

Ashen



Comptroller General
of the United States

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Washington, D.C. 20548

Decision

Matter of: Scientific Research Corporation

File: B-260478.2

Date: July 10, 1995

Paul F. Khoury, Esq., and Antoinette M. Tease, Esq., Wiley, Rein & Fielding, for the protester.

Alan Dickson, Esq., Jeffrey H. Schneider, Esq., and Shlomo D. Katz, Esq., Epstein, Becker & Green, for SPARTA, Inc., an interested party.

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DIGEST

Protest that discussions were not meaningful, because agency failed to advise offeror that its proposed sample task costs were viewed as unreasonably high, is denied where neither this nor any other alleged deficiency resulted in competitive prejudice to the protester.

DECISION

Scientific Research Corporation (SRC) protests the Defense Intelligence Agency's (DIA) award of a contract to SPARTA, Inc., under request for proposals (RFP) No. MDA908-94-R-0003, for engineering and technical support services. SRC challenges the evaluation of its cost proposal. In addition, it maintains that DIA improperly failed to conduct meaningful discussions with respect to the agency's evaluation of SRC's proposed sample task costs as unrealistic.

We deny the protest.

BACKGROUND

The solicitation contemplated award of a cost-plus-fixed-fee contract for one base with 2 option years for engineering and technical support of technical test bed development (TTBD) and the Foreign Material Program (FMP) at DIA. The statement of work (SOW) called for the contractor to design and develop technical test beds for the operational analysis.

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of foreign weapon systems and technologies; modify foreign and domestic radars and command, control and communications equipment to serve as surrogate threat weapon systems; perform the analysis of weapon systems and technologies; "provide on-site support at the . . . Missile and Space Intelligence Center (MSIC), Intelligence Test and Analysis Facility (ITAF) supporting the [FMP]"; and support Foreign Material Exploitation efforts. The solicitation established eight required labor categories, setting forth minimum educational and experience requirements and anticipated yearly levels of effort for each.

The solicitation generally provided for award to be made to the offeror whose proposal "offers the best value to the government in terms of both overall technical capability and cost"; it expressly cautioned that the lowest cost would not necessarily be determinative in the source selection. The RFP listed four specific evaluation factors: (1) technical merit (with an unstated, but mathematically ascertainable, weight of 50 percent), which was described as 2.5 times more important than (2) cost (20 percent) and (3) management approach (20 percent), and 5 times more important than (4) past performance (10 percent). In addition to requiring the submission of overall technical, cost, management and past performance proposals, the solicitation required offerors to submit technical/cost proposals responsive to two sample tasks: (1) the integration of a digital signal processor into a test bed facility, and (2) the analysis of a foreign surface-to-air missile system. The solicitation described the sample tasks as "representative of the application areas and types of services to be performed under the proposed contract," but "not all inclusive of the types of applications that could be performed under this contract." The RFP stated that the sample tasks "will be used as an additional evaluation tool"; it specifically provided for evaluation of sample task responses by technical and cost teams, indicating that "[t]he sample task evaluation will be weighted approximately one third of the overall evaluation."

With respect to cost, the solicitation listed two evaluation subfactors: (1) "Labor Costs Based on the Overall Proposal," and (2) "Labor Costs Based on the Sample Tasks." The RFP instructed offerors to utilize the anticipated overall levels of effort for each labor category set forth in the solicitation in preparing their (overall) cost proposals. (Although the solicitation included overall levels of effort for each labor category for each year, it did not specify anticipated levels of effort for the sample tasks.)

DIA received proposals from SRC and SPARTA. Both proposals were included in the competitive range. At the conclusion

of discussions, DIA requested the submission of best and final offers (BAFO). As set forth below, SPARTA's BAFO received the highest evaluation score.

	Available Evaluation Points	SPARTA	SRC
Technical Merit	1,000	987	833
Management	400	386	333
Cost			
Overall Cost Proposal Score (Proposed Cost)	200	160 (\$47.8 million)	134 (\$45.98 million)
Sample Task Cost Score (Proposed Costs Sample Tasks 1/2)	200	153 (\$96,109/ \$87,133)	94 (\$185,413/ \$250,563)
Total Cost Score	400	313	228
Past Performance	200	160	150
Total Score	2,000	1,846	1,544

SPARTA's BAFO was rated superior to SRC's in several key areas, including demonstrated experience and knowledge of foreign and domestic weapon systems and technologies, procedures for safe transport and storage of explosive materials, translation of foreign documents, and electro-optical/infrared measurement techniques. Further, while no major disadvantages were found in SPARTA's proposal, a number of disadvantages in significant areas were found in SRC's proposal, including: insufficient explosive ordnance disposal experience for safe transport and storage; limited or no experience and knowledge with respect to several areas of weapons systems and technologies; limited experience and knowledge in foreign material exploitation methods and practices and in exploitation of particular types of weapons systems and technologies, such as short range ballistic missiles, electronic countermeasure devices, warheads, and

infrared/electro-optical devices; and reliance primarily on outside vendors, from which no contractual commitment was shown, for the translation of foreign technical documents.

Further, although SRC proposed a slightly lower (approximately 3.8 percent) overall cost (\$45,984,070) than SPARTA's (\$47,800,959), DIA appears to have largely discounted the difference in this regard and instead emphasized SPARTA's significantly lower proposed sample task costs. As explained in the report of the source selection advisory council (SSAC):

"[b]ecause of the complex and flexible nature of this contract's Statement of Work, the cost proposals prepared by the offerors were generated utilizing a Government-provided labor mix and labor hours. While the use of mandated parameters was necessary, it precluded the contractors from demonstrating any initiative with labor mixes and hours.

". . . The use of sample tasks in the evaluation process was invaluable . . . as we evaluated the proposals. The two sample tasks provided in the RFP were realistic, representative Statements of Work, of the type that will be written against this contract. It was through the use of these sample tasks that the offerors were provided with their first opportunity to demonstrate how they would bid an actual delivery order. . . . To preclude unrealistically low bids, the Government stated in the solicitation that we reserved the right to award either or both the sample tasks at contract award as bid."

SRC's proposed sample task costs were 92.9 percent higher than SPARTA's for task one and 187.6 percent higher for task two. The difference in proposed costs primarily resulted from the difference in proposed man-hours; SRC's proposed 4,240 man-hours for task one substantially exceeded SPARTA's proposed 1,870 man-hours (as well as the independent government cost estimate's (IGCE) 1,700 hours), while SRC's proposed 4,897 hours for task two substantially exceeded SPARTA's proposed 1,456 hours (as well as the IGCE's 1,302 hours). SRC's labor mix also emphasized higher-level, more expensive labor categories. Although agency technical evaluators found that SRC's sample task technical proposals demonstrated an "understanding of requirements" and awarded SRC high scores in this area, the agency's cost evaluator concluded that "[t]he sample task costs as proposed cannot be assumed to be realistic nor reasonable. . . . [T]he only logical conclusion is that the offeror does not understand the requirements." Likewise, while the SSAC concluded that

SRC could accomplish the work required under sample tasks one and two, it also determined that "SRC's management approach to the application of its resources (i.e. labor mix and level of effort) demonstrates a lack of understanding of the tasks to be performed by allocating resources in a manner which leads to unacceptably high costs."

As a result of the significant differences in proposed sample task order costs, the SSAC determined that "the actual estimated cost of performance is substantially higher for SRC than for SPARTA." The SSAC therefore recommended award to SPARTA as the offeror submitting "the best technical solution at the lowest expected cost." Upon learning of the resulting award to SPARTA, SRC filed this protest with our Office.

AWAY LABOR RATES

As an initial matter, SRC challenges DIA's evaluation as a cost disadvantage of SRC's proposal of lower ("away") labor rates for the approximately 20 percent of the proposed labor hours to be worked at MSIC facilities than the labor rates proposed for the remaining hours, which are to be worked at non-government sites. The agency determined that SRC's apparent assumption of the availability of on-site government administrative support was inconsistent with the specific, written direction given offerors during discussions that: "NO Government furnished on-site facilities, at [MSIC] will be provided for performance of this requirement (i.e., no administrative facilities and no facilities in the 'Bubble')." (The Bubble is the nickname for the ITAF. The bulk of MSIC's work is performed at the ITAF.) DIA viewed the understatement in SRC's likely cost of performance resulting from the improper assumption of the availability of government-furnished on-site administrative support as a further indication that SRC's 3.8 percent advantage in overall proposed cost was illusory, and as evidence that SRC's overall proposed cost was unrealistically low.

SRC argues that DIA's evaluation in this regard fails to take into account the fact that, in explaining in its cost proposal its lower away rates, SRC specifically stated that "[t]he hours proposed at Government sites do not include any administrative support in the ITAF 'Bubble.'" In any case, argues SRC, the direction not to rely on government-furnished on-site facilities was inconsistent with the solicitation provisions calling for the contractor to provide on-site support at MSIC/ITAF. Noting that the solicitation provided that it could "only be changed by a formal written amendment," SRC contends that the direction not to rely on government-furnished on-site facilities was

not binding because it was inconsistent with the solicitation and was not part of a formal amendment.

When an agency evaluates proposals for the award of a cost reimbursement contract, an offeror's proposed estimated costs of contract performance are not controlling, since the offeror's estimated costs may not provide valid indications of the final actual costs which the government is, within certain limits, required to pay. Federal Acquisition Regulation § 15.605(d); Arthur D. Little, Inc., B-243450, July 31, 1991, 91-2 CPD ¶ 106. Consequently, the agency must perform a cost realism analysis to determine the extent to which an offeror's proposed costs represent what the contract should cost assuming reasonable economy and efficiency. Because the contracting agency is in the best position to make this cost realism determination, our review is limited to determining whether the agency's judgment in this area is reasonably based and not arbitrary. Id.

We conclude that DIA acted reasonably in not accepting SRC's proposed lower away rates and in finding that, as a result, SRC's overall proposed cost was understated. SRC does not explain the basis for its significantly lower away rates, nor is it otherwise apparent, except perhaps on the assumption that the government would furnish on-site administrative facilities--e.g., office space, electricity, heat, telephone service, etc.--that otherwise would be furnished by SRC. Offerors, however, were expressly advised by the contracting officer in writing during negotiations that no government-furnished on-site administrative facilities, in the "Bubble" or otherwise, would be made available.

Further, SRC's position that it could ignore the agency's express, written prohibition during negotiations on assuming the availability of administrative facilities is not convincing. First, information disseminated during the course of a procurement that is in writing, signed by the contracting officer, and sent to all offerors, meets all the essential elements of a solicitation amendment and will therefore bind both the offerors and the agency. See Automation Management Consultants Inc., 68 Comp. Gen. 102 (1988), 88-2 CPD ¶ 494. Second, there is no necessary inconsistency between a requirement to furnish on-site support to the government and the unavailability of government-furnished administrative facilities since the two provisions can be reconciled as simply requiring the contractor to furnish its own office space, etc., perhaps by using its own trailers. (In any case, to the extent that the express prohibition on assuming the availability of on-site administrative facilities could be seen as inconsistent with other solicitation provisions, SRC could not compete under such a patently ambiguous solicitation and then

complain when the agency proceeded in a way inconsistent with one of the possible interpretations. Rather, SRC was required to timely protest the ambiguity; its post-award protest in this regard is untimely. See generally Watchdog, Inc., B-258671, Feb. 13, 1995, 95-1 CPD ¶ 69.)

SAMPLE TASK COSTS

SRC primarily argues that DIA's evaluation of its proposed sample task costs was based on unrealistically low IGCEs that bore no relation to the relevant actual historical cost of performing similar work. Indeed, SRC contends that the agency's evaluation of its sample task costs as unrealistic and excessive is inconsistent with the agency's favorable technical evaluation of its proposed sample task approaches as evidencing an understanding of the requirements. Further, SRC argues that DIA was required to advise it during discussions that its approach was based on different assumptions from the agency's and that the agency considered its proposed costs unrealistic. Furthermore, SRC claims that DIA's improper evaluation of, and failure to conduct meaningful discussions with respect to, SRC's proposed sample task costs was especially prejudicial because the agency allegedly failed to conduct a meaningful cost realism analysis of the overall cost proposals; the agency allegedly treated them as meaningless and relied instead on the evaluated sample task costs.¹

Competitive prejudice, however, is an essential element of a viable protest, and where no competitive prejudice is shown or is otherwise evident, our Office will not sustain a protest even if a deficiency in the procurement is evident. See Latins Am., Inc., 71 Comp. Gen. 436 (1992), 92-1 CPD ¶ 519; Anamet Labs., Inc., B-241002, Jan. 14, 1991, 91-1 CPD ¶ 31. Here, it is clear from the record that neither DIA's allegedly improper failure to discuss its concerns with respect to SRC's proposed sample task costs nor its underlying evaluation in this regard resulted in competitive prejudice to SRC. Under the solicitation, technical merit was 2.5 times more important than cost, while management was equal to cost. SPARTA's proposal was found more advantageous than SRC's under both the technical

¹Prior to receipt of the agency report, SRC also questioned DIA's evaluation and discussion of SRC's experience and proposed approach to furnishing the required translation services. In its report, DIA explained its evaluation in this regard and why it believed discussions were adequate. Since SRC has not refuted the agency's explanation, we consider these arguments abandoned. See General Elec. Ocean and Radar Sys. Div., B-250418; B-250419, Jan. 11, 1993, 93-1 CPD ¶ 30.

merit and management factors (as well as under the less important past performance factor). Further, cost itself encompassed consideration of both an offeror's overall proposed costs and its proposed sample task costs. Even in the unlikely event that SRC had received the maximum evaluation score for proposed sample task costs, the resulting 106-point relative change would not have erased SPARTA's overall-302 point advantage.

As for SRC's argument that DIA failed to conduct a meaningful overall cost realism analysis, SRC has likewise shown no basis for concluding that any failure on the agency's part in this regard resulted in competitive prejudice. As discussed above, the solicitation limited offerors' freedom of action in preparing their overall cost proposals by mandating use of a particular labor mix and level of effort. Furthermore, DIA reasonably determined that SRC's use of lower away rates understated its likely cost of performance. SRC has failed to establish the existence of any deficiency in the agency's overall cost evaluation which when corrected would offset SPARTA's advantage under the other evaluation factors. In these circumstances, we have no basis to question the selection of SPARTA for award.

The protest is denied.

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General Counsel