



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Science Applications International Corporation

File: B-238136.2

Date: June 1, 1990

Joel R. Feidelman, Esq., Fried, Frank, Harris, Shriver & Jacobson, for the protester.
Paul Shnitzer, Esq., Crowell & Moring, for the interested party, Booz, Allen & Hamilton Inc.
David J. O'Connor, Office of Administration and Resources Management, Environmental Protection Agency, for the agency.
Anne B. Perry, Esq. and John F. Mitchell, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Contracting agency's cost realism analysis had a reasonable basis where the agency reviewed awardee's responses to agency cost discussions, verified awardee's estimated cost with specialist within the agency and at the Defense Contract Audit Agency, verified awardee's past performance costs under a similar cost reimbursement contract, and awardee was able to demonstrate to agency's satisfaction how it could perform contract at the costs proposed.
2. Contracting agency may accept a technically lower rated proposal to take advantage of its lower costs, where agency reasonably decides that cost premium involved in an award to a higher rated, higher cost offeror is not warranted.
3. General Accounting Office will review challenges to technical evaluations of proposals to determine whether they were fair and reasonable and consistent with stated evaluation criteria. Protester's mere disagreement with selecting official's conclusion concerning the technical rating of its proposal does not render evaluation unreasonable.

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DECISION

Science Applications International Corporation (SAIC) protests the award of a cost-plus-fixed-fee contract to Booz, Allen & Hamilton Inc. (BAH), under request for proposals (RFP) No. W806739-E1, issued by the Environmental Protection Agency (EPA) for the acquisition of Resource Conservation and Recovery Act (RCRA) enforcement technical guidance and policy support services. SAIC principally contends that the EPA did not properly evaluate the cost realism of BAH's proposed "Other Direct Costs."

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

The RFP contemplated the award of a cost reimbursement contract for support services for technical guidance and training for regional and state RCRA enforcement programs. The technical guidance covers areas such as inspections, groundwater monitoring, and installation and corrections at hazardous waste facilities. The solicitation also calls for the training of regional and state personnel in new guidance policies.

The RFP called for a total level of effort (LOE) of 225,000 direct labor hours, inclusive of all contract option quantities. The scope of work divided the tasks to be performed into four categories: (1) technical; (2) policy; (3) training; and (4) special support--video teleconferencing. Approximately one-half of the statement of work detailed the requirements of the technical and policy aspects, a short paragraph explained the training necessary, and the remaining portion detailed the video teleconferences. Amendment 1 of the solicitation, issued January 12, 1990, advised offerors that video teleconferencing would comprise only "10 percent of the costs."

The RFP provided the following technical evaluation criteria:

(1) Qualifications and Experience	45 percent
(2) Technical Approach	25 percent
(3) Corporate Qualifications and Experience	15 percent
(4) Management Plan	15 percent

The solicitation indicated that selection of the successful offeror would be based upon technical and estimated cost factors, with technical factors receiving greater weight

than cost. The RFP informed offerors that estimated cost would be compared to technical competence to determine the cost and technical/management approach that was most advantageous to the government. In addition, since the RFP anticipated the award of a cost reimbursement contract, the solicitation stated that estimated cost would be evaluated in accordance with the Federal Acquisition Regulation Part 31 (FAC 84-29), to determine cost realism.

Three proposals were received in response to the RFP. The technical proposals were reviewed by the technical evaluation panel, and the cost proposals were reviewed and audited by the EPA's Washington Cost Advisory Operations (WCAO), as well as by the Defense Contract Audit Agency (DCAA). Concurrent with the technical and cost evaluations, the contract specialist prepared a Business Evaluation Panel report that included a preliminary analytical cost evaluation report (PACER), as is required by internal EPA regulations.^{1/}

As a consequence of the technical and cost evaluations SAIC and BAH were determined to be technically acceptable and in the competitive range. Technical and cost interrogatories were sent to both offerors on June 2, responses from each were received by June 12, and as a result both offerors slightly improved their technical scores. SAIC received a score of 821.1, and BAH received 772.6, both out of a possible 1,000 points. Following discussions with SAIC and BAH on October 25, the EPA requested submissions of best and final offers (BAFO) by November 13. The offerors' best and final offered costs were as follows:

	SAIC	BAH
Estimated Cost	\$14,328,192	\$11,428,325
Fixed Fee	1,038,794	602,727
Total Cost Plus	<u>\$15,366,986</u>	<u>\$12,031,052</u>

EPA determined that the award of a contract to BAH was in the best interests of the government, despite BAH's lower rated technical proposal, because of the substantial cost savings associated with awarding the contract to BAH. Following a debriefing by the EPA, SAIC filed a protest in

^{1/} The PACER is a preliminary evaluation of offeror's cost proposals which does not include any type of formal cost analysis. Rather, the PACER is designed to review proposals for compliance with the terms and conditions of the RFP (i.e. LOE requirements) and for arithmetical accuracy.

our Office. SAIC challenges the award to BAH on essentially four grounds: (1) the EPA failed to properly evaluate the cost realism of BAH's proposed "Other Direct Costs"; (2) the EPA failed to follow the evaluation criteria set forth in the RFP; (3) SAIC was misled as to the scope of work; and (4) SAIC's technical proposal was improperly downgraded. SAIC requests that we recommend that these alleged flaws be corrected and that the procurement be reopened for another round of BAFOs.

COST REALISM

SAIC generally alleges that the EPA failed to perform an adequate cost realism analysis of BAH's cost proposal as to BAH's Other Direct Cost (ODC) rates, which represent approximately \$1.2 million of the approximately \$3.3 million cost differential between the two offerors. SAIC also alleges that the EPA utilized an irrational methodology in developing the ODC rate it did use.

When a cost reimbursement contract is to be awarded, a cost realism analysis must first be performed by the agency. See FAR §§ 15.801, 15.805 (FAC 84-35). However, an agency is not required to conduct an in-depth cost analysis or to verify each and every item in conducting its cost realism analysis. Rather, 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 and must bear the difficulties or additional expenses resulting from a defective cost analysis. Burns & Roe Indus. Servs. Co., B-233561, Mar. 7, 1989, 89-1 CPD ¶ 250. Since the cost realism analysis is a judgmental 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. OptiMetrics, Inc.; NU-TEK Precision Optical Corp., B-235646; B-235646.2, Sept. 22, 1989, 89-2 CPD ¶ 266.

The record indicates that the EPA conducted a detailed cost analysis of BAH's proposal. The EPA's evaluation consisted of a WCAO/DCAA audit, and the review and evaluation of the offerors' cost proposals, which included a review of proposed ODC rates by the technical evaluation panel, contract specialist, contracting officer, and the EPA's auditing staff. Although the reviews of BAH's initially proposed ODC rates stated that these figures appear low, in BAH's revised proposal, it raised its ODC rates considerably, and subsequent evaluations indicated that the increase satisfied previous concerns.

The EPA compared BAH's ODC rates to historical data of two other EPA contractors performing the same types of work as well as to BAH's similar experience as a Superfund management support contractor. The contracting officer determined that the ODC rates proposed by BAH here, although lower than previous contractors had experienced, were not unreasonable, since the agency anticipated that under this contract more work orders would be issued for tasks calling for a low ODC rate. The record shows that the work orders anticipated under this contract can be split between training and teleconferencing tasks, which call for high ODC rates, ranging up to approximately \$20 per LOE hour, and technical and policy tasks, which call for low ODC rates, ranging approximately between \$6 and \$7 per LOE hour. The EPA did not set forth in the solicitation precisely what the breakdown would be between types of work orders that were anticipated, rather, it left it up to individual offerors to devise their own technical approaches and on that basis to estimate their proposed cost, including ODC rates. The statement of work in the RFP, however, stressed the technical and policy aspects and put little emphasis on training.

SAIC raised a number of questions, several of which concerned the extent of teleconferencing and training that would be ordered under the contract. The EPA subsequently issued amendment 1 which, in a question-and-answer format, stated with respect to teleconferencing that work orders for such tasks would comprise no more than 10 percent of the total LOE and suggested an estimated ODC figure of \$20 per LOE hour for teleconferencing and training. SAIC now alleges that the amendment suggested an "overall" plug figure of \$20 for the entire contract effort. In support of this allegation, SAIC submitted affidavits from four individuals, only one of whom was involved in the preparation of the proposal. The others were a consultant and employees of other contractors. All of those individuals, when shown amendment 1 by SAIC, expressed the opinion that the \$20 figure included in the amendment was meant to apply to all components of the job.

We do not find that this is a reasonable interpretation of the amendment. The \$20 plug figure was EPA's answer to SAIC's request for a plug figure for ODC rates for training and teleconferencing if the EPA could not predict the LOE for these tasks. Moreover, even if SAIC's reading of the amendment were reasonable, there is no evidence in the record to suggest that SAIC relied on this figure in developing its overall ODC rates, as it proposed an ODC rate of less than \$15 per hour, which is more than 25 per-

cent lower than the rate it now says it used as an overall plug figure.

The contracting officer, concurring with the unanimous opinion of the technical evaluation panel chairperson and the WCAO/DCAA audit findings, determined that BAH's revised proposed ODC rates, which were divided 80 percent/20 percent between low ODC rate tasks and high ODC rate tasks respectively, were not unrealistic.^{2/} The contracting official further concluded that BAH's overall estimated contract cost was not unrealistically low, especially in light of the fact that BAH's total proposed cost was some \$750,000 more than EPA's own estimate. Based on the above, we find that the EPA's conclusion that BAH's estimated cost proposal was realistic was reasonably based on an adequately performed cost realism analysis. Further, apart from the ODC rates SAIC has questioned, there remains over a \$2 million price differential between the offerors. Accordingly, even if SAIC were correct, it does not appear that it would have suffered any prejudice as a result.

EVALUATION CRITERIA

SAIC next alleges that although the RFP stated that technical merit was more important than cost, the award was made exclusively on proposed cost, with the EPA ignoring the significant technical differences between the proposals. We do not find that the agency awarded the contract on evaluation factors not set forth in the solicitation. The RFP stated that award would be made to the offeror whose proposal was determined to be the most advantageous to the government with the technical factors being more important than cost. In a negotiated procurement, however, even if cost is the least important evaluation criterion, an agency properly may award to a lower priced, lower scored offeror if it determines that the cost premium involved in awarding to a higher rated, higher priced offer is not justified given the acceptable level of technical competence available at the lower cost. OptiMetrics, Inc.; NU-TEK Precision Optical Corp., B-235646; B-235646.2, supra. Here, the EPA weighed SAIC's technical advantage against the approximately \$3 million cost savings associated with an award to BAH, and concluded that based on BAH's acceptable technical approach, award to BAH would be most advantageous to the government.

^{2/} Although originally not disclosed to the offerors, the EPA did have a rough estimate that the work orders would be split 75 percent/25 percent between low and high ODC rate tasks, respectively.

In our opinion, the EPA's decision to award the contract to an offeror whose estimated costs were 22 percent lower, while its technical rating was only 5 percent lower, was reasonable and consistent with the RFP's evaluation scheme.

SCOPE OF WORK

SAIC, alternatively, argues that the solicitation clearly suggested that training and teleconferencing were the primary aspects of the contract, and that the many of the work orders would be for these tasks, which have high ODC rates. The protester alleges that this is demonstrated in the language of amendment 1, which suggested a \$20 "plug figure" for ODCs. SAIC further alleges that its cost proposal clearly set forth its interpretation of the RFP requirements and its ODC model, and that it was improper for the EPA not to inform SAIC that it had misperceived the true requirements of the RFP. The protester argues, in fact, that the EPA's failure to discuss this matter with SAIC at any time during the procurement process constitutes affirmative misrepresentation by the EPA as to the requirements of the RFP.

As we have previously indicated, the \$20 plug figure in amendment 1 was clearly intended to be used for the training and teleconferencing ODC model. There is no indication in the record that the EPA was aware that SAIC had misinterpreted this amendment, since the overall ODC rate proposed by SAIC was significantly lower. The solicitation required offerors to devise their own technical approach and to base ODC rates on that plan. Here, SAIC's higher ODC rates were, in part, the result of a superior technical approach which entailed more tasks with high ODC rates, as well as more specialized subcontractors with higher associated costs. In this regard, we note that the EPA awarded SAIC higher technical scores in recognition of its approach. Accordingly, EPA had no reason to determine that SAIC misperceived the requirements of the RFP.

We do not find it unreasonable, nor do we believe it is a breach of any obligation, for the EPA not to help SAIC devise a more cost efficient proposal. The burden is on the offeror to submit a proposal that is both technically acceptable and cost effective, and the agency, in our view, has no duty to adjust a totally acceptable approach by one offeror merely because its competitor proposed a more cost effective approach. See OptiMetrics, Inc.; NU-TEK Precision Optical Corp., B-235646; B-235646.2, supra. We further find that SAIC's contention that the only reasonable interpretation of the scope of work is that training and conference support, which involves high ODC rates, would comprise a

greater portion of the overall effort than would standard technical and program support, which involves low ODC costs, to be incorrect, as the solicitation clearly indicated the opposite to be true.

Moreover, to the extent that SAIC alleges the solicitation was ambiguous in this regard, its contention is untimely, as protests based upon alleged improprieties in a solicitation which are apparent prior to the closing date for receipt of initial proposals must be filed before that date. 4 C.F.R. § 21.2(a)(1) (1990).

TEHNICAL SCORES

SAIC finally alleges that the EPA gave preferential treatment to BAH with respect to indicating to BAH those technical areas that needed improvement, while at the same time, leading SAIC to believe that there were no technical deficiencies or weaknesses in its own proposal. The protester argues that if it had been given an equal opportunity to improve, its technical score would have been much higher, the technical difference between its proposal and that of BAH would have been much more significant, and an award to SAIC may then have been deemed to be in the best interests of the government.

We do not conduct a de novo review of the technical proposals or make an independent determination of their relative merit because that is the function of the selection official who is to exercise informed judgment and sound discretion. TIW Sys., Inc., B-222585.8, Feb. 10, 1987, 87-1 CPD ¶ 140. We limit our review to examining whether the evaluation was fair and reasonable and consistent with the stated evaluation criteria.

We are not persuaded by SAIC's contention that, despite its superior technical score, it was improperly downgraded. SAIC received excellent scores of "4" to "5," on a 0-5 point scale, in 25 of the 27 technical subcriteria, and received favorable scores of "3" in the other two. There is no evidence that further discussions with SAIC would have resulted in increasing these scores of "3" since they both related to factors of experience--in the conduct of hazardous waste inspections, and environmental auditing of facilities, and in the retention and replacement of key personnel--and even extensive discussions were not likely to change a company's level of experience.

OTHER GROUNDS

SAIC orally alleged at the conference on this protest that there were eight mistakes reflected in the evaluation documents which affected the award process, and that any source selection decision based on these documents, therefore, could not be reasonable.^{3/} SAIC did not amend its protest to include these allegations until it submitted its post-conference comments. Since these allegations were not filed in writing with us within 10 working days of when SAIC had been provided with these documents, we dismiss these new grounds as untimely. See JWK Int'l Corp.; tg Bauer Assocs., Inc., B-229831.4; B-2229831.5, Sept. 29, 1988, 88-2 CPD ¶ 298. Accordingly, the protest is denied in part and dismissed in part.

for Robert P. Murphy
James F. Hinchman
General Counsel

^{3/} The eight flaws relate to typographical errors, a transposition of offerors' names, a mathematical error, and the failure to mention a previous contractor's name when its ODC rates were used as a comparison. EPA contends that those errors which were not actually corrected during the procurement process were so minor as to have made no difference in the award determination.