

DECISION

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

FILE: B-221353 **DATE:** April 1, 1986
MATTER OF: Emerald Maintenance, Inc.

DIGEST:

1. A technically acceptable proposal may be excluded from the competitive range where the agency determines that the proposal has no reasonable chance of being selected for award. The agency has a reasonable basis for excluding the protester's proposal where the proposal's technical score is significantly lower, and its evaluated cost higher, than the firms that are included in the competitive range.
2. Evaluated costs provide a sounder basis than proposed costs for determining the most advantageous proposal in cost reimbursement procurements. Where protester merely speculates that the cost-realism analysis was arbitrary, but does not show any unreasonable action on the agency's part, protest must be denied.

Emerald Maintenance Inc. (Emerald) protests the exclusion of its proposal from the competitive range under request for proposals (RFP) No. RFP2-31563, issued by the National Aeronautics and Space Administration (NASA) for maintenance support services and incidental construction for buildings, facilities and equipment at the NASA-Ames Research Center in Moffet Field, California.

We deny the protest.

The procurement contemplated the award of a cost-plus-award fee contract to cover a variety of services to permit the Research Center to operate without interruption. The agency received 6 proposals in response to the RFP. The RFP advised offerors that the initial determination of the competitive range would be based on a review of the written proposals only, and that offerors should therefore make

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certain that their written proposals reflected their ability to satisfy the requirements. Proposals were evaluated with respect to 4 groups of factors: Mission Suitability, Cost, Experience and Past Performance, and Other Factors.

The RFP provided that a numerical scoring system would be used in the evaluation of the Mission Suitability Factors.^{1/} Emerald received a total score of 626 for this factor, placing it fifth out of the 6 offerors. The scores for the higher rated offerors ranged from 815 to 750 points. In addition, while Emerald's proposed costs fell approximately at the mid-point of all offers received, its evaluated costs (after adjustment for cost realism) were the highest. The Source Evaluation Board concluded that Emerald did not have a reasonable chance of being selected for contract award and was not in the competitive range.

Emerald points out that it has been performing the same kind of services as those required by the RFP for 24 years and contends that its proposal was at least equal to, if not superior to, any proposal submitted. The protester alleges that the agency must not have adhered strictly to the evaluation criteria established by the RFP, and that the evaluation was not equitable. For example, the protester contends that it was unreasonable to find that Emerald did not have a technical understanding at least equivalent to the other offerors, with the possible exception of the incumbent.^{2/}

The agency points out, correctly, that the evaluation of proposals and the resulting determination as to whether an offeror is in the competitive range is a matter within the discretion of the contracting activity, since it is responsible for defining its needs and the best methods of accommodating them. RCA Service Co., et al., B-218191, et al., May 22, 1985, 85-1 CPD ¶ 585. Consequently, an agency's determination of whether a proposal is in the competitive range will not be disturbed absent a clear showing that the determination lacked a reasonable basis. Moreover, a protester's mere disagreement with the agency's judgment is not sufficient to carry the protester's burden

^{1/} The other evaluation factors were not numerically scored.

^{2/} Emerald's score for this subfactor was fifth out of the 6 offerors.

of proving that the evaluation of proposals and competitive range determination were unreasonable. Digital Radio Corp., B-216441, May 10, 1985, 85-1 CPD ¶ 526.

We find no support in the record for the protester's allegation that the evaluation factors were not properly applied, or that the competitive range determination was unreasonable. It is apparent from the evaluation documents that the agency did not find Emerald's proposal to be completely unacceptable technically. Rather, as the contracting officer points out, Emerald's exclusion from the competitive range was based on the determination that Emerald did not have a chance for receiving the award because of its position relative to the other competing offerors.

We have approved this "relative" approach to determining the competitive range based upon the array of scores actually obtained by the other offerors. See, e.g., Leo Kanner Assocs., B-213520, Mar. 13, 1984, 84-1 CPD ¶ 299. Consequently, even if it is technically acceptable or capable of being made so, a proposal need not be included in the competitive range when the agency determines that it has no reasonable chance of being selected for award. JDR Systems Corp., B-214639, Sept. 19, 1984, 84-2 CPD ¶ 325. Here, Emerald's relatively low technical score and high probable costs support its exclusion, given the higher-scored, lower probable cost offers from other firms.

Emerald also points out that portions of the narrative evaluation of its proposal cited some strengths and either no weaknesses or only minor weaknesses, and contends that its rank relative to the other offerors does not seem to reflect what it perceives to be a fair evaluation. However, the evaluation documents reveal that the strengths cited in Emerald's evaluations were scored as minor ones, and that the higher-scored proposals generally included major strengths, more minor strengths, and no weaknesses at all.

As NASA points out, Emerald's score is approximately 30 percent lower than the offeror that received the highest Mission Suitability score. Its probable cost is approximately 6 percent higher than the offeror with the highest score, and 14 percent higher than the offeror with the lowest probable cost in the competitive range. Given this disparity, we see no basis for questioning the agency's determination to eliminate Emerald's proposal, which had to

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overcome both a technical and cost disadvantage, from further consideration.

The protester also questions NASA's determination of Emerald's probable cost. The protester argues that this is a cost-reimbursement contract over which NASA has control of all expenditures that nearly all of the basis for the cost estimate was specified by the RFP, and that the government can manipulate costs in any way it chooses. Therefore, the protester concludes, the cost element of the evaluation was totally arbitrary.

By the nature of cost-reimbursement contracts, proposed costs do not provide a sound basis for determining the most advantageous proposal, since the government is required, within certain limits, to pay the contractor's actual, allowable and allocable costs. Petro-Engineering, Inc., B-218255.2, June 12, 1985, 85-1 CPD ¶ 677. While that does not mean that proposed costs should be discounted, it does mean that the government cannot simply rely on proposed costs in selecting a contractor, but instead needs to examine their realism. Moreover, the procuring agency's judgment in evaluating proposed costs is entitled to great weight, since the agency is in the best position to determine the realism of costs and must bear the major criticism for cost overruns because of defective cost analyses. Id. Thus, we will not second-guess an agency's cost evaluation unless it is not supported by a reasonable basis. See Triple A Shipyards, B-213738, July 2, 1984, 84-2 CPD ¶ 4.

Here, the protester has only speculated that an improper evaluation of costs occurred; it has presented no specific argument to show that NASA's probable-cost analysis was in any way improper. Furthermore, the record reveals no impropriety in this area.

Since the protester has not demonstrated that the agency's exclusion of Emerald's proposal from the competitive range was unreasonable, we have no basis to question the agency's action.

The protest is denied.

for *Seymour Efor*
Harry R. Van Cleve
General Counsel