



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Alpha Building Corporation

File: B-255178; B-255178.2

Date: February 14, 1994

Kathleen K. Acock for the protester.
W. M. Sweetser, Jr., for Centennial Contractors Enterprises, Inc., an interested party.
Walker L. Evey, National Aeronautics and Space Administration, for the agency.
Peter A. Iannicelli, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that agency engaged in technical leveling is denied where: (1) agency requested only one round of best and final offers; (2) protester has provided no evidence to support its speculative assertion; and (3) General Accounting Office review of record provides no evidence that agency officials gave awardee more favorable treatment than protester during the course of the procurement.

2. Protest that agency's probable cost analysis was inadequate is denied where the General Accounting Office review shows that agency's analysis was reasonable in the three specific instances raised by the protester and there is nothing else to discredit agency's probable cost analysis.

DECISION

Alpha Building Corporation protests the National Aeronautics and Space Administration's (NASA) award of a construction support services contract to Centennial Contractors Enterprises, Inc. pursuant to request for proposals (RFP) No. 9-BG3-11-3-15P.

We deny the protest.

Issued as a total small business set-aside on April 20, 1993, the RFP solicited offers for award of a cost-plus-award-fee, level-of-effort contract for construction support services at the Johnson Space Center, Houston, Texas, for a basic period of 1 year with options for four additional

1-year periods. Ten offers were received by the June 7, 1993, date set for receipt of initial proposals. Initial proposals were evaluated on the following factors set forth in the RFP: mission suitability, cost, relevant experience and past performance, and other considerations. Only the mission suitability evaluation used point scoring; the other factors were rated adjectivally. Three offers, including Alpha's and Centennial's, were considered to be in the competitive range. Discussions were held with the competitive range offerors, and best and final offers (BAFO) were received from all three offerors by the August 23 closing date.

After BAFOs were evaluated, the source evaluation board (SEB) presented its findings regarding the relative strengths and weaknesses of each offer to the source selection official and cognizant NASA procurement personnel. After soliciting the opinions of the other procurement personnel that had attended the SEB's presentation, the source selection official narrowed his consideration to Alpha and Centennial primarily because the third competitive range offer was evaluated as highest in probable cost by a significant amount. The source selection official determined that the proposals of Alpha and Centennial were essentially technically equal, but that the cost savings represented by Centennial's offer were significant, and selected Centennial's BAFO for award. On September 30, 1993, the contract was awarded to Centennial.

Alpha protests that NASA officials engaged in technical leveling, allowing Centennial to improve the technical score of its BAFO on mission suitability to within 36 points of Alpha's. Alpha argues that, once the technical scores were sufficiently close, the source selection official was able to make his award selection based upon cost alone.

Technical leveling means helping an offeror bring its proposal up to the level of other proposals through

¹In its initial protest letters, dated September 30 and October 7, 1993, Alpha also alleged that: (1) NASA mischaracterized as "deficiencies" several concerns the evaluators had regarding Alpha's proposal that should have been characterized as "clarifications"; (2) evaluators reduced the technical score given Alpha's proposal based upon requirements that were not set forth in the RFP; and (3) the source selection official did not consider Alpha's status as a woman-owned business. The agency responded to these allegations in its report, but Alpha did not address the issues in its comments on NASA's report. Therefore, we consider these protest grounds to be abandoned. See Heimann Sys. Co., B-238882, June 1, 1990, 90-1 CPD ¶ 520.

successive rounds of discussions, such as by pointing out weaknesses resulting from the offeror's lack of diligence, competence, or inventiveness in preparing the proposal. Federal Acquisition Regulation (FAR) § 15.610(d). In the present case, NASA held only one round of discussions and requested BAFOs only once, and therefore, there was no opportunity for procurement officials to engage in technical leveling.

Moreover, the protester has provided no evidence, and we see nothing in the record, to suggest that agency officials improperly assisted Centennial during discussions to improve its technical rating. On the contrary, the record shows that Alpha's initial proposal was rated only slightly better than Centennial's initial proposal on technical merit and that NASA evaluators regarded both offers overall as excellent with very few weaknesses. Concerning the mission suitability factor, Alpha's received 927 points out of 1,000 points; Centennial's score was 886, a difference of only 41 points. Following oral discussions, the evaluators' few concerns were clearly articulated in the written requests for BAFOs. Both Alpha and Centennial responded with revisions in their BAFOs, and the technical ratings for both offerors were upgraded. While each offer improved slightly after revisions, the evaluation scores for Alpha's and Centennial's BAFOs remained close. Alpha received 969 points on the mission suitability factor, an increase of 42 points; Centennial increased its score 47 points to 933 total points. The point difference between the offerors decreased 5 points to 36 points. Thus, contrary to the protester's assertion, Centennial did not significantly improve its standing relative to Alpha. In sum, there is no evidence that Centennial had access to inside information, benefitted from technical transfusion,² or received more favorable treatment during the course of the procurement. See Electra-Motion, Inc., B-229671, Dec. 10, 1987, 87-2 CPD ¶ 581; Sony Corp. of Am., B-224373.2, Mar. 10, 1987, 87-1 CPD ¶ 267.

Alpha also protests that Centennial's proposed cost was unrealistically low and that NASA's probable cost analysis was inadequate. Alpha identifies three specific instances in which it believes the probable cost analysis was flawed. Alpha states that its own proposal showed that it could save NASA a significant amount of money through the use of an electronic payroll system. Alpha alleges that Centennial's proposal did not include the full cost of worker's

²Technical transfusion is the disclosure to other offerors in a negotiated procurement of one offeror's innovative or ingenious solution to a problem. Hattal & Assocs., 70 Comp. Gen. 632 (1991), 91-2 CPD ¶ 90.

compensation and general liability insurance as required by the RFP. Alpha also asserts that Centennial's proposed direct labor costs are so low that Centennial cannot be paying the rates prescribed by the Department of Labor under the Davis-Bacon Act. The protester argues that the cost assessment was inadequate because NASA did not consider the potential costs savings associated with Alpha's proposal or that Centennial's proposed costs were too low.

An agency is not required to conduct an in-depth analysis or to verify each item in conducting a cost realism analysis. Hattal & Assocs., supra. A cost realism assessment necessarily involves the exercise of informed judgment and the agency is clearly in the best position to make that assessment; therefore, our Office will review such a determination only to ascertain whether it was reasonably based. Id.

Alpha states that it uses an electronic payroll system that could reduce clerical and supervisory man-hour requirements by as much as 1 and 1/2 person, thus saving NASA approximately \$187,500. However, the RFP stated the estimated number of hours of work for each labor category and required offers to be based upon those estimates. Therefore, Alpha argues that it was compelled to base its cost proposal upon the number of clerical/supervisory hours stated in the RFP even though it could perform payroll functions using significantly fewer man-hours due to its automated system. Alpha states that the "price proposal instructions specifically precluded our pricing this advantage" and contends that NASA should therefore have reduced Alpha's proposed costs to reflect the potential savings.

Essentially, Alpha is arguing either that the RFP's estimate of labor hours is too high or that offerors should have been allowed to make offers based upon using fewer hours than specified. Our Bid Protest Regulations require that a protest based on an alleged solicitation defect or impropriety that is apparent prior to the time set for receipt of initial proposals must be filed before that time. 4 C.F.R. § 21.2(a)(1) (1993). Here, the RFP clearly stated that, in order to have uniformity in proposal evaluation, proposals were required to be based upon the labor classifications and man-hour estimates set forth in the RFP. As the alleged RFP defect was apparent from reading the RFP, but Alpha chose not to protest until after the contract was awarded, this portion of the protest is untimely. See Arcata Assocs., Inc., B-249763.3, Feb. 22, 1993, 93-1 CPD ¶ 157.

In any event, after reviewing the portions of Alpha's proposal that Alpha states should have alerted the

evaluators to the potential savings to be gained by selecting Alpha, we do not think that the probable cost analysis was unreasonable. In the executive summary of its proposal, Alpha made a very brief statement to the effect that its timekeeping system would improve productive time at all levels, and in an addendum to its cost proposal, Alpha stated:

"It is estimated that this [automated timekeeping] system, over the life of the contract will pay for itself several times over by saving productive time of Timekeeper/Payroll employees."

In our view, these general statements that cost savings would accrue to the government were not sufficient to alert NASA evaluators that the costs Alpha stated in its cost proposal were overstated.

Alpha next asserts that Centennial's proposal was noncompliant with the RFP's worker's compensation and liability insurance requirement and did not include the full cost of such insurance. Alpha contends that the cost analysis should have revealed this fact and that NASA should have increased its estimate of Centennial's probable cost accordingly.

The RFP contained only a general requirement for the contractor to obtain and maintain several different types of insurance, including worker's compensation and comprehensive general (bodily injury) liability insurance. The RFP did not require offerors to submit proof that they had or could obtain such insurance with their proposals, but did require that the costs of such insurance be included in cost proposals as part of "Other Indirect" costs. As the requirement to obtain insurance concerns the contractor's ability to perform the contract, it is a matter of responsibility. See Secure Eng'g Servs., Inc., B-252270.2; B-252271.3, June 11, 1993, 93-1 CPD ¶ 452. Absent a showing of possible fraud or bad faith, we will not review the contracting officer's affirmative determination of Centennial's responsibility. 4 C.F.R. § 21.3(m)(5); Secure Eng'g Servs., Inc., supra.

Furthermore, we have no reason to question NASA's decision not to adjust upward Centennial's proposed costs for insurance premiums. Centennial's proposal stated that it would purchase both types of insurance, indicated the insurance companies that would provide the insurance, and included in its cost proposal the premium quoted for each. In response to NASA's discussions questions, Centennial showed exactly how the insurance rates were calculated (each labor category had a different rate). Moreover, NASA reports that contracting officials verified the

reasonableness of Centennial's insurance costs with both the Texas Insurance Board and the Defense Contract Audit Agency.

Finally, Alpha alleges that Centennial's proposed direct labor costs are so low that Centennial cannot be paying the rates prescribed by the Department of Labor under the Davis-Bacon Act. Alpha contends that Centennial's proposal should therefore have been rejected as noncompliant with the RFP requirements. Alpha further contends that NASA's cost analysis should have revealed this fact and that NASA should have adjusted Centennial's proposed costs upward to reflect Davis-Bacon Act wage rates. We do not agree.

The RFP required offerors to state estimated direct labor costs based upon the labor classifications and man-hour estimates set forth in the RFP and included the appropriate Department of Labor (DOL) General Wage Decisions for the work area. The RFP also incorporated FAR § 52.222-6, which implements the Davis-Bacon Act and basically states that all laborers and mechanics employed on the contract will be paid at not less than the wage rates set forth in the DOL wage determination. Centennial's proposal indicated that it accepted all RFP terms and conditions and that it would pay craftsmen (for example, carpenters, painters, plumbers, etc.) Davis-Bacon wage rates. However, Centennial's BAFO also stated that it would use apprentices to do some of the work required of craftsmen and that the apprentices would be paid less than craftsmen's wages.

The use of apprentices on construction contracts is specifically authorized under regulations issued by the Secretary of Labor implementing the Davis-Bacon Act. The DOL regulations state:

"Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor." 29 C.F.R. § 5.5(a)(4)(i).

The RFP also incorporated FAR § 52.222-9, which reiterates that apprentices will be allowed to work on the contract in accord with the above DOL regulation.

NASA questioned Centennial on its use of apprentices and was satisfied that Centennial's mix of craftsmen to apprentices was satisfactory and that the apprentices to be used on the contract would be employed under a bona fide apprenticeship program registered with DOL. Moreover, the contracting officer reported, and Alpha agrees, that the use of

apprentices is a well recognized practice sanctioned by DOL.¹ Thus, the protester's assertion that Centennial's proposal was noncompliant is without merit. Other than arguing that Centennial's proposed labor costs are too low because apprentices will not be paid Davis-Bacon rates, the protester has identified no other specific error and we see nothing else to discredit NASA's probable cost analysis. See Hattal & Assocs., supra.

The protest is denied.

Christine S. Melody
for Robert P. Murphy
Acting General Counsel

¹Alpha also states that in its technical proposal, under mission suitability, it in fact "described its intention to pursue the use of craft employees at below journeyman rates and estimated minimum possible savings"