



Comptroller General
of the United States

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Washington, D.C. 20548

Decision

Matter of: EG&G Washington Analytical Services Center, Inc.

File: B-257816

Date: November 14, 1994

Kathleen C. Little, Esq., Nancy L. Boughton, Esq., and Alice M. Crook, Esq., Howrey & Simon, for the protester. Paul Shnitzer, Esq., Crowell & Moring, and Dawn Elliott Oakley, Esq., Stuart Young, Esq., and Cheralyn S. Cameron, Esq., for DynCorp, Dyn Marine Services Division, an interested party.

Richard S. Haynes, Esq., Alan W. Mendelsohn, Esq., and John J. Blanchard, Esq., Department of the Navy, for the agency.

Susan K. McAuliffe, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Evaluation of proposals and resulting award determination are unobjectionable where evaluation was reasonable and in accordance with the evaluation criteria stated in the solicitation.

2. Protest that offeror was misled by agency during discussions is denied where discussions were appropriate and offeror's determination to increase its proposed manning and price in its best and final offer was the result of its own business judgment.

DECISION

EG&G Washington Analytical Services Center, Inc. (WASC) protests the award of a contract to DynCorp, Dyn Marine Services Division, under request for proposals (RFP) No. N62387-94-R-4001, issued by the Department of the Navy, Military Sealift Command, for the operation and maintenance of six government-owned oceanographic research vessels. WASC contends that the agency improperly evaluated proposals and misled the protester during discussions to increase the firm's proposed manning and price in its best and final offer (BAFO).

We deny the protest.

The RFP, issued on October 22, 1993, contemplated the award of a firm, fixed-price contract (with one reimbursable item for certain supplies and services) to the offeror submitting the proposal representing "the combination of technical merit and price most advantageous to the Government." The RFP stated that:

"[p]rice is an important factor and its importance as an evaluation factor will increase as the degree of equality of technical competence between proposals increases. If the two or more highest rated technical proposals are considered to be essentially equal in terms of technical competence, price may become the determinative factor in making an award."

Section L of the RFP instructed offerors that:

"[to] assure the Government there will be no interruption of contract services due to labor disruptions . . . [the offeror's contingency plan] may consist of or include any or all of the following: [c]ollective bargaining agreements containing provisions for resolution of labor disputes through binding arbitration coupled with no-strike, no-lockout provisions; [or] [e]mployment agreements"

Eight proposals were received by the January 28, 1994, closing date for receipt of initial proposals. All of the proposals were included in the competitive range and discussions were held with all eight offerors.

Among other things, WASC was informed during discussions of the agency's concerns about the firm's proposed price as it related to the firm's proposed labor and wage rates. The agency pointed out that the firm's proposed wage rates for its union labor were lower than the rates provided in the collective bargaining agreement (CBA) proposed by the union for the contract (the union's proposed CBA was submitted with WASC's proposal). The protester was told during discussions that the firm should explain the disparity in rates, confirm that the firm had sufficient financial resources to cover the difference in rates, and affirm that the protester accepted the risk and responsibility for any difference in the wage rates in the event subsequent negotiations with the union failed to result in the union's agreement to the rates proposed by the protester. The protester was also told of the agency's concern about the firm's proposing of a limited number of meal service personnel (stewards) since the agency's review of the

proposal found that the protester had incorrectly presumed that the ships had been converted to cafeteria-style dining (instead of the current table delivery of ordered food items). Consequently, during discussions, the agency told WASC, as well as DynCorp, that the RFP does not permit cafeteria-style dining aboard the ships. The agency states that although conversion to cafeteria-style dining is under consideration by the agency, the ships are not currently equipped for such service.

Revised proposals were received by April 15, and BAFOs were received by May 31. DynCorp's BAFO (which offered the lowest price) and WASC's BAFO (which offered the next lowest price, which was substantially higher than DynCorp's) were determined to be essentially equal in technical merit. Award was made to DynCorp on June 27. This protest followed.

WASC protests several aspects of the agency's evaluation of the proposals.¹ In reviewing a protest against the propriety of an agency's evaluation of proposals, it is not our function to independently evaluate proposals and substitute our judgment for that of the agency. See General Servs. Engr'g, Inc., B-245458, Jan. 9, 1992, 92-1 CPD ¶ 44. Rather, we will review an evaluation only to ensure that it was reasonable and consistent with the evaluation criteria in the RFP. Id. A protester's mere disagreement with the agency's judgment is not sufficient to establish that the agency acted unreasonably. United HealthServ Inc., B-232640; et al., Jan. 18, 1989, 89-1 CPD ¶ 43.

WASC contends that the agency failed to properly evaluate the risk presented by DynCorp's proposal of non-union labor and the sufficiency of the awardee's proposed labor supply, particularly in light of the fact that the proposal did not include signed employment agreements from these individuals. Similarly, the protester challenges the evaluation of the awardee's ability to provide a trained crew in accordance with the RFP's requirements. In this regard, WASC contends that the RFP's statement that as much as 120 to 160 days could be necessary to arrange for government-furnished training of crew members shows that DynCorp could not meet the RFP's requirement for the commencement of performance on at least one ship (with fully trained personnel) within 70 days of award.

¹WASC raised additional issues in its protest that were withdrawn by the protester in its comments responding to the agency's report on the protest and, therefore, have not been considered by our Office.

The record provides no basis to question the reasonableness of the agency's evaluation of the awardee's labor supply and training capabilities. The record shows that the agency reasonably based its favorable evaluation on the awardee's substantial marine experience; low crew-turnover rate; training capabilities; and large, diverse labor pool, in assessing the adequacy of the firm's labor supply and the firm's ability to provide and maintain a trained crew in a timely fashion. The firm's proposal contains adequate detail concerning the sufficiency of the firm's available labor pool, which includes a substantial number of DynCorp's currently employed, trained personnel, as well as a large number of mariners and applicants that have expressed interest in the firm's oceanographic vessel services; additionally, some of the incumbent's trained personnel would be included in the firm's labor pool. Although, as the protester points out, some evaluators were concerned about any risk in assuring an adequate labor supply due to the firm's use of non-union labor, the record reasonably supports the determination made by several of the other evaluators--as well as the evaluation team consensus--that the awardee's proposed labor pool adequately meets the contract's labor supply requirements.

The protester argues that since several evaluators questioned the fact that the awardee's proposal failed to include signed employment agreements, the proposal should have been rejected for failing to meet the RFP's requirements; however, the RFP simply did not require the submission of such signed employment agreements. Rather, the RFP provided that, due to the critical nature of the contract, the agency required sufficient assurance that there would be no interruption to the performance of the contract. The awardee's proposed employment agreement includes a Shipping Articles Agreement customarily applicable to these type of services and a specific statement to be signed by DynCorp's personnel attesting that such personnel will not engage in any action that will result in any interruption to the performance of the contract. Moreover, DynCorp confirmed that if a CBA is pursued, no such agreement will be made unless it contains the required no-strike provisions. The agency reasonably concluded that the terms of this agreement met the RFP's requirement for assurance against interruptions in service. Although the protester disagrees with the agency's evaluation and acceptance of DynCorp's proposed employment agreement with limited labor terms, the record shows that the awardee, in its BAFO and in a letter to the agency clarifying its proposal, submitted sufficiently detailed terms of employment for its personnel to reasonably satisfy the agency's concerns in this regard.

Further, the agency's determination of the technical merit of DynCorp's proposed training was reasonable. The awardee's proposal demonstrated substantial experience with and commitment to the required training, in-house government-approved training programs, and knowledge of the required government-provided training. The protester's principal argument in this regard is that the RFP advised that the provision of government-furnished training to the contractor's personnel could take up to 120 to 160 days after award, while the RFP requires the commencement of performance on at least one ship within 70 days of award. The argument provides insufficient basis to question the agency's evaluation of the awardee's training proposal--the 120-to-160-day period referred in the RFP is set out as a "worst-case" parameter and the training could be, as the RFP indicates, provided in a shorter period of time. DynCorp's proposal of various trained labor and incumbent personnel, as well as its assurances that the RFP's performance requirements will be met, support the reasonableness of the agency's conclusion that DynCorp's training proposal satisfied the RFP's requirements. We also note that, to the extent WASC contends DynCorp cannot meet the contract's training requirements if it does take up to 120 to 160 days to receive the government training, WASC does not show how it would in fact meet the same requirements, and thus fails to show how it is prejudiced in this regard. In sum, the challenged agency evaluation determinations are reasonably supported. Therefore, we deny this aspect of the protest.

WASC next protests the adequacy of discussions held with the firm. The protester contends that it was misled by the agency during discussions to substantially increase its proposed manning, resulting in a substantial increase to its BAFO price.

Agencies are required to conduct meaningful discussions with all offerors in the competitive range; the requirement is satisfied by advising them of weaknesses, uncertainties, excesses, or deficiencies in their proposals which require amplification or correction and by affording them the opportunity to submit revised proposals. Federal Acquisition Regulation §§ 15.610(c)(2) and (5); Crestmont Cleaning Serv. & Supply Co., Inc.; Scott & Sons Maintenance, Inc.; Son's Quality Food Co., B-254486; et al., Dec. 22, 1993, 93-2 CPD ¶ 336.

Although the protester challenges the propriety of the agency's actions during discussions, the record does not support the protester's contention that the agency unfairly misled or directed the firm to increase its price by increasing its manning. Instead, the record shows that the agency properly pointed out during discussions its concern about the disparity between the protester's proposed rates

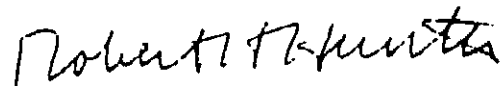
and those included in the labor union's proposed CBA attached to the proposal. The agency sought reasonable assurance that the protester's proposed prices were accurate and that the agency's liability was limited in the event the lower proposed rates were not agreed to by the union. WASC's BAFO gave the requested assurances and satisfied the agency's concern; the protester's price increase reflects a business judgment which was not due to any improper agency conduct in this regard during discussions.²

Further, the record does not support the protester's allegation that the agency misled or directed the firm to increase its manning in regard to the required meal services. The protester was told during discussions, as was the awardee, that, to the extent the firm's proposal of limited meal service personnel (stewards) was based on the firm's presumption of cafeteria-style dining, that presumption was incorrect. The agency informed the offerors that the ships had not yet been converted to cafeteria-style dining and that the current RFP did not allow for cafeteria-style dining. The agency did not mislead or direct the protester to increase its staff to meet the RFP's table service requirements, but rather sought assurances that the protester (and DynCorp) could meet the RFP requirements (i.e., without cafeteria-style dining), with the staff proposed. The agency's determination that DynCorp's meal service personnel proposal was acceptable under the RFP's requirements was based on DynCorp's explanation in its BAFO of its understanding that cafeteria-style dining was not permitted and its demonstrated ability to meet the table service requirements through an efficient use of its proposed staff. WASC's BAFO, however, acknowledged that it had initially mistakenly relied, in part, upon the provision of cafeteria-style dining, and the firm chose to increase its steward staff (and to increase its manning elsewhere in

²The protester also states that the agency's evaluation of its price proposal was improper because the agency used the rates contained in the CBA attached to the proposal as a "baseline" for evaluation purposes. However, to the extent WASC contends the agency incorrectly calculated the firm's proposed price on this basis, it fails to show any specific instance in which the agency used the CBA rates instead of its proposed prices in determining the firm's evaluated price. In any event, the record shows that, among the essentially equal technical proposals, WASC's actually proposed prices were higher than DynCorp's price. Under these circumstances, the agency's award determination would have been unaffected even if WASC's allegation in this regard were correct.

its BAFO), and to substantially increase its price as a result. Under these circumstances, WASC's BAFO manning and price increases were due to the firm's exercise of its own business judgment and not the result of improper agency discussions.

The protest is denied.



Robert P. Murphy
Acting General Counsel