



Decision

Matter of: AAI Engineering Support Incorporated
File: B-257857
Date: November 16, 1994

John A. Scaldara, Esq., and Donald J. Walsh, Esq., Wright, Constable & Skeen, for the protester.
Clifford E. Greenblatt, Esq., Thomas P. Barletta, Esq., and Jerald S. Howe, Jr., Esq., Steptoe & Johnson, for Dynamic Science, Inc., an interested party.
David H. Scott, Esq., and Craig E. Hodge, Esq., Department of the Army, for the agency.
John L. Formica, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency properly accepted a proposal for a time-and-materials contract which set forth a pricing scheme that discounted the cost of labor to be charged to the agency during the performance of the contract depending on the [DELETED].

DECISION

AAI Engineering Support Incorporated (AAI) protests the award of a contract to Dynamic Science, Inc. (DSI), under request for proposals (RFP) No. DAAD05-93-R-0093, issued by the Department of the Army for artillery testing services at the Combat Systems Test Activity (CSTA), Aberdeen, Maryland. AAI, the incumbent contractor, argues that the agency improperly considered a discount set forth in DSI's cost proposal in determining that DSI had submitted the lowest-priced, technically acceptable offer.

We deny the protest.

The decision issued on November 16, 1994, contained proprietary information and was subject to a General Accounting Office protective order. This version of the decision has been redacted. Deletions in text are indicated by "[DELETED]."

The RFP contemplated the award of an indefinite quantity time-and-materials contract for a base contract period of 1 year with four 1-year options. The contractor will provide, as specified by the individual delivery orders issued under the contract, all personnel, management, transportation, material, and certain equipment to perform artillery support associated with acceptance and development testing of weapons, ammunition, and armor. The RFP provided that award would be made to the responsible offeror submitting the lowest-priced, technically acceptable offer.

The RFP requested the submission of technical, management, and cost proposals, and provided detailed instructions with regard to the preparation of proposals. The solicitation provided an estimated level of effort of 135,500 hours for the base year and for each of the option years of the contract. The RFP required that offerors complete the price schedule included in the solicitation and submit cost data detailing the elements of their proposed prices. The RFP also provided a breakdown by labor category of the 135,500 hour per year estimated level of effort (e.g., program manager--2000 hours), and requested that offerors provide their fixed hourly rates for each of the eight labor categories set forth in the RFP.

The agency received six proposals, including the proposals of AAI and DSI, by the RFP's closing date of January 20, 1994. The proposals of DSI and two other offerors were found to be technically acceptable, and the proposals of AAI and two other offerors were found to be technically unacceptable but capable of being made acceptable. All six offers were included in the competitive range. Discussions were held, and best and final offers (BAFO) were received and subsequently evaluated as technically acceptable.¹

The cost proposals submitted by both DSI and AAI set forth pricing schemes which discounted (using different methods) the labor costs to be charged to the agency (DELETED). In conducting its price analysis, the agency reviewed and accepted the discounts offered by both AAI and DSI in their cost proposals, with AAI's proposal being considered at a price of \$11,375,059, and DSI's proposal being considered at a price of \$9,163,141. The other offers received (which did not offer similar discounts) ranged in price from \$11,389,308 to \$13,731,398. The agency made award to DSI as the offeror submitting the lowest-priced, technically acceptable offer.

¹One offeror withdrew from the competition and did not submit a BAFO.

DSI explained in its cost proposal that it had based its proposed price on the total hours set forth in the RFP, and that because of its "knowledge of the current marketplace and this particular program" and "plans and procedures to maximize efficiency and provide a highly productive work force," it was offering "a discount [DELETED]."

The agency explains, and the record makes clear, that the agency was aware during its evaluation of DSI's cost proposal that DSI's pricing strategy was based, at least in part, on [DELETED]. Because of this, the requiring activity (the CSTA in Aberdeen, Maryland) was tasked with verifying that [DELETED]. This verification was completed during the conduct of the procurement, [DELETED].² The agency concludes that because [DELETED] verified as accurate, DSI's offer was properly determined to be low in price under the terms of the solicitation.

AAI argues that because DSI's cost proposal incorporated the discount feature discussed above, it was not prepared in accordance with the terms of the RFP and should have been rejected.³ Even if we were to agree with the protester that DSI's cost proposal deviated from the terms of the solicitation, we would not object to the agency's acceptance of DSI's offer because, under the circumstances here, the acceptance of DSI's proposal did not prejudice AAI. Tero Tek Int'l, Inc., B-228548, Feb. 10, 1988, 88-1 CPD ¶ 132.

This is so because, as indicated above, AAI's cost proposal included a pricing scheme which also discounted, using a different method, the cost of labor to be charged to the agency [DELETED].

As the foregoing demonstrates, AAI clearly interpreted the RFP as permitting offerors to propose pricing schemes which discount the cost of labor to be charged to the agency [DELETED]. Consequently, AAI should not now be permitted to argue that DSI's proposal should be rejected because DSI also included a method to discount the cost of labor to the agency; the integrity of the protest process does not permit a protester to espouse one interpretation of a solicitation

²After this protest was filed, CSTA again reviewed the [DELETED] again verified [DELETED].

³The protester actually argues that the agency should have rejected DSI's proposal as "nonresponsive" because of the discount offered by DSI in its price proposal. However, responsiveness is a concept related to sealed bidding, not negotiated procurements. Noslot Cleaning Servs., Inc., B-251264, Mar. 18, 1993, 93-1 CPD ¶ 243.

during the procurement, and then argue during a protest that the interpretation is unreasonable. See Picker Int'l, Inc., B-249699.3, Mar. 30, 1993, 93-1 CPD ¶ 275; Xerox Corp., GSBGA 9862-P, 89-2 BCA ¶ 21,652, at 108,923, 1989 CPD ¶ 68, at 21.

AAI nevertheless argues that the agency should not have considered DSI's discount in evaluating DSI's price, and that DSI's price should be considered without the discount. AAI calculates that DSI's price without the discount would total [DELETED].⁴ We disagree.

In our view, the agency acted properly in considering DSI's proposed discount in determining DSI's proposed price. First, as a general matter, there is nothing improper about the agency's decision to accept a contractor's offer to waive or discount certain charges. See Halifax Technical Servs., Inc., B-246236.6; et al., Jan. 24, 1994, 94-1 CPD ¶ 30. The record here shows that the agency carefully reviewed and fully understood DSI's cost proposal, including DSI's proposed discount. In this regard, the agency was fully cognizant that DSI's discounted price was contingent on [DELETED]. In other words, the agency knew there was a risk that DSI's offered discount would not be obtained if [DELETED]. However, the agency verified and reverified that its [DELETED] were accurate, and the protester has not substantively challenged the accuracy of the [DELETED]. Moreover, DSI's evaluated price is considerably lower than AAI's evaluated price, which is also contingent on [DELETED] and lower still than the prices offered by the other competitors. Under the circumstances, we agree that the agency could reasonably find that DSI's proposal represents the lowest overall cost to the agency, and therefore, that DSI had submitted the lowest-priced, technically acceptable offer in response to the RFP. See SIMSHIP Corp., B-253655.2, Dec. 2, 1993, 93-2 CPD ¶ 293.

The protest is denied.

Robert P. Murphy
General Counsel

⁴DSI's price without the discount is actually [DELETED] when the [DELETED] contract line items are considered.