



Comptroller General
of the United States

Washington, D.C. 20548

REDACTED VERSION'

Decision

Matter of: Jack Faucett Associates

File: B-254421.2

Date: February 18, 1994

James H. Roberts III, Esq., and Suzanne M. Dohrer, Esq., Manatt, Phelps & Phillips, for the protester. Vivian Philbin, Esq., Federal Highway Administration, for the agency. Paula A. Williams, Esq., and Linda C. Glass, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency reasonably downgraded protester's best and final offer in areas found deficient where the record shows that the protester did not adequately respond to the agency's concerns during discussions.
2. Protest alleging that agency improperly made upward adjustments to proposed best and final costs under cost-reimbursement solicitation is denied where agency had reasonable basis for the adjustments.
3. Awards to higher cost offerors are unobjectionable where the solicitation provided that technical factors were more important than cost and past performance and the agency reasonably found that the awardees' higher costs were offset by their higher-rated and lower-risk technical proposals.

DECISION

Jack Faucett Associates (JFA) protests the award of contracts to Battelle and DRI/McGraw-Hill under request for proposals (RFP) No. DTFH61-93-R-00055, issued by the Federal Highway Administration (FHWA), Department of Transportation, for technical and program support services

The decision issued on February 18, 1994, contained proprietary information and was subject to the terms of a General Accounting Office protective order. It was released to the parties admitted to the protective order. The parties have agreed that this decision should be released in its entirety.

related to transportation policy analysis. JFA alleges that the awards were based on improper technical and cost evaluations of proposals.

We deny the protest.

The RFP was issued on an unrestricted basis on February 9, 1993, and contemplated award of one or two indefinite-quantity, cost-plus-fixed-fee contracts for 4 years. It provided that contract performance would be accomplished through the issuance of work orders and required the successful contractors to provide all labor, management, materials, and other resources necessary to perform the contract services.

The RFP statement of work (SOW) contained extensive requirements for five task areas identified as: (A) support for policy analysis of emerging energy, environmental, and highway financing issues; (B) support for policy analysis of highway cost allocation, truck size and weight, and freight demand issues; (C) support for policy analysis of inter-relationships between highway investment and economic productivity; (D) support for policy analysis of strategic system performance; and (E) support for improvement of transportation data acquisition and management. Each task area included numerous subtask areas. As a guide for offerors in preparing their proposals, the solicitation contained a list of the disciplines and/or expertise which FHWA believed necessary to perform the contract and an estimate of the professional and technical staff required expressed in staff-months for each discipline/task.

The RFP stated that proposals would be evaluated in accordance with the following factors: technical, cost, and past performance. Technical quality was stated to be more important than cost and past performance. Within the technical area, the RFP listed the evaluation factors and subfactors in descending order of importance as:

1. Demonstration of technical competence
 - a. adequacy and availability of offered expertise
 - b. experience in areas of expertise
 - c. offeror's ability to provide management expertise
 - d. offeror's demonstrated competence in writing
2. Indication of sufficient resources
 - a. data and data sources available
 - b. analytical models available
 - c. facilities and equipment available
 - d. management services

3. Responsiveness to request for proposal

- a. completeness of the proposal
- b. consistency of proposal with RFP

Four proposals were received by the March 29 closing date for receipt of initial proposals. The proposals were evaluated by a technical evaluation panel, which numerically rated offerors' technical proposals. Based upon the initial evaluation, the three highest technically rated offers were included in the competitive range. The agency conducted written and oral discussions with the offerors in the competitive range to advise them of perceived deficiencies and areas in their proposals requiring clarification. Best and final offers (BAFO) were evaluated and scored on a 100-percent scale under the technical factors as follows:

<u>Offeror</u>	<u>Original Technical Score</u>	<u>BAFO Technical Score</u>
Battelle	84.6	88.4
DRI/McGraw-Hill	75.1	85.4
JFA	74.7	70.3

Cost proposals were evaluated for realism and probable cost. JFA submitted the lowest BAFO cost (\$12,342,742) and after upward adjustments for cost realism, the protester's evaluated cost (\$14,134,025) remained lower than either Battelle's (\$14,307,067) or DRI's (\$16,774,902). Past performance was reviewed but not scored to ensure that offerors had relevant prior experience. Battelle and DRI were given average to superior recommendations by their references; the majority of the protester's references furnished negative past performance recommendations.

The source selection official (SSO) reviewed the findings of the technical and cost evaluation panels and adopted their recommendations that awards to Battelle and DRI would be most advantageous to the government. Accordingly, the SSO selected Battelle and DRI; each firm was awarded a contract on July 23. After JFA was debriefed, it filed this protest challenging various aspects of the evaluation of its proposal under the technical, cost, and past performance factors.¹

¹JFA also argues that the procurement is for Federal Information Processing (FIP) support services and subject to the Brooks Act (41 U.S.C. § 759) authority of the Administrator of General Services (GSA) and that FHWA's failure to obtain a delegation of procurement authority (DPA) from GSA makes the awards to Battelle and DRI void as
(continued...)

JFA contends that a reasonable evaluation of its BAFO would have resulted in JFA's receiving the second award, instead of DRI. In support of this premise, JFA argues that its technical proposal was impermissibly downgraded from 74.7 points to 70.3 points based on the evaluators' "misperception" that JFA failed to provide assignments of specific staff to tasks/subtasks in its staffing plan.

The evaluation of technical proposals is primarily a matter within the contracting agency's discretion which we will not question unless we find the evaluation to be unreasonable or inconsistent with the RFP's evaluation factors. Microwave Solutions, Inc., B-245963, Feb. 10, 1992, 92-1 CPD ¶ 169. The protester's disagreement with the agency's conclusion does not render the evaluation unreasonable. Tate-Griffin Joint Venture, B-241377.2, Jan. 7, 1992, 92-1 CPD ¶ 29. We have reviewed the protester's arguments, its proposal and BAFO, the evaluators' comments, and the agency report, and have no basis to find the evaluation of JFA's proposal unfair or unreasonable; to the contrary, the record shows that the agency performed a reasonable technical evaluation consistent with the evaluation criteria.

The evaluators were concerned that JFA's initial proposal did not contain sufficient information regarding its ability to manage and provide in-house staff support for all required tasks and subtasks. The evaluators noted that JFA's initial proposal contained general rather than specific information concerning its proposed staffing and that the level of staff effort by discipline to be assigned by task/subtask was not provided in JFA's proposal. The evaluators specifically believed that JFA's subcontractors offered more experienced staff and that JFA needed to increase use of its more experienced subcontractors for many of the tasks. As a result, the discussion letter sent to JFA listed five technical and cost discussion questions. These matters included: (1) a request to provide a specific level of staff for each task identified by disciplines and the amount of time each would be assigned to each task, (2) the need to assign more of the total effort to the firm's subcontractors and consultants (JFA's own staff would

¹(...continued)

a matter of law. While the solicitation by its terms requires the successful contractor to use FIP resources in the performance of the contract, such use is incidental to the primary purpose of the contract (which is to provide staff support, technical reports, and studies to FHWA). The agency was therefore not required to obtain a DPA from GSA to conduct this acquisition. See Federal Information Resources Management Regulation, 41 C.F.R. § 201-1.002-2(d) (1993).

provide 111,876 staff-hours out of a total of 190,400 staff-hours), (3) notice that the agency questioned the capabilities of the personnel proposed by JFA since the hourly rates for JFA's in-house senior and junior analysts were substantially lower than the hourly rates proposed by its subcontractors for analysts, (4) a request to explain why JFA's support staff qualified for higher wages than its junior analysts, and (5) how the firm would process multiple work orders.

JFA responded to the agency's concerns by assigning more of the total effort to its subcontractors and consultants. Nonetheless, JFA proposed to provide 46 percent of the total contract staff effort with its own staff (JFA reduced its own staff-hours from 111,876 to 88,076). The record shows that even with this reduction in total in-house staff effort and increased use of subcontractors, the evaluators were still concerned with JFA's ability to both manage and provide staff support for all required tasks and subtasks. As stated above, the evaluators considered the level of experience offered by JFA's subcontractors to be greater than that offered by JFA. Because JFA intended to use significant in-house staff for this effort, the evaluators concluded that the overall level of experience offered in JFA's BAFO was not as good as it would have been if JFA's more experienced subcontractors provided the majority of the total contract staff effort.

JFA does not refute the evaluators' judgment that the level of expertise offered by its subcontractors was greater than its own. Instead, the protester argues that since the agency during discussions did not establish any percentages by which it should lower its total contract staff effort, its BAFO was responsive to the discussion question and should have received credit for the reduction of its in-house staff effort. As explained above, notwithstanding JFA's reduction of its own in-house staff effort, the agency concluded that too much of the requirement would be performed by JFA's less experienced staff and therefore the agency was reasonably concerned about JFA's ability to perform satisfactorily. We have no basis to question the agency's evaluation of the level of experience offered in JFA's BAFO. Tate-Griffin Joint Venture, supra.

Further, we conclude that the agency's judgment that the protester did not make specific assignments of staff by tasks and subtasks was reasonable. JFA's proposed staff plan lacked the degree of detail sufficient to overcome the evaluators' concerns regarding staff assignments. In response to the discussion item addressing this concern, JFA stated that assigning specific levels of staff for each task/subtask was unrealistic because the agency had not furnished the specific task needs for individual work order

requirements. However, we believe that the RFP contained sufficient information concerning each of the five tasks and subtasks; and, as written, each task/subtask called for different types and levels of disciplines/expertise. For instance, as set forth above, tasks A and C require a greater level of economic expertise than tasks B and E; similarly, task A requires a greater level of environmental expertise than task D. Given this apparent differentiation in the types and levels of disciplines/expertise in the RFP, JFA does not satisfactorily explain why it could not have proposed a staffing plan which matched staffing to task and subtask. Under the circumstances, we conclude that the evaluation of JFA's proposal has not been shown to be unreasonable or inconsistent with the announced evaluation criteria.

JFA also argues that the FHWA's cost evaluation was flawed and challenges the agency's upward adjustments to its BAFO. Each offeror's cost proposal was analyzed to ascertain the most probable cost associated with the offeror's proposed technical approach. When a cost-reimbursement contract is to be awarded, the offerors' estimated costs of contract performance should not be considered as controlling since the estimates may not provide valid indications of the final actual costs which the government is, within certain limits, required to pay. See Federal Acquisition Regulation (FAR) § 15.605(d); Science Applications Int'l Corp., B-232548; B-232548.2, Jan. 23, 1989, 89-1 CPD ¶ 52. The agency's evaluation of estimated costs should determine the extent to which offerors' estimates represent what the contract should cost, assuming reasonable economy and efficiency. Science Applications Int'l Corp., supra. Our review is limited to considering whether the agency's cost realism determination is reasonable. Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 CPD ¶ 325. As discussed below, we conclude that the results reached were proper and reasonable.

Based on its cost evaluation, the FHWA made upward adjustments to JFA's proposed hourly rates for both JFA senior and junior analysts. As stated previously, the agency had questioned the protester during discussions concerning the reasonableness of JFA's proposed hourly rates for its analysts. The evaluators specifically noted that the protester's proposed rate for its senior analyst A staff was \$37.13 per hour; senior analyst B staff, \$20.47 per hour; and junior analyst staff, \$10.55 per hour. Yet, the average hourly rates for JFA's subcontractor senior analyst staff was \$56.72; and junior analyst staff was \$28.90. The evaluators reviewed JFA's response and concluded that the level of expertise offered by JFA at the junior analyst level was not sufficient to satisfactorily meet the solicitation requirements. The evaluators also concluded that more senior analysts would be needed since JFA, as

prime contractor, expected to provide 46 percent of the total contract staff effort and also provide overall management services. The evaluators adjusted the hourly rate for senior analyst B staff from \$20.47 to \$37.13, the proposed hourly rate for senior analyst A staff, the more experienced analyst category. The junior analyst rate was adjusted from \$10.55 to \$20.47 per hour, the proposed hourly rate for senior analyst B staff. The protester disagrees with these adjustments, and maintains that they do not reflect the current and projected JFA salaries and do not reflect a reasonable distribution of the assignments under this contract. We see nothing inappropriate with these adjustments. The agency has reasonably concluded that for successful performance of the requirement JFA needed to primarily use its more experienced staff. The agency's adjustment to JFA's direct labor costs to ensure that those costs can support a more experienced and realistic anticipated staff mix consistent with the approach identified in JFA's technical proposal therefore was reasonable, notwithstanding JFA's views to the contrary.

In sum, we find from the record that the agency reasonably downgraded the protester's proposal in the areas discussed above; we also find that the agency's decision to award contracts to Battelle and DRI based on their higher-rated technical proposals was reasonable and consistent with the evaluation scheme which emphasized technical merit.² See BDM Mgmt. Servs. Co., B-228287, Feb. 1, 1988, 88-1 CPD ¶ 93.

Finally, JFA alleges that the agency engaged in improper post-BAFO communications with Battelle. We disagree. Discussions occur when an offeror is given an opportunity to revise or modify its proposal, or when information requested from and provided by an offeror is essential for determining the acceptability of its proposal. FAR § 15.601; Oak Street Distribution Ctr., Inc., B-243197, July 2, 1991, 91-2 CPD ¶ 14. Discussions are to be distinguished from clarifications, which are merely

²The protester also challenges the agency's evaluation of its proposal in the area of past performance. JFA states that the negative recommendations given by some of its references were inaccurate and/or incomplete. We do not find, however, that JFA was prejudiced by these negative recommendations since JFA's proposal was lower-rated technically than the awardees' and, under the evaluation scheme, past performance was not point-scored. We see no reasonable possibility that the protester's proposal could have been determined to be most advantageous to the government and selected for award even if JFA had received excellent past performance recommendations since the RFP emphasized technical merit.

inquiries for the purpose of eliminating minor uncertainties or irregularities in a proposal. Microlog Corp., B-237486, Feb. 26, 1990, 90-1 CPD ¶ 227. Clarifications, which are inquiries to eliminate minor uncertainties or irregularities and do not give an offeror an opportunity to revise or modify its proposal, may be requested from just one offeror. FAR § 15.601; RCA Serv. Co., B-219643, Nov. 18, 1985, 85-2 CPD ¶ 563.

Here, the record shows that when the contract document was sent to Battelle for signature, Battelle discovered a computation error in the contract and contacted the agency concerning this matter. Specifically, Battelle discovered that the agency had not properly allocated its other direct costs between travel costs and fees over the base period and option years. From this record, we conclude that the communications between the agency and Battelle did not constitute discussions. Battelle was not provided an opportunity to revise its proposal or submit information necessary to determine the acceptability of its proposal. As such, no post-BAFO communications took place. The communication between the agency and Battelle can best be described as clarification of an error made by the agency in preparing the contract documents. Correction of this error did not constitute discussions since it was the proposed contract documents, not Battelle's proposal, which had to be corrected.

The protest is denied.

Robert P. Murphy
Acting General Counsel