



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: University of Dayton Research Institute
File: B-260709
Date: July 10, 1995

Daniel A. Bellman, Esq., Ronald S. Perlman, Esq., and James A. King, Esq., Porter, Wright, Morris & Arthur, for the protester.
Michael R. Charness, Esq., and John G. Horan, Esq., McDermott, Will & Emery, for CAE-Link Corporation, an interested party.
Maj. M. Steele Kenyon and Gregory H. Petkoff, Esq., Department of the Air Force, for the agency.
Daniel I. Gordon, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Allegation that agency improperly failed to consider personnel relocation costs in its cost realism analysis is without merit, where the solicitation indicated that relocation costs would not be considered, and neither the protester nor the awardee included such costs in its proposal.
2. Allegation that the agency improperly failed to consider, as part of its cost realism analysis, the actual current salaries of individuals proposed by the awardee is denied where both the agency and offerors anticipated that incumbent personnel could be substituted for proposed individuals after award, thus reducing the significance of the current salaries of proposed individuals.

DECISION

The University of Dayton Research Institute (UDRI) protests the award of a contract to CAE-Link Corporation for research services under request for proposals (RFP) No. F41624-94-R-5001, issued by the Department of the Air Force. UDRI contends that CAE-Link's selection was based on an inadequate cost realism review and cost/technical tradeoff analysis by the Air Force.

We deny the protest.

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The Air Force issued the RFP on June 15, 1994, to obtain proposals for aircrew training research and research support at the Armstrong Laboratory in Mesa, Arizona. The RFP anticipated award of a cost-plus-fixed-fee contract for a 24-month performance period.

The work covered by the RFP was previously performed by two contractors performing under three separate contracts. UDRI was the incumbent for one of those contracts; Martin Marietta Services, Inc., and a predecessor company were the incumbents under the other two contracts. A predecessor company to CAE-Link held one of those contracts before Martin Marietta.

The RFP indicated that the agency would evaluate proposals for technical merit, cost, "general considerations," proposal risk, and performance risk.¹ Technical merit, which was more important than cost, was divided into technical approach, qualifications, and management (in descending order of importance).

The RFP specified the government's estimate of other direct costs and directed offerors to use that dollar amount in their proposals. The RFP did provide, however, that offerors could include additional other direct costs if they were determined necessary.

Four proposals were received by the August 9 closing time, of which only the awardee's and the protester's are relevant and therefore discussed here. The agency determined that both of those proposals were in the competitive range and that both carried low proposal and performance risks. After discussions, the agency requested that offerors submit best and final offers (BAFO), which were due on February 15, 1995.

Evaluation of BAFOs led the agency to rate the protester's proposal "acceptable plus," while the awardee's was rated "acceptable." The protester's proposed BAFO cost was slightly below \$20 million; the awardee's was slightly above \$17 million. The agency's analysis of the proposals' cost for completeness, reasonableness, and realism led it to determine that the protester's most probable cost was higher (somewhat above \$20 million), while the awardee's most probable cost was essentially the same as its BAFO cost.

¹Proposal risk entails technical judgment and refers to the likelihood of success of the specific technical approach proposed by the offeror, while performance risk reflects an experience-based assessment, grounded on the offeror's relevant past performance, of the likelihood of that particular offeror successfully performing the contract.

The source selection authority (SSA) concluded that the higher technical rating assigned to the protester's proposal did not justify the payment of a cost premium of approximately \$3 million. Accordingly, the agency awarded the contract on March 3. This protest followed.

UDRI contends that the agency failed to conduct a reasonable cost realism analysis of CAE-Link's proposal, and that, had it done so, it would have concluded that CAE-Link's most probable cost was substantially higher than proposed. UDRI also argues that the agency failed to perform a reasonable cost/technical tradeoff analysis and that such an analysis would have led to UDRI's proposal being selected for award.

Where, as here, a cost reimbursement contract is to be awarded, the offerors' estimated costs of contract performance should not be considered as controlling since the estimates may not provide valid indications of the final actual costs which the government is required to pay. See Federal Acquisition Regulation § 15.605(d). Consequently, the contracting agency must perform a cost realism analysis to determine the realism of an offeror's proposed costs and to determine what the costs are likely to be under the offeror's technical approach, assuming reasonable economy and efficiency. CACI, Inc.-Fed., 64 Comp. Gen. 71 (1984), 84-2 CPD ¶ 542.

An agency is not required, however, to conduct an in-depth analysis or to verify each item in conducting a cost realism analysis. Hattal & Assocs., 70 Comp. Gen. 632 (1991), 91-2 CPD ¶ 90. A cost realism assessment necessarily involves the exercise of informed judgment and the agency is clearly in the best position to make that assessment; therefore, our Office will review such a determination only to ascertain whether it had a reasonable basis. Id.

Here, the record demonstrates that the Air Force reviewed key facets of CAE-Link's cost proposal for realism, as well as for completeness and reasonableness. The evaluators reviewed the number of labor hours as well as the type of labor proposed by CAE-Link. Its proposed labor rates were referred to the Defense Contract Audit Agency (DCAA), which took no exception to the rates. Because a majority of the awardee's proposed rates were composites of actual rates currently being paid to the awardee's employees at sites with higher average salaries than the place of performance (Arizona), no cost of living adjustment was deemed necessary. DCAA also reviewed and took no exception to the awardee's various indirect rates (with two minor exceptions not relevant here).

The Air Force evaluators verified that CAE-Link had properly included in its cost calculations the estimated dollar

amount specified in the RFP for other direct costs. Finally, the agency reviewed the number of subcontractor and consultant hours proposed by CAE-Link and concluded that it and the associated rates were reasonable and consistent with the quotations that the consultants and subcontractors had furnished to CAE-Link.

UDRI contends that the agency's cost realism analysis was unreasonable because it failed to consider two aspects of CAE-Link's cost proposal that were allegedly unrealistic: the proposal failed to include relocation costs, and it was based on unrealistically low salaries for some of the proposed employees.

Regarding the first issue, the protester argues that most of the personnel proposed by the awardee are currently located outside of Arizona, where the contract will be performed, and that the costs of relocating those employees will be reimbursable under the contract. UDRI contends that the agency should have taken into account, in its cost realism analysis, the substantial personnel relocation costs that the agency will bear due to CAE-Link's proposed use of non-incumbents who will need to be transferred to Arizona in order to perform. According to calculations proffered by a consultant retained by the protester, the awardee's proposal will entail \$646,938 more in reimbursable relocation costs than would UDRI's proposal.

Neither the agency nor CAE-Link denies that CAE-Link proposed to employ a substantial number of individuals not currently located in Arizona and neither denies that the costs of moving those employees to Arizona may be reimbursable under the contract. Both the agency and the awardee contend, however, that it was reasonable not to consider relocation costs in assessing the cost realism of proposals, and that UDRI's own proposal demonstrates that, at the time that proposal was prepared, the protester understood that relocation costs would not be considered in the cost evaluation.

In this regard, the agency explains that the RFP did not require offerors to obtain letters of commitment from proposed employees and, indeed, recognized the agency's interest in the successful offeror's substituting acceptable incumbent personnel for those proposed, thus reducing the need for relocating employees and eliminating the associated relocation costs.² It was the recognition that the

²The RFP initially included a provision requiring letters of commitment, but that provision was deleted prior to the closing time. Moreover, there are provisions alluding to the possibility of the hiring of incumbent personnel by the

successful offeror might not actually need to produce the proposed employees, so that the relocation costs would not be incurred, that led the agency to conclude that any relocation costs would be speculative and should not be included in proposals.

Even though the RFP did not explicitly address the treatment of relocation costs, the agency and the awardee understood the solicitation's use of a "normalized" figure for other direct costs as indicating that relocation costs would not be considered in the evaluation. UDRI's proposal demonstrates that it shared this understanding at the time it prepared its proposal. The protester concedes that its proposal was premised on relocating approximately one third of its work force from Ohio to Arizona and it considers the associated relocation expenses to be reimbursable as other direct costs (that is, costs other than labor and material) under the contract. It did not disclose those costs in its cost proposal, however, and it has not argued that the agency's cost realism analysis was faulty for not including those costs in its calculation of the probable cost of UDRI's proposal.

The only reasonable explanation for the protester's failure to identify personnel relocation costs in its proposal is that UDRI shared the understanding of the agency and the awardee that, due to the likelihood that incumbents would be retained by whichever offeror won the contract, relocation costs were uncertain and would not be evaluated. Since UDRI's own proposal indicated that it, like the agency and the awardee, expected that those costs would not be considered in the evaluation of cost proposals, it cannot plausibly now take the contrary position and argue that the agency's failure to consider those costs in the probable cost analysis was unreasonable or inconsistent with the RFP.

The protester's second challenge to the cost realism analysis concerns the salaries of the individuals proposed by the awardee. UDRI points out that the awardee proposed a number of specific named individuals as employees, while its cost proposal was based on pooled labor rates rather than those individuals' current salaries. According to UDRI, DCAA's review of labor rates was meaningless because the Air Force did not disclose to DCAA that the proposed employees were not currently working for CAE-Link. As a result, DCAA merely confirmed that the proposed salaries were consistent

successor contractor in both the RFP and the predecessor contract under which UDRI is currently performing part of the work covered by the RFP. Both UDRI and CAE-Link indicated in their proposals that they intended to hire incumbent employees currently working for other firms.

with CAE-Link's pooled rates for its employees, not that they were realistic in terms of the individuals' current salaries. The protester's consultant estimated the individuals' current salaries (based on the credentials set out in the resumes) and performed his own calculation of the impact on CAE-Link's cost proposal of the awardee paying labor rates comparable to those salaries. According to UDRI's consultant, the result would be to increase the awardee's most probable cost by at least \$714,263.

As with relocation costs, the agency explains that its evaluation did not assume that the particular individuals proposed by any offeror would actually perform the work, since the successful offeror would be permitted to substitute acceptable incumbent employees for the proposed individuals. In addition, the agency and awardee point to other weaknesses in the protester's argument. In particular, they stress that an increase of even \$1 million to the awardee's most probable cost would still leave a most probable cost gap of some \$2 million in favor of the awardee.³

While the agency could have asked DCAA to consider current salaries in considering the realism of the labor rates proposed for the individuals named in CAE-Link's proposal, in light of the likelihood that incumbents would be substituted for many of those individuals, the methodology used was not unreasonable. In any event, the most probable cost of UDRI's proposal was so high (a matter not challenged

³There are also criticisms raised with respect to specific components of the consultant's analysis. For example, the awardee notes that UDRI's consultant assumed that CAE-Link would need to pay a fairly high labor rate for a particular labor category; yet, UDRI itself proposed a much lower labor rate for that labor category. The protester, who was afforded the opportunity to submit supplemental comments responding to the awardee's comments, failed to address this discrepancy.

in the protest) that even an increase in CAE-Link's most probable cost would not erase the awardee's significant cost advantage.⁴ In fact, UDRI's most probable cost would remain nearly 10 percent higher than CAE-Link's, even if the increase in the awardee's probable cost advocated by UDRI's consultant in the area of salaries were doubled (that is, if CAE-Link's most probable cost were increased by \$1.43 million). In this factual context, there is no basis to find that the cost evaluation methodology adopted by the Air Force prejudiced UDRI.

The protester also contends that the agency should have considered, in judging the awardee's performance risk in the cost area, past government contracts under which the awardee allegedly engaged in fraud. The protester points to evidence of fraud that led to a settlement in a suit filed by a qui tam relator under the False Claims Act, 31 U.S.C. § 3729 et seq. (1988). The agency responds that, as part of its evaluation of past performance, it contacted contracting officials familiar with the awardee's contract performance and received uniformly positive comments. The awardee points out that the problems leading to the false claims settlement arose more than 6 years ago, at a time when the awardee was under different ownership. The awardee also notes that, as part of the settlement agreement, CAE-Link has been subject to frequent government audits for more than 2 years, none of which has resulted in an adverse finding. The awardee argues that this close scrutiny suggests that CAE-Link now represents a particularly low performance risk.

In the context of the broad discretion afforded contracting officials in the evaluation of past performance, the Air Force's determination that CAE-Link posed a low performance risk is unobjectionable. See Lockheed Aircraft Serv. Co., B-255305; B-255305.2, Feb. 22, 1994, 94-1 CPD ¶ 205. The evaluation was consistent with the solicitation criteria, and the fact that problems arose in the 1980s, when CAE-Link was under different ownership, does not render unreasonable the Air Force's determination that the firm represented a low performance risk in this procurement. Accordingly, UDRI's challenge to this aspect of the evaluation is denied.

Finally, the protester contends that the Air Force's cost/technical tradeoff analysis was deficient. As explained above, UDRI's technical proposal received an

⁴In this regard, the agency points out that a good part of the difference between the two offerors' total proposed costs arose from a difference in indirect costs. The protest does not challenge the realism of the awardee's indirect costs.

overall rating of "acceptable plus," while the awardee's proposal was rated only "acceptable." The protester points out that the source selection decision document provides no detailed analysis explaining the SSA's selection of the lower-cost, lower-rated proposal offered by CAE-Link, rather than UDRI's higher-cost, higher-rated proposal.

Cost/technical tradeoffs may be made, and the extent to which one may be sacrificed for the other is governed by the test of rationality and consistency with the established evaluation factors. Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 CPD ¶ 325. Accordingly, an agency may award to an offeror with a lower-cost, lower-rated proposal if it reasonably determines that the cost premium involved in awarding to a higher-rated, higher-priced offeror is not justified. Dayton T. Brown, Inc., B-229664, Mar. 30, 1988, 88-1 CPD ¶ 321.

While the selection official's judgment must be documented in sufficient detail to show it is not arbitrary, KMS Fusion, Inc., B-242529, May 8, 1991, 91-1 CPD ¶ 447, a source selection official's failure to specifically discuss the cost/technical tradeoff in the selection decision document does not affect the validity of the decision if the record shows that the agency reasonably determined that a higher technically scored proposal is not worth the additional cost associated with that proposal. McShade Gov't Contracting Servs., B-232977, Feb. 6, 1989, 89-1 CPD ¶ 118.

Here, the source selection decision document stated that the choice of CAE-Link was based on an integrated assessment of the proposals under the evaluation criteria set forth in the RFP. In making that assessment, the SSA was faced with a choice between two proposals with similar technical ratings, where the difference in most probable cost was substantial.⁵ While the SSA did not provide a detailed cost/technical tradeoff analysis, we think, in the context of the wide disparity in probable cost between the two proposals here,

⁵While UDRI argues that the spread in the underlying numerical scoring assessed by the technical evaluators was greater than suggested by the slight difference in overall ratings, we view this argument as inconsequential, since the disparity in the technical evaluations (even as to the numerical scoring) was not so great as to call into question the reasonableness of the SSA's selection of CAE-Link's proposal for award on the basis of its lower probable cost.

that the selection of the lower-cost proposal was not unreasonable.

The protest is denied.

/s/ Ronald Berger
for Robert P. Murphy
General Counsel