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The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: E.H. White & Company

File: B-227122.3; B-227122.4

Date: July 13, 1988

DIGEST

Weaknesses in offeror's proposal with respect to mission suitability and financial condition (where solicitation provided for consideration of financial condition and capability in the evaluation of technical proposals) provide a reasonable basis for selection of another more highly evaluated offeror.

DECISION

E.H. White & Company protests the proposed award of a contract to the Quad S Company under request for proposals (RFP) No. RFP2-32814(DHC), issued by the National Aeronautics and Space Administration (NASA) for administrative support services at the Ames Research Center in California. White disputes NASA's evaluation of proposals and alleges that the agency failed to conduct meaningful discussions.

We deny the protest.

The solicitation, set aside for small business concerns, requested proposals to provide administrative support services (e.g., warehousing, supply, and mail delivery) under a cost-plus-fixed fee contract for a period of 1 year plus four option years. The solicitation provided for proposals to be evaluated based upon four criteria of generally equal importance: (1) mission suitability (including key personnel, understanding of the requirement and management plan); (2) cost (including probable cost to the government, cost realism, and compensation of employees); (3) experience and past performance; and (4) other factors (such as financial condition and capability).

Fourteen proposals were received, eight of which were included in the competitive range. After conducting written and oral discussions with these firms, NASA requested the submission of best and final offers (BAFOs). Quad S' BAFO received the highest score (816 out of 1,000 possible points) under the criterion for mission suitability (the only criterion that was point scored); NASA considered Quad S' score "significantly higher" than the score received by White (663 points), the next-highest-scored offeror. This disparity in scores reflected the Source Evaluation Board's (SEB) assessment that Quad S' proposal contained major strengths in 13 areas and no major weaknesses, while White's proposal contained major strengths in only 6 areas and major weaknesses in 2 areas.

In addition to Quad S' perceived superiority in the area of mission suitability, Quad S' cost proposal and financial condition also were determined to be more advantageous to the government. Although White proposed a lower cost ($34,355,093) than Quad S ($34,747,815), the agency found the probable cost to the government of accepting White's proposal ($36,592,128) to be greater than the probable cost ($35,971,491) of Quad S' proposal. Moreover, the SEB questioned White's financial condition and capability, one of the subcriteria under the "Other Factors" evaluation criterion. The SEB's concern was prompted by the most recent financial statement provided by White, which indicated that the firm's current liabilities ($1,121,180) exceeded its total assets ($1,010,862). Moreover, the Dun & Bradstreet report on White stated that two civil suits had been filed against the firm to collect amounts allegedly owed creditors; White's financial statements indicated that the firm had not paid its city taxes for several years and was in arrears on payment of federal payroll taxes; and a report from contracting officials administering a current contract with White for library services advised that White's slow payments to vendors had been and continued to be a problem affecting library acquisitions. When agency evaluators expressed their concern with White's financial condition during oral discussions, the large business to which White proposed to subcontract approximately 53 percent of the level of effort specified in the solicitation emphasized that it would act only as a subcontractor and refused to commit its own financial resources to aiding White.

Accordingly, the SEB determined that there were "grave concerns" about White's capability to handle the financial aspects of the required work, and the source selection authority found the questionable financial condition of White would be potential discriminator for selecting the firm with which to conduct final negotiations if Quad S' superiority in the area of mission suitability had not already provided a basis for distinguishing between these two offerors. Based upon the BAFO evaluation, NASA selected Quad S for final negotiations. White thereupon filed this protest with our Office.

White first questions the evaluation of its proposal under the criterion for mission suitability; it argues that the agency applied unstated requirements in evaluating its proposed personnel and that a fair evaluation would have resulted in White receiving a higher score.

The solicitation provided for evaluation of the education, experience and appropriateness of the proposed key personnel, and required offerors to state their rationale for the selection of individuals as key personnel and supply resumes and sufficient information to permit the evaluation of their education, experience and other qualifications. In addition, the solicitation required the submission, and provided for the evaluation, of a method for the backup and replacement of the key personnel. The subcriterion for key personnel was the most important aspect of mission suitability (worth 425 of 1,000 mission suitability points), and the one where Quad S enjoyed the greatest advantage, receiving 343.8 points, 90 more than White (253.8 points).

In addition to several minor weaknesses, White's proposal was found to contain two major weaknesses in this area. The agency found that the White site manager directly responsible for overseeing the performance of the public information services supervisor lacked education and experience relevant to public information services. By contrast, both the responsible manager and the subordinate public information services supervisor proposed by Quad S appears to have possessed relevant public information services experience. Further, Quad S, but not White, proposed a backup plan under which there existed for each key person a specific, designated backup position whose incumbent would be trained as a replacement for that position. Based upon our review of the record, we find that NASA's overall con-clusion that Quad S' proposal was superior with respect to mission suitability was consistent with the evaluation criteria and not unreasonable.1/

White also challenges NASA's cost analysis, arguing that the agency's estimate of the probable cost of accepting its

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1/ White argues that the agency should have raised these concerns during its oral and written discussions with White. Since, however, the concerns were viewed as a relative weakness in White's approach and not as deficiencies that would render its proposal unacceptable, we are unwilling to conclude that NASA failed in its obligation to conduct meaningful discussions. See generally Varian Associates, Inc., B-228545, Feb. 16, 1988, 88-1 CPD ¶ 153; Emerson Electric Co., B-227936, Nov. 5, 1987, 87-2 CPD ¶ 448.

proposal failed to take into account its offer of a contract ceiling on reimbursement for general and administrative (G&A) expenses.

When a cost-reimbursement contract is to be awarded, the offerors' estimated costs of contract performance and their proposed fees should not be considered as controlling since the estimates may not provide valid indications of final actual costs, which the government is required, within certain limits, to pay. See Federal Acquisition Regulation § 15.605(d) (FAC 84-16); Petro-Engineering, Inc., B-218255.2, June 12, 1985, 85-1 CPD ¶ 677. The government's evaluation of estimated costs thus should be aimed at determining the extent to which the offerors' 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. Because the contracting agency clearly is in the best position to make this cost realism determination, we will disturb its determination only where it is shown to be unreasonable. See Handyman Exchange, Inc., B-224188, Jan. 7, 1987, 87-1 CPD ¶ 23.

The most significant increase in White's evaluated probable cost (approximately $1 million) resulted from NASA's rejection of White's proposed 7.5 percent (of cost input base) ceiling on reimbursement for G&A costs. In White's prior contract with NASA, reimbursement for G&A costs was limited to 32 percent, and in the previous 4 years, White's G&A rate in fact varied between 23.7 and 30.7 percent. White's 7.5 percent rate proposed here was based upon its expectation that it could reduce G&A expenses and increase sales.

NASA rejected the proposed ceiling based on its conclusion that there simply was no assurance that White in fact would receive the additional 1988 contract awards upon which the increase in sales was predicated. NASA also found the planned reductions in G&A unsupported, noting that in prior years White's G&A costs actually increased when the cost input base increased. In addition, NASA calculated that G&A costs above the proposed 7.5 percent ceiling (and other unreimbursed expenses) would total approximately $425,000 per year, offsetting White's likely annual fee and creating an annual deficit for White of approximately $225,000. Since NASA had concluded that White would be unable to finance a G&A ceiling of 7.5 percent because of the firm's unsatisfactory financial condition, the agency rejected the ceiling in its cost analysis and instead assumed a G&A rate of 15 percent in calculating probable costs.

An offeror's proposed ceiling rate on overhead generally cannot be ignored by the agency in the evaluation process, see NDI Engineering Co., Inc., 66 Comp. Gen. 198 (1987), 87-1 CPD ¶ 37, but that is not what happened here. NASA fully considered the proposed ceiling and, apparently as a result, ultimately applied a 15 percent G&A rate instead of a higher rate as suggested by White's experience under prior contracts. Taking the proposed ceiling into account in this manner was entirely consistent with the RFP description of the cost evaluation factor as encompassing "validity of proposed costs," which permitted NASA to consider misleading cost information that could be "indicative of potential estimating/projection problems."

At the same time, we find NASA reasonably evaluated White's likely increased financial difficulties if the 7.5 percent G&A rate were used: There was no evidenced likelihood that White would receive additional contracts and, in view of White's past performance and the agency's expectation that G&A costs would increase as the firm's workload increased, it was not unreasonable for NASA to discount White's prediction of reductions in G&A costs. Moreover, in view of White's lack of internal financial resources (as evidenced by the fact that its current liabilities already exceeded its total assets by a significant amount), we think NASA reasonably concluded that White could not absorb the negative financial impact of a 7.5 percent G&A ceiling.

Although the G&A rate adjustment had a larger impact on the adjustment of White's proposed cost, a significant part of the approximate $2.6 million upward adjustment to White's proposed cost resulted from NASA's determination that White had proposed unrealistically low hourly labor rates; the agency questioned the basic hourly labor rates proposed for the first contract year, noting that for some labor categories the rates were lower than those paid by the incumbent contractor or those required under collective bargaining agreements. NASA also considered unrealistically low the size of the escalation rate (3.5 percent per year) White proposed for future contract years, and challenged White's failure to allow for any increase in the hourly rates for labor categories other than supervisors. For purposes of its cost analysis of all proposals, including White's, NASA assumed that the hourly rates for all labor categories would increase at a 4.5 percent annual rate. The resulting adjustment to direct labor costs added $569,079 to the probable cost of White's proposal. We find nothing improper in this adjustment.

White challenges NASA's consideration of financial condition as part of the evaluation of technical proposals, maintaining that financial condition and capability is only relevant to the overall determination of responsibility. As we have previously held, however, in appropriate circumstances, and where the solicitation so apprises offerors, financial condition may be used to assess the relative merits of individual proposals. Ira T. Finley Investments, B-222432, July 25, 1986, 86-2 CPD ¶ 112; see generally Lembke Construction Co. Inc., B-228139, Nov. 23, 1987, 87-2 CPD ¶ 507. Here, the solicitation clearly apprised offerors of NASA's intent, and we see no other reason to object to this aspect of the evaluation.

We find that Quad S' reasonably perceived superiority under the criterion for mission suitability and White's poor financial condition provided a reasonable basis for the agency selection of Quad S.

The protest is denied.

for Seymour Efros
James F. Hinchman
General Counsel