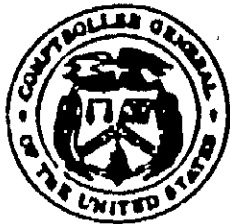


Van Schaik

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Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Health Services International, Inc.; Apex Environmental, Inc.

File: B-247433; B-247433.2

Date: June 5, 1992

Juan de Dios Pozo-Olano for Health Services International, Inc.; and Peter T. Young for Apex Environmental, Inc., the protesters, Julie Adams, Department of Agriculture, for the agency, John W. Van Schaik, Esq., and John Brosnan, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Where agency evaluates prices for an indefinite quantity contract based on an average of the labor rates in proposals, the evaluation is flawed since there is little relationship between an offeror's average hourly rate and the likely actual cost of the contract to the government.

DECISION

Health Services International, Inc. and Apex Environmental, Inc. protest the proposed award of a contract to Applied Environmental, Inc. under request for proposals (RFP) No. FSIS-12-W-91, issued by the Department of Agriculture's Food Safety and Inspection Service (FSIS) for laboratory, safety, health and environmental management services.

We sustain the protests.

The solicitation contemplates the award of a fixed-price indefinite quantity contract under which the contractor is to support FSIS' laboratory safety, health and environmental management program for a base year and 4 option years. In response to delivery orders issued by the agency, the contractor is to provide all personnel and equipment necessary to perform the work. The solicitation included the following six categories of labor and required offerors to insert in their proposals a loaded hourly rate for each category:

Support Staff	_____
Technician	_____
Junior Professional Industrial Hygienist	_____
Engineer/Scientist	_____
Senior Professional Industrial Hygienist	_____
Engineer/Scientist	_____

According to the solicitation, these rates are to become a part of the contract and are to be used in pricing all delivery orders under the contract.

The RFP provides that "award will be made on the basis of the most technically qualified proposal," except "[w]here technical scores are of equal value, cost will become the determining factor." The solicitation includes the following technical evaluation criteria, "listed in descending order of importance": Technical Qualifications; Personnel Qualifications; Organizational Experience; and Management Report. The solicitation also states: "The hourly rates will be added together and divided by all categories of labor to develop an average hourly rate. The average hourly rate will be used as the cost evaluation rate."

Agriculture received 14 proposals in response to the solicitation. Agency evaluators scored the proposals under the technical evaluation criteria in the RFP by assigning 25 possible points to each of the four technical criteria. Total technical scores ranged from 99 for Applied to 68 for the lowest scored proposal. Apex received a score of 94 and Health Services received a score of 92. Based on this technical evaluation, the contracting officer requested best and final offers (BAFO) from the 12 offerors considered to be technically acceptable. No technical discussions were held.

For the price evaluation, the contracting officer used the average hourly rates calculated from the rates in the BAFOs and assigned 20 points to the lowest priced proposal and proportionally fewer points to proposals with higher average hourly rates. Under this evaluation, since nine proposals had lower average hourly rates than Applied, including Apex and Health Services, those nine proposals were assigned higher price scores than Applied.

When the price and technical scores were combined, Applied received the highest overall score of 109, the second highest score was 108, while Health Services received an overall score of 106.5 and Apex received a score of 104.2. These firms' proposals were the third and fourth highest scored. As a result of the evaluation, the agency concluded that Applied would provide the best environmental management services based upon the agency's view that the firm's proposal clearly demonstrates its understanding of the tasks and the broad experience of its staff. Therefore, the agency proposes to make an award to Applied even though, on average, it offered higher hourly rates than nine of the other competitive range firms.

THE PROTESTS

In its protest, Apex argues that the agency incorrectly calculated its average hourly rate for purposes of the price evaluation. Apex states that it offered personnel in one of the six labor categories of the solicitation, "Support Staff," at no cost to the government, yet it was not given credit for this in the evaluation. In addition, Apex argues that there is no justification for awarding the contract to Applied at a much higher price than that proposed by Apex since both firms received excellent technical scores indicating that both have the ability to perform the contract.

Health Services argues that an award to Applied would be at an excessive price since Applied's average hourly rate is \$47.98 compared to its own rate of \$33.24, a difference of \$14.74. In addition, Health Services argues that there were numerous errors in the scoring of the technical proposals. First, Health Services states that the assignment of 25 points to each of the four technical factors was inconsistent with the evaluation scheme in the solicitation which listed those factors in descending order of importance. Second, Health Services argues that the agency failed to evaluate the management reports submitted with proposals as required by the solicitation. Finally, Health Services argues that the agency failed in its duty to hold discussions with competitive range offerors and did not make available information on the previous contract that was necessary for all offerors to compete on an equal basis.

ANALYSIS

Our review of the record in the context of the various protest contentions leads us to the conclusion that the evaluation was flawed in three respects. First, the price evaluation was deficient in that it did not include an accurate assessment of probable costs of performing the required services. Agencies must consider cost to the

government in evaluating competitive proposals. 41 U.S.C. §§ 253a(b)(1), 253b(d)(4) (1988). While it is up to the agency to decide upon some appropriate, reasonable method for proposal evaluation, an agency may not use an evaluation method that produces a misleading result. Aurora Assocs., Inc., B-215565, Apr. 26, 1985, 85-1 CPD ¶ 470. Here, although the RFP required offerors to insert in their proposals loaded hourly rates for each of the six categories of labor, the price evaluation was not based on a comparison of an offeror's proposed hourly rates for each of those six categories in the context of an estimate of the quantity of the particular labor category the agency expects to order. Rather, the evaluation considered only each offeror's "average hourly rate," which was calculated by adding the costs submitted in each of the six categories and dividing the sum by six. As discussed below, this method does not establish whether one offeror's proposal would be more or less costly than another's, because there is no necessary relationship between an offeror's average hourly rate and the likely actual cost of the contract to the government. See, for example, KISS Eng'g Corp., B-221356, May 2, 1986, 86-1 CPD ¶ 425.

In this regard, the price of each delivery order under the contract will not be based on the contractor's average rate. According to the solicitation, delivery orders are to be based on the loaded rates for the mix of the labor categories which is determined by the agency's needs for the particular tasks to be ordered. This means that over the period covered by the contract the agency will require different amounts of each of the various labor categories. For example, the record indicates that on the predecessor contract, the contractor used approximately 1,300 hours of Senior level staff, 500 hours of Junior level staff and approximately 300 hours of Support staff in performing the delivery orders. Using this and other information available from the predecessor contract, the agency should have created and applied in the price evaluation realistic estimates of the number of labor hours expected to be used in each category. Without using such estimates, there was nothing to assure that the evaluation would account for the possible wide disparity in labor hour usage between the various labor categories and, as a result, there was no direct relationship between the evaluated price of a particular offeror and the actual price of performance by that offeror. See for example R.P. Densen Contractors, Inc., 66 Comp. Gen. 31 (1986), 86-2 CPD ¶ 401.

In a second error in the price evaluation, the method used to calculate Apex's average hourly rate was flawed and, as a result, the score assigned to Apex for its price was incorrect. Apex offered one of the labor categories, Support Staff, at no charge. Agriculture divided the total

of Apex's six proposed hourly rates--which included \$00 for Support Staff--(\$234) by five, instead of six, and on that basis determined Apex's average hourly rate for the evaluation to be \$46.80.

This simply makes no sense. As the agency notes, the solicitation states that to determine average hourly rates each offeror's "rates will be added together and divided by all categories of labor." Apex's proposal did not take exception to the requirement of proposing support service personnel and the agency does not suggest that Apex did so; rather, Apex simply proposed to provide Support Staff at no charge to the government. Under the circumstances, since Apex proposed staff in all six required categories, in evaluating Apex's proposal, the agency should have divided the total of Apex's hourly rates (\$234) by six (the number of labor categories which the firm proposed). Under the correct calculation, Apex's average hourly rate should have been \$39 and under the scoring system used by the agency, its overall score should have been higher.

Finally, there was an error in the technical evaluation that casts doubt on Agriculture's proposed decision to award a contract to Applied. As Health Services points out, Agriculture assigned incorrect weights to the technical evaluation factors. Contrary to the evaluation scheme in the solicitation, which listed the evaluation factors in descending order of importance, Agriculture assigned 25 points, or equal weight, to each of those factors in the evaluation.¹

On the record before us, we conclude that the evaluation was materially defective. In light of the errors detailed above, we are not in a position to judge whether Applied would be the awardee under a corrected evaluation. We recommend that Agriculture reevaluate the proposals on the

¹We have considered Health Services' other contentions. First, with respect to management reports, contrary to the protester's allegation, the record indicates that the agency, in fact, considered and scored the reports. Second, with respect to the allegation that Agriculture failed to hold discussions, we think in this case that the agency's request for BAFOs satisfied the duty to hold discussions. Finally, Health Services' allegation that Agriculture failed to make sufficient information available to offerors is untimely. Under our Bid Protest Regulations, a protest issue, such as this, which is based upon a solicitation impropriety which is apparent prior to the time set for receipt of initial proposal, must be filed before that time. 4 C.F.R. § 21.2(a)(1) (1992); William Hunter and Assocs., B-235123; B-235164, June 20, 1989, 89-1 CPD ¶ 580.

basis of estimates of the hours expected to be required in each of the six labor categories. We also recommend that the agency reevaluate and rescore the technical proposals considering the technical evaluation factors in descending order of importance, as contemplated by the solicitation. The protesters are entitled to the cost of filing and pursuing their protests. 4 C.F.R. § 21.6(d).

The protests are sustained.

for *Milton J. Jostler*
Comptroller General
of the United States