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The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Cobro Corporation
File: B-228410
Date: December 16, 1987

DIGEST

1. Where protester's proposed deductions to the government's estimates for travel and per diem, even though not considered in the price evaluation because these deductions were inconsistent with the cost evaluation scheme, reasonably were not considered a proposal deficiency, it was not necessary for agency to discuss them with the firm during negotiations.
2. An agency may not depart in any material way from the evaluation plan set forth in a solicitation without informing all offerors and giving them a chance to structure their proposals with the new evaluation plan in mind.
3. Although the protester had the highest point-rated technical proposal, it was not unreasonable for the agency to make an award to another firm to take advantage of the awardee's lower price since the agency found the awardee's offer as acceptable as the protester's. Notwithstanding the fact that in an overall evaluation scheme price is of less importance than other evaluation criteria, price may become the determinative consideration in making the award where the proposals are essentially equal technically.

DECISION

Cobro Corporation protests the award of a firm, fixed-price requirements contract to Vinnell Corporation under request for proposals (RFP) No. DAAD05-87-R-6115 issued by the United States Army Test and Evaluation Command. Cobro contends that its proposal was improperly evaluated; that adequate discussions were not held with Cobro; and that Cobro should have received award on the basis of its superior technical proposal and low price. We deny the protest.

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The RFP was issued for the acquisition of field exercise data collection for a base year plus three option years. Offerors were advised by the RFP that award would be made to the best overall proposal with appropriate consideration given to the major areas of technical and cost/price. Four cost reimbursable contract line items (CLINs) were included in the RFP for travel, per diem, vehicle rental, office and material cost. The RFP provided that travel and per diem were to be reimbursed in accordance with the Joint Travel Regulation (JTR). In order to equalize competition and eliminate the incumbent's (Vinnell) advantage, the Army included in the RFP an estimated amount for the cost reimbursable items to be used in the evaluation of each offer received.

The Army received proposals from 6 offerors in response to the RFP. The offerors' technical proposals were evaluated and two offerors, Cobro and Vinnell, were determined to be technically acceptable with scores of 582.1 for Cobro and 570.5 for Vinnell out of a possible total score of 680. Technical discussions were not conducted with these two offerors. After discussions with the other offerors, five proposals were considered technically acceptable and a price analysis of each was performed. Best and final offers (BAFOs) were requested from the offerors. Following review of BAFOs, the Army determined that the highest rated proposals of Cobro and Vinnell were essentially equal, consequently award was made to Vinnell, the lowest evaluated price offeror at a price of \$6,521,327. Cobro's evaluated BAFO price was \$6,581,740.

In its proposal, Cobro proposed a lower cost per diem charge than the JTR rate, which was deducted from the Army's estimated reimbursable amount for travel, per diem, etc. included in the RFP for evaluation purposes. However, the Army evaluated Cobro's price using the estimated prices contained in the RFP. Cobro protests the fact that its proposed low price of \$5,988,900 was adjusted by the Army without notice to Cobro, and determined to be \$6,581,740. It is Cobro's contention that the government should have informed Cobro of the unacceptability of its proposed per diem rate through discussions thus giving Cobro an opportunity to make comparable reductions elsewhere in its price proposal.

The Army responds that the evaluation of proposals was conducted in accordance with the terms of the RFP and the FAR provisions. The Army states that its evaluation plan contemplated that the cost elements of all offers would be equalized and evaluated in an identical manner. Consequently, Cobro's proposed "estimated credits" for the four cost reimbursable items were not evaluated since they were

considered inconsistent with the concept of equalized cost factors. All proposals were evaluated using the estimated costs provided by the agency for the four cost reimbursable line items. It is the Army's position that discussions with Cobro were unnecessary since Cobro's proposal contained no technical deficiencies and to have advised Cobro that their credits would not be evaluated would have constituted price negotiations, which were not held with any of the offerors.

The governing provisions in the Competition in Contracting Act of 1984 (CICA), 10 U.S.C. § 2305(b)(4)(A) and (B) (Supp. III 1985), require that discussions be held with all responsible sources whose proposals are within the competitive range. Moreover, discussions must be meaningful, and to be so must include disclosure not only of deficiencies, but also of excesses. Washington School of Psychiatry/The Metropolitan Educational Council for Staff Development, B-192756, Mar. 14, 1979, 79-1 CPD ¶ 178. However, the extent and content of discussions are matters within the judgment of the agency and are not subject to question by our Office unless clearly unreasonable. See Chemonics International, B-222793, Aug. 6, 1986, 86-2 CPD ¶ 161.

With regard to Cobro's contention that the Army essentially did not hold meaningful discussions with the firm, the record indicates that Cobro's proposal was devoid of technical uncertainties and its price was reasonable. In such circumstances, a mere request for BAFOs satisfied the requirement (as it applies to Cobro) that an agency electing to conduct discussions with any offeror must conduct discussions with all offerors within the competitive range. Information Management Inc., B-212358, Jan. 17, 1984, 84-1 CPD ¶ 76. The Army at all times considered Cobro's proposal to be completely technically acceptable, in fact, Cobro's proposal received the highest technical rating both before and after BAFOs. Under these circumstances, where the RFP clearly indicates how the cost reimbursable items are going to be evaluated, we believe the Army was under no obligation to inform Cobro that its per diem costs were not going to be evaluated.

It is well settled that offers must be evaluated on the basis stated in the solicitation. Everhart Appraisal, Inc., B-213369, May 1, 1984, 84-1 CPD ¶ 485. Once offerors are informed of the criteria against which their proposals will be evaluated the agency must adhere to those criteria or inform all offerors of any changes made in the evaluation scheme. Everhart Appraisal, Inc., B-213369, supra.

Therefore, it would be improper for an agency to depart in any material way from the evaluation plan described in the RFP without informing the offerors and giving them an opportunity to structure their proposals with the new evaluation scheme in mind.

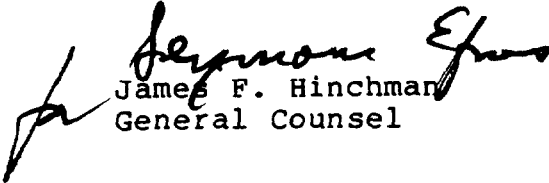
In this instance, the RFP clearly described exactly how the Army intended to handle the cost reimbursable line items. The RFP provided that travel and per diem would be reimbursed in accordance with JTR rates. As previously stated, the Army adopted these procedures to eliminate an unfair advantage to the incumbent. All five of the other offerors submitted proposals that did not make any adjustments to the Army's estimate. Clearly, the incumbent would have been prejudiced if the Army had evaluated Cobro's per diem rate, since the incumbent's travel and per diem costs could not possibly have been as high as the government's estimate because the incumbent was already established at some of the various sites and it was performing basically the same work as listed in the RFP. Moreover, other offerors, if given the opportunity, may have proposed different per diem rates that may have saved the government even more money than Cobro's proposed rates.

Cobro also argues in its comments to the agency report that its innovative per diem reimbursement rate placed a heightened element of risk on the protester, which the contracting officer failed to recognize. Cobro states that whatever its actual incurrence of per diem costs might be, Cobro could never seek more than the decreased per diem rate it proposed. In addition to the fact that price or cost risk to the contractor was not an evaluation factor in the RFP, the JTR is a variable rate that depends on many factors, such as the exchange rate between the United States dollar and other foreign currency, and there is the possibility that this rate at some future date may in fact be less than the protester's proposed rate. The government would actually pay more if the JTR rate is ever calculated to be less than Cobro's fixed-priced per diem rate. Under these circumstances, we do not believe the agency acted unreasonably in not taking into consideration Cobro's fixed-priced per diem rates.

Lastly, Cobro contends it should receive award because it was rated highest technically and offered the lowest price. As discussed above, Cobro was rated highest technically, but it did not submit the lowest evaluated price. The technical competence of Vinnell and Cobro was judged by the agency to be almost equal, with Cobro having a very slight edge technically. However, the agency determined that this slight difference did not compensate for the increased cost proposed by Cobro. Consequently, award was made to Vinnell.

Where, as here, proposals are considered technically equal, cost or price may become the determinative factor in making award, notwithstanding that the evaluation criteria assigned cost or price are of less importance than technical considerations. Ship Analytics, Inc., B-225798, June 23, 1987, 87-1 CPD ¶ 621; PRC Kentron, B-225677, Apr. 14, 1987, 87-1 CPD ¶ 405.

The protest is denied.


James F. Hinchman
General Counsel