



Comptroller General
of the United States

:53172

Washington, D.C. 20548

Decision

Matter of: Ways, Inc.
File: B-255219
Date: February 17, 1994

Christine E. Monical, Esq., Monical & Associates, for the protester.
Douglas K. Turner for Cost Management Systems, Inc., an interested party.
Colonel Michael E. Nye and Paul D. Warring, Esq., Department of the Air Force, for the agency.
Linda C. Glass, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Requirement for meaningful discussions is satisfied when all competitive range offerors are advised of the weaknesses, deficiencies, and excesses in their proposal and are given the opportunity to revise their proposals through the submission of best and final offers.
2. Protest challenging the acceptability of the awardee's proposal on the basis that the awardee's proposed staff did not have Performance Analyzer source code experience is denied where the solicitation only requires proposed key personnel to have experience "with the Performance Analyzer software tool" and the awardee demonstrated that its proposed key personnel had the required experience.
3. Protest challenging cost realism analysis of awardee's proposal based on the awardee's alleged lack of expertise is denied where the record shows that the cost analysis was reasonable and the agency assured itself that each firm proposed a technical approach that met all the solicitation requirements and that each firm's offer fairly and reasonably reflected the costs represented by that approach.

DECISION

Ways, Inc. protests the award of a contract to Cost Management Systems, Inc. (CMS) under request for proposals (RFP) No. F48650-93-R0116, issued by the Department of the Air Force for support, maintenance, and enhancement of the cost performance measurement and analysis software tool identified as the Performance Analyzer (PA). This software

is used by the Air Force Cost Analysis Agency. Ways principally contends that the awardee's proposed key personnel lacked experience in PA software development and that the agency failed to conduct meaningful discussions with the firm.

We deny the protest.

The RFP, issued July 2, 1993, contemplated the award of an indefinite delivery, indefinite quantity contract with negotiated firm, fixed-priced burdened labor rates. Offerors were required to submit separate technical and cost proposals. The solicitation listed technical, management, and cost in descending order of importance as evaluation factors. The solicitation stated that the technical criteria were significantly more important than the management criteria or cost. The solicitation listed the following technical and management criteria with the subfactors listed in descending order of importance:

I. Technical

Item 1: Technical Tasks

Factor 1: Software Development

Factor 2: Analyses of "Earned Value"
Performance Measurement Data

Item 2: Software Support Services

Factor 1: Software Telephone Hotline
Support

II. Management

Item 1: Program Management Capabilities:

Factor 1: Areas of technology, schedule
and cost

Item 2: Organizational Structure

We dismiss Ways's protest allegation that it should be awarded the contract on a sole-source basis because it allegedly is the only source for PA software development. We generally will not review a protest that an agency should award a contract on a sole-source basis, since the purpose of our bid protest function is to ensure full and open competition for government contracts. See Simula, Inc., B-251749, Feb. 1, 1993, 93-1 CPD ¶ 86; Kollmorgen Corp., B-221709.5, June 24, 1986, 86-1 CPD ¶ 580.

- Factor 1: Corporate and team structure
- Item 3: Personnel²
- Factor 1: Employees experience,
education and training
- Factor 2: Staffing Plan

The solicitation also stated that cost would be evaluated for reasonableness, completeness, and realism. It further provided that cost would be an important factor in determining contract award and would be evaluated to determine the offer that provided the best overall value to the government, technical superiority, and reasonableness of price considered. The solicitation further stated that offers would be evaluated using the following assessment criteria applied to the evaluation factors: soundness of approach; understanding of the requirement; compliance with the requirement; and the extent that offeror's past performance shows evidence of having performed similar tasks.

Four proposals were received by August 9, the closing date for receipt of initial proposals. Based on the initial technical evaluation, all four proposals were included in the competitive range and clarification requests and deficiency reports were issued. The clarification requests to the protester requested information concerning:

- (1) past experience;
- (2) identification of key personnel;
- (3) description of Ways's cost accounting system;
- (4) handling of concurrent projects and prior contractual obligations of key personnel;
- (5) specific actions to be taken if additional staff is required to be hired/subcontracted and trained; and
- (6) explanation on how communication/ coordination and work will be accomplished where its proposed personnel reside in three different states.

Further, during oral discussions, the protester was asked to define its corporate executive responsibility for contract/financial management, explain its project manager's responsibility and describe how it would integrate program management requirements. The protester was also requested to define its professional compensation plan and breakdown training.

²The proposed minimum qualifications of designated key personnel were significantly more important than those of non-key personnel. The proposed minimum qualifications of the project leader, analysts, and programmer were more important than those of other key personnel and equal in importance to each other.

Best and final offers (BAFO) were requested on September 3, and received on September 9. The evaluators assigned adjectival ratings to the proposals.¹ The final evaluation results and prices for Ways and CMS were as follows:

	Ways	CMS
<u>Overall Rating</u> (risk)	GREEN (Moderate)	GREEN (Low)
Technical Tasks		
Software Development	BLUE (Low)	GREEN (Moderate)
Earned Value	BLUE (Low)	GREEN (Low)
Hotline Support	BLUE (Low)	BLUE (Low)
Program Management		
Technology, schld. & cost	YELLOW (High)	BLUE (Low)
Corporate & Team Struct.	YELLOW (High)	BLUE (Low)
Employees, Educ. & Train.	YELLOW (High)	GREEN (Low)
Staffing Plan	YELLOW (High)	GREEN (Low)
Price	\$2,322,163	\$1,733,066

¹The following rating system was used by the evaluators:

Blue-Exceptional - Exceeds specified performance and has a high probability of satisfying requirements.

Green-Acceptable - Meets evaluation standards; and has good probability of satisfying requirements.

Yellow-Marginal - Fails to meet minimum evaluation standards; low probability of satisfying requirements.

Red-Unacceptable - Fails to meet a minimum requirement; deficiency requires major revision to the proposal to make it correct.

The Air Force awarded the contract to CMS on September 24. The source selection authority (SSA) stated that CMS' proposal offered the best overall value. The SSA found that CMS' proposal demonstrated CMS' understanding of the requirements, ability to deliver on time and innovative and user friendly solutions, at a reasonable cost. The SSA also concluded that CMS demonstrated relevant experience that would enable successful completion of software development. It was also believed that the teaming arrangement between CMS and Comprehensive Technologies, Inc. provided an organization that was well defined and experienced in program management with a prime/subcontractor relationship offering many years of experience in all essential contract areas. The SSA concluded that CMS' proposal was low risk.

Ways filed its initial protest with our Office on October 5. In that protest, Ways challenged the award decision on the grounds that the agency failed to conduct meaningful discussions with the firm and that its offer was the most advantageous to the government because it was the only reasonable source for PA software development. On October 25, our Office issued a protective order in this matter. On November 9, 1 day before the agency's report in response to the protest was due at this Office, the protester's attorney submitted its application for access to the materials covered by the protective order to only this Office. On November 10, the agency provided the protester with a redacted version of the protest report. This redacted version of the report contained all the documentation concerning the evaluation of the protester's proposal but not the awardee's. After the protester's attorney received a complete unredacted report, the protester submitted its comments to our Office on December 1.

The protester in its comments raises several new issues. The protester argues that the awardee's proposal should have been rejected as technically unacceptable because the awardee did not show that it has the capacity to deliver the services. More specifically, the protester asserts that the awardee's proposed personnel do not have the qualifications to perform the tasks of designing and programming enhancements to PA. The protester also argues that the evaluation was improper because the agency emphasized corporate experience rather than the experience of technical personnel. The protester further contends that the agency performed an improper cost realism analysis.⁴

⁴The protester, in its comments on the agency report filed with our Office on December 1, also alleges that a member of the source selection team gave preferential treatment to
(continued...)

MEANINGFUL DISCUSSIONS

The protester argues that the contracting officer failed to conduct meaningful discussions of all of Ways's deficiencies in the management and organization areas.

The agency responds that all offerors were given the same opportunity to clarify their proposals and correct any existing deficiency through responses to the clarification requests and deficiency reports. The agency states that Ways was specifically told that the agency questioned the feasibility of its scattered organizational structure as it relates to cost/schedule control and program management. The agency further states that although the solicitation specifically provided that the evaluation of proposals would be based on information presented in the proposal and/or gathered from the pre-award surveys, management reviews and government audits, after discussions, Ways did not, in its BAFD, make the appropriate changes to its management proposal to eliminate or diminish the government's concerns about its management structure.

Agencies are required to conduct meaningful discussions with all competitive range offerors. Miller Bldg. Co., B-245488, Jan. 3, 1992, 92-1 CPD ¶ 21. Although agencies are not obligated to afford all-encompassing discussions or to discuss every element of a technically acceptable proposal that receives less than the maximum possible score, they still generally must lead offerors into the areas of their proposals which require amplification or correction. Delta Food Serv., B-245804.2, Feb. 11, 1992, 92-1 CPD ¶ 172. Based on the record of the written and oral discussions, we think the agency satisfied its duty to hold meaningful discussions.

^ (...continued)

the awardee by requesting that the protester's proposed personnel accept employment with the awardee once the contract was issued. In support of this allegation, the protester provides affidavits from two of its proposed personnel which show that these individuals were aware of this matter at the time award was made in September 1993. We dismiss this allegation as untimely because the record shows that if this action in fact occurred, the protester knew, or should have known, about it at the time it filed its initial protest on October 6. See 4 C.F.R. § 21.2(a)(2) (1993). Therefore, this protest issue raised on December 1, almost 2 months after the filing of the initial protest, is untimely.

The agency questioned Ways's capability to perform the contract based on Ways's initial management proposal which lacked detail and contained deficiencies in management, organization, and personnel. Ways's proposal indicated that it had no corporate experience and limited corporate resources. Ways had proposed key personnel currently residing in three different states and a program manager who had limited supervisory experience. Ways stated in its proposal that it would hire or subcontract for additional expertise as required to support the contract but failed to furnish a management plan to do so. The proposal lacked the staffing plan required by the RFP. While Ways stated it had facilities in the Los Angeles area, it failed to provide the agency a telephone number. Moreover, Ways's key personnel did not meet the required experience and/or education standards of the RFP.

These concerns were related to Ways. First, during written discussions, the agency furnished Ways clarification requests and deficiency reports in which Ways was advised of the agency's concerns about its program management, capabilities, and organizational structure. Ways was specifically advised that its proposal was deficient with respect to, among other things, key personnel identification and experience, its cost accounting system, plan for handling concurrent projects and prior contractual obligations of key personnel, plan for hiring and training additional personnel if necessary, and its plan for communication/coordination of work of its multi-state organization. In short, Ways was asked to address the agency's doubts that its management and organization could perform the work. Second, during oral discussions, Ways was once again requested to describe its management and organizational structure as it pertained to this contract. Thus, during both written and oral discussions, Ways was advised of the government's many concerns under the program management factors.

Further, contrary to the protester's assertion, the agency was not required to hold further rounds of discussions. Here, the agency conducted one round of written discussions and one round of oral discussions with the protester and requested the protester to more fully describe its management proposal and how it would coordinate its work effort. In response to these discussions, the protester did not materially revise its management proposal. Given the record of discussions in this case and the fact that the protester received on two separate occasions reasonable notice of the agency's concerns, the agency was not required to further advise the protester of deficiencies remaining in its proposal which the agency had previously and repeatedly identified to the protester in successive discussions. ITT Fed. Servs. Corp., B-250096, Jan. 5, 1993, 93-1 CPD ¶ 6.

The protester also maintains that discussions were unequal because while the awardee was allegedly unable to respond to the technical questions posed by the agency during its oral discussion, the agency allowed the awardee to respond in its BAFO. All offerors were requested to submit a BAFO after oral discussions and were given the opportunity to make any changes to their offers they deemed appropriate based on the written and oral discussions. Ways was given the same opportunity as the other offerors and could have more fully responded to the agency's concerns in its BAFO but simply chose not to.

EVALUATION OF OFFERS

Ways argues that CMS submitted a technically unacceptable proposal because its proposed personnel did not have the software experience required under the RFP. The evaluation of technical proposals is primarily a matter within the contracting agency's discretion, since it must bear the burden of any difficulties incurred because of a defective evaluation. Thus, we question the evaluation only if the record demonstrates that it was unreasonable or inconsistent with the RFP's evaluation criteria. Microwave Solutions, Inc., B-245963, Feb. 10, 1992, 92-1 CPD ¶ 169.

The RFP required that key personnel have a specified level of experience "with the PA software tool." The protester argues that this RFP language requires experience in design of the PA software. The agency states that it did not intend to restrict the solicitation to firms which could offer key personnel with experience in designing PA software; rather, it intended that experience in the operation of the PA software tool would be sufficient to meet the experience requirement. The agency evaluated CMS based on its less restrictive interpretation and CMS' proposal demonstrated that its project leaders, senior analysts, and programmers all had the requisite level of experience operating the PA software tool.

We think the language "experience with the PA software tool" is broad and reasonably conveys that virtually any type of experience with the PA software would meet the agency's needs. Thus, we have no basis to question the evaluation in this regard.

Ways also argues that the agency gave undue emphasis to corporate experience in the selection decision. While the solicitation provided that technical was the most important evaluation factor, it specifically stated that management/corporate capabilities would be evaluated in the areas of program management capabilities, organizational structure, and personnel. Ways simply did not demonstrate its management capability to perform the requirement. The

lack of management/corporate capability was a significant concern since none of the key personnel proposed by Ways actually worked for Ways and thus Ways had to organize and manage essentially a new operation to perform this contract. As previously stated, Ways's response to discussions did not resolve the agency's concerns in the management area. CMS, on the other hand, demonstrated a satisfactory level of competence in all management areas. Given CMS' demonstrated technical and management capabilities and lower cost, we believe the award decision was reasonable.

COS' REALISM ANALYSIS

Ways alleges that the agency's cost evaluation was flawed because the agency failed to take into consideration the cost to CMS of hiring consulting personnel experienced in the PA source code to train CMS personnel and the months of paid, but unproductive, transition time the CMS team would need to learn the PA source code before any actual work could be done on the design or programming of enhancements to the PA software.

We find nothing improper in the cost evaluation. Each offeror's pricing was evaluated for reasonableness, completeness, and realism. While the evaluators recognized that there would be a learning curve for CMS, they determined that CMS' costs were realistic for the work to be performed, reflected a clear understanding of the requirements, and was consistent with various elements of their technical proposal. Ways's objections to the agency's cost analysis is based on its belief that CMS' proposed personnel did not have the required experience. As previously stated, the solicitation only required that offeror's key personnel have experience working with the PA software tool and the agency reasonably determined that CMS' proposed personnel met the RFP requirements. Further, the agency believes that experience with the PA software tool is adequate for successful contract performance. As we find no indication that the cost evaluation was inconsistent with the RFP, we have no basis to question that evaluation.

The protest is denied.

Ronald Berger
 For Robert P. Murphy
 Acting General Counsel