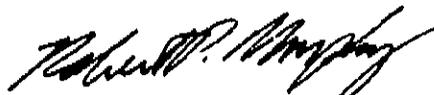
¹(...continued)

were correct that all 3.3 points should not have been deducted (TAMS' final score was 87.4 points while CRSS' final score was 93.9.)

regulations (including GSA acquisition regulations and a variety of federal construction guidelines), as well as the similarity of previous projects to the project being solicited. In selecting examples to discuss, offerors were further instructed to choose projects which were similar or equivalent to the project being solicited. Offerors were therefore on notice that their proposals should demonstrate a familiarity with federal procurement and construction regulations, including GSA guidance. In view of these requirements, we find that GSA could reasonably give favorable consideration to offerors discussing GSA-related experience under the Previous Experience evaluation criterion.

As to familiarity with the developer RFP, offerors were required to prepare a preliminary management plan for the project as part of their proposals, and the RFP specifically advised that the agency would evaluate the preliminary management plan in performing its technical review. This preliminary management plan was to include, among other things, a detailed description of the interrelationship between the QCS contractor, GSA and the developer, including a narrative of project objectives and cost containment methods. Offerors were also asked to provide preliminary written procedures for coordinating the project (and the various parties' responsibilities) as well as a network schedule and organization charts depicting the interrelationships of the parties to the project. Given this required level-of-detail, and the fact that the contract covered supervision of the work done under the developer RFP, we think GSA logically could expect the offerors to demonstrate relative familiarity with the developer RFP under the Preliminary Management Plan evaluation criterion. In addition, TAMS was specifically asked during discussions whether it had become "completely familiarized" with the developer RFP and whether it had any concerns or criticisms regarding its contents. In light of the RFP's specific requirements, as amplified during discussions, we find that TAMS was reasonably on notice that GSA's evaluation would take into consideration its familiarity with the developer RFP.

The protest is denied.


James F. Hinchman
General Counsel