

Arsenoff



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Anamet Laboratories, Inc.

File: B-241002

Date: January 14, 1991

Richard A. Ciambrone, Esq., Thompson, Hine and Flory, for the protester.

Conor D. Johnson, Ph.D., for CSA Engineering, Inc., an interested party.

William D. Cavanaugh, Esq., and Gregory H. Petkoff, Esq., Department of the Air Force, for the agency.

Robert C. Arsenoff, Esq., and John Brosnan, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Cost analysis using updated historical data to compare labor mixes and rates of two competing technically acceptable proposals for a cost-type level-of-effort contract was reasonable and adequate to support the agency's decision to make award without discussions.

2. Agency acted reasonably in concluding that competing proposals were technically equal where technical evaluation revealed proposed awardee had a slightly better understanding of the technical issues involved in the procurement but presented a slightly higher performance risk than the incumbent competitor because of a lack of direct experience in operating an analysis information center.

3. Where solicitation did not specify what positions were "key" to successful performance, agency was not required to reject an offer for failure to include a resume for the position of information specialist.

4. Record does not support the protester's contention that proposed awardee had access to a computer model during the preparation of its proposal which placed the protester at an unfair competitive disadvantage in the evaluation process.

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DECISION

Anamet Laboratories, Inc. protests the proposed award of a cost-plus-fixed-fee (CPFF) contract to CSA Engineering, Inc., under request for proposals (RFP) No. F33615-90-R-3211, issued by the Air Force for technical support services involved in the operation of the Aerospace Structures Information and Analysis Center (ASIAC) at Wright-Patterson Air Force Base, Ohio. The protester contends that the evaluation of cost proposals was inadequate to support an award without discussions, that the technical evaluation of CSA's proposal was deficient in several respects, and that the proposed awardee received an unfair competitive advantage when it was allegedly provided with technical information pertaining to one of several "example task orders" that offerors were required to address in their proposals.

We deny the protest.

BACKGROUND

The RFP was issued on July 3, 1990, contemplating a contract for two principal efforts: the daily on-site operation of the ASIAC--a research and development (R&D) information center--which amounts to approximately 20 percent of the overall contract effort; and the performance of special R&D engineering services related to aerospace structures upon the issuance of task orders, which constitutes the largest and most technically complex portion of the contract effort.

Award was to be made to the offeror whose proposal was determined to be technically acceptable and most advantageous to the government based on an assessment of technical merit and cost. The RFP evaluation factors, listed in descending order of importance, were: technical acceptability; reasonableness, realism and completeness of cost; and management capabilities. The technical acceptability factor was to be assessed based on four subfactors, listed in descending order of importance: soundness of approach; understanding of the problem; "special technical factors" and compliance with the RFP requirements.

As a measure of technical acceptability which was to "weigh heavily" in the agency's technical evaluation, offerors were required to address seven "Example Task Orders" representative of the type of work a contractor would perform under the task order portion of the contract and to identify "key" persons it would assign to such tasks. In addition to these seven task orders, offerors were required to propose and address two additional orders. Of the seven task orders set forth in the

RFP, the estimated amount of time to perform each effort ranged from 520 staff hours to 4 staff years. The RFP also contained a provision limiting the amount of subcontracting to 50 percent of the total contract effort.

On August 3, proposals were received from CSA and Anamet--the 18-year incumbent contractor at ASIAC. Each submitted a detailed cost proposal which reflected the following overall proposed costs:

CSA	\$3,068,158
Anamet	\$3,628,217

Technical evaluations were completed on August 13. The evaluators concluded that both firms had very similar acceptable proposals including many of the same subcontractors and the proposals were not ranked in order of technical merit because the evaluators felt that each offeror would be able to perform the contract as well as the other. A detailed review of the technical subfactor evaluation results indicates that each proposal was rated "acceptable" on each subfactor except "understanding of the problem," on which CSA was rated "acceptable +" while the protester was rated "acceptable."

Among other things, the evaluators noted Anamet's corporate experience as a satisfactory incumbent operating the ASIAC and rated the firm as presenting a low performance risk; with respect to CSA, the evaluators noted its lack of corporate experience running an information and analysis center and rated the firm as presenting a low to medium performance risk stating that its arrangement with a highly-regarded subcontractor having direct ASIAC management experience reduced the risk. The evaluators found no deficiencies in either proposal and recommended no clarifications or discussion questions for either offeror.

Following an analysis of proposed costs, the contracting officer concluded that CSA should receive the award based on the fact that it had submitted a technically acceptable proposal equal to Anamet's at a lower proposed cost.

PROTEST OVERVIEW

Anamet's protest involves three principal allegations: (1) the cost analysis performed on CSA's proposal was inadequate to support an award without discussions; (2) the Air Force's technical evaluation of CSA's proposal was defective for a variety of reasons; and (3) CSA obtained an unfair competitive advantage by receiving information from the Air Force relating to an example task prior to the submission of its proposal.

COST ANALYSIS/AWARD WITHOUT DISCUSSIONS

Anamet points out that Federal Acquisition Regulation § 15.610 requires, in pertinent part, that discussions be conducted with all offerors in the competitive range unless "it can be clearly demonstrated from the existence of full and open competition or accurate prior cost experience with the product or service that acceptance of the most favorable initial proposal without discussion would result in the lowest overall cost to the government at a fair and reasonable price" provided that, as here, the RFP notified offerors of the possibility that award might be made without discussions.

It is Anamet's position that the record of the evaluation and proposed award to CSA does not contain a sufficiently clear demonstration, as required by the regulations, that CSA's proposed costs represented, in fact, the lowest offered to the government. The protester's position is grounded on its belief that the proposed award to CSA was based solely on its low cost as proposed, without an adequate analysis to determine if adjustments were in order and without an audit by the Defense Contract Audit Agency (DCAA) 1/.

Anamet questions such matters as whether the evaluators adequately examined CSA's proposed level-of-effort in terms of numbers of hours to be expended and of the appropriate labor mix for the contract effort, whether the historical data used to determine the reasonableness of CSA's labor rates in lieu of a formal audit was updated for inflation and whether CSA's own proposed escalation factor for the multi-year effort, which the evaluators noted was somewhat high, was properly considered in the agency's cost analysis.

Contracting agencies have broad discretion in determining an acceptable method of evaluating competing cost proposals, provided that inherent in the method used is a reasonable basis for source selection. Electronic Warfare Integration Network, B-235814, Oct. 16, 1989, 89-2 CPD ¶ 356. Where labor constitutes a substantial portion of the cost of performance, a comparative evaluation of labor mix and costs contained in technically acceptable proposals is an acceptable method of cost analysis falling within the range of discretion permitted a contracting agency. Id.

1/ While DCAA audits may be of assistance to a contracting officer in evaluating proposed costs, they are only advisory in nature and, therefore, are not required for a proper cost analysis. Electronic Warfare Integration Network, B-235814, Oct. 16, 1989, 89-2 CPD ¶ 356.

Our review of the agency's cost evaluation, which included an examination of the Air Force's analysis itself as well as the competing cost proposals, reveals that the agency acted reasonably and with adequate foundation in concluding that CSA's proposed costs--which were 18.25 percent lower than the protester's--were reasonable, complete and realistic, and that they represented the lowest cost to the government.

For example, although CSA proposed approximately 6 percent fewer labor hours than Anamet for the entire contract effort, the agency determined that the firm's proposed level-of-effort and its labor mix were realistic and adequate to successfully perform the ASIAC effort and that they were consonant with the RFP requirements. The detailed historical data used to examine the reasonableness of CSA's proposed labor rates, which dated from 1989 and which included specific experience with CSA under other research contracts, was specifically updated by the Air Force to account for current conditions by the application of an inflation factor. As to Anamet's concerns that the agency believed CSA's own proposed escalation factor was somewhat too high, the record shows that the evaluators determined that the factor was adequately justified in the proposal and, further, that both offerors proposed the same escalation factor in computing their proposed costs. In addition to labor hours and rates, the Air Force examined each category of proposed costs contained in CSA's proposal in detail.

From this record, we find that the agency acted reasonably and with adequate foundation in concluding that CSA's proposed costs were complete, reasonable and realistic. Where, as here, the RFP advises offerors that award might be made on the basis of initial offers and an adequate cost analysis discloses that one technically acceptable offer is more advantageous to the government than another, a decision to make award without discussions is reasonable. Electronic Warfare Integration Network, B-235814, supra, (concerning a cost-type, level-of-effort contract).

TECHNICAL EVALUATION

Relying on language in the agency report to the effect that CSA's proposal reflected an "intention" to comply with the RFP requirement that an offeror perform at least 50 percent of the required effort with its own labor resources, Anamet points to various RFP provisions indicating that the evaluation would examine whether an offeror had a "demonstrated" ability to perform, and questions whether CSA actually was properly evaluated as being able to adequately perform with in-house resources without excessive reliance on subcontractors.

Anamet also contends that the technical evaluation was defective because CSA's proposal was not rejected for an alleged failure to conform to a material term of the solicitation, i.e., the submission of a resume for the position of information specialist--a position that Anamet believes to be "key" to the successful performance of that portion of the overall effort involving the daily operations of the ASIAC information center. Also, noting that the proposed awardee had, in effect, proposed the same information specialist as the protester (albeit without a resume), Anamet suggests that the evaluators should have questioned whether the proposed individual had given permission for his name to be used by CSA and whether the proposed awardee had a sufficient commitment from the individual.

The evaluation of technical proposals is primarily the responsibility of the contracting agency since it is responsible for defining its needs and the best method of accommodating them and must bear the consequences of a defective evaluation; therefore, we will not engage in an independent evaluation of technical proposals but will examine the agency's evaluation to ensure that it was reasonable and consistent with the stated evaluation criteria. Group Technologies Corp., B-240736, Dec. 19, 1990, 90-2 CPD ¶ ____.

Our review of the evaluation records discloses that the Air Force acted reasonably and in consonance with the evaluation criteria in assessing the proposals as it did and in reaching the conclusion that they were technically equivalent.

CSA's proposal was actually rated higher than Anamet's on the important technical subfactor relating to understanding the problems presented by the RFP. This is not to say, however, that the evaluator's were unconcerned in some measure by CSA's lack of direct ASIAC experience when compared to Anamet. While they did not believe that CSA had demonstrated capabilities in each and every aspect of the work described in the RFP, they specifically noted that the resumes submitted by the firm, together with its proposed teaming with a highly-respected subcontractor with direct ASIAC operational experience, adequately showed that the firm possessed the variety of technical knowledge and expertise to successfully complete the contract. To the extent that the evaluators believed that a lack of direct corporate experience in day-to-day running the ASIAC itself was a problem, this was adequately reflected in their "low to medium" risk assessment of CSA's proposal, as compared to Anamet's "low" risk assessment.

With regard to the suggestion that CSA may have excessively relied on subcontracting, the evaluators examined this aspect of the firm's proposal and specifically concluded that the

"prime contractor has the ability to perform 50 percent or more of the contract." Our own review of CSA's cost proposal shows that, although the firm proposed a higher proportion of contract costs in subcontracting efforts than did Anamet, the degree of subcontractor participation proposed by CSA was well within the limits set forth in the RFP.

Thus, we have no basis upon which to conclude that the agency acted unreasonably in evaluating the proposals as it did. Group Technologies Corp., B-240736, supra. In essence, the Air Force concluded CSA's slight lack of direct experience in operating the ASIAC--an aspect which only accounted for approximately 20 percent of the total contract effort--was not an indication that the firm's proposal was technically inferior to the incumbent protester's. Id.

Anamet also argues that CSA's proposal should have been rejected for failure to submit a resume for the position of information specialist--a position that the protester believes is "key" to the daily operation of ASIAC. This argument is based on Anamet's reading of Section D.3. of the technical evaluation criteria--a portion of the subfactor entitled "Compliance With Requirements"--which provides that the area will be evaluated with respect to "[r]esumes of all key (prime and subcontract) personnel which also notes the percent of time to be devoted to the effort." While CSA did not name an information specialist or submit a resume, its proposal did indicate that the firm intended to retain the present specialist--an employee of the protester. CSA states that it did not regard the position as "key" to the overall contract effort because the daily ASIAC operations constitute a small portion of the work described in the RFP and argues, in effect, that the lack of a resume did not preclude the agency from evaluating the individual because it is already familiar with his credentials and performance.

The agency states that the lack of a resume for the information specialist position did not render CSA's proposal unacceptable because, in its view, the position of information specialist requires no special credentials other than a high school education and on-the-job-training of the type that the individual proposed by both offerors received when he began work for Anamet.

While Anamet disagrees with the lack of emphasis the Air Force placed on the position in question, we find no basis in the solicitation upon which to conclude that a resume was in fact required. The RFP simply did not specify that any particular positions were "key" nor did it set forth any qualification requirements for the positions. Apart from the mention of the term in the evaluation criterion quoted above, the only other references contained in the RFP pertain to

managerial or technical personnel and primarily to the technical personnel that an offeror proposed to perform the task order portion of the contract. Thus, we have no basis for concluding that the Air Force acted improperly in determining that CSA's proposal was acceptable even though it did not contain a resume for the position of information specialist.2/

Anamet has also suggested that CSA may have acted improperly in proposing its information specialist without his permission. In view of the fact that the RFP did not require resumes for that position, much less require any degree of employment commitment, and in light of the RFP provision which encouraged post-award recruitment of incumbent personnel, we find the protester's suggestion that CSA acted improperly in submitting its proposal and that the agency acted improperly in not questioning whether an employment commitment existed to be unpersuasive. Cf. Ultra Technology Corp., B-230309.6, Jan. 8, 1989, 89-1 CPD ¶ 42; also see Agusta Int'l SA, 69 Comp. Gen. 285 (1990), 90-1 CPD ¶ 311 (degree of employment commitment required, if any, depends on the RFP provisions and other circumstances of the procurement).

UNFAIR COMPETITIVE ADVANTAGE

The final protest issue involves an alleged inequality of access to a finite-element computer model of the Advanced Medium Range Air-to-Air Missile (AMRAAM) which mathematically describes the physical properties of that missile. The AMRAAM model concerns the RFP's third example task order which involved the lowest level-of-effort of the seven listed task orders offerors were required to address. The task order required offerors to describe their technical approaches in mathematically correlating results obtained from the AMRAAM model with data derived from experimental testing of the AMRAAM itself in order to "fine tune" the model as an accurate indicator of how the missile's structure will react to various forces encountered in flight, including vibration. Neither Amanet nor CSA was downgraded for its proposed solution to this task.

2/ The circumstances of this procurement are quite unlike the situation in National Medical Staffing, Inc.; PRS Consultants, Inc., B-238694; B-238694.2, June 4, 1990, 90-1 CPD ¶ 530, upon which the protester relies in suggesting that CSA's proposal should have been rejected. In that case, resumes were specifically required for three pharmacist positions. Here, the RFP had no detailed requirements and did not require the submission of resumes for the position of information specialist.

Amanet specifically alleges that during July 1990--(proposals were due on August 3)--Mr. Gordon Negaard contacted Air Force employees^{3/} on behalf of CSA, in particular Lt. Steve Rasmussen, and obtained a copy of the AMRAAM model. This allegation is based entirely on an affidavit from Mr. James Marsh--Amanet's ASIAC manager--in which he states that Lt. Rasmussen told him on August 29 that it was "quite possible" that he could have given Mr. Negaard a copy of the model. The protester argues that Mr. Negaard's contacts were in violation of an RFP provision which cautioned offerors to limit their inquiries concerning the procurement to the contracting officer and submits that Amanet was placed at a significant and unfair competitive disadvantage as a result of CSA having the model available to it during the proposal preparation period.

The affidavit of the agency's chief technical evaluator and ASIAC project manager--Mr. Duane Veley--notes that the example task in issue was only one of nine (seven tasks were specified in the RFP, while two were to be of the offeror's choice) and, therefore, concludes that an offeror's response to it was of minor consequence to the overall technical evaluation. Mr. Veley states that the intent of the task was to evaluate an offeror's understanding of the finite-element method of mathematical analysis not its understanding of the AMRAAM model; Mr. Veley further states that if an offeror does not understand the analytical method involved, possession of the model would not help to produce an acceptable response, and that any offeror with a knowledge of the method could have proposed an acceptable solution whether or not that offeror had the AMRAAM model.

As part of the Air Force's report, Lt. Rasmussen has submitted two affidavits in which he states that he does not recall Mr. Negaard asking for or receiving the AMRAAM model during their July conversation. He further states that he only recalls describing the general size of the model to Mr. Negaard and that he did not view the contact as unusual since Mr. Negaard works with him as a consultant on various projects unrelated to the procurement involving finite-elements models. Mr. Negaard, while admitting that his contact with Lt. Rasmussen during the pendency of the procurement was an "oversight" in view of the RFP provision about making inquiries only of the contracting officer, unequivocally states in his affidavit that he did not receive the model or any other valuable technical information during

^{3/} The record shows that Mr. Negaard first contacted a Mr. Douglas Henderson who referred him to Lt. Rasmussen. Neither Air Force employee is involved in the ASIAC procurement.

the July 23 conversation with Lt. Rasmussen. Mr. Negaard further states that the only information he received about the model was that it was a "100-node model," as the RFP states.

Lt. Rasmussen also states that, during July of 1990, while he was preparing a task order for Amanet under its current contract, he gave Dr. Young In Moon--an Amanet engineer--copies of his AMRAAM materials including the computer model in issue. Dr. Moon acknowledges that he received technical materials related to the AMRAAM from Lt. Rasmussen, however, he denies that the model was among them and further states that the materials were not given to anyone else at Amanet connected with proposal preparation. The record further reflects that another Amanet engineer--Mr. David Ballenger--received a copy of the AMRAAM model from Lt. Rasmussen on August 1; Mr. Ballenger denies that he shared the model with anyone at the firm connected with the preparation of Amanet's proposal, and the protester has submitted other evidence purporting to indicate that Mr. Ballenger's receipt of the model followed the final preparation of its response to the subject task order.

Both CSA and Amanet have submitted affidavits from the individuals who prepared their proposals denying that either had access to the AMRAAM model during the proposal preparation period. Amanet's proposal engineer--Mr. Steven Harris--further states that a lack of information such as the model forced him to make assumptions about the problem and, in essence, made the protester's proposed solution more general and longer than it otherwise could have been; according to Mr. Harris, knowing details beyond the "100-node" description in the RFP would have permitted him to assess the relative "coarseness" of the model and may have eliminated some of the assumptions he had to build into his proposed solution. The affidavit of Mr. Warren Gibson--CSA's proposal engineer--states that he, too, had some questions concerning the "coarseness" of the model but realized upon rereading the RFP that a model of 100 nodes was "unquestionably a coarse model." In a manner similar to Mr. Harris, Mr. Gibson notes that CSA's response to the subject task order was also general in nature and quotes from a portion of the firm's response: "The process can only be described in general terms here since the details of the model are not known at this time."

The existence of a competitive advantage, as is here alleged by Amanet, only becomes objectionable where it results from preferential treatment through unfair actions of the government. See Advanced Sys. Technology, Inc., B-235327, Aug. 29, 1989, 89-2 CPD ¶ 184. The record must demonstrate that the actions of the government resulted in prejudice for

or on behalf of an offeror. AT&T Technologies, Inc., B-237069, Jan. 26, 1990, 90-1 CPD ¶ 114; Chemonics Int'l Consulting Div., 63 Comp. Gen. 14 (1983), 83-2 CPD ¶ 426. Even where a technical deficiency in the procurement process may have arguably occurred, such prejudice is an essential element of a viable protest and where no prejudice is shown or is otherwise evident from the record, our Office will not disturb an award. Merrick Eng'g Inc., B-238706.3, Aug. 16, 1990, 90-2 CPD ¶ 130.

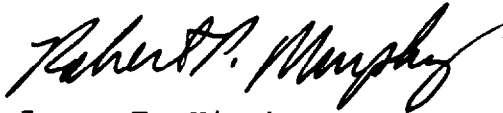
From the record submitted for our review which includes numerous affidavits from the concerned individuals, we find that it is implausible that Mr. Negaard, acting on behalf of CSA, ever obtained any technical information from Lt. Rasmussen, other than a description of the size, or coarseness, of the AMRAAM model--the same description that was set forth in the RFP and available to all offerors. Amanet's only evidence in support of a contrary conclusion is Mr. Marsh's recollection of a conversation with Lt. Rasmussen in which the Lieutenant described a contact with a third party to Mr. Marsh and purportedly said it was "quite possible" that he could have given the model to Mr. Negaard. In our view, this conditional statement simply is not an admission that he did, in fact, provide the model, as alleged.

In contrast, the affidavits of the two parties actually present at the July 23 meeting--Lt. Rasmussen and Mr. Negaard--indicate that Mr. Negaard did not obtain the model or any information related to it, except for a general description of its size. CSA's proposal itself corroborates our conclusion in that it states that details of the model were not known during proposal preparation--a situation which caused the firm's proposal to be general in nature--much like, we note from Amanet's affidavits and our review of its proposal, the protester's own response to the sample task.

Even if, arguendo, CSA had obtained a copy of the AMRAAM model prior to the submission of its proposal (a proposition which is not supported by the record), we do not believe that competitive prejudice could be demonstrated given the circumstances of this procurement. The nature of the task order to be addressed was not such, according to the agency's chief evaluator and principal ASIAC engineer, that possession of the AMRAAM model itself would have enabled either offeror to prepare a successful response demonstrating analytical abilities with the mathematical method to be employed. In this regard, we note that both offerors approached the AMRAAM example task order in similar, albeit general, fashions and submitted responses which were viewed as acceptable demonstrations of their knowledge of mathematical methods. Moreover, the example task order itself was of relatively minor significance to the overall evaluation process and does not appear

to have been a discriminating factor in the comparative assessment of the firm's proposals; in this regard, we note that the record of the technical evaluation shows that all nine of the tasks were apparently graded as a group in assessing the offerors' respective technical proficiencies. Finally, we cannot overlook the fact that Amanet also, admittedly, had access to materials relating to the AMRAAM model in July (and according to the agency, had the model itself), although we do find plausible the protester's denial that the information was not used in preparing its proposal; from the record presented for our review (including the proposals themselves). However, it is equally plausible, as CSA maintains that its proposal was not the product of having any special information about the model. Thus, we have no basis for disturbing the agency's determination that access to the model, or a lack thereof, could have operated to alter either offeror's technical rating.

The protest is denied.


for James F. Hinchman
General Counsel