



Comptroller General
of the United States

517207

Washington, D.C. 20548

REDACTED VERSION*

Decision

Matter of: ASI Personnel Service, Inc.

File: B-258537.7

Date: June 14, 1995

Howard Stanislawski, Esq., and Gary Quigley, Esq., Sidley & Austin, for the protester.
Matthew Perlman, Esq., and Craig King, Esq., Arent Fox Kintner & Kahn, for Pentad Corporation, an interested party.
Vera Meza, Esq., Department of the Army, and Charmaine E. Betty-Singleton, Esq., United States Military Academy, for the agency.
Mary G. Curcio, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that evaluation of offeror's management/staffing proposal was unreasonable is denied where evaluation was in accordance with the stated criteria and protester has done no more than indicate its disagreement with the agency evaluation.
2. Where award of a fixed-price contract is contemplated, agency is only required to perform a price analysis, not a cost realism analysis. Price analysis based on comparison of proposed prices to the government estimate, and a review of offeror's material costs, direct labor, indirect, and other costs provided adequate basis to determine that proposed prices are fair and reasonable.

DECISION

ASI Personnel Service, Inc. protests the award of a contract to Pentad Corporation under request for proposals (RFP) No. DAAG60-94-R-0017, issued by the United States Military Academy at West Point (USMA) for mess attendant services. ASI principally asserts that the Army improperly evaluated technical and price proposals, and misled ASI into basing

*The decision issued on June 14, 1995, contained proprietary information and was subject to a General Accounting Office protective order. This version of the decision has been redacted. Deletions are indicated by "[deleted]."

064223

its price proposal on its own performance data rather than on the historical data provided in the solicitation.

We deny the protest in part and dismiss it in part.

BACKGROUND

The solicitation, issued on July 29, 1994, contemplated the award of a fixed-price requirements contract. The solicitation provided that proposals would be evaluated under the following criteria, listed in descending order of importance: management and staffing; quality control; and cost. The solicitation also listed subfactors for each of the evaluation factors. The evaluation plan for the solicitation called for a source selection evaluation board (SSEB) to evaluate proposals and prepare discussion questions, and a source selection advisory council (SSAC) to oversee and advise the SSEB and to advise the source selection authority (SSA), who was responsible for making the final award determination. The award was to be made to the offeror whose proposal represented the best value to the government based on an integrated assessment of the evaluation factors.

The Army received 11 proposals, which were evaluated by the SSEB. On November 9, oral discussions were held, after which seven offerors, including the protester, were provided with written discussion questions and asked to submit best and final offers (BAFO).

The SSEB assigned ASI's BAFO a rating of acceptable for each subfactor under the management/staffing factor and an overall rating of acceptable for the factor. Under quality control, the proposal was rated acceptable for three of the four subfactors, good for one subfactor and acceptable overall. Under price,¹ the SSEB assigned ASI an overall rating of marginal, with marginal ratings for price proposal and price realism, the price evaluation subfactors. Pentad received a marginal rating for the management/staffing factor (poor for past experience, and good and acceptable under the other subfactors), acceptable under the quality control factor (acceptable for three subfactors and good for one), and good for price. The SSAC reviewed the evaluation results and recommended that Pentad be selected for award based on its overall proposal, including price.

¹Although the Army and the protester refer to a cost proposal and a cost realism analysis, since the solicitation contemplated the award of a fixed-price contract, the proper terminology is price proposal and price realism.

The SSA reviewed the recommendation of the SSAC, as well as the BAFOs and the SSEB evaluations of the BAFOs. The SSA generally agreed with the SSEB as to ASI's proposal, but concluded that it should have been rated acceptable instead of marginal for price. The SSA concluded that Pentad's proposal was acceptable in all areas, and offered a realistic price. In doing so, the SSA discounted the poor rating Pentad's proposal received under the experience/past performance subfactor; the evaluators' rating was based on the fact that Pentad was a newly formed company, but the SSA reasoned that the weakness was mitigated by the personnel experience of Pentad's three top individuals--the president, the vice president, and the project manager. Overall, the SSA determined that Pentad's proposal represented the best value to the government based on its acceptable rating and a price that was [deleted] lower than the most highly rated technical proposal. The contract was awarded to Pentad and this protest followed.

ASI's EVALUATION UNDER MANAGEMENT/STAFFING FACTOR

ASI asserts that its proposal should have been rated good rather than acceptable under the management/staffing factor.² In this regard, ASI notes that it has been performing as the incumbent for more than 5 years, and that its project manager has more than 12 years of experience; ASI reasons that its probability of success, and its overall rating for this factor, thus should have been good. ASI believes the agency rated its proposal acceptable based on a misapplication of the RFP rating standards; ASI claims the agency would give a rating higher than acceptable only to a proposal that exceeded the government's requirements, even though this was the standard applicable to an exceptional, not a good rating.

The evaluation of technical proposals is primarily within the discretion of the procuring agency, not our Office. We will review a technical evaluation only to determine whether it was reasonable and consistent with the stated evaluation criteria. LJC Mechanical Contractors, Inc., B-250792, Feb. 1, 1993, 93-1 CPD ¶ 85.

In evaluating ASI's proposal under the management/staffing factor, the agency found that, with the exception of ASI's incumbent USMA contract, the firm had experience only with

²ASI argued in its initial protest that the agency based the rating on the number of years of experience an offeror had. In its report, the agency denied this and the protester did not respond to the agency's position. Accordingly, we consider this argument abandoned. See Watkins-Johnson Co., B-252790, July 7, 1993, 93-2 CPD ¶ 8.

small dining facility mess attendant operations. ASI's performance on those smaller contracts was satisfactory. On the current USMA contract, ASI's performance was rated only adequate. This conclusion was based on information that showed that while ASI consistently delivered required services, in some cases it did not adequately respond to the USMA's request for cost and other information. We think this concern reasonably could be viewed by the agency as warranting an acceptable, rather than a good, rating for ASI's prior performance. ASI asserts that this performance criticism does not relate to deficiencies in ASI's proposal. However, experience/past performance was one of the subfactors under the management/staffing factor; ASI's performance on the USMA contract thus was properly considered.

An acceptable proposal, as defined in the RFP, is one that contains only minor deficiencies relative to the stated requirements, and has a probability of satisfying the requirements and successful performance that is fair. A good proposal is defined as one that meets or slightly exceeds stated requirements, has a good probability of success, and contains deficiencies that can be readily corrected. We believe it was reasonable for the agency to rate ASI's proposal acceptable rather than good under the management/staffing factor on the basis that ASI's current performance was deficient in minor ways that could hinder its performance. ASI's disagreement based on its belief that as the incumbent it could offer the agency exactly what it wanted does not demonstrate otherwise.³

COST EVALUATION

Most Probable Cost

Section B of the RFP listed the services that the offerors would be required to provide. For example, line item 105 required the offeror to provide all labor, supplies, equipment, management and support personnel necessary to serve two weekend/holiday meals. The RFP provided an estimate of the number of days that each particular service would have to be provided to a specified number of people. Offerors were required to provide a unit price and a total price for each subline item. In total, there were 379 subline items.

³ASI also generally alleged in its protest that the agency misapplied the RFP standards in its proposal only acceptable under the quality control factor. The agency asserted generally in its report that its evaluation was consistent with the evaluation criteria and reasonable. ASI did not raise this issue again. Accordingly, we deem it abandoned.

alleges it did not base its price proposal on this information, but instead based it on the information it gathered as the incumbent performing the contract. ASI asserts that it informed the agency during discussions that the RFP estimates were inaccurate, and that it was urged to base its prices on its own data. ASI asserts that its proposal then was unfairly criticized based on its price being high in comparison to other proposals which were based on the inaccurate data.

This argument also is untimely. To the extent ASI believed the estimates were inaccurate based on its experience as the incumbent contractor, this information was apparent from the face of the RFP. ASI thus was required to protest on this ground prior to the initial closing time. 4 C.F.R. § 21.2(a) (1). Even if the allegation (which the Army denies) arguably arose only when the agency advised ASI (on November 9) to rely on its own information, ASI should have protested the estimates at that juncture in order to assure that all offerors would have access to accurate information. Again, ASI did not do so; it protested on this ground only after learning that it had not received the award.

BIAS

ASI maintains that the Army was biased against it, as supported by (1) the tone of the current contracting officer in the protest report; (2) a statement by the contracting officer on ASI's incumbent contract that ASI understated its costs (despite that fact that the government accepted responsibility for those understated costs); (3) the fact that at the debriefing it was told that its price proposal was rated only marginal, while in fact it had been upgraded to acceptable; and (4) the fact that the contracting officer criticized ASI for not using the historical data provided in the solicitation, but commended Pentad when Pentad also used data other than that provided in the solicitation.⁵

⁵ASI also argues that bias is demonstrated because in evaluating ASI's past performance the SSEB concluded that ASI performed only adequately on certain contracts even though the past performance surveys provided to the SSEB rated ASI's performance as acceptable to superior for these contracts. This allegation is in reality a challenge to the agency's evaluation of ASI's past performance, which was apparent from documents ASI received from the agency on February 8 and February 28. Since ASI did not raise this argument until April 12, more than 10 working days later, it is untimely and will not be considered. 4 C.F.R. § 21.2(a) (2).

When a protester alleges bias on the part of a contracting officer, the record must establish that the official intended to harm the protester, since government officials are presumed to act in good faith. Our Office will not attribute unfair or prejudicial motives to procurement officials on the basis of inference or supposition. Further, in addition to credible evidence showing bias, the protester must demonstrate that the agency bias translated into action which unfairly affected the protester's competitive position. That is, the protester must demonstrate that the alleged bias resulted in the exertion of improper influence in the procurement on behalf of the awardee or against the protester. Docusort, Inc., B-254852.2, Feb. 22, 1995, 95-1 CPD ¶ 107.

There is no showing of bias here. First, neither a contracting officer's tone in a written document nor a report of understated costs demonstrates that the procurement officials involved intended to harm the protester. Second, neither of the allegedly biased contracting officers took part in the evaluation of proposals or the award decision. Finally, since we find from the record that the evaluation was reasonable and in accordance with the stated criteria, any bias against ASI did not result in harm to ASI's competitive standing.

OTHER ISSUES

ASI maintains that (1) the agency misevaluated Pentad's proposal under the management/staffing and cost evaluation factors; (2) Pentad's proposal was "nonresponsive" because it was conditioned on Pentad's receiving [deleted]; (3) the agency failed to perform a performance risk assessment as required by the solicitation; and (4) the agency converted the basis of award from best value to the government to low cost, technically acceptable proposal.

Under our Regulations, a protester must be an interested party to protest before our Office. 4 C.F.R. § 21.1. An interested party is an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a contract or the failure to award a contract. 4 C.F.R. § 21.0(a). A protester is not an interested party if it would not be next in line for award if its protest were sustained. Systems Dynamics, Inc., B-245666.2, Mar. 11, 1992, 92-1 CPD ¶ 276.

The record shows that the SSA considered the proposals of Pentad, ASI, and four other offerors, including an offeror designated as offeror E, substantially equal under the management/staffing evaluation factor, the most important factor. Under the next most important factor, quality control, he considered the proposals of Pentad, ASI, and

three other offerors substantially equal, but found that offeror E's proposal offered tangible benefits to the government in this area. Pentad nonetheless was selected for award because the SSA concluded that the benefits of its proposal were not worth the [deleted] additional cost. Given our conclusion that the evaluation of ASI's proposal was reasonable, and the absence of any challenge to the evaluation of offeror E's proposal, ASI would not be in line for award even if Pentad were eliminated from award consideration. This is because, no matter what the resolution of these issues, ASI would remain equal to offeror E in the management/staffing area and slightly lower than offeror E in the quality control area, with a price [deleted] higher than offeror E's. Accordingly, offeror E, not ASI, would be next in line for award. ASI thus is not an interested party to protest these issues. See Steinhoff & Sadler, Inc. d/b/a SSI, B-246604; B-246604.3, Mar. 20, 1992, 92-1 CPD ¶ 299.

The protest is denied in part and dismissed in part.

Robert P. Murphy
General Counsel