

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

FILE: B-185061

DATE: July 29, 1976

MATTER OF: The Marquardt Company

DIGEST:

1. Recognizing that low cost estimates should not be accepted at face value and that agency should make independent cost projection of estimated costs, agency's cost analysis which reduced entire evaluation to comparison of averaged, verifiable labor rates excluding protester's subcontract labor rates which could not be verified because subcontractor was not identified is not arbitrary and will not be disturbed.
2. Protest allegation that experience in field should have been evaluation factor is untimely since such allegations regarding alleged solicitation defect should have been made prior to receipt of initial proposals.

The Marquardt Company (Marquardt) challenges the legality of the award of a cost-plus-fixed-fee contract to Day & Zimmerman, Inc. (D&Z), under request for proposals (RFP) DAAG49-75-R-0050 issued by Tooele Army Depot, Tooele, Utah. Marquardt argues that it should have received the award since its proposal was technically acceptable and offered the Government the greatest number of manhours of effort, at the lowest estimated cost.

On May 22, 1975, the subject RFP was issued soliciting technical and cost proposals for furnishing the services, personnel and equipment necessary to prepare operational documentation (technical manuals) for use with a Chemical Agent/Munitions Disposal System (CAMDS).

The RFP specifies that "Ultimately, the source selection decision will take into account the contractor's capability to accomplish the Operational Documentation for the Chemical Agent Munitions Disposal System (CAMDS) meeting the requirements of this solicitation on a timely and cost effective basis."

The following "Evaluation and Award Factors" are set forth in the RFP:

"a) Company Experience and Capabilities:

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b) Qualification of Personnel

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c) Management Plan

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d) Comprehension and Completeness of Proposal"

Nine firms responded to the subject RFP on the June 12 closing. Three of these firms; D&Z, Marquardt and TRW were considered by the agency to be technically qualified and included within the competitive range.

Negotiations were conducted with TRW on June 23, with Marquardt on June 24 and on June 26 with D&Z. As a result of these negotiations TRW proposed a total estimated cost including fee of \$887,352; Marquardt proposed \$664,615 and D&Z \$463,974.

Meanwhile, the specification was reviewed by agency technical personnel and on August 7 the three offerors were sent a "clarification" which revised the scope of work and changed submission dates for the manuals. As a result, TRW reduced its manhour estimate from 33,200 hours to 15,195 hours and its cost estimate from \$887,352 to \$393,996, Marquardt did not significantly lower its manhour estimate but reduced its cost estimate from \$664,615 to \$418,754. D&Z confirmed its estimates as negotiated (25,420 hours at a cost of \$463,974).

In view of the significant reductions in the cost estimates agency representatives again visited each of the offerors primarily to clarify the basis for the reductions by TRW and Marquardt. In the agency's view neither the TRW nor the Marquardt reductions were adequately justified. A final cost evaluation was conducted which resulted in the conclusion that D&Z offered the lowest rate per hour (\$8.65) although not the lowest estimated overall cost. On this basis, D&Z was awarded the contract.

On September 25, 1975, Marquardt was debriefed by agency procurement personnel. Subsequent to the debriefing Marquardt filed a protest with this Office by letter dated September 30, 1975. At this time Marquardt contended that it was entitled to the award because it was determined to be technically qualified and offered 18 percent more manhours of effort at a price which was 11 percent lower than proposed by D&Z. After reviewing the agency report on the protest, Marquardt raised an additional objection based on the agency's alleged repricing of Marquardt's final cost proposal.

The main issue in this protest centers on the agency's alleged "repricing" of Marquardt's final cost proposal after the conclusion of the second round of negotiations. Marquardt's final proposal consisted of revisions of its earlier proposal submitted in response to the agency's August 7 specification "clarification". In this revised cost proposal Marquardt reduced its estimated labor hours to 29,870 and its estimated total cost to \$418,754. This cost reduction appears to have resulted mainly from Marquardt's plan to subcontract 17,501 hours of labor.

In view of this rather significant reduction in Marquardt's cost estimate another round of negotiation was conducted with all offerors. At the close of these negotiations agency personnel concluded that it was impossible to determine the number of labor hours of effort required to perform the contract (offerors' estimates ranged from 29,870 to 15,195 hours), and, therefore, that the evaluation of the cost proposals should be based on the average hourly rate proposed and supported by each offeror. Since it did not have sufficient information to support the rates proposed by Marquardt for the effort to be contracted out, those rates were not included in the calculations which resulted in the following hourly rates for the three offerors: TRW \$9.78, Marquardt \$9.43, D&Z \$8.65.

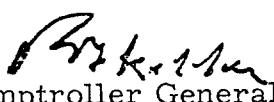
Marquardt argues that the agency's cost evaluation constituted an unauthorized "repricing" of its cost proposal. Marquardt states that at no time during negotiations were its representatives questioned regarding the validity of the proposed hourly rates for contract personnel nor asked to provide written quotations substantiating its proposed hourly rates for contract personnel. In fact, Marquardt's original proposal shows an intent to use at least two subcontractors who were also mentioned in the second round of negotiations. Marquardt contends that it could and would have verified the contract rates upon request and, in such case, would have been evaluated low.

The parties disagree as to the nature of the discussions concerning the use of subcontracting. It seems clear, however, that the specific individuals or firms to perform the subcontract work were not identified to the agency representatives. Whether such specific identification was possible or necessary, we do not decide. However, it is clear that with respect to a cost-plus-fixed-fee contract such as this, the agency would be derelict in its duty to accept unsupported figures for evaluation, and we have so stated. See PRC Computer Center, Inc.; On-Line Systems, Inc.; Remote Computing Corporation; Optimum Systems, Inc., 55 Comp. Gen. 60 (1975), 75-2 CPD 35 and cases cited therein. Certainly, the agency should make every reasonable effort to obtain such information. The agency position is that it met this standard. Marquardt takes a contrary view. A close analysis of the facts indicates that agency discussions were intended to elicit the kind of information needed and were not successful. Conceivably, the effort might have been greater or more precise. However, we think they were reasonable. Both parties have an obligation to cooperate in the course of negotiations. We do not believe the offeror can insist on responding only when a precise question or demand is presented to him by agency representatives. We think the record shows that the agency reasonably concluded that cost figures for the effort to be subcontracted could not be verified. Therefore, it was reasonable for the agency to delete those labor hours from agency cost evaluation calculations.

Marquardt makes allegations concerning the propriety of the technical evaluation. However, since that evaluation was not a factor in the rejection of Marquardt's proposal, we do not find it necessary to consider those allegations.

Marquardt also argues that previous CAMDS experience or knowledge should have been included in the RFP as an evaluation factor. This argument is untimely and will not be considered since protest allegations, such as this one based upon an alleged impropriety in a solicitation which is apparent prior to the closing date for receipt of initial proposals must be filed prior to the closing date for the receipt of such proposals. See section 20.2 (b)(1) of our Bid Protest Procedures, 40 Fed. Reg. 17979 (1975).

The protest is denied.


Deputy Comptroller General
of the United States