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Comptroller General
of the United States

Washington, D.C. 20548

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Decision

Matter of: The Warner/Osborn/G&T Joint Venture

File: B-256641.2

Date: August 23, 1994

J. Andrew Jackson, Esq., Dickstein, Shapiro & Morin, for the protester.
James S. Hostetler, Esq., Kirkland & Ellis, for Robert P. Madison International, Inc., an interested party.
Walker L. Evey, National Aeronautics and Space Administration, 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

1. Under a level-of-effort solicitation which sets minimum and maximum labor hours and annual escalation rate, agency's cost realism analysis of proposals and determination of most probable cost which focuses on realism of labor rates is reasonable, where it includes: identification of cost issues by the agency; comparison of proposed labor rates with published surveys of prevailing labor rates; review of audits by Defense Contract Audit Agency; adjustments made by offerors in response to discussions; and adjustments by agency on basis of past labor rates.

2. Agency evaluation of relative strengths and weaknesses of proposals, coupled with review of offerors' understanding of requirements throughout technical evaluation, is sufficient to meet any agency obligation to assess performance risk associated with proposals.

3. Where cost and mission suitability factors are equal, record supports selection official's trade-off determination that technical superiority of protester's proposal does not justify its higher cost.

DECISION

The Warner/Osborn/G&T Joint Venture protests the proposed award of a contract to Robert P. Madison International, Inc. under request for proposals (RFP) No. 3-450280 a total small business set-aside, issued by the National Aeronautics and Space Administration (NASA) for engineering, construction, and environmental services at two NASA facilities in Ohio. Warner/Osborn alleges that NASA's award determination is flawed for a number of reasons including NASA's failure to follow either its own regulations or the RFP's evaluation criteria with regard to conducting a cost realism evaluation, and NASA's inadequate justification for its determination that Madison's proposal represented the best value to the government.

We deny the protest.

The RFP sought proposals for engineering, construction, and environmental services for rehabilitation, modification, and construction of research and institutional facilities and systems. The RFP contemplated award of a level-of-effort, cost-plus-award-fee contract for a base period of 2 years with three 1-year options. Award was to be made to the responsible offeror whose conforming proposal would be most advantageous to the government, cost and other factors considered.

The RFP called for offerors to submit their proposals in three parts: a business management proposal with cost and pricing data; a business management proposal with information other than cost or pricing data (e.g., past performance and experience, financial statements, plan to achieve culturally diverse work force, and award fee plan);[1] and a technical proposal demonstrating the offeror's thorough understanding of the requirements of the statement of work (SOW) and three sample problems including a logical plan for providing the required services. The RFP provided offerors with the government's assumption of the 5-year levels of effort: maximum, 69 personnel, 717,600 hours and minimum, 26 personnel, 270,400 hours. The RFP also provided for the addition of optional increments of 14,000 hours to increase the level of effort. With the addition of all increments, the maximum level of effort would be 1,067,600 hours.

Section M of the RFP identified four evaluation factors: (1) mission suitability, (2) cost, (3) relevant experience and past performance, and (4) other considerations. Mission suitability and cost were described as the most important of the evaluation factors, and were weighted approximately equal in importance. The last two evaluation factors--relevant experience/past performance, and other

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[1]The RFP provided that the amount of the award fee should be "sufficient to motivate the offeror towards the attainment of superior performance with respect to quality of technical performance, management of cost and timeliness of deliverables."

considerations--were described as having "somewhat less importance" and "considerably less importance," respectively, than the first two factors and were to be evaluated adjectivally. Cost was not scored or rated, while mission suitability was weighted and scored, as follows: (1) Understanding the Requirements and Approach to Sample Problems[2] (450 points); (2) Management Plan (250 points); (3) Key Personnel and Key Positions (150 points); and (4) Corporate Resources (150 points), for a total of 1,000 points.

Eight firms, including Warner/Osborn and Madison, submitted proposals by the August 31, 1993, closing date. The proposals were evaluated by a source evaluation board (SEB) which identified the strengths and weaknesses in each proposal. Based upon the initial evaluation, the contracting officer and chairman of the SEB established a competitive range of five proposals including those of Warner/Osborn and Madison. NASA then conducted written and oral discussions with each offeror and the SEB evaluated the revised proposals. NASA issued model contracts to the competitive range offerors and solicited best and final offers (BAFOs) from them.

As part of its cost evaluation, NASA obtained audits from the Defense Contract Audit Agency (DCAA) for each cost proposal submitted. DCAA's audits included a review of proposed wage rates, overhead, general and administrative (G&A) costs, and other direct costs. DCAA and NASA cost evaluators identified various deficiencies and issues in each cost proposal and requested revisions during discussions. In the evaluation of BAFOs, NASA found that all proposals in the competitive range required adjustment to account for incumbent employee labor rates.[3] As a result, Warner/Osborn's proposal was adjusted upward by $.8 million and Madison's was adjusted upward by $2.6 million. As finally adjusted for cost realism, Warner/Osborn's BAFO ranged from $45.1 million for the contract without increments to $61.3 million with increments. Madison's BAFO, as adjusted, ranged from $40.4 million to $54.8 million. The government estimate for the maximum level of effort was $60 million.

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[2]The first subfactor was scored in two separate elements: overall comprehension (150 points) and approach to problems (300 points). While the other subfactors were evaluated on the basis of various elements, these were not separately scored.

[3]The RFP required offerors to include 25 incumbent employees in their proposals.

In the final evaluation, Warner/Osborn's proposal received a mission suitability score of 918 points and Madison's proposal received a score of 724 points. With regard to relevant experience/past performance, Warner/Osborn was rated "very good+" and Madison was rated "excellent." For the other considerations factor, the offerors' proposals were rated as follows:

Offeror	Financial Condition	Exception to SOW	Cultural Diversity	Stability Labor/Mgmt Relations	Award Fee
Warner/ Osborn	very good	good	very good	excellent	excellent
Madison	good	good	very good	good	fair

The SEB's written report and presentation to the source selection official (SSO) included the evaluation scores, ratings, strengths, weaknesses, and adjusted costs of all the competitive range offerors, but did not recommend any proposal as most advantageous to NASA. Concluding that all competitive range offerors could successfully perform the contract work load, the SSO considered whether selection of a higher-scored proposal would justify the payment of a substantial price premium. He concluded that it did not and selected engineering design group (EDG), a lower-cost proposal, for award. EDG was subsequently determined to be ineligible for award, whereupon, the SEB made another presentation to the SSO, again without recommending an awardee, and the SSO again concluded that all offerors could successfully perform the contract and that the technical superiority of Warner/Osborn and another offeror were insufficient to justify the payment of the concomitant cost premiums. The cost difference between Warner/Osborn and Madison ranged from $4.7 million to $6.5 million or approximately 10 percent. Upon receiving notice of the award, Warner/Osborn filed this protest.

THE COST ANALYSIS

Warner/Osborn contends that NASA's cost realism analysis was either nonexistent or flawed because it did not include sufficient in-depth analysis or review of proposed costs. Specifically, the protester complains that NASA relied "blindly" on the DCAA audits and failed to adjust Madison's costs upward to account for the "inferior" approach. We have reviewed NASA's cost analysis and find it unobjectionable.

When a cost-reimbursement contract is to be awarded, a cost realism analysis must first be performed by the agency. See Federal Acquisition Regulation (FAR) §§ 15.801, 15.805. The purpose of a cost realism analysis by an agency under a level-of-effort, cost-type contract is to determine the extent to which the offeror's proposed labor rates are realistic and reasonable. ERC Envtl. and Energy Servs. Co., Inc., B-241549, Feb. 12, 1991, 91-1 CPD ¶ 155. In this regard, an agency is not required to conduct an in-depth cost analysis or to verify each and every item in conducting its cost realism analysis. Rather, the evaluation of competing cost proposals requires the exercise of informed judgment by the contracting agency involved, since it is in the best position to assess "realism" of cost and technical approaches and must bear the difficulties or additional expenses resulting from a defective cost analysis. Since the cost realism analysis is a judgment function on the part of the contracting agency, our review is limited to a determination of whether an agency's cost evaluation was reasonably based and not arbitrary. General Research Corp., 70 Comp. Gen. 279 (1991), 91-1 CPD ¶ 183; Science Applications Int'l Corp., B-238136.2, June 1, 1990, 90-1 CPD ¶ 517.

Warner/Osborn contends that the agency improperly relied on a DCAA audit as a substitute for a cost realism analysis because the contracting officer alone is responsible for the cost realism determination. See Purvis Sys. Inc., 71 Comp. Gen. 203 (1992), 92-1 CPD ¶ 132. In fact, the record establishes that NASA did not rely "blindly" on the results of the audits; rather, NASA conducted a detailed cost analysis of Madison's proposal.

In accordance with the RFP, Madison's cost proposal included summaries of minimum and maximum costs as well as cost and pricing data for all proposed direct and indirect cost elements including the award fee. The SEB cost committee used this information in its initial evaluation to identify cost issues and concerns which formed the basis for cost questions for Madison during discussions. The SEB questioned various aspects of Madison's costs including the accuracy of estimates and inclusions under other direct costs, and sought clarifications of certain markup items. NASA also had DCAA perform audits on the cost proposals of Madison and its subcontractors, identifying concerns and making recommendations for cost adjustments. DCAA questioned certain aspects of Madison's direct and incremental costs. In response, Madison provided detailed clarifications of all questioned costs and made significant downward adjustments to its cost proposal including the areas of labor and material overhead and G&A rates. With each round of discussions and revised proposals, Madison furnished an updated cost summary along with reconciliation data for all cost adjustments.

At the time BAFOs were submitted, the SEB again reviewed Madison's cost proposals. Based on a comparison of proposed direct labor rates with published surveys of corresponding average prevailing labor rates for the geographical area in question, the SEB concluded that Madison's proposed labor rates were reasonable. Based on questions by the technical evaluator, the SEB also adjusted Madison's proposed labor rates for the incumbent employees and, as appropriate, adjusted related costs such as fee based on the labor rate adjustment. The SEB noted that Madison and its subcontractors accepted all of the DCAA recommendations and had proposed labor, G&A, and material overhead and burden rate ceilings, all of which were incorporated as special provisions in Madison's model contract.

It is plain from the foregoing that DCAA's audit information simply formed a part of NASA's cost analysis and that it was NASA's analysis, not DCAA's, that resulted in NASA's conclusions regarding cost realism. The role that DCAA's advice played here was entirely proper. See Delta Research Assocs., Inc., B-254006.2, Nov. 22, 1993, 94-1 CPD ¶ 47.[4]

We also find that NASA's cost analysis constituted a reasonable and complete evaluation of Madison's cost proposal, and resulted in a realistic estimate of its probable cost. This is a level-of-effort contract in which the RFP set the number of hours and annual escalation percentage, materials costs, and relocation estimates. Thus, the agency's primary inquiry was reasonably focused on the accuracy and reasonableness of labor rates. ERC Envtl. and Energy Servs. Co., Inc., supra. To this end, the agency ensured that Madison's labor rates were consistent with prevailing rates, had Madison make adjustments based on NASA and DCAA recommendations, and adjusted Madison's costs to account for the proper incumbent labor rates. Although the protester argues that NASA should have adjusted Madison's costs upward to account for Madison's "inferior" proposal, the protester fails to identify any "inferior" approach which would warrant an adjustment, or to specify any costs which should be adjusted. Under the circumstances, we have no basis to conclude that there was any aspect of Madison's technical proposal which required NASA to adjust Madison's costs upward.

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[4]Warner/Osborn also notes that DCAA qualified its audit of Madison based on its lack of technical information regarding proposed employees and labor rates. However, DCAA also concluded that Madison's proposal was acceptable as a basis for negotiating a fair and reasonable price. In the absence of any evidence that Madison's labor rates are inaccurate, the DCAA qualification does not adversely impact the agency's cost realism analysis.

In a related argument, Warner/Osborn contends that the agency failed to follow certain provisions of the NASA Source Evaluation Board Handbook, NASA Federal Acquisition Regulation Supplement, 48 C.F.R. § 1870.303, Appendix I (hereinafter, Handbook). For example, because costs "may be significant" in indicating an offeror's understanding of the human and material resources required for contract performance, technical personnel "may be given access" to the cost proposals. Handbook, § 301 1.a.(1). In addition, evaluators are to consider proposal risk and discuss it in the SEB report. Handbook, § 301 1.f.(1), (4). When the SEB report is prepared and presented to the SSO, it should discuss the effects of proposed cost on the management and technical effort and the final cost evaluation chart should include the evaluators' confidence in the costs reflected there. Handbook, App. C, II, § C.3.b.(2)(e). Since these items are not specifically recorded in the SEB report, the protester argues that the cost evaluation was flawed. We disagree.

First, the technical evaluators did review the cost proposals. From their review, they raised concerns about proposed total compensation plans, identified a labor rate concern with all proposals in the competitive range, and questioned the direct costs of some offerors. Second, with regard to risk, the agency explains that based on Madison's "very good" mission suitability rating and score, as well as its high rating on the remaining factors, there never was any question about its technical competence to perform. While there is no specific reference to risk in the SEB report, the evaluators identified the various strengths and weaknesses of the offerors' proposals, including Madison's proposal. In view of the agency's assessment that Madison's lower-scored proposal provided no indication of technical inability and the agency's satisfaction with its probable cost, the record makes it clear that the evaluators did not perceive any significant risk associated with Madison's proposal.

Third, with regard to discussion of these matters in the report to the SSO, since there was no apparent negative technical impact on cost, we fail to see how the evaluators' decision not to advise the SSO of the absence of technical risk and the lack of any cost impact had any meaningful consequence here since the absence of that information obviously had no effect on the award decision or otherwise prejudiced Warner/Osborn. In the absence of prejudice, we will not disturb a contract award. American Mutual Protective Bureau, Inc., B-229967, Jan. 22, 1988, 88-1 CPD ¶ 65.

THE COST/TECHNICAL TRADE-OFF

Warner/Osborn next contends that NASA's award decision is flawed because NASA ignored the technical superiority of the Warner/Osborn proposal and effectively made the award on the basis of low cost and technical acceptability. To the extent NASA made a cost/technical trade-off, Warner/Osborn argues that the agency failed to properly document its award decision. In a negotiated procurement, agency selection officials have broad discretion in determining the manner and extent to which they will make use of the technical and cost evaluation results. Cost/technical trade-offs may be made; the extent to which one may be sacrificed for the other is governed by the test of rationality and consistency with the established evaluation factors. General Servs. Eng'g, Inc., B-245458, Jan. 9, 1992, 92-1 CPD ¶ 44. An agency may award to an offeror with a lower-cost, lower-scored proposal if it determines that the cost premium involved in awarding to a higher-rated, higher-priced offeror is not justified. Dayton T. Brown, Inc., B-229664, Mar. 30, 1988, 88-1 CPD ¶ 321.

While the selection official's judgment must be documented in sufficient detail to show it is not arbitrary, KMS Fusion, Inc., B-242529, May 8, 1991, 91-1 CPD ¶ 447, an SSO's failure to specifically discuss the cost/technical trade-off in the selection decision document does not affect the validity of the decision if the record shows that the agency reasonably determined that a higher technically scored proposal is not worth the additional cost associated with that proposal. McShade Gov't Contracting Servs., B-232977, Feb. 6, 1989, 89-1 CPD ¶ 118.

The RFP provided that award would be made to the offeror whose proposal is most advantageous to the government considering cost and other factors, here, mission suitability, relevant experience/past performance, and other considerations (financial condition, SOW exceptions, etc.) The SSO determined that the technical advantage of Warner/Osborn's proposal did not justify its relatively higher cost. The agency states that prior to making this determination there was considerable discussion at the source selection presentation regarding the strengths and weaknesses of the offerors, the point differential in the mission suitability scores, the cost differential among the offerors, and whether it was to the government's advantage to select a higher-scored, higher-priced offeror. The record supports the SSO's trade-off decision.[5]

[5]While viewed in whole, the record supports the selection official's judgment, we believe the better practice here
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Although Warner/Osborn's proposal's mission suitability score was higher than Madison's, Madison's technical proposal was better than average. With regard to mission suitability, Warner/Osborn's proposal was viewed as containing 11 major strengths, 6 minor strengths, and no weaknesses, and was rated overall "excellent"; Madison's proposal was seen as having four major strengths, five minor strengths, two minor weaknesses, and was rated overall "very good."[6] While the protester's proposal score was higher than Madison's in most subfactors, Madison's proposal score was higher on the approach to sample problems subfactor which was the highest weighted subfactor (300 points). The protester emphasizes its higher mission suitability score; however, mission suitability and cost were approximately equal in value. Madison's proposal, with most probable costs of $4.7 to $6.5 million less than the protester's, represented a significant cost advantage over Warner/Osborn's. In the next most important factor, relevant experience, Madison's "excellent" rating was greater than Warner/Osborn's "very good+" rating. In the least important factor, other considerations, Warner/Osborn generally had better ratings.

The record shows that the SSO considered mission suitability and cost approximately equal in weight, took into consideration Madison's "excellent" relevant experience rating and acceptable ratings for other considerations, and carefully weighed whether selection of a higher-scored proposal would result in sufficient added value to the government to justify the payment of a substantial price premium. In our view, since neither proposal represented a clear advantage over the other under the two most important evaluation factors, and Madison was rated higher in the next

[5](...continued)
would have been to document the "considerable discussion" of strengths, weaknesses, point and cost differentials, and ultimately, the specific rationale for the cost/technical trade-off. See KMS Fusion, Inc., supra.

[6]"Excellent" was defined as a "comprehensive and thorough proposal of exceptional merit with one or more major strengths." "Very good" was defined as a "proposal which demonstrates overall competence. One or more major strengths have been found, and strengths outbalance any weaknesses that exist."

most important factor, the record supports the SSO's trade-off determination. See McShade Gov't Contracting Servs., supra; KMS Fusion, supra.

The protest is denied.

/s/ Ronald Berger
for Robert P. Murphy
Acting General Counsel