



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Arcata Associates, Inc.

File: B-249763.3

Date: February 22, 1993

Richard B. Oliver, Esq., and Gail D. Frulla, Esq., McKenna & Cuneo, for the protester.

Ralph A. Rockow for Dynamic Science, Inc., an interested party.

John Pettit, Esq., and Michaelisa T. Johnson, Esq., Department of the Air Force, for the agency.

Glenn G. Wolcott, Esq., and Paul I. Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging accuracy of agency's labor estimate is untimely where estimate was included in the solicitation and protest was not filed until after another offeror was selected for contract award.

2. Protest that agency required the protester, but not the awardee, to submit a proposal consistent with the agency's labor estimate is denied where awardee's proposal was, in fact, consistent with the labor estimate, and the record establishes that the agency did not dictate any particular level-of-effort or skill mix.

3. Protest that agency failed to properly evaluate awardee's proposal for cost realism is denied where record provides ample support for agency's determination that awardee's cost proposal was realistic.

DECISION

Arcata Associates, Inc. protests the Department of the Air Force's award of a contract to Dynamic Science, Inc. (DSI) under request for proposals (RFP) No. F04703-92-R-0002, for launch support services at Vandenberg Air Force Base, California. Arcata protests that the agency's estimate of the quantity of labor required to perform the contract was flawed; that Arcata, but not DSI, was required to base its proposal on the agency's labor estimate; and that DSI's cost proposal was not properly evaluated.

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

BACKGROUND

The RFP was issued on February 3, 1992, for proposals to provide technical support for missile and satellite launch programs at Vandenberg Air Force Base during a base period and four option periods. The RFP contemplated award of a cost-type contract and required submission of proposals to perform various contract line item numbers (CLINs), including CLINs for (1) "basic operations and maintenance" (O&M) work and (2) "additional undefined" work.¹ The RFP stated that the total projected staffing requirements for fiscal year 1993 (the base contract period), was 175,270 manhours, or approximately 95 staff years.²

The agency received four proposals by the March 23 closing date, including those of DSI and Arcata. Based on its initial evaluation, the agency determined that Arcata's and DSI's initial proposals were deficient due to unacceptably low levels of proposed staffing; nonetheless, both were considered susceptible to being made acceptable and were retained in the competitive range.

On May 8, the agency opened discussions with the competitive range offerors, sending clarification requests (CRs) and deficiency reports (DRs) that identified specific weaknesses and deficiencies in each offeror's proposal. Both Arcata and DSI were advised that their proposed staffing appeared inadequate and were asked to explain their allocation of skills and man-years in order to demonstrate their ability to perform the contract with the staffing levels they had proposed.

The agency conducted oral discussions between May 18 and May 20 and again advised both DSI and Arcata that their proposed staffing levels appeared inadequate for successful contract performance. By letters dated June 25, 1992, the offerors were asked to submit best and final offers (BAFOs). Arcata and DSI both timely submitted BAFOs by the July 2

¹The "basic O&M" portion of the contract was to be performed on a cost-plus-incentive-fee basis via the issuance of "routine installation tasks." The "additional undefined" portion of the contract contemplated extraordinary repairs beyond the scope of the CLIN for "basic O&M" work, and was to be performed on a cost-plus-fixed-fee basis via the issuance of "work requests"; each work request was to be negotiated at the time it was issued.

²Conversion of manhours to staff years was based on the assumption of 1,844 productive labor hours per staff year.

closing date. DSI's BAFO provided for significant increases in its staffing, proposing a total of approximately 98 staff years, which slightly exceeded the agency's estimate. Arcata's BAFO offered a staffing level of approximately 80 staff years, which was well below the agency's estimate.

After receiving and evaluating the BAFOs, the agency concluded that a second round of BAFOs was necessary;³ accordingly, the contracting officer sought and obtained authorization to request a second round of BAFOs. By letters dated July 15, all offerors were notified that discussions were being reopened and that the government expected a second round of BAFOs to be submitted by July 24. With the second BAFO request, the agency provided Arcata another DR stating that its proposed staffing level and skill mix still appeared inadequate.

The agency conducted a second round of oral discussions with the competitive range offerors between July 16 and July 18. During discussions, the agency advised Arcata that a proposal incorporating a quantity of labor significantly below the agency's estimate must include an adequate explanation of how the solicitation requirements would be met--and that Arcata's proposal lacked such an explanation. The agency also noted that Arcata's proposed work force appeared to rely on a disproportionate number of lower-skilled personnel.

DSI and Arcata each timely submitted second BAFOs by July 24. DSI's proposed staffing level was unchanged, and it offered a total cost of approximately \$26 million. Arcata's proposed staffing level increased significantly to approximately 88 staff years and the equivalent of an additional 3 staff years in employee overtime. Arcata's

³Among other things, DSI's BAFO for the first time offered a "rebate" program as part of its cost proposal and added language indicating that it intended for most post-launch repair and refurbishment of launch facilities to be performed under the CLIN for "additional undefined" work. These two new aspects of DSI's proposal created concerns for the agency. Specifically, the agency questioned whether DSI's proposed "rebate" program could be incorporated into the contract under applicable laws governing appropriation of federal funds, and questioned whether DSI understood that most post-launch repair and refurbishment activities were to be performed under the CLIN for "basic O&M" work. Due to these concerns, the contracting officer determined it would be in the best interests of the government to obtain further information prior to making a source selection.

second BAFO also proposed a "richer" skill mix, increasing the proportion of higher-skilled personnel; Arcata's proposed cost was higher than DSI's.

Upon evaluating the second BAFOs, the agency concluded that DSI's and Arcata's technical proposals were essentially equal and determined that DSI's proposal offered the best value to the government due to its lower cost. On August 3, DSI was selected for award. This protest followed.

DISCUSSION

Arcata first challenges the accuracy of the agency's labor estimate, stating that "[the agency's] estimate of 175,270 labor hours to perform the launch support services for Fiscal Year 1993 is unreasonably overstated [for various reasons]." This portion of Arcata's protest is untimely. Our Bid Protest Regulations require that a protest based on an alleged solicitation defect or impropriety which is apparent prior to the time set for receipt of proposals 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. Here, since the agency's 175,270 hour estimate was clearly stated in the solicitation and Arcata chose not to protest that estimate until after DSI had been selected for contract award, this portion of its protest is untimely and will not be considered. Id.

Arcata next protests that the agency failed to afford equal treatment to Arcata and DSI, asserting that "[the agency] required Arcata, but not DSI, to base its proposal on [the agency] estimate of labor hours and skill mix."⁴ Specifically, Arcata refers to the labor quantity and skill mix it proposed under the CLIN for "basic O&M" work and asserts that, during discussions, the agency dictated both the quantity and the specific skill mix that Arcata ultimately proposed.⁵ Arcata maintains that, had it been

⁴To the extent Arcata's protest suggests that the labor estimate in the RFP was divided into a particular skill mix, the allegation is erroneous: the RFP contained no estimate regarding any particular skill mix.

⁵Arcata also asserted that, in its second BAFO, DSI reduced the number of personnel proposed under the "basic O&M" CLIN. Following receipt of the agency report, Arcata acknowledged the inaccuracy of that assertion. Due to the proprietary nature of the specific details of the offerors' proposals, our decision discusses only the aggregate levels-of-effort proposed by each offeror.

permitted to propose fewer manhours and a "leaner" skill mix, its proposal would have offered a lower cost and would have represented the best value to the government.

The agency denies that it dictated either the quantity of labor or the skill mix proposed by Arcata or any other offeror. The agency acknowledges that where a proposal offered a quantity of labor below the estimate contained in the RFP it sought a thorough explanation from the offeror regarding how it intended to accomplish the contract requirements.⁴ In describing the discussions conducted with Arcata, the contracting officer states that:

"The government never insisted on any proposal changes by [Arcata]; we emphasized to [Arcata] that proposal changes were up to [Arcata]. The government did not merely indicate that the proposed quantity of staffing labor hours was too low and needed to be raised. Rather, the government stated that it was a low quantity of staffing labor hours and an inappropriate mix combined with an inadequate explanation of how [Arcata] could perform the contract with the proposed staffing that was causing the proposal deficiency. We stated that technical innovation to reduce the required quantity of staffing labor hours was always of interest but only if sufficient rationale were provided." (Emphasis in original.)

The record does not support Arcata's assertion that the agency dictated the quantity of labor or the skill mix that Arcata ultimately proposed. On the contrary, the record establishes that the agency gave Arcata ample opportunity to explain how it would perform the contract requirements using the labor quantity and skill mix initially proposed and that, instead, Arcata elected to revise its proposal to more closely conform to the agency's estimate.

⁴For example, during discussions with Arcata, the agency contrasted the requirements of this solicitation with other contracts which Arcata identified as having relied on in preparing its proposal. The agency identified specific unique requirements of this solicitation and sought Arcata's explanation regarding how it intended to perform those requirements with the level-of-effort and skill mix it initially proposed.

Finally, Arcata protests that the agency failed to perform a proper cost realism assessment with regard to two aspects of DSI's proposal--computer maintenance and overtime.⁷ Arcata notes that, after initial proposals were submitted, the agency amended the RFP to provide that maintenance for 285 items of computer hardware and 236 packages of computer software would not be furnished by the government and that the cost of this maintenance effort must be included in proposals. In response, Arcata added approximately \$280,000 in subcontract costs to its second BAFO while DSI added approximately \$2,000. Arcata also complains that DSI's second BAFO included no costs for employee overtime while Arcata's proposal included the equivalent of approximately 3 staff years of overtime.

The agency responds that it reviewed the elements of cost contained in DSI's proposal, verified that the proposal included a nominal amount for supplies and equipment related to the computer maintenance effort, and determined that DSI intended to perform the actual tasks associated with this effort with its own staff under the "basic O&M" CLIN. In light of the overall level-of-effort proposed by DSI, along with the fact that there was no prohibition on performance of the computer maintenance tasks in-house, the agency determined that DSI's cost proposal was reasonable and realistic regarding the computer maintenance requirement. Similarly, with regard to overtime, the agency considered the fact that DSI had proposed a level of staffing slightly exceeding the agency's estimate (98 staff years versus 95 staff years) and concluded that the absence of overtime was realistic.

We find no basis to question the agency's conclusions regarding the realism of DSI's cost proposal. The fact that Arcata chose to include subcontract costs for the computer maintenance tasks does not indicate that DSI's decision to perform the tasks in-house was unreasonable or unrealistic.⁸ Similarly, Arcata's decision to augment its proposed staffing level of approximately 88 staff years with

⁷Arcata initially asserted that the agency's evaluation of DSI's cost proposal was flawed for other reasons but, upon receipt of the agency report, withdrew those allegations.

⁸In any event, it does not appear that the cost associated with this effort constituted a material portion of the total contract cost.

the equivalent of 3 staff years of employee overtime provides no basis to question the cost realism of DSI's proposal which proposed 98 staff years without overtime.

The protest is dismissed in part and denied in part.


for James F. Hinchman
General Counsel