

Matter of: Crestmont Cleaning Service & Supply Co., Inc.;
Scott & Sons Maintenance, Inc.;
Son's Quality Food Company

File: B-254486; B-254486.2; B-254486.3

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of the decision.

DIGEST

1. Agency reasonably evaluated awardee's proposal in accordance with solicitation's evaluation criteria and made award to lowest-priced, technically acceptable offeror as set forth in the solicitation.
2. In-depth cost realism analysis is not required for award of firm, fixed-price requirements contract since government's liability is fixed and the risk of cost escalation is borne by the contractor; evaluation of awardee's price was reasonable where agency compared offerors' prices with each other and government estimate.
3. Protest that agency improperly "directed" offeror during discussions to increase its best and final offer (BAFO) price is denied where record shows agency reasonably told protester during discussions of its concerns with protester's drastically reduced proposed hours (to levels significantly less than the independent government estimates) since agency was concerned about protester's ability to satisfy contract requirement at the levels proposed; protester, in the exercise of its own business judgment, substantially increased its hours and price in its subsequent BAFO.

DECISION

Crestmont Cleaning Service & Supply Co., Inc.; Scott & Sons Maintenance, Inc.; and Son's Quality Food Company protest the award of a contract to Good Food Services, Inc. under request for proposals (RFP) No. DABT59-92-R-0030. The solicitation was issued by the Department of the Army, through the Small Business Administration, as a competitive section 8(a) set-aside, 15 U.S.C. § 637(a) (1988), for full food, management and food production, and dining facility attendant services at Fort Lee, Virginia. The protesters contend that Good Food Services, Inc.'s low price demonstrates that Good Food's proposed staffing and hours must be so low as to warrant the rejection of the proposal as either technically unacceptable or lacking in price realism.

We deny the protests.

The RFP, issued on September 1, 1992, contemplated the award of a firm, fixed-price requirements contract for 1 base year and 4 option years. Section B of the RFP, the schedule of required services, provided estimated quantities (in terms of hours, days, or meal periods) and cautioned offerors that these estimates did not represent amounts to be ordered under the contract. Section M of the RFP required offerors to establish their understanding and knowledge of the RFP's requirements through their proposals. The RFP provided the following evaluation factors listed in descending of importance:

- (1) price (to include labor, overhead, general, and administrative (G&A), other direct costs, and profit);
- (2) management (to include proposed staffing, managerial concept, levels of authority and responsibility and phase-in/phase-out plan); and
- (3) technical (to include experience (company background and technical experience), comprehension of specification requirements and quality control plan.

The RFP required offerors to include in their price a detailed breakdown of all costs for each line item. The RFP, as amended, provided that "[a]ward will be made to the lowest priced technically acceptable offeror."

Seven proposals were received by the November 24, 1992, amended closing date for the receipt of initial proposals. Five of the proposals were included in the competitive range; best and final offers (BAFO) were requested from and submitted by those firms by December 15. Due to subsequent amendments to the technical requirements of the RFP, revised BAFOs were requested and received by January 25, 1993. Upon evaluation of the revised BAFOs, the Army initially determined that the low staffing levels of Good Food's and Scott's proposals rendered the two proposals technically unacceptable. The agency later revised this determination, in response to protests submitted by the firms, and, by letter of April 13, concluded that the two proposals would remain in the competitive range. Amendment No. 0008, revising the RFP to provide that award would be made to the lowest-priced, technically acceptable offeror, was issued on April 13. Discussions were held with the offerors in the competitive range and third (and last) BAFOs were submitted by May 7.

Good Food proposed the lowest price. Although the Army had concerns about the firm's failure to provide detailed cost information and the sufficiency of Good Food's staffing and level of proposed hours, the agency ultimately determined that the variance between the awardee's hours and the government's estimate was minimal (approximately 10.5 percent), that the RFP's requirements could satisfactorily be met by Good Food's proposed approach and that, despite a lack of detail regarding certain cost elements, Good Food's proposal demonstrated a thorough understanding of the contract requirements. The Army concluded that Good Food's proposal was technically acceptable. The agency's price analysis showed that Good Food's price was reasonably comparable to (at less than 9 percent below) the next low offeror's proposal and 17.75 percent below the government estimate based on the current contract prices for the services. The agency determined to award the contract to Good Food. During the week of August 5, the Army notified the other four offerors in the competitive range, including each of the protesters, of its award determination. The protests of the evaluation of Good Food's proposal followed.

TECHNICAL EVALUATION

The protesters essentially argue that the technical evaluation of the Good Food proposal was faulty because the firm proposed less than the government's estimate of hours, and that the Army therefore waived for Good Food the agency's minimum requirements set forth in the solicitation. Since staffing was the most important subfactor of the management criterion for the evaluation of proposals, the

protesters contend Good Food's proposal of less than the government estimate of hours requires the rejection of the firm's overall proposal as technically unacceptable. We do not agree.

In reviewing a protest against the propriety of an evaluation, it is not our function to independently evaluate proposals and substitute our judgment for that of the agency. See General Servs. Eng'g, Inc., B-245458, Jan. 9, 1992, 92-1 CPD ¶ 44. Rather, we will review an evaluation only to assure that it was reasonable and consistent with the evaluation criteria in the RFP. Id.

In negotiated procurements, unless specifically prohibited by the solicitation, offerors generally are not precluded from proposing to meet an agency's minimum needs with staffing levels different from the government's estimates. See, e.g., Tate-Griffin Joint Venture, B-241377.2, Jan. 7, 1992, 92-1 CPD ¶ 29; Pan Am World Servs., Inc. et al., B-231840 et al., Nov. 7, 1988, 88-2 CPD ¶ 446. Here, the RFP specifically notified offerors that the estimated hours and levels-of-effort provided in the solicitation did not represent the exact or minimum quantities required under the contract. Thus, contrary to the protesters' contention, offerors were not bound to expressly propose to these estimates, rather reasonable deviations in hours based on innovative approaches would be acceptable, if justified.

The record shows that the agency had initial concerns about Good Food's proposal of staff hours below those levels estimated by the agency. The Army, however, concluded that Good Food could satisfactorily perform the contract with its proposed staffing based upon the overall strength of its management and technical proposals. The agency determined that the firm's overall technical proposal showed that Good Food had a strong understanding of the agency's requirements. Good Food's technical approach was considered "very solid" (and was scored as high as any of the protesters' technical proposals). Although the agency had some concerns under the staffing subfactor of the management criterion, Good Food's management proposal was found to be strong under that criterion's remaining subfactors (managerial concept and levels of authority and responsibility) and to have included a particularly well-defined phase-in/phase-out plan. Given these technical strengths, and the fact that the firm explained its proposed use of personnel to, at times, fulfill more than one job description, the agency determined the firm could perform the contract with its proposed staff levels and found the proposal to be technically acceptable.

Initially, although the protesters generally allege that the agency failed to follow the solicitation's technical evaluation criteria in evaluating Good Food's proposal and that the proposal should have been rejected for lack of understanding, none of the protesters set forth specific examples of evaluation improprieties or provide examples in Good Food's management (including staffing) or technical proposals to support their general allegations that the proposal fails to address the RFP's requirements.¹ Instead, the protesters rely upon a concession by the Army in its protest report--stating that the agency's evaluation of proposals improperly included the scoring of proposed prices and a general conclusion that the overall evaluation scores did not appear to represent a well-defined consensus--to support the firms' contentions that the award was based on a faulty evaluation. (In its report in response to the protests, the Army concluded that these findings did not invalidate the propriety of the evaluation of proposals; the agency instead noted that these actions should be avoided in future procurements.) The protesters also provide no evidence to show how the evaluation of the proposal or ranking of offerors were in any way affected by the problems with the evaluation conceded to by the agency.

Here, despite lower staffing levels than those proposed by its competitors or included in the government estimate, Good Food's proposal was found technically acceptable since the offeror's strong technical approach showed proper understanding of the contract requirements and an acceptable approach to meeting the government's needs. The protesters do not refute the agency's evaluation findings except to generally challenge the acceptability of the firm's proposed low staffing levels. Given the unchallenged strength of the awardee's proposal under all of the RFP's other evaluation factors, which reasonably evidence the offeror's understanding of the contract requirements, we have no basis to question the reasonableness of the technical acceptability determination. Good Food's proposed hours are approximately 10.5 percent less than the government's estimate of such hours--which we do not think alone warrants rejection of the proposal, as the protesters contend. Given the strength of Good Food's experience in providing food services, its demonstrated understanding of the specifications, its strong managerial concept, and the fact that the government's estimates were not intended to be controlling, the agency reasonably concluded that Good

¹Although Son's generally alleges that numerous inconsistencies exist between Good Food's cost and technical proposals that render the firm's overall proposal ambiguous, the protester fails to identify any specific inconsistency or ambiguity in the offer.

Food's proposal of less hours would permit Good Food to properly perform the contract. See T. Head & Co., Inc., B-250897, Feb. 24, 1993, 93-1 CPD ¶ 231.

EVALUATION OF PRICE

Good Food submitted the lowest proposed price, at \$16,662,855.16, which was found to be 17.75 percent lower than the government estimate and 8.9 percent lower than the next low offer. The protesters allege that Good Food's low price indicates the firm's lack of understanding of the RFP's requirements since the contract allegedly cannot be performed at that price. Crestmont and Son's specifically contend that the agency failed to conduct a proper cost realism analysis of the firm's price and argue that the proposal should have been rejected for failure to provide information regarding two elements of the firm's proposed price (G&A costs and profit) as required by the RFP.

Under the evaluation criteria, price was the most important evaluation factor for award, and the RFP requested information regarding proposed labor, overhead, G&A, other direct costs and profit. The RFP did not specify how this information would be used in the price evaluation. Further, the RFP did not expressly call for a cost realism evaluation.

Where the award of a fixed-price contract is contemplated, the procuring agency is required to perform a price analysis to determine that the proposed prices are fair and reasonable. Federal Acquisition Regulation (FAR) §§ 15.805-1 and 15.805-2; Family Realty, B-247772, July 6, 1992, 92-2 CPD ¶ 6. "Cost realism" is ordinarily not considered in the evaluation of proposals for the award of fixed-price contracts because these contracts place the risk and responsibility of loss upon the contractor. Culver Health Corp., B-242902, June 10, 1991, 91-1 CPD ¶ 556.

In our view, the agency's evaluation of Good Food's proposed price is not objectionable. The record shows that although the agency was initially concerned with the Good Food proposal's failure to detail G&A expenses and profit--since it precluded evaluation of the offeror's understanding of the RFP's requirements--the Army reversed this earlier position. The Army ultimately concluded that based upon the strength of the firm's technical and management proposals which, as discussed above, reasonably confirmed the firm's understanding of the requirements of the contract, the agency did not need the offeror's detailed cost breakdown to confirm its understanding of the required services. Since this is a fixed-price contract, the contractor here bears the risk and responsibility for loss in the event of cost escalation. Further, the firm's understanding of the

technical requirements was independently confirmed by the technical evaluation. We believe the Army reasonably conducted a price analysis (pursuant to FAR §§ 15.805-2 and 15.804-3(b)), comparing the offeror's proposed price to the other offers received and reasonably concluded that based upon the competition received, the firm's offered price was fair and reasonable.²

DISCUSSIONS

Scott contends that the agency's award to Good Food at a lower price than that offered by Scott indicates that the Army improperly "directed" the protester during discussions to increase its proposed price. The Army reports that in its January 25 second BAFO, Scott drastically reduced the number of its proposed hours to a level approximately 25 percent below the government estimate. Although the Army initially determined that this reduction caused the proposal to be rejected as technically unacceptable, the Army decided to keep Scott in the competitive range since the proposal was capable of being made technically acceptable. Scott, as were the other offerors, was told during discussions where its proposal's hours differed from the government's estimates. As did several of the other offerors, Scott explained during discussions its proposed use of staff to meet the RFP's requirements with a lower level of hours. Scott, however, chose to dramatically increase its staffing and hours in its last BAFO and, consequently, substantially increased its price.

Agencies are required to conduct meaningful discussions with all offerors in the competitive range; the requirement is satisfied by advising them of weaknesses, excesses, or deficiencies in their proposals which require amplification or correction and by affording them the opportunity to

²We note that the fact that a firm's offer may not include any profit or may be an attempted buy-in does not render the firm ineligible for award. This is so because below-cost pricing is not prohibited and the government cannot withhold an award from a responsible offeror merely because its low offer is below cost. Family Realty, supra; Ebonex, Inc., B-213023, May 2, 1984, 84-1 CPD ¶ 495. To the extent the protesters allege that Good Food will not be able to perform at its proposed price, the protest challenges the affirmative determination of the offeror's responsibility, as certified to by the Small Business Administration, and is not for our review here. 4 C.F.R. § 21.3(m)(5) (1993).

submit revised proposals. FAR §§ 15.610(c)(2) and (5); JCI Envtl. Servs., B-250752.3, Apr. 7, 1993, 93-1 CPD ¶ 299. Although the protester challenges the propriety of the agency's actions during discussions, the record does not support the protester's contention that the agency "forced" the firm to increase its price by "directing" the firm to increase its proposed staffing. Instead, the record shows that the agency properly pointed out during discussions Scott's significant reduction in staffing and the agency's concern about whether the protester could perform the contract requirements at the low levels proposed--levels which were substantially lower than the government estimate and all other offerors. Our review of the record shows that Scott, in the exercise of its own business judgment, subsequently increased its staffing, and also chose to increase its price to an amount which unfortunately exceeded those prices proposed by other offerors.

The protests are denied.

James F. Hinchman
General Counsel

³Son's also protests the agency's determination to request subsequent BAFOs. To the extent Son's contends that the agency failed to obtain approval from the proper authority for the second and third BAFO requests, the record shows that the individual with such delegated authority, the Directorate of Contracting, was apprised of the procurement proceedings and in submitting the agency report on the merits of the protest, ratified such action. As for Son's contention that the subsequent rounds of BAFOs constituted improper technical leveling by the agency, first, the need for subsequent BAFOs were the result of amendments which required responses from the competitors and the agency's decision to take corrective action on the agency-level protests. Second, our review of the record shows that although successive rounds of BAFOs were requested, there is no evidence of technical leveling--i.e., helping an offeror to bring its proposal up to the level of other proposals through successive rounds of discussions.