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Comptroller General  
of the United States

Washington, D.C. 20548

# Decision

**Matter of:** Allied Cleaning Services, Inc.

**File:** B-237295

**Date:** February 14, 1990

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George Pitter, for the protester.  
William T. Hentrich, Esq., for the interested party, Serv-Tech Management Corporation.  
Herbert F. Kelly, Jr., Esq., Office of the Judge Advocate General, Department of the Army, for the agency.  
Guy R. Pietrovito, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## DIGEST

1. Contracting agency's mechanical application of an undisclosed man-hour estimate to determine the acceptability of offers for a fixed-price contract is unreasonable where the agency rejected offers without discussing the discrepancy between the offerors' estimates and the government's estimate, and did not, in accordance with the requirements of the solicitation, assess the realism of the offerors' lower prices or otherwise evaluate the offerors' technical approaches.
2. Where agency cannot reasonably conclude that awards represented the lowest overall costs to the government, agency cannot make award on the basis of initial proposals.

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## DECISION

Allied Cleaning Services, Inc., protests the award of four contracts to Serv-Tech Management Corporation and New Life Group, Inc., under request for proposals (RFP) No. DABT35-89-R-0089, issued by the Department of the Army for custodial services at 17 Army recruiting centers in the vicinity of New York City. Allied protests that it is entitled to award of four sites on the basis of its lower proposed prices.

We sustain the protest.

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The RFP contemplated the award of multiple fixed-price contracts for the required custodial services and provided that individual awards would be made for the item or combination of items resulting in the lowest aggregate cost to the government. Offerors were informed that in evaluating offers for award the price of all options would be added to the price for the basic requirement.

The RFP provided a separate contract line item for each location at which the custodial services would be performed and provided space for offerors to insert their monthly price to perform each item. Offerors were required, for each location bid, to complete a "cost breakout worksheet" which identified the offeror's intended staffing levels, hourly rates, and overhead and fringe benefit rates. The RFP did not contain estimated or minimum staffing levels to perform the services.

The RFP also informed offerors that the government would assess the cost realism of proposed prices as follows:

"Cost realism will be used as an aid to determine the offeror's understanding of the requirements of the request for proposals as well as to assess the validity of the offeror's approach. Proposals will be evaluated to assess the degree to which proposed cost accurately reflect proposed performance. Cost will not be point scored. Costs which are found to be either unreasonably high or unrealistically low in relation to the proposed work will result in the overall proposal being considered unacceptable and further evaluations will be discontinued."

The RFP did not contain technical criteria for comparative evaluation of the merits of proposals or solicit the submission of technical proposals.

In response to the RFP, the Army received 25 proposals, including Allied's offer to perform four items. The Army ranked the proposals for each item on the basis of price and the number of man-hours per week indicated in the offerors' worksheets. Utilizing an undisclosed predetermined formula, the Army eliminated from the competition those offerors whose intended man-hours per week were less than 80 percent of the government's estimate of the man-hours necessary to satisfactorily perform the services and those offerors whose prices were found to be above the "natural break point" of prices received.

Allied's offer, for each of the four items, was eliminated from the competitive range on the basis that the man-hours indicated on its worksheets were not within 80 percent of the government's estimated hours. Awards of these four items were made on initial proposals, without discussions, to Serv-Tech and New Life, and Allied protested to our Office.<sup>1/</sup>

The Army initially argues that Allied is not an interested party to protest the awards under our Bid Protest Regulations, 4 C.F.R. § 21.0(a)(1), because Allied was not determined to be within the competitive range and is therefore not in line for award. Since Allied's protest concerns the propriety of its exclusion from the competitive range, it is an interested party to challenge the Army's competitive range determination. 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 use of "cost realism" to determine the acceptability of proposals and establish the competitive range is reasonable. The Army states that in the past it used sealed bidding to procure these custodial services and it was forced to terminate the contracts for default because of labor hour insufficiencies.

We find that the Army's actions here were improper. The Army determined the acceptability of proposals by mechanically eliminating those offerors whose worksheets indicated that their prices to perform were comprised of man-hours which were not within 80 percent of the agency's estimate of the number of man-hours believed necessary to perform the RFP requirements. The agency, despite its notice in the RFP, made no effort to independently analyze the realism of the offerors' prices by determining the offerors' understanding of the solicitation requirements or assessing the validity of the offerors' technical approach. Rather, the agency relied on its undisclosed estimate to eliminate as unacceptable those offers which were not within 80 percent of the government's man-hour estimate.

While an agency may rely on its own estimates of the manning levels necessary for satisfactory performance when negotiating a fixed-price contract, see Intelcom Support Services, Inc., B-225600, May 7, 1987, 87-1 CPD ¶ 487, we have found that it is improper for a contracting agency to

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<sup>1/</sup> Performance of the contracts has been suspended pending our decision on the protest. 31 U.S.C. § 3553(d) (Supp. IV 1986); 4 C.F.R. § 21.4(b) (1989).

reject fixed-price proposals because the offerors' estimated man-hours differ significantly from the government's estimate, where the government's estimate was not disclosed to the offerors and the agency failed to conduct discussions with the offerors concerning the discrepancy. See Teledyne Lewisburg et al., B-183704, Oct. 10, 1975, 75-2 CPD ¶ 228. In that case we explained:

"[I]t must be recognized that estimates are no more than informed guesses, frequently based on an agency's experiences with the previous suppliers. It may well be that in some instances the estimates have little or no applicability to certain other companies, either because of the agency's limited experience base or because of some unusual aspect of those other companies. In such instances, any absolute reliance on estimates could have the effect of arbitrarily and unfairly penalizing an innovative or unusually efficient firm and depriving the government of the benefit available from such a firm . . . ."

Here, the Army did not discuss the discrepancy between the government's man-hour estimate and the offerors' estimated man-hours, but arbitrarily eliminated those offerors, including Allied, who were not within a stated percentage of the government's undisclosed estimate. The record shows, in this regard, that most of the offerors' estimated staff hour levels in fact differed substantially from the government's estimate. The Army, however, has stated no justification for why its estimate or only those estimated man-hours within 80 percent of its estimate would be valid; it refers only to the performance problems it encountered on prior contracts.

We have found that estimates provide an objective standard against which an offeror's understanding of requirements and realism of proposals can be measured. See Teledyne Lewisburg, B-183704, *supra*. However, it is inappropriate to determine the acceptability of proposals through the mechanical application of an undisclosed estimate. It may be that a firm's proposed workforce is particularly skilled and efficient or that because of the firm's technical approach, the firm could satisfactorily perform the work with fewer man-hours than estimated by the Army. See Kinton, Inc., 67 Comp. Gen. 226 (1988), 88-1 CPD ¶ 112.

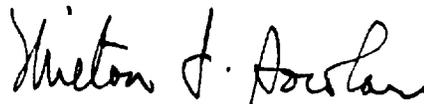
However, the Army did not solicit, much less account for, the particular technical approaches of the various offerors. Moreover, the Army did not assess the realism of the offerors' proposed prices, as required by the RFP, or

conduct discussions concerning the discrepancy in estimated man-hours. Instead, the Army simply applied the 80 percent cut off to eliminate offerors. Since the Army has provided no specific rationale why Allied's particular proposals were necessarily unacceptable or state its reasons why Allied could not accomplish the work with its estimated man-hours, we find that the agency did not have a reasonable basis to reject Allied's proposals as unacceptable.

In addition, we think the agency's actions here are inconsistent with the Competition in Contracting Act of 1984 provision that allows an agency to award a contract on the basis of initial proposals only where the acceptance of an initial proposal will result in the lowest overall cost to the government. 10 U.S.C. § 2305(b)(4)(A)(ii) (1988); Federal Acquisition Regulation § 15.610(a)(3) (FAC 84-16). Given the range of man-hours in the proposals received and the lack of any meaningful explanation from the Army as to why the offerors who proposed fewer than 80 percent of the Army's estimated man-hours could not perform satisfactorily, we do not think that the Army could reasonably conclude that the awards it made represented the lowest overall cost to the government. See Kinton, Inc., 67 Comp. Gen. 226, supra.

Accordingly, we recommend that, with respect to the four items protested, the Army re-open negotiations with all offerors for the purpose of determining the realism of the offerors' proposed prices and solicit best and final offers. If the agency, after doing so, concludes that offerors other than Serv-Tech or New Life are entitled to receive awards under the solicitation criteria, then Serv-Tech's and New Life's contracts should be terminated and awards made to proper firms. We also find that the protester is entitled to recover its costs of filing and pursuing the protest. 4 C.F.R. § 21.6(d) (1989). Allied should submit its claim for such costs directly to the agency. 4 C.F.R. § 21.6(e).

The protest is sustained.

*for*   
Comptroller General  
of the United States