



Decision

Matter of: SSI Services, Incorporated

File: B-254269.2; B-254269.3

Date: September 2, 1994

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Department of the Army, for the agency.

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the General Counsel, GAO, participated in the preparation of
the decision.

DIGEST

1. Agency fulfilled its responsibility to conduct meaningful discussions concerning cost issues by advising protester that its proposal had not followed collective bargaining agreement or Department of Labor rates for all job classifications.

2. Protester asserting that award should be made on the basis of the low-cost, technically acceptable proposal is not an interested party to challenge the award to an offeror who submitted a technically superior, higher-cost proposal where another offeror with a technically acceptable proposal, and a lower cost than the protester, would be in line for award under the protester's rationale.

DECISION

SSI Services, Incorporated protests the award of a contract to Johnson Controls World Services Inc. under request for proposals (RFP) No. DABT02-92-R-0009, issued by the Department of the Army for operation and maintenance of housing services at Fort McClellan, Alabama. SSI argues that it was denied meaningful discussions and challenges both the cost evaluation and the award decision.

We deny the protest.

The RFP contemplated the award of a cost-plus-award-fee contract to provide all services, materials, labor, and equipment to operate, maintain, repair, and construct real property facilities and provide specified related services. The contract term encompassed a 15-month phase-in and base period with 5 option years. Offerors were required to submit technical, management, and cost proposals. The RFP stated that award could be made to other than the lowest-cost offeror and would be made to the offeror whose technically acceptable proposal was most advantageous (best overall) to the government, cost and other specified factors considered. The RFP also advised that award would be made to the technically acceptable offeror with "the most realistic, most probable cost estimate."

Proposals were to be evaluated in the areas of technical acceptability, cost, and management strength, with technical acceptability and cost of approximately equal importance and more important than managerial strength. The RFP provided that cost proposals would be subject to a cost realism evaluation in order for the government to determine each offeror's understanding of the requirement and its ability to organize and perform the contract. The most probable cost (MPC) for each proposal would be established and used in determining the best overall proposal. The cost factor was made up of seven subfactors, listed in descending order of relevance: cost realism, cost variance, cost control experience, fee structure, cost allocation, balance of proposed cost, and offeror's total estimated contract cost.

Nine offerors, including SSI and Johnson, submitted proposals by the July 30, 1993, closing date. After initial review of the proposals, a competitive range of four proposals was established. The agency then conducted oral and written discussions with offerors whose proposals were found to be in the competitive range. At the conclusion of discussions, each offeror submitted a best and final offer (BAFO). In evaluating the BAFOs, the agency calculated each offeror's MPC by adjusting the proposed costs to correct any existing cost deficiencies. The final evaluation resulted in the following scores and MPCs:

<u>Offeror</u>	<u>Johnson</u>	<u>A</u>	<u>SSI</u>	<u>B</u>
Technical	549	401	375	360
Cost	192	142	178	138
Managerial	<u>327</u>	<u>308</u>	<u>282</u>	<u>295</u>
	1068	851	835	793
MPC	\$29.3M	\$28.4M	\$28.9M	\$32.1M

All proposals were evaluated as technically acceptable and the evaluators recommended award to Johnson based on its technically superior proposal that showed a much better understanding of the requirements of the RFP. The evaluators also found that Johnson's management approach reflected the most appropriate staffing levels, labor mix, and staffing rationale. Johnson's proposed costs also were the most realistic, having the least variance between BAFO cost and MPC (0.39 percent). SSI's MPC was lower than Johnson's by approximately \$338,000, but its proposal received the lowest technical-management score, was ranked third in cost realism, and had the largest cost variance (3.97 percent). The source selection authority agreed with the evaluators' recommendation and found that Johnson offered the best overall proposal. The Army awarded the contract to Johnson on April 26, 1994. After receiving a debriefing, SSI filed this protest arguing that meaningful discussions were not conducted and challenging the cost evaluation and the award decision.

SSI first contends that the agency failed to conduct meaningful discussions with it regarding SSI's use of incorrect wage rates for various personnel categories. While SSI does not generally challenge the adjustments to its cost proposal, it maintains that it was prejudiced by the agency's making the adjustments without discussing the matter with SSI and allowing it to make the necessary changes, since as a result of the agency's approach, SSI's proposal received a reduced score under the cost variance subfactor.

¹The ranking for the cost variance subfactor was based on the difference between the MPC and BAFO costs of each proposal. The proposal with the least variance received the highest ranking.

²SSI does challenge as improper a \$40,000 upward adjustment to resolve cost deficiencies in its subcontract proposal. SSI also argues that even if an adjustment were proper, the agency improperly failed to discuss the issue. The Army advised SSI in discussions that its subcontract narrative was not complete. When SSI corrected the narrative in its BAFO, the Army discovered various discrepancies between the worksheets and narrative amounting to approximately \$40,000. Where, as here, an offeror's proposal revisions result in deficiencies, the agency is not obligated to reopen negotiations to allow their correction. Cajar Defense Support Co., B-239297, July 24, 1990, 90-2 CPD ¶ 76. In any event, the adjustment in question was less than .15 percent of SSI's BAFO. As such, it had an insignificant effect on the protester's evaluation standing--if the adjustment were (continued...)

Generally, the requirement for discussions with offerors is satisfied by advising them of weaknesses, excesses, or deficiencies in their proposals and by affording them the opportunity to satisfy the government's requirements through the submission of revised proposals. Federal Acquisition Regulation § 15.610(c)(2) and (5); Miller Bldg. Corp., B-245488, Jan. 3, 1992, 92-1 CPD ¶ 21. The degree of specificity required in conducting discussions is not constant and is primarily a matter for the procuring agency to determine. JCI Envtl. Servs., B-250752.3, Apr. 7, 1993, 93-1 CPD ¶ 299. Our Office will not question an agency's judgment in this area unless it lacks a reasonable basis.

Here, during discussions with SSI, the Army gave the protester 10 written deficiency reports and 47 items for negotiation (IFN) regarding its proposal and discussed each. Three IFNs concerning labor, subcontracts, and other direct costs pointed out that SSI had not followed "the collective bargaining agreement or the Department of Labor [DOL] rates for all job classifications." The Army explained that it had noted inconsistencies in the wage rates proposed and wanted to ensure that SSI's proposed rates were accurate. In response to SSI's request for specific examples, the Army advised that most of the areas were proposed job classes that did not appear on the DOL or bargaining agreement schedules.

In its BAFO, SSI made numerous corrections, but did not use the correct rate for an appliance repairer and two classes of painters. While SSI argues that the agency should have been more specific about the affected classifications, the record shows that SSI was made aware during discussions of the need to conform its rates to the appropriate schedules and simply failed to do so in all cases. In short, the record establishes that the discussions reasonably led the protester into the areas in its cost proposal which the

²(...continued)

reversed, SSI's proposal cost variance score would not be changed and its MPC would remain the second lowest of all offerors.

³SSI erroneously argues that the Army misled it by identifying "warehouseman," "overhead positions," and "salary positions," none of which encompasses the appliance repairer and painters which were the subject of the cost adjustment. While the transcript of oral discussions does reflect these examples, they were provided for the IFNs concerning subcontract and other direct costs. The Army found that SSI's BAFO response in these areas was adequate and no adjustments were necessary.

agency viewed as weaknesses. Having failed to ensure that all its rates were correct, SSI bears the responsibility for an increased cost variance score attributable to the Army's cost adjustment for the affected job classifications.

SSI next challenges various aspects of the cost evaluation. None provides a basis for sustaining the protest. For example, SSI argues that the agency report is "silent" with regard to how the agency ranked each cost proposal in accordance with the seven subfactors and did not consider low cost as a factor. On the contrary, the agency report explains the basis for evaluation under each subfactor, the individual weights attributable to each subfactor, how proposals were ranked under each, and the numerical scores for each proposal. While there was no subfactor entitled "low cost" and the agency report erroneously suggests that low cost was not a factor, the evaluation record is clear that proposed low cost was evaluated under the subfactor "total estimated cost." SSI, with the second-lowest estimated cost, received the second-highest score for this subfactor.

SSI also argues that the cost evaluation was "tainted" with technical considerations as evidenced by the evaluators' identification of higher costs attributable to Johnson's use of extra equipment not required by the RFP. In SSI's view, it was inappropriate to consider technical issues in the cost evaluation. We find nothing objectionable about this approach; the cost impact of an offeror's technical proposal is an appropriate aspect of the cost evaluation. It is plain from the provisions of section M of the RFP that proposed costs are directly related to an offeror's understanding of the requirement and that the evaluation would be conducted with that relationship in mind. Here, the cost evaluators merely recognized that one reason for Johnson's higher costs was its proposal of additional equipment and, finding a potential for higher quality performance, did not delete the equipment's cost in calculating Johnson's MPC. Johnson did not receive a higher cost evaluation score as a result; its higher costs resulted in a lower score on the relevant subfactor. The cost evaluation establishes that whether or not these equipment costs are included, Johnson proposed the second-highest costs and received a lower cost-estimate score than did SSI. SSI also contends that it was prejudiced because it too

⁴In this regard, the record indicates that the amount of upward adjustment attributable to incorrect wage rates (\$1.80 per hour upward for one class and \$.90 per hour downward for two others) was far less than that attributable to SSI's understatement of staffing (costs of five additional full-time employees for 6-plus years).

could have proposed additional equipment. Nothing in the RFP precluded such an approach had SSI elected to run the risk of a lower cost score.

Finally, SSI contends that the RFP requires that award be made to the technically acceptable, low MPC offeror; thus, it was improper to award to Johnson based on its technically superior, higher-cost proposal. We need not consider this allegation since SSI would not be in line for award even if this argument had merit. If the award basis were as asserted by the protester, offeror A, not SSI, would be in line for award. Offeror A was evaluated as technically acceptable (and in fact technically superior to SSI), and proposed a lower BAFO cost, and was evaluated with a lower MPC, than SSI. Since SSI would not be in line for award even if this aspect of its protest were sustained, this argument is academic, and we will not consider it. See General Offshore Corp., B-251969.5; B-251969.6, Apr. 8, 1994, 94-1 CPD ¶ 248.

The protest is denied.

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