



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: ENCORP International, Inc.

File: B-258829

Date: February 21, 1995

Walter J. Sears III, Esq., John J. Park, Jr., Esq., and Rodney L. Moss, Esq., Bradley, Arant, Rose & White, for the protester.

Mary S. Byers, Esq. and Nancy J. Williams, Esq., Department of the Army, for the agency.

Henry J. Gorczycki, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency did not have a reasonable basis to reject a very low-priced, technically acceptable offer, based on an assumed lack of offeror understanding, under an solicitation that did not have an evaluation factor that encompassed offeror understanding, where the record does not support the agency's determination regarding the offeror's understanding and the offeror is otherwise responsible.

DECISION

ENCORP International, Inc. protests the award of a contract to Controlled Demolition, Inc. under request for proposals (RFP) No. DACA78-94-R-0034, issued by the U.S. Army Corps of Engineers, Transatlantic Division, for the demolition and removal of a Large-Phased Array Radar (LPAR) facility in Skrunda, Latvia.

We sustain the protest.

The Corps issued the RFP on August 16, 1994, contemplating the award of a fixed-price contract. The RFP stated that award would be made on a best value basis and listed four evaluation factors: (1) price; (2) experience; (3) past performance; and (4) management and execution plan. The last factor, management and execution plan, was to be evaluated on a pass/fail basis for compliance with the RFP requirements. The RFP stated that this last factor, although significant, was less important than the other three factors. The RFP explicitly refrained from stating the relative weights of the other three factors:

"When making tradeoff decisions during proposal preparation, offerors should remember that the [g]overnment prefers to obtain better offeror experience, past performance, and better project savings. However, the relative influence that any of these factors will have on the source selection decision will ultimately depend on the marginal differences among the competing offerors, which will not be known until the proposals have been analyzed and compared to one another. Therefore, the [g]overnment has not assigned weights to these factors."¹

The RFP also defined each evaluation factor. With regard to the price factor, the RFP stated that:

"The [g]overnment will evaluate each offeror's proposed price to determine reasonableness. Competing offerors who propose reasonable prices will be compared to one another on the basis of their prices to establish the relative competitiveness of those prices."

The Corps received nine proposals. The technical evaluation team (TET) evaluated these proposals for compliance with the minimum requirements of the RFP and rejected three proposals as technically unacceptable. For the six remaining technically acceptable proposals, the TET assigned point scores for experience and past performance. Four proposals, including those of Controlled Demolition and ENCORP, received evaluation scores in the "exceptional" range; of these, Controlled Demolition was ranked first and ENCORP was ranked fourth.

ENCORP submitted the lowest price of \$3,493,987 and Controlled Demolition submitted the next lowest price of \$5,844,715. The government estimate for this project was \$6,449,685. The cost/price evaluation team (C/PET) considered ENCORP's price to be extremely low and analyzed the proposed price for each contract line item number

¹This scheme does not comply with the Competition in Contracting Act of 1984, which requires that the contracting agency set forth in the solicitation; at a minimum, all evaluation factors and significant subfactors and their relative importance. 10 U.S.C. § 2305(a)(2)(A) (Supp. V 1993); H.J. Group Ventures, Inc., B-246139, Feb. 19, 1992, 92-1 CPD ¶ 203.

(CLIN). Six out of 10² of ENCORP's CLIN prices were less than 40 percent of the government estimated price for these CLINs. The C/PET specifically found that:

"Based on the lack of availability of equipment in Latvia and the amount of equipment required for this project and the numbers of workers necessary, the proposed cost for [CLIN] 1, Mobilization and Demobilization, seems extremely low. [CLINs] 3 and 5, Removal of Debris, requires the loading of all the materials from the demolished Receiver and Transmitter building[s] onto trucks and hauling approximately 15 [kilometers] to the disposal site. Based on the computed volume of this material and therefore the number of trucks and trips required; the proposed direct costs for these two items are extraordinarily low. Also, the proposed direct costs for [CLINs] 9 and 10 appear to be unreasonably low. In general, the total proposed manhours and the direct cost of construction equipment seem very, very low."

The Corps determined a competitive range consisting of the four lowest-priced offers.³ The prices for all of these offers were lower than the government estimate, such that the agency determined that more work could be performed under the funds available than originally anticipated; therefore, the agency amended the solicitation to include nine additional CLINs as options.

By letter of September 23, the agency requested best and final offers (BAFO) from the four competitive range offerors. The letter to ENCORP also stated the agency's concern that ENCORP's price seemed unreasonably low, identified the six CLINs of concern by number, and stated the reasons (quoted above) given by the C/PET relating to this concern. This letter stated that prices could be changed; it did not request ENCORP to explain its prices or indicate that, in the C/PET's view, the prices created concerns about ENCORP's understanding of the project.

All four offerors submitted BAFOs by the due date of September 27. The relative technical ratings of the proposals were unchanged. ENCORP proposed the low price of \$4,508,455 and Controlled Demolition was second with a price

²The RFP initially contained 10 CLINs: CLINs 1 through 3 were for basic services and CLINs 4 through 10 were for optional services.

³The other two acceptable proposals were eliminated because of their relatively high prices.

of \$6,172,311. The revised government estimate was \$7,364,024. The C/PET analyzed the BAFO prices and stated that:

"A cursory review of the [BAFOs] and a comparison to the [g]overnment [e]stimate indicates that [Controlled Demolition and two other offerors] actually reduced their costs for [CLINs] 1 thru 10; and have added minimal costs for the new items added by [amendment]. [ENCORP] increased costs very minimally for [CLINs] 1 thru 10; but, has not corrected the unrealistically low costs proposed for several items to which [ENCORP's] attention was directed when BAFOs were requested. These items specifically are [CLINs] 3, 5, 9, and 10. Because of this and as compared to the [g]overnment [e]stimate and the other proposed costs, it is reasonable to conclude that this offeror does not understand the scope of work for these items."

The source selection authority (SSA) considered the price analysis performed by the C/PET and noted that ENCORP did not provide an explanation of its pricing in response to the BAFO letter notifying ENCORP that its prices for certain CLINs were low. The SSA stated that:⁴

"Absent any justification or explanation by ENCORP as to its unreasonably low price, award to ENCORP could not be justified as the best overall value to the [g]overnment. ENCORP was therefore eliminated from further consideration."

"The next low offer was from [Controlled Demolition], an expert demolition firm whose technical proposal was clearly superior to all other offers received, and whose price, well below the revised [government estimate], was clearly reasonable."

⁴The agency's record does not contain a written source selection decision. In response to this protest, the contracting officer, who was the SSA for this procurement, submitted a statement documenting the SSA's decision.

On September 30, the Corps awarded the contract to Controlled Demolition. This protest followed.⁵

ENCORP alleges that the Corps's price evaluation and source selection decision were unreasonable and inconsistent with the evaluation plan stated in the RFP. Specifically, ENCORP asserts that it was improper for the agency to eliminate ENCORP's proposal from consideration on the basis of its low price.

Offeror understanding is always a matter that can be considered in making an award selection. Generally, RFPs include evaluation factors that either expressly or implicitly encompass offeror understanding. See PHP Healthcare Corp., B-251933, May 13, 1993, 93-1 CPD ¶ 381; Family Realty, B-247772, July 6, 1992, 92-2 CPD ¶ 6. In those infrequent cases where the RFP evaluation factors do not encompass offeror understanding, the agency may still take it into account in assessing the offeror's responsibility, since offeror understanding is a traditional element of responsibility. See, e.g., Hewes Eng'g Co., Inc., 52 Comp. Gen. 854 (1973); Design Concepts, Inc., B-184754, Dec. 24, 1975, 75-2 CPD ¶ 410. In other words, an agency is not required to make award to an offeror who does not understand the nature or scope of the project as that offeror may well not meet performance requirements and therefore cannot be said to be responsible. See generally Flight Int'l Group, Inc., 69 Comp. Gen. 741 (1990) 90-2 CPD ¶ 257; Chesapeake Laser Sys., Inc., B-242350, Apr. 8, 1991, 91-1 CPD ¶ 358.

Here, there were no technical evaluation factors that either expressly or implicitly involved offeror understanding.⁶ The management and execution plan factor was evaluated on a pass/fail basis and ENCORP's proposal was found technically

⁵The Corps determined that urgent and compelling circumstances existed and authorized performance of the contract. 31 U.S.C. § 3553(d)(2)(ii) (1988).

⁶The RFP statement that price reasonableness was an evaluation factor does not identify offeror understanding as a technical evaluation factor, but indicates only that unreasonably high-priced offers may be rejected. See Envirosol, Inc., B-254223, Dec. 2, 1993, 93-2 CPD ¶ 295. On the other hand, concern with an unreasonably low price generally concerns the offeror's responsibility, i.e., the offeror's ability and capacity to successfully perform at the offered price. Ball Tech. Prods. Group, B-224394, Oct. 17, 1986, 86-2 CPD ¶ 465; Everhart Appraisal Serv., Inc., B-213369, May 1, 1984, 84-1 CPD ¶ 485.

acceptable under this factor with no reservations. The only other technical evaluation criteria were experience and past performance, which could not be said to encompass offeror understanding, see EnviroSol, Inc., supra, and where ENCORP's proposal was rated in the "exceptional" range. Thus, while the agency could consider Encorp's understanding in making its award selection, it was required in this case to be part of its review of ENCORP's responsibility. Id.

While the agency asserts that ENCORP's low price suggests a lack of understanding of the contract work, it does not argue that ENCORP is not responsible. The record contains no evidence, other than ENCORP's low prices, that ENCORP lacks either the capacity or credit to successfully perform the RFP work. While the C/PET (not the TET, which evaluated the technical proposals) states that the award at such a low price presents a higher performance risk because ENCORP is not a demolition contractor,⁷ the Corps concedes that ENCORP's major subcontractor, which would perform 80 percent of the contract work, is one of the preeminent demolition contractors and is capable of successfully completing the project.⁸

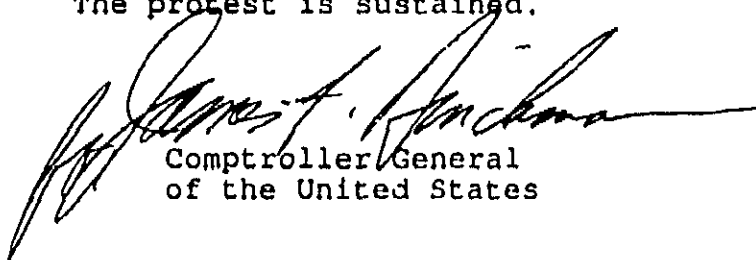
Moreover, ENCORP's response to the discussion question regarding its low prices could not reasonably be viewed as indicating lack of understanding--in the context of the RFP evaluation scheme and how the matter was posed to ENCORP, ENCORP had no reason to believe that it needed to do anything other than check its pricing. When, however, during the course of this protest, ENCORP became aware of the agency's precise concerns, ENCORP provided plausible explanations for its low prices that indicated that it in fact understood the contract work. For example, in the area of debris removal, which accounts for the largest part of ENCORP's low price margin, ENCORP described an approach to debris removal offering the opportunity for large cost savings which the agency had not considered in its price analysis and which the agency has not shown evidences a lack of understanding on ENCORP's part.

⁷The C/PET notes ENCORP is not a demolition contractor and lacks experience in managing demolition subcontractors. Nevertheless, the Corps rated ENCORP's proposal in the "exceptional" range.

⁸ENCORP's response to the discussion questions regarding its low CLIN prices indicated that the protester had reviewed its prices and reconfirmed its commitment to perform the contract requirements at the prices offered. ENCORP continues to assert its willingness and ability to perform at its low offered price, and there is no evidence that this price was the result of a material mistake.

Accordingly, on this record, we see no basis for the agency to have reasonably determined that ENCORP is not a responsible contractor. It is not feasible to recommend that the contract award be disturbed because, based on the agency's determination that urgent and compelling circumstances would not permit the work to be suspended pending our decision, the contract work on this project is substantially underway and not susceptible to termination. ENCORP is entitled to recover its proposal preparation costs and its costs of filing and pursuing this protest, including attorneys' fees. 4 C.F.R. § 21.6(d). The protester should file its certified claim for costs directly with the contracting agency within 60 days after receipt of this decision. 4 C.F.R. § 21.6(f)(1).

The protest is sustained.



Robert F. Henchman
Comptroller General
of the United States