



Decision

Matter of: Energy and Environmental Services
Corporation

File: B-258139.4

Date: May 15, 1995

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of the decision.

DIGEST

1. In performing cost realism analysis agency is not required to adjust offeror's proposed costs to conform to the government estimate since the purpose of a cost realism analysis is to determine if an offeror's proposed costs are realistic for the offeror's technical approach, not the government's approach.

2. Protest that agency failed to do a proper cost realism analysis because it did not determine if awardee's low proposed costs indicated that awardee understood the requirements of the solicitation is denied where, based on technical evaluation of awardee's proposal, agency reasonably concluded that the awardee understood the solicitation requirements.

DECISION

Energy and Environmental Services Corporation (EES) protests the award of a contract to ASCR Contracting Company, Inc. (ACCI) under request for proposals (RFP) No. DAAD01-93-R-0046, issued by the Department of the Army for the acquisition of caretaker and environmental services for the U.S. Army Jefferson Proving Ground. EES asserts that the Army improperly failed to perform a cost realism analysis of ACCI's proposal.

*The decision issued on May 15, 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]."

We deny the protest.

The RFP, issued on January 7, 1994, contemplated the award of a cost-plus-fixed-fee contract for a base year with four 1-year options for caretaker and environmental services at Jefferson Proving Ground.¹

The solicitation required offerors to submit a technical/management proposal, a past and present performance proposal, and a cost proposal. The proposals were to be broken down into separate parts for the caretaker services and the environmental services. The technical/management proposals were to be rated by a proposal evaluation board (PEB) under the following factors: Environmental Management Approach; Caretaker Management Approach; Environmental Technical Approach; and Caretaker Technical Approach. The solicitation listed evaluation subfactors under each of these primary technical/management evaluation factors. The past and present performance proposals were to be assigned a risk rating by a Performance Risk Assessment Group (PRAG), and the cost data provided in the cost proposal were to be evaluated for cost realism. The solicitation advised offerors that the contract would be awarded on the basis of the best value to the government and that the government would be willing to pay more for a superior technical/management proposal. The solicitation also informed offerors that the government intended to award the contract without holding discussions.

The Army received eight timely offers in response to the RFP. With respect to the technical/management proposals, ACCI was ranked first with a score of [deleted] out of 1,000 points and EES was ranked second with a score of [deleted] points. Both offerors received [deleted] risk ratings from the PRAG. Concerning cost, ACCI proposed the second lowest cost of [deleted], and EES proposed the second highest cost of [deleted]. The third ranked technical proposal, with a score of [deleted], was the lowest in cost, [deleted], and was rated [deleted] for performance risk. The fourth ranked technical proposal had a score of [deleted], was rated [deleted] for performance risk and, at [deleted], was fourth low in cost.

The contracting officer reviewed the evaluation results and recommended that the source selection official (SSO) select ACCI for award. In doing so, she considered that ACCI's

¹The services, which are currently being provided by government personnel, are being contracted out because Jefferson Proving Ground will be closed pursuant to the Defense Authorization Amendments and Base Closure and Realignment Act, Public Law 100-526, 102 Stat. 2623 (1988).

proposal was rated [deleted] risk for performance; was technically superior to the others by a significant margin; had no deficiencies and a number of advantages; and was only 3.3 percent higher in cost than the lowest-cost proposal, which had two major deficiencies, a significant number of weaknesses, and only one advantage. The SSO agreed and the contract was awarded to ACCI. This protest followed.

EES protests that the Army did not perform an adequate cost realism analysis of ACCI's proposal. In making this argument, EES primarily focuses on the environmental services portion of ACCI's proposal. EES asserts that the Army did not determine if the costs proposed for environmental services in ACCI's cost proposal were consistent with its technical approach, demonstrated that ACCI understood the requirements of the solicitation, or were realistic for the work to be performed.

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 (FAR) § 15.605(d); Arthur D. Little, 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. In this case, EES argues that the agency did not determine if ACCI's proposed costs were realistic for the work to be performed, or, in other words, what it would cost the government to award the contract to ACCI.

EES first argues that ACCI's proposed labor hours and costs should have been adjusted to reflect the number of FTEs called for by the government estimate. Specifically, EES argues that in its revised estimate the government estimated that it would take 6 full-time equivalents (FTE) to perform the environmental services portion of the work; in contrast, ACCI proposed only [deleted] FTEs.²

²In its protest, EES also discusses its disagreement with the revisions to the government estimate. EES states, however, that for purposes of the protest it is accepting the government estimate of FTEs needed for performance of the environmental services.

The purpose of a cost realism analysis is to determine what, in the government's view, it would realistically cost the offeror to perform given the offeror's own technical approach. See id. Thus, while the Army could have chosen to determine if ACCI's costs were realistic by comparing them to the government estimate, it was not required to do so.

EES also asserts that ACCI's proposal did not include travel costs for environmental services and that for the caretaker services it included no overhead other than fringe benefits and an abnormally low general and administrative (G&A) rate. EES argues that ACCI's cost proposal should have been adjusted for these costs.

With respect to whether the Army should have adjusted ACCI's proposal to reflect travel costs for environmental personnel, ACCI properly did not propose travel costs because it intends to perform most of the environmental work off-site, and to the extent on-site work is required, personnel will commute to the work site. With respect to the allegedly low overhead and G&A rates proposed by ACCI for caretaker services, the cost analyst explained that these rates are appropriate for contractors who are performing services on a government work site. While EES asserts that it has never heard of a contractor proposing such low overhead rates, EES has done no more than offer its opinion that they are unrealistic. EES' mere disagreement is not a sufficient basis on which to conclude that the cost analyst's conclusions are unreasonable. See General Servs. Eng'g, Inc., B-245458, June 9, 1992, 92-1 CPD ¶ 44.

EES also challenges both the cost realism analysis and the technical evaluation on the ground that they did not take into account alleged inconsistencies between the staffing proposed in ACCI's technical proposal and the staffing costs reflected in ACCI's cost proposal. In this regard, EES asserts that the cost analyst did not examine the hours or the skilled positions proposed by ACCI in its technical proposal to determine if they were consistent with the costs ACCI proposed. Nor, argues EES, were the results of the cost analysis forwarded to the PEB so that it could determine if the costs proposed by ACCI were consistent with its technical proposal. EES argues that such a review would have shown that the costs proposed by ACCI for environmental services were inconsistent with its technical proposal.

Specifically, EES asserts that ACCI proposed to have most of the environmental work performed by a subcontractor,³ and listed [deleted] people, [deleted] as key personnel, to perform the environmental services tasks of the contract. In its cost proposal, however, ACCI included costs for a staff of only [deleted] professional FTEs to perform environmental services. EES also avers that in its technical proposal ACCI proposed to staff the contract with certain personnel but did not include costs for some of these personnel in its cost proposal. For example, EES points out that in its technical proposal ACCI proposed a systems information manager, but in its cost proposal EES did not propose any hours for the manager. EES argues that because the cost analyst did not compare the cost and technical proposals she did not consider how the [deleted] referred to in the technical proposal were accounted for in the cost of only [deleted], or whether ACCI proposed costs to cover all the staff it proposed in its technical proposal.

In addition to challenging the cost realism analysis on this ground, EES points out that the PEB was not advised of the disparity between the staffing in ACCI's technical and cost proposals. EES posits that if the PEB had been aware of the low staffing level for environmental services reflected in ACCI's cost proposal,⁴ it would have concluded that ACCI did not understand the requirements of the solicitation and would have lowered ACCI's technical score under the qualification of personnel factor on the environmental portion of the contract. EES asserts that ACCI achieved a

³EES also argues that a proper cost realism analysis would have demonstrated that ACCI itself will not perform 50 percent of the contract and thus is not eligible for this small disadvantaged business set-aside award. See Defense FAR Supplement § 219.502-2-70. However, since in its proposal ACCI offered to perform more than 50 percent of the cost of the contract with its own personnel, and given our conclusion that the cost realism analysis was adequate, we have no basis to question the award on this ground.

⁴EES also argued that with respect to the caretaker portion of the contract, while ACCI proposed the right number of FTEs based on the government estimate, its proposed positions did not match those in the government estimate. The agency explained that ACCI's positions did match the government estimate but that ACCI used different terminology in describing its personnel. Since EES did not refute the agency's explanation, we consider this argument abandoned. See General Elec. Ocean and Radar Sys. Div., B-250418; B-250419, Jan. 11, 1993, 93-1 CPD ¶ 30.

high score for this factor because, based on the [deleted] people listed in ACCI's technical proposal, the PEB believed that ACCI proposed a large, full-time staff for environmental services. EES argues that since the PEB was never provided with the staffing reflected in ACCI's cost proposal, it did not have the opportunity to determine if ACCI proposed a sufficient number of FTEs to perform the environmental services.

First, to the extent that the protester contends that the technical evaluation was based on the erroneous assumption that ACCI had proposed a large full-time staff, the Army explains that ACCI did not offer [deleted] full-time employees to perform environmental services; rather, ACCI stated that it would draw on the [deleted] listed people on an as-needed basis. Further, as discussed below, the agency reviewed the proposal and reasonably concluded that ACCI had a full understanding of the agency's requirements.

A procuring agency is not required to downgrade an offeror's technical proposal for lack of understanding based on a cost realism analysis where the agency otherwise determines in evaluating the technical proposal that the offeror does understand the requirements of the solicitation. See Oshkosh Truck Corp., B-252708.2, Aug. 24, 1993, 93-2 CPD ¶ 115; TRW, Inc., B-243450.2, Aug. 16, 1991, 91-2 CPD ¶ 160.

Here, while there was no evaluation factor that specifically required the agency to evaluate offerors' proposed level of effort, there were a number of factors that required the agency to evaluate the offerors' understanding of various aspects of the contract. For example, under the Environmental Technical Requirements, Qualification of Personnel, the agency was charged with evaluating whether the proposals included a comprehensive outline of the contractor's total resources and demonstrated a thorough understanding of the labor categories and skill levels required for performance and whether the offeror identified key personnel with their areas of responsibility and relationship with management structure. In addition, under Environmental Technical Factors, Background and Experience, the Army was required to evaluate whether the offeror demonstrated a thorough understanding of providing comprehensive environmental compliance and integrating work elements into a united program.

For each of these factors, as well as in every other area where an offeror was required to demonstrate that it understood an area of contract performance, the PEB found that ACCI did a thorough job and totally understood all requirements of the solicitation and offered a qualified staff to perform. Moreover, after the protest was filed, the PEB considered ACCI's cost proposal and determined that

ACCI could in fact perform the contract with the effort proposed in its cost proposal, and with certain caretaker personnel proposed to perform environmental functions.⁵ Given these facts, we have no basis to question the agency's conclusion that ACCI fully understood the requirements of the solicitation.

As discussed above, EES also argues that the cost analysis was flawed because the cost analyst did not review ACCI's technical proposal. We disagree. Given that the PEB examined both the technical and cost proposals and concluded that they were consistent and accurately reflected EES' understanding and proposed approach, there was no requirement that the cost analyst also compare the two parts of the proposal. Rather, in view of the PEB's determination, the cost analysis properly was based on the assumption that the proposed staffing reflected in the cost proposal was consistent with ACCI's technical proposal.

In its initial protest, EES also asserted that the Army improperly evaluated its technical proposal and failed to hold discussions with the firm. In its protest report the agency addressed these issues. The agency specifically explained the basis of its evaluation in each of the eight areas where EES argued that the technical evaluation was unreasonable. The agency also noted that the solicitation indicated that the agency intended to award the contract without holding discussions. The agency stated that since ACCI submitted the highest technically ranked proposal and the second lowest cost proposal it properly awarded the contract to ACCI without holding discussions. In the comments it submitted replying to the agency's report, EES restated its protest basis that the agency improperly

⁵The Army points out in this regard that ACCI intends to perform pest control management, lead management, air management, underground storage tank management, earthwork and some environmental monitoring operations--all tasks listed under the environmental services portion of the solicitation--with its caretaker personnel. EES challenges ACCI's reliance on caretaker personnel, arguing in essence that they lack the technical skills required by the RFP to perform the environmental services. EES' argument is premised on its incorrect assumption that offerors were required to propose 6 FTEs--the number listed in the government estimate--for the environmental services, each satisfying the qualification requirements in the RFP. There was no such requirement; instead, the agency determined that the government estimate was in error and that, based on current requirements, ACCI could perform with [deleted] FTEs, supplemented with caretaker personnel. The record does not show that the agency's conclusion was unreasonable.

evaluated its technical proposal. EES, however, did not substantively address any of the agency's explanation of the technical evaluation of its proposal. Accordingly, we consider this basis of protest abandoned. See E-Systems, Inc., B-258667.2, Mar. 23, 1995, 95-1 CPD ¶ ____.

EES also restated its protest basis that the agency should have held discussions with EES based on the significant differences in costs between the proposals and to provide it with the opportunity to clarify alleged deficiencies in its proposal. The purpose of discussions is to allow an offeror to correct deficiencies in its proposal so that the proposal meets the agency's needs. See TRW, Inc., supra. Since the agency did not conclude that the proposed costs were too low or too high, or that the disparity indicated that the offerors did not understand the solicitation, the disparity in proposed costs did not provide a basis on which the agency was required to hold discussions. Regarding the alleged deficiencies in EES' proposal, in its report, the agency pointed out that there was only one deficiency in the proposal. In any case, since the solicitation stated the agency's intention to award the contract without holding discussions, the agency could do so once it reasonably determined that based on ACCI's high technical score and low cost an award to ACCI presented the best value to the government. See Macro Serv. Sys., Inc., B-246103; 246103.2, Feb. 19, 1992, 92-1 CPD ¶ 200.

The protest is denied.

Robert P. Murphy
General Counsel