Evans

Comptroller General of the United States

Washington, D.C. 20548

Decision

Matter of: ERC Environmental and Energy Services Co., Inc.

File: B-241549

Date: February 12, 1991

Michael D. Stafford for the protester.
L. James Tillman and Thomas Brown, Department of Energy, for the agency.
Catherine M. Evans and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. General Accounting Office will not object to evaluation of technical and cost proposals where review of evaluation records shows that evaluation was fair and reasonable and consistent with the evaluation criteria in the solicitation.

2. Although solicitation provided that technical factors were more important than cost, agency properly awarded contract to technically lower rated, lower cost offeror instead of higher cost, higher technically rated offeror, where solicitation provided for cost/technical tradeoff, and contracting officer reasonably determined that there was no significant technical difference between proposals and that award to lower cost offeror was most advantageous to the government.

DECISION

ERC Environmental and Energy Services Co., Inc. protests the award of a contract to Pacific Sierra Research Corporation under request for proposals (RFP) No. DE-RP01-89IE10747, issued by the Department of Energy (DOE) for technical support services for the Office of Nuclear Non-Proliferation Policy. ERC, the incumbent contractor, alleges that the agency failed properly to apply the evaluation criteria specified in the RFP, and that the evaluation was biased against ERC because of an alleged conflict of interest.

We deny the protest.

The solicitation contemplated award of a cost-plus-fixed-fee, level-of-effort-type contract for a base year and 4 option years. The RFP provided that award would be based on the offer determined to be most advantageous to the government, technical and cost factors considered. In this regard, the RFP stated that the technical proposal was more important than the cost proposal, but that cost could become the determinative selection factor if a technically superior proposal was deemed not to be worth any cost premium. The RFP advised that proposed costs would not be scored but would be evaluated on the basis of probable cost to the government, considering "allowability, allocability and reasonableness," as well as reasonableness of the fixed fee.

Technical proposals were to be evaluated by the three-member technical evaluation committee (TEC) based on three factors: technical approach to the statement of work and sample task; personnel qualifications, experience, and availability; and organizational experience. The first two factors were worth 400 points each, and the third factor was worth 200 points, for a maximum possible score of 1,000 points. Within the first factor, approach to the statement of work and approach to the sample task were each worth 200 points.

Three firms submitted initial proposals by the August 23, 1989, closing date. During the evaluation of initial proposals, the TEC learned that the sample task assignment in the RFP was similar to two tasks performed by ERC under previous contracts, affording ERC a potentially unfair competitive advantage. The contracting officer therefore issued a new sample task and requested revised proposals. After evaluation of revised technical and cost proposals, ERC and Pacific were determined to be in the competitive range on January 30, 1990. The agency's Contract Cost/Price Branch then conducted a detailed cost analysis of both offers, and the TEC evaluated the cost proposals for reasonableness. Cost proposals were also reviewed by the Defense Contract Audit Agency (DCAA). Clarifications of the technical and cost proposals and information relating to organizational conflicts of interest (OCI) were requested of both offerors on March 2.

Following evaluation of the technical clarifications and cost proposals, the agency conducted cost discussions with both offerors between July 12 and July 17. Best and Final Offers (BAFO) were requested by August 27. After evaluation of BAFOs, technical scores and evaluated probable costs were as follows:

Offeror	Technical Score	Probable Cost
ERC	986.67	$ 686,373
Pacific	860	549,625

On September 17, the contracting officer requested an award recommendation from the TEC chairman. The chairman recommended award to ERC, stating that its technically superior proposal was worth the higher cost. However, the other two members of the TEC offered a separate memorandum stating that award to ERC at the higher price would not be justified by its technical advantage. On September 28, the contracting officer determined that the 15 percent difference in technical scores did not reflect a significant difference in the respective capabilities of the offerors, and that award to ERC at a 25 percent cost premium therefore was not warranted. ERC received verbal notification of the ensuing award to Pacific on October 1, and filed this protest on October 9.

ERC contends that both the technical and cost evaluations of the proposals were flawed, and that the agency's cost/technical tradeoff was improper as a result.

COST EVALUATION

ERC alleges that Pacific's probable cost is unreasonably low, that the agency improperly failed to consider ERC's indirect cost history or its cost efficiency, and that it improperly used different labor rate escalation factors to determine each offer's probable cost.

The purpose of a cost realism evaluation by an agency under a level-of-effort-type contract is to determine the extent to which the offeror's proposed labor rates and other costs are realistic and reasonable. An evaluation of this nature necessarily involves the exercise of informed judgment. We will review such an evaluation to insure it was fair and reasonable. Research Analysis and Maintenance, Inc., B-239223, Aug. 10, 1990, 90-2 CPD ¶ 129.

We have reviewed DOE's cost realism evaluation here in light of ERC's allegations and find the results reasonable. Offerors were required to base their proposed costs on a staffing model provided in the RFP; the RFP specified that proposed costs would be evaluated for allowability, allocability and reasonableness. Thus, the agency had an objective basis for evaluating and comparing offerors' costs. The record shows that the agency in fact evaluated each cost aspect of both ERC's and Pacific's proposal. As to ERC's allegation that Pacific's probable cost is unreasonably low, the record shows that both the agency and DCAA reviewed each element of Pacific's cost proposal, and in fact questioned certain cost items, such as its labor rate escalation factor, general and administrative expenses, and the fixed fee, as unreasonably high or unreasonably low. The agency raised these concerns with Pacific during price negotiations; Pacific adjusted these costs in its BAFO. We see nothing else in the record indicating that Pacific's proposed cost is unreasonably low or that the evaluation of the firm's proposal was flawed.

The record does not support ERC's more specific arguments concerning the cost evaluation. In this regard, ERC argues that, in view of its history of lower indirect costs, the agency improperly adopted the firm's proposed cost, which included higher indirect costs, as its final evaluated probable cost; ERC claims that proper consideration of its indirect cost history would have reduced ERC's evaluated probable cost by almost 7 percent. This argument is untenable. If ERC believed its indirect cost history warranted a lower probable cost, it could have factored this history into its own proposed cost; ERC does not explain why it did not do so. We see nothing unreasonable in the agency's relying in its evaluation on ERC's own approach to calculating its proposed cost instead of the firm's indirect cost history.

ERC also argues that the agency should have applied the same labor rate escalation factor to both offers because "both firms are operating in the same economy." ERC believes that if the agency had applied Pacific's lower escalation factor to ERC's labor rates, ERC's probable cost would have been lower. This argument too is without merit; it ignores the fact that each offeror proposed its own escalation factors based on its particular circumstances. ERC proposed an escalation rate of 5 percent; both DCAA and the agency found this rate reasonable based on ERC's corporate history and salary data. Pacific proposed a rate of 4 percent, although, based on Pacific's actual salaries, DOE ultimately determined that a higher rate of 4.3 percent was realistic, and applied that rate in determining Pacific's probable cost. Again, if ERC believed it would experience a lower escalation rate, it should have proposed a lower rate. We conclude that the record supports the agency's evaluation of ERC's and Pacific's costs.

TECHNICAL EVALUATION

ERC's primary challenge to the evaluation is in the area of experience; ERC believes its allegedly greater experience should have resulted in a more substantial scoring difference between its and Pacific's proposals in this area.

The determination of the relative merits of proposals is primarily a matter of agency discretion that we will not disturb unless it is shown to be unreasonable or inconsistent with the stated evaluation criteria. Systems & Processes Eng'g Corp., B-234142, May 10, 1989, 89-1 CPD ¶ 441. A protester's mere disagreement with the agency's judgment does not render that judgment unreasonable. Id. As discussed below, based on our review of the record, we find the agency's technical evaluation reasonable and consistent with the stated evaluation criteria.

We find nothing unreasonable in the relative scoring of the proposals under experience. Pacific received 180 points--including perfect scores from two evaluators--while ERC received the maximum score of 200 points. While ERC's experience obviously was highly regarded, so was Pacific's, although less so. The TEC noted Pacific's "impressive" contributions to the 1985 and 1990 Nonproliferation Treaty Review Conferences and its many papers on the subject of nuclear testing. One evaluator noted that much of Pacific's recent work was in the arms control area and not the nuclear area, but that the disadvantage was minor. ERC claims the two evaluators who gave Pacific the maximum points under this factor improperly failed to consider experience-related information included in ERC's OCI submissions that ERC believes showed a more significant superiority over Pacific than the 20 point scoring difference indicates. However, the fact remains that ERC received the maximum score for experience, so this additional information could not have increased ERC's score further. By the same token, the fact that ERC may have been able to demonstrate experience in excess of that required for the maximum score did not require evaluators to reduce Pacific's score; nothing on the face of Pacific's own experience suggests that its score of 180 points is unreasonable. We conclude that the agency's evaluation in this area was reasonable.

COST/TECHNICAL TRADEOFF

Notwithstanding a solicitation's emphasis on technical factors, an agency properly may award to a lower priced, lower technically scored offeror if it determines that the cost premium involved in awarding to a higher rated, higher priced offeror is not justified given the acceptable level of technical competence available at the lower cost. Dayton T. Brown, Inc., B-229664, Mar. 30, 1988, 88-1 CPD ¶ 321. We will review the source selection official's cost/technical tradeoff decision only to determine whether it was reasonable in light of the RFP evaluation scheme. See Wyle Laboratories, Inc.; Latecoere Int'l, Inc., B-239113; B-239113.2, Aug. 6, 1990, 69 Comp. Gen. ___, 90-2 CPD ¶ 107.

Although ERC's proposal was the highest rated, the contracting officer determined that the scoring difference simply did not reflect a significant quality difference such that a 25 percent greater price was warranted. In addition to the experience factor, Pacific's high scores under other evaluation factors led the agency to conclude that its proposal was not significantly inferior to ERC's. Under the personnel factor, worth 400 points, the TEC awarded Pacific 360 points, including perfect scores from two evaluators, with all evaluators agreeing that the qualifications of its proposed personnel were outstanding. The TEC chairman noted as

Pacific's only weakness that some of the experience of one key employee was related to arms control generally rather than nuclear issues. ERC was rated somewhat above Pacific with 387 points, the evaluators citing the extensive experience of ERC's personnel in the field and their ability to "hit the ground running."

As noted above, the technical approach factor consisted of two subfactors, approach to the statement of work and approach to the sample task, each worth 200 points. Under approach to the statement of work, Pacific's initial proposal received 180 points; ERC's proposal received 193 points. Pacific again received maximum scores in this category from two of the three evaluators, who noted its extensive background in nonproliferation policy. All evaluators agreed that Pacific's proposal was thorough and indicated a complete understanding of the requirement. The only noted weakness, which arose during discussions, was Pacific's failure to recognize that the primary difficulty in working with the various government agencies in the nuclear nonproliferation area is not lack of technical data but conflicting policy viewpoints. As a result, Pacific's score for this factor was reduced to 165, compared to ERC's score of 200.

Under the approach to the sample task subfactor, Pacific initially received 187 points; ERC received 193 points. The evaluators noted that both Pacific and ERC displayed a complete understanding of the issues involved; again, Pacific received perfect scores from two evaluators. As noted above, the agency revised the sample task based on a perceived advantage to ERC due to its work under other contracts. Although Pacific received 155 points on this revised task, while ERC received 187 points, the evaluators still found that Pacific demonstrated a good understanding of all the issues raised and offered some innovative ideas, but found that some of Pacific's suggested incentives for a negotiated agreement were unrealistic.

In sum, the evaluation records show that, while ERC's proposal was rated superior to Pacific's, the evaluators did not consider Pacific's proposal to be significantly inferior to ERC's. Pacific's scores were consistently lower than ERC's but these lower scores were mitigated in every instance by other considerations: (1) it was primarily one evaluator who downgraded Pacific's proposal; (2) two of the three evaluators assigned Pacific perfect scores under two of the three factors; and (3) all evaluators agreed that Pacific's proposal was of high quality overall. For example, Pacific's score under the personnel factor, the most important, reflected the evaluators' view that its personnel qualifications were outstanding overall; ERC's personnel were rated marginally better but, in determining the significance of the rating difference, the contracting officer properly could consider, we think, that this was due to one evaluator's rating. Clearly then, while ERC would have the agency magnify the differences in the two proposals and conclude that Pacific's lower cost could not offset ERC's higher score, there was substantial reason for the agency to instead minimize the differences in the proposals in making its cost/technical tradeoff.

Although the technical proposal here was more important than the cost proposal, the RFP advised that cost could become the determinative selection factor if a technically superior proposal was deemed not to be worth any cost premium. As we have found that the contracting officer reasonably determined that the 15 percent difference in the offerors' technical scores did not reflect a substantial difference in the overall quality of the proposals, we have no basis for objecting to the contracting officer's conclusion--inconsistent with the TEC chairman's recommendation but consistent with the other evaluators' recommendations--that ERC's higher score did not justify its 25 percent cost premium. The award to Pacific therefore was unobjectionable.

ERC alleges that circumstances surrounding the award selection indicate that the agency was biased against it. Specifically, ERC contends that the evaluation documents indicate that all three TEC members had "unanimously and repeatedly" favored award to ERC, but that two members abruptly reversed their positions at the end of the selection process while the chairman was out of town. ERC's argument is not supported by the record. While the evaluation shows that the TEC considered ERC's proposal slightly superior to Pacific's, the evaluators were not asked to make a recommendation concerning a cost/technical tradeoff until the end of the process; at that point, the TEC chairman recommended award to ERC but the other two TEC members stated that the technical superiority of ERC's proposal did not justify its cost premium. The record shows that the TEC members submitted their recommendations to the contracting officer on September 24 and 25, following the chairman's return on September 19.

ERC also alleges that the evaluation was biased against it because of an alleged conflict of interest. Under ERC's predecessor contract, ERC was required to perform tasks related to a proposed revision to the United States-Japan Agreement for Cooperation in the Peaceful Uses of Nuclear Energy. During November 1989, a member of Congress learned that ERC had several Japanese clients and affiliates, and an investigation of ERC's role in the ultimate approval of the agreement ensued. The agency determined, based on the limited scope of ERC's tasks, that no conflict of interest existed. Notwithstanding the agency's conclusion, ERC contends that a fear of continued congressional scrutiny prevented an impartial evaluation of its proposal, and that the agency employed the cost/technical tradeoff as a pretext for award to Pacific in order to avoid further criticism from Congress. We find no support in the record for ERC's position. As discussed above, the agency reasonably determined that ERC's technical superiority did not justify award to it at a higher cost. This being the case, we have no basis for finding that the agency's determination was a pretext designed to avoid further congressional inquiry. See Institute of Modern Procedures, Inc., B-236964, Jan. 23, 1990, 90-1 CPD ¶ 93.

The protest is denied.

Robert P. Murphy

for James F. Hinchman
General Counsel