



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Zeiders Enterprises, Inc.

File: B-230261

Date: June 20, 1988

DIGEST

1. Agency's evaluation of technical proposals, under a solicitation for a cost-reimbursement level of effort contract, is reasonable where agency uses an evaluation worksheet, containing a series of questions relating to the criteria set forth in the solicitation, to score each proposal's labor mix on effectiveness of meeting the general tasks described in the solicitation's schedule of work.
2. Protester's allegation that reasonable evaluation of proposals is impossible since solicitation, contemplating award of a cost-reimbursement level of effort contract, contains no specific tasks or deliverables is dismissed as untimely since it concerns an alleged impropriety that was apparent on the face of the solicitation and was raised after closing date for receipt of proposals.
3. Contracting agency's cost realism analysis involves the exercise of informed judgment, and the General Accounting Office will not question such an analysis unless it clearly lacks a reasonable basis. Reasonable basis is provided by determination that awardee's technical approach is feasible and essentially equal to that of the highest-rated offeror, by Defense Contract Audit Agency analysis of awardee's rates, and by comparison of awardee's rates with those of the incumbent.
4. Where the two highest-rated technical proposals are found to be essentially equal, contracting agency properly made award to the one of those two offerors who proposed the lowest evaluated cost.
5. Contracting agency properly made award of cost-reimbursement contract based on initial proposals without discussions where record supports reasonableness of awardee's lowest evaluated costs and solicitation advised offerors that award might be made without discussions.

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DECISION

Zeiders Enterprises, Inc., protests the award of a cost-plus-fixed-fee level of effort contract to Columbia Research Corporation under request for proposals (RFP) No. N00024-88-C-4200, issued by the Naval Sea Systems Command for management and engineering technical services for its Surface Ships Propulsion Systems Program. Zeiders challenges the Navy's technical evaluation as unreasonable and alleges that award of the contract to Columbia without discussions based on initial proposals was improper.^{1/}

We deny the protest in part and dismiss it in part.

The RFP, issued on August 12, 1987, as a total set-aside for small businesses, was for management and engineering technical services for 1 base year and 4 option years. The solicitation contemplated award of a level of effort term contract. The RFP expressed the required effort by specifying an estimated maximum level of man-hours of time to be devoted to performance per year. The Navy did not include any desired labor mix in the RFP, but instead required each offeror to submit the labor mix it considered appropriate to carry out the general tasks described in the schedule of work. The RFP called for both technical and cost proposals. The technical proposals were to address four areas: (1) relevant experience, expertise, and functional approach; (2) personnel; (3) management, and (4) facilities. In addressing the personnel area, each offeror was to propose its own labor mix of man-hours and the number and type of personnel committed to that effort. The cost proposals were to be broken down by category into direct labor costs, other direct costs, indirect costs (including overhead and general and administrative expenses) and travel.

Section L, paragraph 34, of the RFP set out the basis for award as follows:

"Award will be made to one offeror only. The technical proposal will be the primary factor in determining award, cost and other factors

^{1/} Zeiders' original protest also challenged the Navy's designation of the standard industrial classification for this small business set-aside. In its comments on the agency report, Zeiders withdrew this ground of protest acknowledging that the proper forum for such a protest is the Small Business Administration.

considered. Cost may, however, become an increasingly important factor to the degree which technical proposals approach equality."

Section L, paragraph 15, of the RFP also stated that:

"(c) The Government may award a contract on the basis of initial offers received without discussions. Therefore, each initial offer should contain the offeror's best terms from a cost or price and technical standpoint."

Fifteen offerors submitted initial proposals by the closing date of September 21, 1987. The Navy's Technical Evaluation Review Panel then evaluated the technical proposals and submitted its report to the Contract Award Review Panel. Columbia's technical proposal was scored second highest with less than one point separating Columbia's proposal from the highest rated technical proposal (not the protester). The Navy's award panel reviewed the technical evaluation report and its chairman determined Columbia's and the highest rated technical proposal to be essentially technically equal. The award panel then factored in the cost data and derived a total weighted score for each proposal. Columbia's cost proposal was evaluated as lowest of all submitted and it therefore received the maximum points for cost, resulting in Columbia's proposal receiving the highest total weighted score. The contract award chairman recommended award without discussions to Columbia, since Columbia offered the lowest cost and was essentially technically equal to the highest rated technical proposal. The contracting officer, as the source selection official, accepted the recommendation and awarded the contract to Columbia on January 25, 1988.

Zeiders was notified of the award on February 3 and, upon its request, was debriefed on February 11 by the contracting officer. As a result of the debriefing, Zeiders filed its protest in our Office on February 19.

Zeiders alleges that the technical evaluation was unreasonable because, in applying the evaluation criteria set forth in the RFP, the Navy did not utilize a government estimate of the desired labor mix of man-hours and number and type of personnel. Zeiders argues that without a government estimate of a desired labor mix, the Navy did not have an adequate basis upon which to evaluate the technical proposals. Zeiders complains that the Navy instead used "non-specified subjective criteria to determine if [each] offeror's proposed labor mix looked like it would satisfy the [government's] requirements."

Contracting agencies have broad discretion in choosing among the many acceptable proposal evaluation methods; the only requirements are that the method provide a reasonable basis for source selection and that the evaluation itself be conducted in good faith and in accordance with the criteria in the solicitation. GP Taurio, Inc., B-222564, July 22, 1986, 86-2 CPD ¶ 90.

Here, rather than compare each offeror's proposed labor mix against a government estimate of a desired labor mix, the Navy chose to evaluate each proposed labor mix using an evaluation worksheet containing a series of questions relating to the criteria set forth in the RFP and which were to be scored by members of the technical evaluation panel. Using this approach, the Navy determined how effectively each proposed labor mix would meet the requirements described in the RFP. We find no basis on which to object to the Navy's use of this approach to evaluate technical proposals.

Zeiders also complains that the solicitation contains no specific tasks or deliverables and, thus, makes any evaluation of proposals impossible. This argument concerns an alleged impropriety that was apparent on the face of the solicitation and should have been raised prior to the closing date for receipt of proposals. Since Zeiders' protest was not filed until after contract award and well after closing date for receipt of proposals, this argument is untimely and not for consideration on the merits. 4 C.F.R. § 21.2(a)(1) (1988).

Zeiders also contends that award on initial proposals was improper because acceptance of Columbia's proposal may not reflect the lowest overall cost to the government.^{2/} Zeiders does not contend, however, that discussions should have been held in order to enable the Navy to obtain the actual lowest overall cost. Zeiders, instead, disagrees with the Navy's cost evaluation used to determine the lowest overall cost. In evaluating cost proposals, the Navy used each offeror's proposed labor mix as the basis for each

^{2/} The Navy argues that Zeiders' protest against award on initial proposals is untimely because Zeiders should have raised this issue within 10 working days of February 3, the day it was notified of award to Columbia based on initial proposals. We disagree, since Zeiders was not debriefed concerning the basis for award until February 11, at which time it learned of the details of the Navy's source selection plan which provided its grounds for protest. Zeiders' protest was timely filed within 10 working days of February 11.

proposal's total estimated cost. The Navy did not disturb the labor mixes during cost evaluation since each labor mix had been evaluated by the technical evaluation panel and determined acceptable and reasonable. Zeiders argues that since the cost proposals were based on each offeror's own proposed labor mix and were not adjusted based on a government estimate of an ideal labor mix, an offeror who proposes less high-cost engineering labor and more low-cost secretarial labor may be considered the low offeror for purposes of award on initial proposals but may not ultimately represent the lowest overall actual cost to the government because any proposed labor mix is subject to change during contract performance since the scope of work is generally stated and no specific tasks will be defined until issuance of the technical instructions. Zeiders argues that the Navy should have looked only at the direct and indirect labor rates of each offeror to determine lowest overall cost, rather than factor in each offeror's proposed labor mix.

The evaluation of competing cost proposals requires the exercise of informed judgment by the contracting agency involved, since it is in the best position to assess "realism" of cost and technical approaches. Since the cost realism analysis is a judgment function on the part of the contracting agency, our review is limited to a determination of whether an agency's cost evaluation was reasonably based and was not arbitrary. Research Analysis & Management Corp., B-229057, Nov. 25, 1987, 87-2 CPD ¶ 523. In view of the broad discretion vested in agency procurement officials to make cost realism evaluations, we will accept the agency's judgment even where the record does not provide full explanation or rationalization for cost differences between proposals. Quadrex HPS, Inc., B-223943, Nov. 10, 1986, 86-2 CPD ¶ 545.

In submitting their proposed labor mixes contained in their technical proposals, offerors were required to identify and provide resumes for a program manager and six key personnel to be assigned to the effort and to indicate the extent to which those personnel would be dedicated to the level of effort specified in the RFP. Offerors' cost proposals were also to clearly identify their proposed distribution of man-hours by labor category as well as indicate the number of personnel assigned to those hours by labor category.

The Navy determined the reasonableness of each offeror's proposed labor mix during technical evaluation. These evaluated labor mixes formed the basis for the Navy's evaluation of each offeror's total estimated costs. We are not persuaded by Zeider's argument that the determination of the lowest overall cost should be based only on an evaluation of direct and indirect labor rates, since to do so would ignore an offeror's ability to determine an appropriate labor mix and the Navy's ability to evaluate that proposed mix. Moreover, contrary to Zeider's assertion, work under the contract is not so undefined as to make an offeror's proposed labor mix useless in predicting the actual labor mix to be used in performing the contract. The RFP contains a two page statement of the specific categories of work to be assigned under the contract, and we think the Navy, in light of those work categories, could reasonably determine the realism of the proposed labor mix.

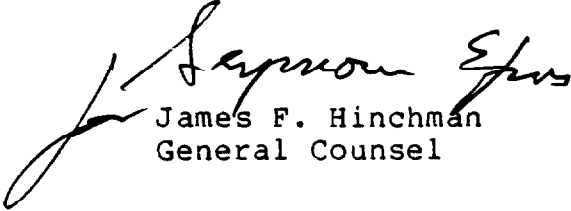
Since Columbia's technical proposal was rated essentially equal to the highest rated technical proposal and Columbia's total estimated costs were lowest of the 15 offers evaluated, the Navy considered Columbia's proposal as representing the lowest overall cost to the government. In making this determination, the Navy verified the reasonableness of Columbia's direct and indirect labor rates by conducting a current rate check through the Defense Contract Audit Agency and by further comparing Columbia's rates with those of the incumbent.

The Competition in Contracting Act of 1984, and the implementing Federal Acquisition Regulation, allow 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) (FAC 84-5).

Here, the record supports the reasonableness of Columbia's costs, since Columbia's total evaluated costs were based on a labor mix deemed fully acceptable by the Navy and were lowest of the 15 offers submitted and evaluated. Further, Section L, paragraph 15 of the RFP notified offerors that

award might be made without discussions. As a result, we find that the Navy's decision to make award without discussions was reasonable.

The protest is denied in part and dismissed in part.


James F. Hinchman
General Counsel