



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Research Associates of Syracuse, Inc.

File: B-259470

Date: March 28, 1995

Robert B. Shields for the protester.
John H. Crocker for the Syracuse Research Corporation, the interested party.
Frank X. Derwin, National Security Agency, for the agency.
Aldo A. Benejam, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protester's contention that agency improperly evaluated its proposal is denied where the record shows that the agency evaluated protester's proposal in accordance with the evaluation criteria announced in the solicitation, and reasonably supports the protester's lower technical rating.
2. Award to offeror submitting a higher-rated, higher-cost proposal is unobjectionable where the evaluation scheme announced in the solicitation gave more weight to the technical area than to cost, and the agency reasonably found that awardee's superior technical proposal was worth the slightly higher cost.
3. Contention that solicitation's "backup" staffing requirement was unduly restrictive of competition because the requirement was burdensome on small businesses, and objection to the agency's decision to conduct the procurement using "one-step" streamlined procedures, are untimely where solicitation clearly advised offerors that agency would consider "backup" technical support staff in evaluating proposals, and would be conducting the procurement using streamlined procedures, and protester did not raise these allegations until well after the time set for receipt of initial proposals.
4. In developing protester's evaluated cost, contracting agency reasonably relied on direct and indirect rates recommended for the protester by the Defense Contract Audit Agency (DCAA), since DCAA based its recommendations on rates associated only with personnel protester proposed that were found acceptable by the contracting agency and based on the protester's current accounting practices.

DECISION

Research Associates of Syracuse, Inc. (RAS) protests the award of a contract to the Syracuse Research Corporation (SRC) under request for proposals (RFP) No. MDA904-95-R-C002, issued by the National Security Agency (NSA) for software electronic engineering and analytic support services.¹ RAS argues that the agency improperly evaluated its proposal and that award to SRC at a higher cost than RAS proposed was improper.

We deny the protest.

BACKGROUND

NSA held a pre-solicitation conference on June 28, 1994, to brief potential offerors on the procurement. NSA provided attendees of that conference, including RAS, with a draft copy of the statement of work (SOW) for comment and a tentative schedule for completing the procurement. NSA also provided a letter explaining that the procurement would be conducted using "one-step," streamlined procedures, meaning that the agency would not conduct discussions. As such, offerors were encouraged to submit their best terms from a technical and cost perspective in their initial proposals.

The agency issued the RFP on August 2, contemplating the award of a cost-plus-fixed-fee, level-of-effort contract for a base period with up to two 1-year option periods. The evaluation criteria NSA would apply in evaluating proposals were provided as an attachment to the RFP entitled "EVALUATION CRITERIA FOR PROJECT BASELINER," dated August 1. Proposals would be evaluated by assigning numerical ratings worth a maximum of 100 weighted points in accordance with the following factors and subfactors and corresponding weights:

A. Technical

1. Personnel Assigned	20 percent
2. Technical Approach	10 percent
3. Technical Support	<u>15 percent</u>
Subtotal weight	45 percent

¹The procurement combines the requirements of two contracts being performed separately by RAS and SRC which were to expire on September 30, 1994.

B. Management

1. Management Approach	15 percent
2. Past Performance	<u>5 percent</u>
Subtotal weight	20 percent

C. Cost

1. Cost Realism	15 percent
2. Evaluated Cost	<u>20 percent</u>
Subtotal weight	35 percent

In addition to assigning numerical ratings, each factor would also be assigned adjectival ratings.² In assigning an adjectival rating, the evaluators would consider the extent to which the offeror understood the RFP's requirements; the appropriateness of the offeror's proposed method/approach; completeness of the proposal; and proposal risk. The RFP also specifically explained the aspects of each factor and subfactor that evaluators would consider most important.

Cost was to be evaluated separately. In addition to evaluating cost for realism, the RFP stated that the government would develop an evaluated cost for each offeror which would be point scored by assigning the highest allowable score for that subfactor (20 points) to the lowest evaluated cost proposal, and assigning proportionately lower scores to proposals with higher costs. Award was to be made to the responsible offeror whose proposal was deemed to be most advantageous to the government.

Of the four firms issued the RFP, only RAS and SRC responded by the time set on August 31 for receipt of proposals. A source selection team evaluated proposals in accordance with the evaluation factors and subfactors announced in the solicitation. As a result of that evaluation, SRC's proposal received a nearly perfect score of 95.232 weighted points, while RAS' proposal received a total score of 84.85 weighted points (out of a maximum of 100 possible points). As for adjectival ratings, except for a "good" rating under past performance, SRC's proposal received a rating of "excellent" under all evaluation factors and subfactors, and "excellent" overall.

²The RFP stated that the evaluators would assign one of four adjectival ratings depending on the results of the numerical point scores, as follows: excellent (90-100); good (80-89); minimal (70-79); unacceptable (69 points or below).

By contrast, RAS' proposal received a rating of only "minimal" under the "personnel assigned" and "technical approach" subfactors, and "excellent" under the "technical support" subfactor, for an overall adjectival rating of "good" in the technical area. RAS' low ratings in that area were driven primarily by the evaluators' finding that RAS had proposed two engineers--considered key personnel-- that did not meet the RFP's minimum qualifications and experience requirements, and were therefore considered "unacceptable" for their respective proposed positions.³

As contemplated by the RFP, the agency also evaluated the cost proposals. SRC's proposed costs (\$766,471) were raised to \$774,504; RAS' proposed costs (\$751,451) were raised to \$875,447. With respect to point scores for cost, SRC's proposal received 34.84 weighted points, while RAS' received 30.56 points (out of a maximum of 35 possible points).

Based on the evaluation results, the evaluators concluded that SRC had submitted a technically superior proposal and recommended award to that firm. On October 21, the agency awarded the contract to SRC for a total cost, including options, of \$766,471.

After a debriefing by NSA, RAS filed an agency-level protest which NSA denied. This protest to our Office followed. The protester argues that NSA improperly concluded that its two proposed engineers were unacceptable. RAS further maintains that the agency's calculation of its evaluated cost, which resulted in an increase to its proposed cost, was flawed. The protester also argues that award to SRC at a higher cost than RAS proposed was improper.

DISCUSSION

Evaluation of RAS' Technical Proposal

The evaluation of technical proposals is the function of the contracting agency; our review of an allegedly improper evaluation is limited to determining whether the evaluation was reasonable and consistent with the stated evaluation criteria. CORVAC, Inc., B-244766, Nov. 13, 1991, 91-2 CPD ¶ 454. Mere disagreement with the agency's evaluation does

³In the management area, RAS' proposal received a raw score of 84.55 points and an overall adjectival rating of "good." As discussed in detail below, we find that the agency reasonably concluded that the two engineers RAS proposed as key personnel were unacceptable. Since it appears that deficiency was the primary reason for RAS' score in the management area, we need not separately discuss the evaluation of RAS' proposal in that area.

not render the evaluation unreasonable. Id. Here, we find that the evaluation of RAS' proposal was reasonable.

The staffing requirements to perform the contract were contained in an attachment to the RFP entitled "MINIMUM MANPOWER REQUIREMENTS LIST," which listed seven labor categories to be filled by the contractor. For each labor category, that document listed minimum qualifications, educational level, and experience, and the number of individuals required to fill each position. As relevant to RAS' protest, the RFP set out the following requirements:

"2. Research Electronic Engineer (RE) - A minimum of two qualified [e]ngineers required. Each individual must have a B.S. degree in [e]lectronic [e]ngineering, [m]athematics, [p]hysics, or [c]omputer [s]cience. Each must have a minimum of [6] years applied electronic engineering experience in radar and/or ECM equipment design, development, test evaluation, and/or computer software design/development/programming in electronic engineering applications.

"3. Electronic/Associate Engineer (EAE) - A minimum of two qualified [e]ngineers required. Each individual must have a B.S. degree in [e]lectronic [e]ngineering, [m]athematics, [p]hysics, or [c]omputer [s]cience and have a minimum of [2] years work experience in radar/ECM/ESM/ELINT applied engineering. An individual with a high school diploma and [10] years work and training experience in ELINT, ESM, and/or EW will be acceptable."

The RFP stated that the evaluation team would be focusing on several aspects of the technical proposals specifically identified in the RFP, including:

"4.1.1 Personnel Assigned - Consideration shall only be given to those personnel that the offeror intends to assign to directing, accomplishing, or consulting on this project. Information on job title, security classification, and the degree of involvement shall be provided. Consideration will be given to the kind of assurance provide[d] concerning the assignment of specific individuals. Also, all personnel assigned to this contract must be TS/SI/TK indoctrinated at the time of award of the contract. If personnel are not cleared, a clear and feasible plan to have personnel indoctrinated upon award of the contract must be provided in contract proposal."

The RFP further stated that in evaluating proposals under the "personnel assigned" subfactor, the evaluators would emphasize the qualifications of proposed personnel across all labor categories, and the offerors' ability to "provide appropriately cleared personnel to fully staff the contract at time of award."

RAS' proposal was downgraded primarily under the "personnel assigned" evaluation subfactor in the technical area because one of the two individuals RAS proposed for the RE position did not meet the RFP's minimum 6 years of experience and security clearance requirements; and one individual RAS proposed for the EAE position did not have the minimum required experience in electronic warfare intelligence (ELINT). The evaluation team's concerns over these deficiencies were emphasized by its classifying both individuals as "unacceptable."⁴ Under the "personnel assigned" subfactor, RAS' proposal received an average raw score of 76.24 points; an overall adjectival rating of "minimal"; and 15.25 weighted points (out of a maximum possible score of 20 points) for that subfactor.⁵

As a result of RAS having proposed an unacceptable RE and EAE, the evaluators concluded that RAS would be unable to provide the necessary engineering support to the project

⁴Since the evaluators concluded that the engineers RAS proposed for two key positions were unacceptable, the agency explains that the evaluation team was faced with several choices, including raising the "unacceptable" rating RAS' proposal received for its unqualified personnel to the subfactor or factor level, precluding further consideration of RAS' proposal. In this regard, the RFP's evaluation criteria stated that:

"[an offeror] may not receive consideration for award if a rating of 'unacceptable' is received in any major factor or major sub-factor."

Instead of rejecting RAS' proposal outright, the evaluators decided to award RAS no points for the unqualified individuals, average the scores of only qualified personnel within a labor category, and calculate an overall score for the subfactor. Using this approach, NSA retained RAS' proposal in the competition, rather than rejecting it as unacceptable.

⁵The evaluation team was composed of five evaluators, each of whom assigned a separate raw score to RAS' proposal under each evaluation subfactor. The individual raw scores were then averaged and a final score calculated using the weights announced in the RFP.

manager, adding an unacceptable level of risk to the project. Accordingly, RAS' proposal was downgraded under the "technical approach" subfactor, under which it received a raw score of 75.7 points; an overall adjectival rating of "minimal"; and 7.57 weighted points (out a maximum score of 10 points).⁶

RAS proposed two individuals, Mr. Lemley and Mr. Cornish, for the RE positions.⁷ Mr. Cornish did not meet the minimum 6 years experience requirement for that position and RAS indicated that he would not be available to staff the position until some time after award. In addition to lacking the required experience, Mr. Cornish was awaiting his clearance indoctrination appointment. Since RAS did not provide in its proposal any assurances that Mr. Cornish could meet the RFP's minimum qualification requirements by the award date, the evaluators considered Mr. Cornish unqualified for that position. That left only Mr. Lemley, whom the evaluators found "highly qualified" and rated accordingly.

As for the EAE positions, the evaluation team concluded that one of the two individuals RAS proposed for that category, Mr. Marshall, did not have the required ELINT experience. While RAS indicated in its proposal that Mr. Marshall had 26 years of experience in signals intelligence (SIGINT), the

⁶While preparing the administrative report in response to the protest, NSA discovered an error in calculating weighted scores for both offerors under the "technical approach" and "technical support" evaluation subfactors. Rather than 10 and 15 percent as announced in the RFP for those two subfactors, the preprinted scoring sheet used to calculate weighted scores for both offerors shows that the evaluators applied weights of 5 and 20 percent, respectively, to the raw scores assigned under those two subfactors. Applying the correct weights results in insignificant reductions to the final scores in the technical area (from 37.78 to 36.87 points for RAS; and from 41.88 to 41.86 for SRC out of a maximum possible score of 45 points). The corrected scores have no material effect on the relative ranking of proposals, on the adjectival ratings, or on the overall weighted score earned by RAS' proposal.

⁷The RFP specified that one of the two REs was to be provided on a full-time basis (for 1,928 direct labor hours) at the government's facility, and the second RE was to be provided at the contractor's facility on a part-time basis (for 250 direct labor hours). Although RAS proposed no RE to work on a part-time basis at the contractor's facility, this was not a major concern to the evaluators.

evaluators did not consider that experience as meeting the RFP's requirement because SIGINT is not interchangeable with ELINT.

The protester's challenge to the evaluation of its proposal is without merit. The RFP clearly announced the minimum staffing, experience, and personnel qualifications requirements. The SOW also emphasized the importance of providing "cleared and indoctrinated personnel qualified in the fields" identified in the RFP and related areas required to successfully perform the contract.⁸ To underscore the significance of providing fully qualified professionals, the evaluation scheme announced in the RFP listed "personnel assigned," "technical approach," and "technical support" as the most important evaluation subfactors, worth a combined weighted maximum score of 45 points--more than double the total number of evaluation points available for the management area (20 points). In addition, the RFP described in detail the areas the evaluators would consider most important, including personnel qualifications.

For these reasons, RAS should have realized that in considering the competing proposals, a commitment by the contractor to assign fully qualified, cleared key personnel to staff the contract at the time of award was of paramount importance to the agency. Since RAS failed to provide that level of commitment, the evaluators reasonably downgraded the firm's proposal in the technical area.

⁸There is no question that RAS recognized the importance of the "personnel assigned" evaluation criterion. In a letter to the agency dated July 7, commenting on a draft SOW provided to all offerors, RAS stated that:

"Since the most important requirement appears to be qualified personnel with existing TS/SI/TK clearances, and since the number of hours for each [labor] category is specified, the [offeror] who can deliver these person hours at the lowest price wins."

While RAS apparently misunderstood that award would be made on the basis of lowest-price/technically acceptable proposal, rather than on the basis of the proposal most advantageous to the government, its statement clearly indicates that the SOW unambiguously conveyed the importance to NSA of having cleared, qualified personnel performing the contract. As explained supra, this theme was reiterated throughout the RFP itself.

The protester concedes that "Mr. Cornish would not fully meet the requirements for [the RE position] until early 1995," well after award. RAS argues, however, that it proposed one qualified RE and one qualified backup RE, and that Mr. Cornish would have met the RFP's requirements approximately 6 months into the contract. With respect to Mr. Marshall, RAS maintains that NSA should have known that "SIGINT" is an all-inclusive term covering various fields, including ELINT. Thus, RAS argues that by indicating that Mr. Marshall had SIGINT experience, RAS intended to show that his experience was broader in scope than ELINT. RAS argues that since it proposed a qualified backup person for the RE position, and since NSA had found Mr. Marshall acceptable under the previous contract for similar services, the evaluators unreasonably downgraded its proposal. These arguments are without merit.

As already explained, the RFP unambiguously required the contractor to provide two qualified, experienced, cleared and indoctrinated individuals to fill the full- and part-time RE positions at the time of award. Mr. Cornish did not meet the RFP's experience requirement; he did not have the required security clearance or indoctrination; and was not available to staff the contract at the time of award. With respect to Mr. Marshall, although he apparently was found acceptable for the previous RAS contract, which RAS argues had identical experience requirements, RAS did not provide sufficient information in its proposal to convince the evaluation team under this RFP that Mr. Marshall had the required experience.⁹ Given the emphasis on providing key personnel that met the RFP's minimum requirements by the time of award, we think that the evaluators reasonably concluded that Mr. Cornish and Mr. Marshall were "unacceptable" for the labor categories for which they were proposed and downgraded the protester's proposal accordingly.¹⁰

⁹The agency does not dispute the protester's assertion that Mr. Marshall was found acceptable for RAS' previous contract which required the same level of experience. The contracting officer explains, however, that the staffing matrix RAS submitted under the prior solicitation for these services showed that Mr. Marshall had experience with ELINT, electronic support measures and electronic warfare. RAS' proposal here did not contain similar information for Mr. Marshall.

¹⁰RAS also questioned the evaluators finding a third individual, whom RAS proposed for the technical typist position, "unacceptable" because she did not have the required NSA security clearance. NSA agrees that the

(continued...)

In this connection, we have consistently stated that no matter how competent a contractor may be, a technical evaluation must be based on information submitted with the proposal. Watson Indus., Inc., B-238309, Apr. 5, 1988, 90-1 CPD ¶ 371. This basic tenet was particularly significant here where the agency advised offerors during the pre-solicitation conference and in the RFP that it would not hold discussions, and cautioned the competing firms that their proposals should contain the "best" terms from the outset. RAS failed to do so here. The firm may not now use the bid protest process to correct the deficiencies in its proposal.

Evaluation of RAS' Cost

The protester argues that in calculating its evaluated cost, NSA improperly applied higher indirect and direct labor rates than it proposed. RAS maintains that as a result, NSA unfairly increased its proposed cost.

When agencies evaluate proposals for the award of a cost reimbursement contract, the offerors' proposed estimated costs of contract performance are not considered controlling, since they may not provide valid indications of the actual costs which the government is required to pay. Federal Acquisition Regulation (FAR) § 15.605(d); Bendix Field Eng'g Corp., B-230076, May 4, 1988, 88-1 CPD ¶ 437. Consequently, an agency's evaluation of estimated costs should consider the extent to which an offeror's proposed costs represent what the contract should cost, assuming reasonable economy and efficiency. Arthur D. Little, Inc., B-229698, Mar. 3, 1988, 88-1 CPD ¶ 225. Because the contracting agency is in the best position to make this determination, we limit our review of these matters to determining whether the agency's cost evaluation was reasonable. General Research Corp., 70 Comp. Gen. 279 (1991), 91-1 CPD ¶ 183. We have reviewed the protester's allegations here and conclude that the agency's cost evaluation was reasonable.

¹⁰(...continued)

proposed individual was acceptable. The record shows, however, that any change in scores due to a reevaluation of the technical typist position (a total of about 1.25 weighted points according to RAS) would have no material effect on RAS' overall ratings, and would not overcome the deficiencies associated with Mr. Cornish and Mr. Marshall which gave rise to their "unacceptable" ratings.

With respect to direct labor rates, RAS proposed to use some of its own employees to perform the contract and some employees from a subcontractor with which it had a teaming arrangement to perform the contract. The record shows that in calculating an evaluated cost for RAS, NSA applied the DCAA-recommended direct and indirect rates associated with only those individuals the evaluators considered qualified to perform the contract. Thus, since both Mr. Cornish and Mr. Marshall were unacceptable, NSA did not use any rates RAS proposed associated with them for their respective labor categories. Instead, since RAS had identified qualified individuals who were employed by its subcontractor, the cost reviewers eliminated the hours and respective rates associated with the unqualified individuals (who were RAS employees), and transferred those hours and rates to the subcontractor at the applicable burdened rates, which were generally higher than RAS'.

Regarding general and administrative (G&A) rates, NSA requested the Defense Contract Audit Agency (DCAA) to review RAS' cost proposal. RAS had proposed two different G&A rates, one rate applied to its on-site facility and another rate applied to an off-site facility. DCAA found that method of using two different G&A rates represented a change from the firm's current accounting practice. DCAA noted that on September 29, RAS had requested approval from the cognizant administrative contracting officer (ACO) to modify the firm's method for allocating G&A expenses to use two different rates. By letter dated October 3, the ACO informed RAS that a review of the proposed accounting change was being requested, and granted tentative approval of the change contingent upon the results of that review. DCAA stated in its report, however, that until that review was completed, it could not determine whether the accounting change would result in a more equitable allocation of G&A costs. Since RAS' established practice was to use one G&A rate for the entire business, DCAA recalculated bases and expenses, and recommended that one combined G&A rate be used for calculating the firm's evaluated cost.

The agency's reliance on the DCAA-recommended direct labor rates in calculating RAS' evaluated cost, which were based on using only qualified personnel, was reasonable. The fact that those rates were generally higher than RAS proposed, because they were associated with individuals employed by RAS' proposed subcontractor, does not render the agency's evaluated cost calculations unreasonable. Further, since RAS' proposed cost was based on an unapproved change to its accounting method, the agency's cost evaluation reasonably reflected the DCAA-recommended single G&A rate. The protester has provided no basis for us to conclude that the agency's reliance on the DCAA-recommended rates was unreasonable.

Award to SRC

RAS' contention that award to SRC at a slightly higher cost than RAS proposed was improper, is without merit. In a negotiated procurement, there is no requirement that award be made on the basis of lowest cost unless the RFP so specifies. Henry H. Hackett & Sons, B-237181, Feb. 1, 1990, 90-1 CPD ¶ 136. Cost/technical tradeoffs may be made, and the extent to which one may be sacrificed for the other is governed only by the tests of rationality and consistency with the established evaluation factors. Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 CPD ¶ 325. Awards to offerors with higher technical scores and higher costs are proper so long as the result is consistent with the evaluation criteria, and the procuring agency reasonably determines that the technical difference is worth the cost premium. Bendix Field Eng'g Corp., B-241156, Jan. 16, 1991, 91-1 CPD ¶ 44.

Here, we find that the agency had a reasonable basis to award to SRC at a higher cost.¹¹ The services to be provided are highly technical and specialized in nature. The agency reasonably found SRC's proposal to be technically superior to RAS' proposal based on RAS' deficiencies in personnel, and technical concerns were more important than cost. Under these circumstances, the agency's determination that SRC's proposal was most advantageous to the government is unobjectionable. See A-Enterprises, Inc., B-255318, Feb. 18, 1994, 94-1 CPD ¶ 133.

Miscellaneous Allegations

The protester also argues that the solicitation was unduly restrictive of competition because the RFP's requirement for "back-up" support staff is difficult for a small business to meet.¹² RAS also argues that the agency's use of "one-step" streamlined procedures to conduct the procurement was unreasonable. These allegations are untimely.

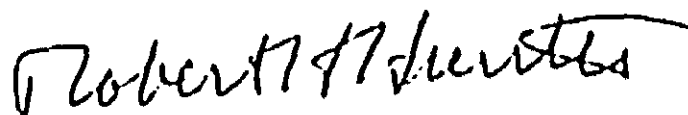
Under our Bid Protest Regulations, protests based upon alleged improprieties in a solicitation which are apparent

¹¹We note that NSA, an agency of the Department of Defense, may make award without discussions to other than the lowest cost offeror. See FAR § 15.610(a)(4).

¹²Notwithstanding RAS' allegation, the evaluators found all individuals RAS designated in its proposal as "back-up" staff fully qualified for their respective positions, and assigned high point scores and an adjectival rating of "excellent" to each of the seven "back-up" individuals RAS proposed.

prior to the closing date for receipt of initial proposals must be filed prior to the closing time. 4 C.F.R. § 21.2(a)(1) (1995); Engelhard Corp., B-237824, Mar. 23, 1990, 90-1 CPD ¶ 324. Here, the RFP's "EVALUATION CRITERIA FOR PROJECT BASELINER" explained in detail the evaluation process. Section 4.1.3 of that document stated concerning the evaluation of technical support that the agency would evaluate "[e]vidence of seven in-depth 'backup' support staff [one for each of the positions listed in the manpower requirements list]." As noted above, the RFP clearly set out the agency's minimum personnel requirements. Further, the agency announced at the pre-solicitation conference, and the RFP stressed, that NSA intended to use a "one-step" streamlined process to conduct the procurement (i.e., no discussions), and encouraged offerors to propose their "best" terms in their initial proposals. Thus, any objections RAS might have had regarding the RFP's "back-up" staffing requirements, or to the agency's decision to conduct the procurement using streamlined procedures, should have been raised either with the contracting agency or with our Office prior to the August 31 closing date. Since RAS did not raise these issues until well after that date, they are untimely and will not be considered.

The protest is denied.



Robert P. Murphy
General Counsel