



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Kinton, Inc.
File: B-228260.2
Date: February 5, 1988

DIGEST

1. Under solicitation calling for award of cost-reimbursement contract, protester whose initial proposed costs were not low nevertheless is an interested party to challenge contracting agency's method of evaluating offerors' cost proposals since, if the protest is sustained, protester could be in line for award.
2. Agency's mechanical application of government estimate of staffhours to each offeror's proposed wage rates to determine evaluated costs for each offeror does not satisfy the requirement for an independent analysis of each offeror's proposed costs.
3. Where government estimate of staffhours is not revealed to offerors and proposals submitted offer staffhour levels that differ substantially from government estimate, acceptance of an initial proposal based on the government's estimate and not a detailed cost analysis of each proposal is improper since the agency has not assured itself that it is actually making award at the lowest overall cost available to the government as required by law.

DECISION

Kinton, Inc. protests the rejection of its proposal under request for proposals (RFP) No. DABT60-87-R-0129, issued by the Army for the design and development of interactive courseware. We sustain the protest.

The RFP was for the development of courseware including lesson plans, exercises and tests in specific subject areas for entry-level service personnel. The awardee is to furnish personnel, including subject matter experts, services, facilities, and equipment to design, develop and deliver the courseware based on subject matter supplied by the Army as government furnished material (GFM). According

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to the Army, the primary objective of the RFP is the development of a "premaster" videotape to be shot by the agency which will be provided to a videodisc manufacturer for the production of videodiscs.^{1/}

The statement of work (SOW) in the RFP includes a series of contract events including delivery of GFM, contractor delivery of instructional design outlines for each subject area, delivery of courseware, government production of videotape, contractor delivery and validation of software and, at various stages, government review and approval of delivered items. After final inspection and approval, the items furnished under the contract are used to reproduce a quantity of videodiscs for actual training. The RFP called for offers on a cost-plus-fixed-fee basis and provided for award to the offeror submitting an acceptable technical proposal at the lowest evaluated cost.

The Army received 15 proposals, 8 of which, including Kinton's, were judged technically acceptable. To determine an evaluated cost for each of the technically acceptable proposals, contracting officials multiplied the government estimate of required staffhours for each staff position (totaling 23,980 staffhours) by each offeror's proposed labor rates. The agency's recalculation resulted in a substantial increase in the costs proposed by seven of the eight offerors in the competitive range. The firm which ultimately received the award, for example, had its costs increased by 50 percent; Kinton's costs, which were the fourth lowest of the proposed costs, were more than doubled; and the offeror with the lowest proposed costs had them almost tripled. The increase in Kinton's costs was due to the disparity between Kinton's proposed staffhours (9,900) and the government estimate (23,980); in evaluating Kinton's costs, the Army increased the firm's hours under each staff position to correspond roughly to the government estimate for each position.

In accordance with the RFP award provision, award was made to Creativision, Inc., the offeror with the lowest evaluated costs. Pending our decision on the protest, performance of the contract has been suspended.

^{1/} In addition to the RFP at issue here, Kinton filed protests involving four other RFPs issued by the Army for the same type of work (RFP Nos. DABT60-87-R-0081, 0087, 0139 and 0179). Those protests were considered in a separate decision by our Office because the Army's reasons for rejecting Kinton's proposals under those RFPs were different than those under the RFP here. Kinton, Inc., B-228233, et seq., Jan. 28, 1988, 88-1 CPD ¶ ____.

Kinton argues that contracting officials should not have increased the firm's proposed staffhours because it can satisfactorily complete the project with the smaller number of staffhours it proposed. Kinton says that its proposed hours, although less than the government estimate, are comparable to the hours it proposed and used under similar Army contracts which it successfully performed. Thus, according to the protester, the government estimate of the required staffhours is inflated and bears no relation to the staffhours Kinton would need for this project.

As a preliminary matter, the Army argues that Kinton is not an interested party to protest the award because the firm would not be in line for award even if its protest is upheld. In this regard, the agency points out that three offerors proposed lower total costs than Kinton and seven offerors were lower on evaluated costs.

Under our Bid Protest Regulations, 4 C.F.R. § 21.1(a) (1987), a party must be "interested" in order to have its protest considered by our Office. Determining whether a party is sufficiently interested involves consideration of the party's status in relation to the procurement. Automated Services, Inc., B-221906, May 19, 1986, 86-1 CPD ¶ 470.

Here, Kinton's protest essentially concerns the propriety of the Army's method of evaluating the offerors' proposed costs. Kinton argues that its own personnel are particularly skilled and efficient, as reflected in Kinton's higher proposed labor rates, so that it could satisfactorily complete the work with fewer hours than estimated by the Army. As a result, in Kinton's view, it was improper for the Army to calculate its evaluated costs by simply adjusting its proposed staffhours to the agency's estimate. If, as Kinton argues, the Army's cost evaluation was flawed, Kinton's proposal, if properly evaluated, could have the lowest evaluated cost. Since under those circumstances Kinton could be in line for award, the firm is an interested party to challenge the Army's cost evaluation method. See Hughes Aircraft Co., B-222152, June 19, 1986, 86-1 CPD ¶ 564.

With respect to the merits of the protest, the Army argues that its adjustment of the offerors' proposed staffhours to conform to the government estimate was appropriate since in a cost-type contract an offeror's proposed hours and costs may not accurately reflect the actual hours the contractor will use and the actual costs the government will be required to pay. The agency also argues that Kinton has not shown that the government estimate of staffhours was incorrect.

As explained in detail below, we find that the agency did not properly evaluate the cost proposals of the competitive range offerors and should not have made award on the basis of initial proposals without holding discussions with all technically acceptable offerors.

Under a cost-reimbursement type contract, offerors' proposed costs of performance should not be considered as controlling since, regardless of the costs proposed by the offeror, the government is bound to pay the contractor its actual and allowable costs. Federal Acquisition Regulation (FAR) § 15.605(d). Accordingly, where, as here, the RFP contemplates the award of a cost-type contract, the agency is required to analyze each offeror's proposed costs for realism. GP Taurio, Inc., B-222564, July 22, 1986, 86-2 CPD ¶ 90.

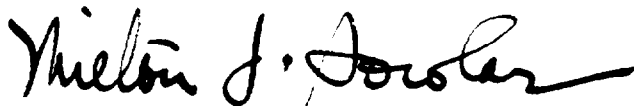
In this case, the Army formulated its estimate of the required staffhours and used that estimate to adjust each offeror's proposed costs. The agency made no effort to independently analyze the realism of the offerors' proposed costs based on each offeror's proposed personnel, staff-hours and wage rates; rather, contracting officials simply applied each offeror's proposed wage rates to the agency's predetermined staffhour estimate, without regard to the offeror's proposed staffhours. The agency's recalculation here resulted in a substantial increase in the costs proposed by seven of the eight competitive range offerors. Under these circumstances, we think that it is clearly inconsistent for an agency to use a cost-reimbursement method of contracting on the one hand while maintaining on the other hand that estimated costs or hours are capable of being determined to such a degree of certainty that any estimated costs or hours other than those of the government are unrealistic and must be significantly adjusted. See FAR § 16.301-2; 47 Comp. Gen. 336, 347 (1967). More importantly, the mechanical approach taken here does not satisfy the requirement for an independent analysis of each offeror's cost proposal, particularly where award is made on the basis of initial proposals without discussions. In fact, we have recognized that where, as here, the government estimate is not revealed to offerors and proposals substantially deviate from that estimate, the contracting agency should consider the possibility that the proposals may, nevertheless, be advantageous to the government and conduct discussions with the offerors concerning the discrepancy. See Teledyne Lewisburg; Oklahoma Aerotronics, Inc., B-183704, Oct. 10, 1975, 75-2 CPD ¶ 228.

Thus, we think that it was improper for the agency to make award without a more detailed cost analysis of proposals or without holding discussions regarding offerors' proposed

staffhours and costs. In this respect, the Competition in Contracting Act of 1984 (CICA) allows an agency to award a contract on the basis of initial proposals where the solicitation advises offerors of that possibility and the existence of full and open competition or accurate prior cost experience clearly demonstrates that acceptance of an initial proposal will result in the lowest overall cost to the government. 10 U.S.C. § 2305(b)(4)(A)(ii) (Supp. III 1985); FAR § 15.610(a)(3). This provision of CICA prohibits an agency from accepting an initial proposal that may not represent the lowest overall cost to the government. When an agency is faced with circumstances where an initial proposal may not reflect the lowest overall cost, the agency should conduct discussions to enable it to obtain the actual lowest overall cost or to otherwise determine the proposal most advantageous to the government under the evaluation factors listed in the solicitation. Hartridge Equipment Corp., B-228303, Jan. 15, 1988, 88-1 CPD ¶ _____; JGB Enterprises, Inc., B-225058, Mar. 13, 1987, 87-1 CPD ¶ 283.

Here, rather than negotiate with offerors over the discrepancy between the government estimate of staffhours and the offerors' proposed staffhours, the agency merely adjusted the cost proposals of all offerors to conform to its own estimate. There is nothing in the record to indicate why the Army believed only its estimates could be valid or why the protester's position, that considerably fewer hours are possible through high efficiency levels and higher wage rates, is without merit in this case. Therefore, given the range of proposals submitted and the Army's absolute reliance in making the award decision on a government estimate which was not disclosed to the offerors, we find that the Army could not reasonably conclude that award based on initial proposals would result in the lowest overall cost to the government, as required by CICA. Accordingly, we are recommending that the Army open negotiations relating to staffhours, labor rates and costs with all offerors in the competitive range and then determine the realism of the proposed costs after discussions are concluded. If the agency, after so doing, concludes that an offeror other than Creativision should receive the award under the solicitation's evaluation criteria, Creativision's contract should be terminated and the award made to the proper firm.

The protest is sustained.



Acting Comptroller General
of the United States