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DECISION

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THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

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FILE: B-205238

DATE: April 6, 1982

MATTER OF: R & D Maintenance Services, Inc.

DIGEST:

GAO concludes that the contracting officer's assessment of the realism of the awardee's proposed prices is reasonably based. The effect of the contracting officer's assessment raised the awardee's score at least 18 more points for realism than the second pricing panel's assessment. Thus, in conformance with the RFP's award scheme, the award was properly made to the technically acceptable offeror with the highest pricing point score.

R & D Maintenance Services, Inc. (R & D), protests the award of a fixed-price, incentive contract to Halifax Engineering, Inc. (Halifax), under request for proposals (RFP) No. DACW56-81-R-0035 issued by the Army for supplies and services necessary for operation and maintenance at Kaw Lake, Oklahoma. R & D contends that, under the RFP's award clause, R & D should have received the award. The Army argues that the award to Halifax, based on Halifax's low proposal, was proper. We find that R & D's protest is not meritorious.

The RFP provided that award would be made to the offeror submitting the offer considered most advantageous to the Government in accord with the evaluation criteria set forth in the RFP. The RFP advised offerors that, of those proposals determined to be technically acceptable, the offer receiving the most pricing points would be considered to be the offer most advantageous to the Government. Pricing points were determined by the Army based on an evaluation of (1) realism and (2) assumption of the cost risk by the offeror. Equal weight was assigned to each factor. Realism would be determined by comparing the offeror's proposed costs to the offeror's proposed manning and effort. From the RFP, offerors knew that Government estimates of prices would be used as the baseline for evaluation of price proposals.

R & D's and Halifax's technical proposals received 385 and 354 points, respectively (out of 400 possible points), and the contracting officer determined that both proposals were technically acceptable. R & D's annual target price (defined as the target cost plus target profit) over the life of the contract was $578,356 and Halifax's was $486,326. The Government estimate was $599,702. R & D's annual target cost over the life of the contract was $525,778 and Halifax's was $458,798. The Government annual target cost estimate was $557,862.

For the risk factor, the Army's price evaluation panel initially scored R & D's and Halifax's proposals at 79 and 100 points, respectively (out of a possible 100 points). For realism, using a predetermined chart-point system, the panel initially scored R & D's and Halifax's proposals at 84 and 0 points, respectively (out of a possible 100 points). Thus, R & D's and Halifax's initial pricing point scores were 163 and 100, respectively.

The contracting officer was not satisfied with the scoring and requested that the price panel score the realism of the proposals again. As a result of the second scoring, R & D's and Halifax's realism scores were changed to 88 and 50, respectively. Thus, R & D's and Halifax's final pricing point scores awarded by the panel were 167 and 150, respectively.

Relative to proposed price realism, the record contains an Army analysis of each offeror's proposed manning, which was performed after the second pricing panel evaluation and which shows that R & D's and Halifax's on-the-ground labor hours were 35,240 and 33,834, respectively. The Army analysis shows R & D's higher proposed target price reflects higher wage rates, higher administrative salaries and higher profit. Since both offerors' on-the-ground labor hours were about the same, the contracting officer concluded that the difference in points between R & D and Halifax was so close that the best interest of the Government required award to the offeror proposing the low target price.

In fixed-price, incentive contracts, like this one, the amount of the contractor's profit is determined by a formula set forth in the contract, which rewards the contractor with additional profit for efficient operation and penalizes the contractor with reduced profit for inefficient operation. Use of this contract type requires a realistic target cost estimate and a realistic ceiling price. If the contractor's actual cost of performance exceeds the ceiling, the cost to the Government will not exceed the ceiling price. Thus, the contractor is responsible for all costs above the ceiling price that are necessary to obtain the required performance over the term of the contract.

R & D contends that since it received the highest pricing point score, it was entitled to award under the terms of the RFP.

In response, the Army argues that point scores are not conclusive on selection officials and that the contracting officer is permitted to consider cost quantum in arriving at his determination of which proposal is most advantageous to the Government.

Our analysis begins with the observation that the RFP's award clause essentially provides that cost-to-the Government will be the determining factor where more than one proposal is considered to be technically acceptable. Here, the RFP disclosed the details of how the Army would evaluate the cost elements of risk and realism. To adhere to the RFP's award clause, the offeror selected for award should have received a higher rating on the cost factor.

The pricing panel awarded Halifax the maximum score for the risk element and the contracting officer concurred. Regarding the realism element, the record clearly shows that the contracting officer disagreed with the pricing panel's initial assessment of Halifax's proposed price realism reflected in the score of 0 points. The record also indicates that the contracting officer disagreed with the pricing panel's second assessment reflected in the score of 50 points. The contracting officer's evaluation reflects his assessment that Halifax's proposed prices were much more realistic than the pricing panel's assessment. The contracting officer explains that Halifax could accomplish about the same amount of work as R & D proposed to do, for about $92,000 a year less than R & D proposed, because R & D proposed higher administrative costs, higher wage rates, and higher profit. The contracting officer determined that while Halifax's price proposal was not as realistic as R & D's, the two proposals were close. While the contracting officer did not actually rescore the realism of Halifax's proposal, the effect of his assessment was that Halifax was entitled to at least 18 more price points than awarded by the pricing panel's second evaluation.

We find that the contracting officer's assessment is reasonably based because (1) the RFP provided that, in addition to the Government estimate as a baseline, realism would be determined by comparing the offeror's proposed costs to the offeror's proposed manning and effort, (2) the contracting officer observed the RFP's disclosed scheme to make his realism determination, and (3) the contracting officer properly determined that Halifax's lower-fixed price, technically acceptable proposal (which guarantees that Halifax will perform the required work at no more than the proposed ceiling price) is essentially entitled to at least 18 more points than the pricing panel awarded in its second evaluation, making Halifax's proposal the highest scored price proposal.

Thus, we conclude that the award to Halifax was proper and in accord with the RFP's award scheme.

Protest denied.

Milton J. Socolar

for Comptroller General
of the United States