Schatz

Comptroller General
of the United States

Washington, D.C. 20548

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Decision

Matter of: Berner Lanphier & Associates

File: B-259324

Date: March 14, 1995

DECISION

Berner Lanphier & Associates (BLA) protests the award of a contract to Evidence Based Research, Inc. (EBR), under the Department of the Army request for proposals (RFP) No. DAHC32-94-R-0003, for services in connection with improving the state of the art and the practice of command and control for the National Defense University. BLA argues that EBR's proposal did not meet certain RFP requirements, and thus was not eligible for award.

We dismiss the protest.

The RFP, as amended, solicited proposals for a firm-fixed-price, time-and-materials, task order/requirements contract. Award was to be made to the responsible offeror whose offer, conforming to the solicitation, was determined to be the best value to the government, based on an integrated assessment of specified technical factors and cost. Four proposals were received; two, EBR's and BLA's, were included in the competitive range. Following discussions and submission and evaluation of best and final offers (BAFO), EBR was selected for award, since it received the same technical rating as BLA, and its price was lower ($184,604 versus $260,135).

BLA argues that EBR's BAFO does not show compliance with the RFP's requirement to propose consultants/subcontractors for approximately 500 hours of the total contemplated level of effort; EBR instead proposed its own less-expensive in-house personnel to perform this work. BLA concludes that EBR's proposal should have been rejected and award made to BLA.

BLA's argument is based on the fact that three RFP provisions--the schedule, and sections L.16 and L.21--specifically refer to consultants/subcontractors as part of the proposal to be submitted. Specifically, the schedule stated that "[t]he government estimates the contractor shall expend the following approximate levels of effort each year in the performance of this contract," and then lists 300 hours for a project director, 500 hours for the senior researcher, 200 hours for the researcher, 200 hours for

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clerical/secretarial, and 500 hours for consultants/subcontractors. Offerors were to submit unit and extended prices for the labor categories based on the stated estimated hours. Section L.16, in relevant part, stated that:

> "For all team members (whether employed by the company or subcontractors/consultants), indicate the percentage of time the member will be available to perform under this proposed contract. For [p]roject [t]eam members not currently employed by the offerors (i.e., subcontractors and consultants) a signed [s]tatement of [a]vailability to [p]erform is required."

Finally, section L.21 stated that:

> "This section shall provide a listing of all labor categories detailed in Section B [the schedule] of the proposal. Each position should include the unit price per hour and the estimated amount based on the estimated hours in Section B."

While these provisions reference consultants/subcontractors, there is no indication or reason to believe that the agency intended to require offerors to propose subcontractors/consultants to perform the work. Simply, the provisions cited do not state that use of consultants/subcontractors is mandatory, and the RFP contains no other provisions establishing this as a requirement. Rather, the cited provisions appear to be structured based on the premise that consultants/subcontractors may be proposed, with the provisions setting forth instructions applicable if they were. Our reading of the RFP is supported by the agency's explanation in its report that in issuing the RFP as a small business set-aside, it anticipated that at least some small businesses would not be in a position to perform with a large staff of in-house personnel; it thus included the consultants/subcontractors labor category to make it clear that the requirements could be met by proposing outside personnel. The agency's understanding actually appears to have been borne out by BLA's own BAFO which stated that "[a]s a small firm it has been our standard business practice to maintain as consultants a number of nationally-recognized experts whom we can bring to bear on specific client projects."[1] We conclude that EBR's failure to

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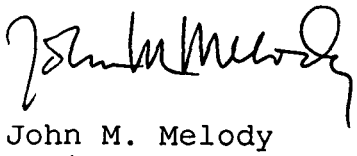
[1]Beyond the fact that the plain language of the RFP did not compel offerors to propose using consultants/subcontractors, (continued...)

propose using consultants was not a basis for rejecting its proposal as unacceptable.

We note that, even if we agreed that the agency's interpretation of the consultants/subcontractors requirement could be viewed as a waiver of an RFP requirement for EBR, we fail to see how this resulted in competitive prejudice to BLA. BLA does not argue, and nothing in the record indicates, that it could have proposed lower-cost, acceptable, in-house personnel to perform the entire level of effort had it understood that consultants/subcontractors were not mandatory. There thus would be no basis for objecting to the award to EBR in any case. See Loral Data Sys., B-250532.3, Mar. 30, 1993, 93-1 CPD ¶ 277.

The protest is dismissed.



John M. Melody
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[1](...continued)
here that would have justified the agency's precluding otherwise acceptable offerors from proposing their in-house personnel to perform the contract.