



Comptroller General
of the United States

Washington, D.C. 20548

3411910

Decision

Matter of: Innovative Training Systems

File: B-251225.3

Date: October 19, 1993

Simon H. Budman, Ph.D., for the protester.
William E. Thomas, Jr., Esq., Department of Veterans Affairs, for the agency.
Paul E. Jordan, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency conducted meaningful cost discussions by questioning protester on specific areas within its cost proposal without disclosing its relative cost standing, and by providing it with opportunities to submit a revised cost proposal.

DECISION

Innovative Training Systems (ITS) protests the award of a contract to Klemm Analysis Group, Inc. under request for proposals (RFP) No. 101-25-92, issued by the Department of Veterans Affairs (VA) for support of a research study. ITS contends that the agency did not conduct meaningful cost discussions with it.

We deny the protest.

The RFP contemplated the award of a cost-plus-fixed-fee contract to provide all labor, materials, and facilities to support a study of reproductive health outcomes among female Vietnam veterans. The study was to be conducted in two phases: a base effort involving 500 veterans over 16 months; and, if the VA decided to proceed, a subsequent effort involving approximately 8,000 veterans over 24 months. The RFP required offerors to submit technical and cost proposals containing cost data on direct labor; labor overhead; consultants/subcontractors; other direct costs; general and administrative expenses; and fee.

Proposals were to be evaluated on the basis of four technical factors (worth 90 points combined) plus cost (worth 10 points). The technical factors, listed in descending order of importance were: technical approach; relevant organizational experience; personnel; and equipment and facilities. The RFP advised that the technical proposal would be the most important single consideration. Award was to be made to the offeror whose proposal, conforming to the solicitation, earned the most technical and cost evaluation points and was most advantageous to the government.

Four offerors including Klemm and ITS submitted proposals on July 14, 1992. After evaluations, discussions, and submission of best and final offers (BAFO), on November 1, 1992, the VA awarded the contract to ITS at a combined cost of \$2,916,657. Klemm then filed a protest with our Office challenging the adequacy of the agency's technical discussions. In December, the VA took corrective action by terminating ITS' contract for convenience and reopening negotiations with all four offerors, whereupon we dismissed the Klemm protest as academic.

By letters of February 9, 1993, the VA provided technical discussion questions to the offerors and requested that any technical or cost changes be submitted by February 23. All four offerors responded and, in March, after reevaluation of the proposals, the VA determined that all proposals were technically acceptable. By letters of April 7, the VA asked each offeror a series of cost-related questions and advised that discussions would be scheduled for a later date. ITS submitted its written responses on April 13. During telephonic discussions on April 19, the VA advised that the discussions would examine aspects of the ITS cost proposal to enable it to submit a more competitive proposal. The VA also advised that cost would be an important factor in the contract award and recommended that ITS re-examine its proposed costs and submit its best cost proposal. Subsequently, ITS alone requested an opportunity to submit a revised draft budget prior to submitting a BAFO, which would have necessitated a delay in the BAFO closing date. Since the request for BAFOs represented the fourth opportunity during the 10-month conduct of this procurement for offerors to examine proposed costs, and granting the request was expected to delay the procurement approximately an additional month in the interest of a single offeror, the VA denied the request.¹ ITS and the other offerors submitted BAFOs on April 29.

¹In addition to this BAFO request, offerors had the opportunity to examine their cost proposals prior to submitting initial proposals in July 1992; as part of their initial BAFOs in September 1992; and in conjunction with technical revisions in February 1993.

Based upon its review of the revised technical and cost proposals, the evaluation panel scored the proposals as follows:

<u>Offeror</u>	<u>Technical</u>	<u>Cost</u>	<u>Combined</u>	<u>Total cost</u>
Klemm	79	10	89	\$1,557,027
ITS	80	6.7	86.7	\$2,322,710
No. 3	80.6	8.7	89.3	\$1,786,570
No. 4	66.6	5	71.6	\$3,133,589

In making the award determination the contracting officer found the technical difference between the proposals submitted by Klemm and the third offeror to be negligible. The contracting officer further determined that the third offeror's technical proposal did not offer additional benefits sufficient to justify its higher cost. In view of ITS' significantly higher proposed cost (more than \$400,000 higher on Phase I alone), its proposal was not considered further for award. Having determined that Klemm's proposed cost was fair and reasonable, the contracting officer awarded Klemm the contract on June 9. Following a debriefing, ITS filed this protest contending that the agency failed to afford it meaningful cost negotiations.

In negotiated procurements, contracting officers generally are required to conduct discussions with all offerors whose proposals are included in the competitive range. Federal Acquisition Regulation (FAR) § 15.610. Although the discussions need not be all-encompassing, discussions are required to be meaningful; that is, the agency must lead offerors into the areas of their proposals which require amplification or correction. Jaycor, B-240029.2 et al., Oct. 31, 1990, 90-2 CPD ¶ 354. In this regard, the agency is required to point out weaknesses, excesses or deficiencies in a proposal unless doing so would result in technical transfusion or leveling. FAR § 15.610(c), (d); Manekin Corp., B-249040, Oct. 19, 1992, 92-2 CPD ¶ 250.

ITS argues that the agency's negotiations were not meaningful because the questions the VA asked were few and limited in scope and because the agency refused to allow ITS to submit a draft revised budget. We disagree. When negotiations were reopened, in addition to asking a number of technical questions, the VA also provided the offerors an opportunity to revise their cost proposals. At least one of the questions directed at ITS, concerning the educational requirements for its interviewers, had a cost impact. Next, in preparation for further discussions, the VA sent ITS five cost questions regarding per hour charges of proposed

individuals; the role of a review panel; travel costs; the services of a specific employee; and the expertise of certain personnel. In telephonic discussions on April 19, the VA offered to discuss technical matters and discussed two of the earlier cost questions in more detail. The VA also advised ITS that the cost discussions were designed to examine aspects of the cost proposal and enable the protester to submit a more competitive proposal. At the close of discussions, the VA reminded ITS that technical aspects were important but that cost would be an important factor in the award. The VA then recommended that ITS re-examine its proposed costs and submit its best cost proposal. There is no evidence that ITS had any questions about its proposed costs which the agency declined to answer. In our view, these questions and the opportunities provided to ITS to revise its cost proposal were sufficient to lead ITS into areas of its cost proposal which required attention during the competition. Accordingly, the agency satisfied its responsibility to conduct meaningful discussions with the protester.

While the protester now complains that it was not provided an opportunity to submit a revised draft budget, it appears that ITS could have done so either with its technical questions or at the time it submitted its written answers to the cost questions.² We believe the agency was reasonable in concluding that submission of such a draft, after the close of discussions and just prior to the request for BAFOs, would unnecessarily delay the procurement. We also note that while ITS argues that the discussions which were conducted related only to proposal aspects with a small cost impact, it is evident that these discussions had a substantial effect since ITS reduced its overall cost proposal by more than \$500,000.

ITS next contends that it could have reduced its cost proposal even more if the agency had advised it of the great difference between its costs and those of its competitors. In this regard, ITS observes that it was at a disadvantage as the original awardee because its overall costs were revealed to the other offerors, while their costs were not

²This protest ground essentially is a challenge to the agency's determination not to extend the due date for receipt of BAFOs, and thus concerns a solicitation impropriety. Protests of improprieties subsequently incorporated into a solicitation must be raised prior to the next closing date for receipt of proposals following the incorporation. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1993). Since ITS did not protest the matter until after award of the contract, we find that this issue is untimely.

revealed to ITS.³ While discussions cannot be meaningful if an offeror is not apprised that its cost exceeds what the agency believes to be reasonable, an agency may not inform an offeror of the cost that it must meet in order to obtain further consideration or advise it of its relative price standing. Mikalix & Co., 70 Comp. Gen. 545 (1991), 91-1 CPD ¶ 527; FAR § 15.610(e)(2). ITS' costs were below the proposed costs of one of the other offerors and below the VA's independent cost estimate; the agency had no duty in these circumstances to advise ITS of the need to further lower its costs to be more competitive.

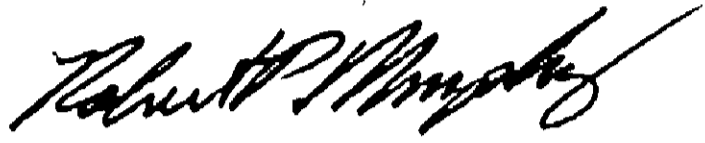
Finally, ITS argues that the decision to award to the offeror with the lowest evaluated cost shows that the agency violated FAR § 15.605(d). This FAR provision states that in cost-reimbursement contracts, "the cost proposal should not be controlling, since advance estimates of cost may not be valid indicators of final actual costs." For this reason, an agency ordinarily must conduct a cost realism analysis to determine what probable, realistic cost it will incur if it accepts a particular proposal. See Honeywell, Inc., B-238184, Apr. 30, 1990, 90-1 CPD ¶ 435. The regulation does not, however, preclude a selection based on lowest evaluated, realistic cost. As is always the case in negotiated procurements, where the agency finds technical proposals essentially equal, cost or price may become the determinative factor in making an award, even where the solicitation scheme assigns cost less importance than technical factors. Sparta, Inc., B-228216, Jan. 15, 1988, 88-1 CPD ¶ 37.

In this case, in determining Klemm's costs to be realistic, the agency considered that Klemm's proposal provided a very detailed accounting of all labor categories, hourly rates, and expenses to be incurred in performance, all of which were to be used for purposes of evaluating invoices submitted by Klemm, and that the proposal represented Klemm's 1993 costs as well as G&A, fringe, and overhead rates which had recently been approved by the Department of Health and Human Services. The contracting officer also learned that the Defense Contract Audit Agency had recently completed an audit of Klemm's accounting system and that this resulted in approval of an award to Klemm. On this

³ITS knew or should have known that the VA was not going to reveal the other offerors' costs at the time negotiations were reopened in February. Since ITS did not raise this issue until after the award was made in June, its protest on this ground is untimely. 4 C.F.R. § 21.2(a)(2).

record, we have no basis to object to the agency's conclusion that award to Klemm would result in a lower cost to the government.

The protest is denied.



for James F. Hinchman
General Counsel