



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Sterling Services, Inc.

File: B-229926.2

Date: August 19, 1988

DIGEST

Protest challenging as too low the wage rates (of employee classes not covered by wage rate determination) used in government's cost estimate and, thus, the propriety of the cost realism analysis based on that estimate, is without merit where record indicates that, although protester utilized higher-skilled employees in its proposal than agency utilized in developing estimate, agency's use of lower-skilled employees in estimate was not inconsistent with solicitation requirements.

DECISION

Sterling Services, Inc., formerly W.B. & A., Inc., protests the wage rates forming the basis of the government cost estimate utilized in the evaluation of proposals under request for proposals (RFP) DACW01-87-R-0056, issued by the Army Corps of Engineers (Corps) for operation and maintenance of government-owned facilities at Lake Sidney Lanier, Georgia. The protester argues that the Corps underestimated labor costs by misclassifying employee classes not covered by the wage rate determination included in the solicitation, resulting in an unrealistic and unreasonable cost estimate to which proposals were compared.

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

The RFP, a total set-aside for small businesses, contemplated a 1-year (plus two option years) cost-plus-award-fee contract for janitorial, facility maintenance, and other services. Offerors were to submit separate technical, management, and cost proposals, with cost to be evaluated (not scored) for completeness, reasonableness, and realism. The cost realism analysis was to determine the extent to which offered costs were comparable to the undisclosed

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government estimate. Award was to be made to the responsible offeror whose offer was rated most advantageous to the government, technical, management, cost, and other factors considered.

Pursuant to the Service Contract Act of 1965, 41 U.S.C. § 351 (1982), applicable here, the RFP as originally issued was accompanied by two Department of Labor (DOL) wage determinations (Nos. 87-281 and 87-289), establishing the minimum wages and fringe benefits for some classes of employees needed for performance of the contract. (DOL later concluded that one of the determinations, No. 87-281, was inapplicable, and deleted it). The RFP included the standards for "conforming" the wages of the employee classes omitted from the wage determination; generally, the contractor must establish wages that are reasonably related to those of workers in listed classifications with the same knowledge and skill levels. 29 C.F.R. § 4.6(b)(2) (1987). In preparing the government estimate for use in the cost evaluation, the Corps matched the omitted employee classes with wage determination classifications, much the same as the conforming process, to assure that the estimate would reflect the wages the contractor likely would pay.

Five proposals were received and evaluated. Discussions were conducted and best and final offers were received on December 2, 1987. Upon completion of evaluations, Trim-Flite, Inc., was determined to be the successful offeror. Subsequently, on February 25, we dismissed a W.B. & A. protest (B-229926), also challenging the government estimate used in the evaluation, because the Corps agreed to reevaluate offerors' proposed costs using a revised estimate (the Corps determined that the deleted wage rate determination had erroneously been relied upon in its estimate). Subsequently, the Corps made other revisions to the estimate following an agency-level protest by W.B. & A. and there were also reevaluations of proposals by the Corps due to deficiencies not at issue here. After completion of a third evaluation, Trim-Flite again was determined to be the successful offeror, and all offerors were so informed. W.B. & A. still was not satisfied with the revisions to the estimate, however, and filed the protest at hand on April 18.

While W.B. & A.'s April protest was pending, a fourth evaluation of proposals were completed and Ferguson-

Williams, Inc., was determined to be the successful offeror.^{1/} Award was made on June 30, after the agency made the required finding that urgent and compelling circumstances significantly affecting the interests of the United States would not permit waiting for the decision by our Office on W.B. & A.'s protest. See 31 U.S.C. § 3553 (d)(2)(A)(ii) (Supp. IV 1986).^{2/}

Essentially, W.B. & A. alleges that the Corps, in developing its cost estimate, improperly set wages too low for employee classes omitted from the wage rate determination, resulting in a low total government estimate, which formed the basis of an improper cost realism evaluation. According to W.B. & A., the Corps set the wages of higher-skilled employee classes lower than the wages of lower-skilled employee classes, in effect reversing the relationship between supervisors and laborers as it existed under W.B. & A.'s incumbent contract. The protester, the incumbent, maintains that use of the low estimate caused its own cost to be evaluated as unduly high, and that the firm thus was penalized for accurately assessing costs.

As an example, W.B. & A. argues that the agency unreasonably classified refuse truck drivers under the "truck driver (light)" category of the wage rate determination, with a rate of \$5.17 an hour, compared to the "laborer" rate of \$8.46. The protester argues that the refuse truck driver, the crew leader under its incumbent contract, should be classified at a higher wage rate than the laborers collecting the refuse, since the crew leader supervises and drives the truck in addition to acting as a laborer. Similarly, W.B. & A. argues that grass cutting tractor operators, classified by the government as "truck drivers (medium)," at \$7.62 an hour, should earn more than the laborers because tractor operators are a more highly skilled employee class, contract, supervising laborers. The procuring agency's judgment as to the methods used in estimating costs are

^{1/} This reevaluation resulted after an agency-level protest and the determination by the contracting officer that the third evaluation was not consistent with the RFP. The agency then convened a new evaluation team, not composed of any members from Lake Sidney Lanier, and conducted the reevaluation.

^{2/} W.B. & A. (as Sterling Services, Inc.) protested the award to Ferguson-Williams on July 13 (B-229926.5). This protest currently is being developed and will be resolved in a separate decision.

given great weight by our Office. Institute for Advanced Safety Studies--Request for Reconsideration, B-221330.2, July 25, 1986, 86-2 CPD ¶ 110. We will not second-guess an agency's cost determination unless it is unreasonably based. TRS Design & Consulting Services, B-218668, Aug. 14, 1985, 85-2 CPD ¶ 168. While W.B. & A. disagrees with the Corps as to the skill levels necessary for completion of the RFP requirements and as to what constitutes reasonable labor costs, the protester has not shown that the skill levels and wages on which the estimate was based are inconsistent with the RFP requirements, or unreasonable.

First, in the area of refuse truck drivers, contrary to the protester's position, the RFP did not require the designation of the refuse truck drivers as crew leaders who also would collect refuse and supervise other laborers collecting refuse. Indeed, the RFP did not specify any job classifications or the composition of job crews but, rather, merely set forth performance requirements, leaving it to the offerors to determine the labor composition necessary to complete the required tasks. While the protester may consider it more efficient to designate truck drivers as crew leaders, at a higher skill level than laborers, the RFP did not require such a relationship, and the government estimate was based on wages for these drivers not encompassing the added duties.^{3/}

Further, we find no merit to an additional argument by W.B. & A. that a refuse truck driver is not contemplated under the occupational definition of "truck driver" in the Service Contract Act Directory of Occupations, which includes those who drive a truck to transport materials or workers between various types of establishments and may also load or unload the truck, make minor mechanical repairs, and keep the truck in good working order. In our view, the refuse truck driving under the cleaning function of the RFP is not clearly equivalent to over-the-road or sales route driving (which are expressly excluded from the definition), as W.B. & A. suggests but, rather, is more akin to the short-haul trips between establishments within the government-owned facilities included in the definition. Accordingly, we have no reason to question the agency's classification of the refuse truck driver as a truck driver

^{3/} Although the protester argues that the refuse truck drivers were classified in the government estimate as light truck drivers earning \$5.17 an hour, it appears from the government estimate that these drivers actually were classified, under the cleaning function, as medium truck drivers earning \$7.62 an hour.

for purposes of determining labor costs for the government estimate.

The RFP also does not mandate supervisory responsibilities for operators of the grass cutting tractors, and we find no other basis for concluding that the tractor operators are more highly skilled than laborers such that the Corps should have set their wages at a higher rate in the estimate. The Corps determined that, based on similar jobs in the government and private sector, a tractor operator generally would be expected to earn a wage similar to that of the occupational definition of a medium truck driver, and thus anticipated that the contractor ultimately would conform the tractor operator wages to this classification. We find no basis for questioning the agency's judgment in this regard. We note, moreover, that under the grass mowing function the government estimate included the separate job classification "leaders," earning \$9 an hour; it thus appears that the agency did provide for the cost of supervision in its estimate.


W.B. & A. cites in support of its position the fact that the employees in the challenged classifications are being paid higher wage rates than those used in the government estimate during the performance of the work in-house (the Corps began in-house performance after expiration of W.B. & A.'s incumbent contract pending a new award). The Corps was performing the work only on a stop-gap basis, however, not pursuant to the specific requirements of the RFP. Moreover, the record indicates that temporary emergency hires were being used under a different scope of work to keep the recreational areas open to the public, and that their wage-grade classifications differed from the Service Contract Act classifications. Thus, the Corps' approach to in-house performance is irrelevant to W.B. & A.'s protest.

We conclude that the classifications the Corps used to determine the proper wages for unlisted employees to include in its estimate were reasonable, in that they likely reflected the wages at which the contractor will arrive through the conforming process. Use of these classifications and wages thus provides no basis for questioning the cost realism analysis.^{4/}

^{4/} W.B. & A. has protested that discussions were inadequate, but as this issue was fully detailed for the first time in its comments on the agency report and conference, and thus was not fully developed in the record, we will consider this issue fully in deciding the firm's pending protest (B-229926.5)

Finally, W.B. & A. claims it is entitled to recover the costs of filing and pursuing its protest as well as its proposal preparation costs. Since we find W.B. & A.'s protest to be without merit, there is no basis upon which to find an entitlement to recovery of these costs. 4 C.F.R. § 21.6(d).

The protest is denied in part and dismissed in part.


James F. Hinchman
General Counsel