



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Arthur D. Little, Inc.

File: B-229698

Date: March 3, 1988

DIGEST

Agency properly limited evaluation of cost proposals to only task identified in solicitation, rather than maximum quantity of labor-hour effort, since maximum quantity was based on general, non-task specific estimates in solicitation, which did not take into consideration individual offerors' technical approach or efficiency.

DECISION

Arthur D. Little, Inc. (ADL), protests award of a indefinite quantity cost-plus-fixed-fee contract to PEI Associates, Inc., under request for proposals (RFP) No. DAAA15-87-R-0067, issued by the U. S. Army Armament Munitions and Chemical Command at Aberdeen Proving Ground, Maryland. The RFP is for the development of improved technologies for the control, abatement, and recovery/reuse of wastes generated at Army facilities. ADL argues that the Army misevaluated its technical proposal, failed to follow its announced criteria in evaluating the cost proposals for cost realism, and made award without discussions to other than the offeror proposing the lowest overall cost to the government.

We deny the protest.

Under the contract, cost-plus-fixed-fee task orders would be issued to identify a specific effort to be accomplished within the solicitation's statement of work. The minimum quantity of effort was identified as Task Order 1: "Pilot Study of Paint Waste Treatment Technology," with an anticipated performance period of 10 months. No other task orders were identified in the RFP. The RFP statement of work listed additional areas of concern involving the control and treatment of liquid, solid and gaseous wastes from government-owned facilities. The RFP also provided that the maximum quantity of effort against which task orders would be written was 94,350 direct labor hours. This estimate of total direct labor hours was divided among the following by labor categories: program manager, general engineer, senior engineer, senior technician and technician. Estimated hours

041468/35202

for each labor category was provided. These estimates were not specific to any task, that is, there was no estimate as to how many labor hours for each category might be needed for a given task.

The RFP contemplated the submission of technical and cost proposals. The RFP indicated that all proposals would be evaluated according to technical, management, and cost factors. Technical and management were of equal weight and were to be combined into a merit rating. The cost proposal was to be evaluated for realism to determine the probable cost to the government. For award purposes, the solicitation stated that the merit rating was more important than cost in determining the most advantageous proposal. Concerning cost, the solicitation cautioned offerors that as proposals become more equal in merit, the evaluated cost becomes more important. The RFP provided that the cost proposal would be evaluated by using cost realism to determine a proposal's total probable cost to the government.

Three firms submitted proposals on July 6, 1987, the closing date for receipt of initial proposals. All three offerors were deemed to be technically equal and, therefore, cost became the determining factor for award. The offerors submitted cost proposals for the minimum and maximum quantities. The contracting officer determined that all task orders to be awarded under the contract would involve essentially the same mix of labor and hours as Task Order 1, and, therefore, each offeror's cost for Task Order 1 was commensurate to its probable cost for the contract as a whole. Task Order 1, the only task identified in the RFP, was used, therefore, for purposes of source selection based on cost. No evaluation of offerors' maximum quantity cost proposals was conducted. Since the contracting officer saw no likelihood of obtaining lower costs through discussions, award was made without discussions on November 16, to PEI because it proposed the lowest cost for Task Order 1. After an informal debriefing, ADL filed this protest on November 25 and work was suspended on November 30.

ADL initially protested a deficiency in its technical rating for "Completeness and Thoroughness of Proposal." However, upon review of the agency report the protester concedes in its comments that this claim is moot as all proposals were technically equal and, consequently, award was based on cost alone. Therefore, our discussion is limited to the alleged misevaluation of the cost proposals.

Specifically, ADL takes issue with AMCCOM's use of Task Order 1 as the sole determining factor for selection based on cost. ADL points out that in its Task Order 1 cost proposal it used a significantly higher cost subcontractor

to meet that task requirement, but that its maximum quantity cost proposal contains a lower cost subcontractor for all other possible tasks. ADL argues the agency's failure to consider its lower cost subcontractor by analyzing only Task Order 1 costs is contrary to the evaluation provisions as stated in the RFP and constitutes an unreasonable evaluation. Additionally, since ADL submitted the lowest maximum quantity offer, ADL also believes that this award is contrary to the Competition in Contracting Act of 1984 (CICA) because it is an award on initial offers to other than the offeror proposing the lowest overall cost to the government. We disagree that ADL's proposal was misevaluated and that award to PEI was inappropriate.

Initially, we note that Paragraph 15.605(d) of the Federal Acquisition Regulation (FAR) states that "(i)n awarding a cost-reimbursement contract, the cost proposal should not be controlling, since advance estimates of cost may not be valid indicators of final actual costs," which the government will be required to pay. The government's evaluation of estimated cost thus should determine the extent to which the offeror's estimates represent what the contract should cost, assuming reasonable economy and efficiency. This determination in essence involves an informed judgment of what costs actually would be incurred by acceptance of a particular proposal. Marine Design Technologies, Inc., B-221897, May 29, 1986, 86-1 CPD ¶ 502. Since the contracting agency's cost realism analysis involves the exercise of informed judgment, we will not question such an analysis unless it clearly lacks a reasonable basis. Quadrex HPS, Inc., B-223943, Nov. 10, 1986, 86-2 CPD ¶ 545.

First, ADL protests that the agency's cost evaluation (limited to Task Order 1) is inconsistent with the RFP cost proposal provision Paragraph M.4.3 of the RFP which provides as follows:

"M.4.3. Cost. This factor includes an evaluation of the costs and fee proposed by the offeror for performing both the contemplated contract minimum and maximum quantities. The evaluation will include an analysis of costs and fee proposed together with all supporting cost information data. The cost proposal for each task comprising the minimum quantity will be analyzed for magnitude and cost realism and adjusted as necessary to establish the probable cost to the Government for the performance of the work described in each task order. The probable cost for each task will then be used to adjust the cost proposal for the maximum quantity in order to obtain an estimate of the probable cost to the Government for the

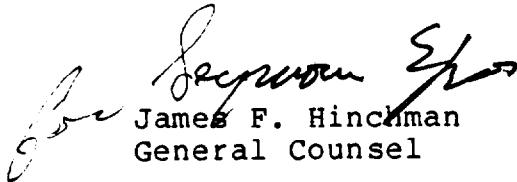
performance of the total quantity and mix of work which the Government anticipates awarding under this contract. This estimate for each offeror will then be used as the basis for comparison with respect to the cost factor in accordance with paragraph M.3. In performing the cost realism analysis, the contracting officer may consider any information he deems appropriate including extraordinary Government support costs, information from the Defense Contract Audit Agency, Government technical personnel and other sources."

This provision does not indicate that the maximum quantity as initially proposed by the offerors would be used for evaluation purposes. The clause, rather, provides that each task would be evaluated for probable cost and the probable cost of each task would be used to adjust the maximum quantity proposed. Here, this was done in effect, by extrapolating from the task 1 cost evaluation. We note that although the provision refers to "each task," suggesting that more than one task would be evaluated, the fact remains that only one task was identified in the RFP for evaluation purposes. Thus, in our view, the offeror's reasonably should have known that the agency's evaluation could only be conducted on the task listed in the RFP. We thus do not view the evaluation as inconsistent with the cost realism provision. To the extent ADL is arguing that the RFP cost evaluation provision is defective because it did not contain multiple tasks for evaluation, this protest concerns an impropriety apparent from the face of the RFP which had to be filed before the closing date for submissions of initial offers. 4 C.F.R. § 21.2(a)(1) (1987).

With regard to the agency's cost evaluation, we cannot conclude it was unreasonable. While the agency admits that it did not evaluate the proposed costs for the maximum quantity, the agency reasonably found that such an analysis would not further a better understanding of the probable cost to the government for the contract as a whole. The agency points out that the object of the cost analysis required under the RFP was to establish for each offeror a probable cost to the government for the offeror to perform the entire quantity based on the mix of work--amount of labor and required skills--expected to be awarded under the contract. Here, the evaluators determined that, from the information available to them at that time, all succeeding task orders to be awarded under the contract would involve essentially the same technical approach and efficiencies by the offeror and thus the same quantity, mix and type of labor as Task Order 1, thus enabling the use of Task Order 1 alone for purposes of source selection based on cost.

While ADL proposed the lowest cost for the maximum quantity, this figure was not evaluated by the agency since it was not based on any task specific estimates. As indicated above, the RFP estimates of labor and hours were general estimates and not specific to any tasks or controlling on the individual offeror in preparing its cost proposals. They do not reflect technical approach or efficiency of any contractor in performing the contract. For example, a contractor could perform specific tasks using less labor hours or with less expensive types of labor and propose on this basis. Thus, the maximum quantity is not meaningful in determining a firm's probable cost for a specific task. It simply does not indicate what labor or skills are required for any specific tasks. Since task 1 was the only task which could be evaluated which reflected an offeror's technical approach and efficiencies, and the maximum quantity proposed cost did not, we think the agency reasonably relied on this evaluation to determine the low offeror.^{1/} Award properly was made, therefore, without discussions on the basis of a reasonable cost realism evaluation which indicated that the awardee, PEI, was the low cost offeror.

The protest is denied.


James F. Hinchman
General Counsel

^{1/} ADL's also complains that the agency determination of probable cost based upon ADL's use of an expensive subcontractor in Task Order 1, rather than the use of a less expensive subcontractor proposed for the maximum quantity. We only note that it was within the protester's discretion to propose a subcontractor for Task Order 1 and here, absent a showing that the evaluation of task order 1 unreasonable, we will not overturn an agency's informed judgment regarding probable cost because an offeror later questions its own business judgment.