

DECISION



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

61392

FILE: B-186311

DATE: August 26, 1976

MATTER OF: University Research Corporation

W98633 / 98633

DIGEST:

1. When contracting agency's cost evaluation consists merely of comparing estimated costs proposed by offerors, adequate analysis and assessment of offerors' realistic, probable costs is lacking and rational support for source selection decision cannot be found. Renewing evaluation and selection process under circumstances does not appear practicable, but GAO recommends that 1-year contract option not be exercised and that any requirements after contract expiration be resolicited on competitive basis.
2. In view of GAO recommendation that contract option not be exercised and option requirements be resolicited competitively, further consideration at present time of protester's claim for proposal preparation costs is unnecessary.
3. Contention that agency's statement of cost and technical evaluation factors was vague and misleading is untimely, because protests against RFP improprieties apparent prior to closing date for receipt of initial proposals must be filed prior to initial closing date. However, requirement for clear statement in RFP of relative importance of evaluation factors is noted for agency's consideration in drafting future RFP's for same services.

University Research Corporation (URC) protests the award of a contract to American Technical Assistance Corporation (ATAC) under request for proposals (RFP) No. L/A 76-9, issued by the Department of Labor (DOL). While the RFP sought offers on several separate program areas, the only one at issue here is Area "A," executive programs. The cost-plus-fixed-fee contract awarded to ATAC involves furnishing technical assistance in this area to DOL's Office of Education and Career Development. URC asks that the contract be canceled and award made to it. Alternatively, URC asks for its proposal preparation costs.

The RFP specified that services were to be provided for a period of 12 months (January 1, 1976 to December 31, 1976) with DOL having an option to extend the contract for an additional 12 months. The RFP included four criteria (with numerical weights) for technical evaluation:

Evaluation Factors and Weights

<u>Factors</u>	<u>Weights</u>
Understanding of proposal requirements	10
Soundness and relevance to the DOL of the overall program proposal	35
Experience of the offeror, as related to this project	25
Experience and qualifications of personnel to be assigned to this project	30

Since each technical proposal was to be reviewed by two evaluators, the maximum point score attainable was 200.

The RFP also included the following reference to price:

"Offerors are advised that major consideration shall be given to the evaluation of technical proposals, as well as price, in the award of a contract hereunder."

A preproposal conference was held by DOL to provide information concerning the Government's requirements and to answer prospective offerors' questions. URC submitted the following question:

"What factor is cost in the evaluation? Will the contract be awarded to the lowest cost qualified bidder or is cost just one of the many factors? If the latter applies, why was cost not indicated on page two of the technical proposal requirements?"

A DOL representative responded as follows:

"As a matter of practical policy within the procurement division here at the Department, we do not include cost as an evaluative factor unless we are talking in an area of systems hardware where cost can be accurately measured.

"We are dealing with a cost reimbursement effort for services such as we are talking about here. Cost, of course, is a critical factor in the final selection of contractors. What we normally do as a matter of practice is receive the proposals under separate cover; cost and technical.

"Technical proposals are then forwarded to the evaluation panel, the people you see here at the table, for technical evaluation. They do not see the cost elements of your proposal.

"They evaluate those technical proposals, of course, with the criteria spelled out on page two of the technical proposal instructions. We, in the procurement division, evaluate the cost for reasonable and realistic price factors and conditions.

"Once we get the technical evaluation back, we then, of course, call those contractors who are technically acceptable to our program area, people we further consider.

"We further consider those acceptable proposals, technically, with regard to their cost elements at this point in time to determine where our competitive range is. At that point in time, of course, the cost factors are introduced.

"Cost factors are again important when we make our final selection for award, however, under a negotiated procurement you, I am sure, realize that we are not tied to the lower costed contractor.

"In our own subjective judgment, then, we award contracts to those contractors we feel offer the best benefits to the Government, cost and other factors considered; the other factors being, of course, those technical factors we are talking about."

Although minutes of the preproposal conference were distributed to prospective offerors, they were not designated as a formal amendment to the RFP.

URC's initial proposal, submitted October 20, 1975, included two educational options not required by the RFP. In this regard, RFP paragraph 5, "INSTRUCTIONS TO OFFERORS" provided:

"Offerors may, at their discretion, submit alternate proposals or proposals which deviate from the requirements, provided, a proposal is submitted for performance of the work and services described in the Schedule. Alternate proposals or proposals which deviate from the requirements may be considered, provided the intended use and overall performance are either improved or not prejudiced and are in the interest of the Government. If deviations are requested, they must be specifically stated."

After submission of the initial proposals DOL conducted oral negotiations with three of the seven offerors: URC, ATAC, and the incumbent contractor, the Department of Agriculture Graduate School (DOA). On November 26, 1975, in response to DOL's oral request, URC submitted a revised proposal, including what it describes as a modified educational option. Subsequently, DOL orally reduced the RFP scope of work because of alleged budget reductions. However, this was not committed to writing as a formal RFP amendment. In response, URC submitted its second best and final offer to DOL including the educational option on December 31, 1975. A final oral reduction in the scope of work was made by DOL on March 7, 1976, which, again, was not reduced to writing as a formal amendment to the RFP. URC then submitted its third and last best and final offer with a proposed cost of \$328,190. Again, URC's proposal included the educational option. An attached cover letter indicated, however, that without the educational option the proposed cost was \$310,759.

In DOL's final technical scoring of the proposals, URC's proposal ranked highest (197.5 out of a possible 200 points), ATAC was second (181.0) and DOA third (173.0).

On March 18, 1976, award was made to ATAC in the amount of \$264,116 for a performance period extending from March 19, 1976, through December 31, 1976, with a 1-year option. URC's subsequent protest to DOL was denied, and URC then protested to our Office by letter dated April 14, 1976.

URC contends inter alia that DOL failed to make an adequate independent cost analysis of the proposals as required by Federal Procurement Regulations (FPR) § 1-3.807-2 (1964 ed. amend. 103) and, by failing to do so, did not exercise informed judgment with regard to proposal cost and contractor selection. URC contends that DOL simply accepted the low cost estimate of the ATAC proposal at face value. Had DOL conducted an adequate cost analysis, URC argues, it would have been apparent that the ATAC proposal price was based on a lower level of effort than the URC proposal and that ATAC's lower price was minimal in contrast to the substantial differential in the weighted point score evaluation of the URC technical proposal over the ATAC technical proposal.

Specifically, URC argues that to fairly compare the two proposals DOL should have:

(1) eliminated URC's educational option, reducing URC's price by \$26,031; and

(2) reduced URC's cost estimates for the levels of effort of professional days and secretarial days, and reduced cost estimates for counselors' salaries to correspond with ATAC's cost estimates in these areas, thereby reducing URC's overall cost by \$65,436 to \$262,754.

For its part, DOL contends that URC received its higher technical rating based on the technical evaluation of its entire proposal, including the more costly items (such as the educational option) which URC urges should have been eliminated for purposes of cost comparison. DOL contends that if these items had been eliminated, as URC urges, URC's technical evaluation rating would have been lower. DOL also contends that it conducted an indepth cost analysis producing the following results:

	<u>ATAC</u>	<u>URC</u>
Professional Manhours	11,920	11,472
Clerical Manhours	2,400	5,670
Indirect (Dollars)	\$ 40,988	\$ 79,050
Fixed Fee	\$ 20,153	\$ 20,490
Total CPPF	\$264,116	\$328,190

From the above cost analysis, DOL concluded that:

"[T]he ATAC proposal offered the Government more professional effort than the URC proposal. The clerical support proposed by ATAC was judged to be quite sufficient, and the increased clerical effort proposed by URC did not appear to be of significant benefit to the Government. As can be seen by the total indirect cost figures above, the ATAC proposal clearly offered lower indirect cost structure."

With regard to URC's educational option, DOL maintains it advised URC in the negotiations that this feature was not desired, whereas URC denies this. Even assuming DOL's account is correct, we have difficulty seeing why DOL could not have simply considered URC's last best and final offer exclusive of the educational option. In any event, notwithstanding this issue and other specific allegations of error raised by URC, we believe the disposition of this case turns upon the nature of the overall cost evaluation conducted by DOL. In making a cost evaluation, it is established that a low cost estimate proposed by an offeror should not be accepted at face value. Rather, pursuant to FPR § 1-3.807-2, supra, the contracting agency should make an independent cost projection of the estimated costs reflected in the cost proposal. See PRC Computer Center, Inc., et al., 55 Comp. Gen. 60 (1975), 75-2 CPD 35; Signatron, Inc., 54 Comp. Gen. 530 (1974), 74-2 CPD 386.

The initial difficulty which we have with DOL's position is that the above-quoted statements constitute virtually the entire record of the cost evaluation of proposals. The only other pertinent material appears to be a document entitled "Summary of Negotiations," dated March 17, 1976, which contains some cost information. Also, at the bid protest conference on this case on June 10, 1976, a DOL representative indicated that some contemporaneous workpapers were prepared by the evaluators, but these apparently have not been preserved.

Given these circumstances, and absent any evidence to the contrary, we must conclude that DOL's cost evaluation was seriously deficient. All of the cost figures in the record, both those quoted above and those in the "Summary of Negotiations," appear to have been

taken directly from the estimated costs proposed by offerors in their proposals. There is no indication that DOL made any adjustments to offerors' costs to reflect the agency's informed judgment of what the services probably should cost. So far as the record shows, the only sense in which the offerors' costs were analyzed or evaluated was by means of a comparison of ATAC's and URC's estimated costs in the process of making the source selection decision.

We note that FPR § 1-3.807-2(a), supra, recognizes that the method and degree of cost analysis is dependent upon the facts surrounding the particular procurement and pricing situation. Also, FPR § 1-3.807-2(c)(3)(iii) provides that an offeror's current estimated costs should be compared with current cost estimates from other possible sources.

However, we are unaware of any basis to conclude that an evaluation limited solely to a comparison of offerors' estimated costs could be considered minimally adequate in a procurement of this type. Such a conclusion would ignore other mandatory provisions set forth in FPR § 1-3.807-2(c), which states in pertinent part:

"(1) Cost analysis is the review and evaluation of a contractor's cost or pricing data * * * and of the judgmental factors applied in projecting from the data to the estimated costs, in order to form an opinion on the degree to which the contractor's proposed costs represent what performance of the contract should cost assuming reasonable economy and efficiency. It includes the appropriate verification of cost data, the evaluation of specific elements of costs, and the projection of these data to determine the effect on prices of such factors as:

- (i) The necessity for certain costs;
- (ii) The reasonableness of amounts estimated for the necessary costs;
- (iii) Allowances for contingencies;
- (iv) The basis used for allocation of overhead costs; and
- (v) The appropriateness of allocations of particular overhead costs to the proposed contract.

"(2) Cost analysis shall also include appropriate verification that the contractor's cost submissions are in accordance with the contract cost principles and procedures in Part 1-15.

"(3) Among the evaluations that should be made where the necessary data are available are comparisons of a contractor's or offeror's current estimated costs with:

(i) Actual costs previously incurred by the contractor or offeror;

(ii) The contractor's or offeror's last prior cost estimate for the same or a similar item or with a series of his prior estimates;

(iii) Current cost estimates from other possible sources; and

(iv) Prior estimates of historical costs of other contractors manufacturing the same or similar items.

"(4) Forecasting future trends in costs from historical cost experience is of primary importance. An adequate cost analysis must include consideration of future trends in costs.* * *"

After reviewing the record in this case, we cannot conclude that the requirements for cost analysis were satisfied. Lacking an adequate assessment of offerors' realistic and probable costs, we believe it follows that the source selection decision, based upon tradeoffs between technical scoring and offerors' estimated costs, cannot be said to be rationally supported. Accordingly, URC's protest is sustained.

Possible corrective action recommendations in such circumstances might involve further evaluation or investigation by the agency, possibly leading to reconsideration of a source selection or termination for convenience of a contract. See Tracor-Jitco, Inc., 54 Comp. Gen. 896,900-901 (1975), 75-1 CPD 253; Cf. Management Services, Inc., 55 Comp. Gen. 715 (1976), 76-1 CPD 74. In the present case, we note that performance of the contract is approximately one-half completed. Under these circumstances, we believe that to renew the evaluation of proposals in this case, reconsider the selection decision, and possibly terminate ATAC's contract for convenience and reaward

would likely be so time-consuming that it would not be practicable and in the Government's best interests. However, by letter of today to the Secretary of Labor, we are recommending that the 1-year option not be exercised, and that any requirement after December 31, 1976, for these services be resolicited competitively.

In view of this disposition, we think it is unnecessary to give further consideration at this time to URC's claim for proposal preparation costs. See, in this regard, Dynalectron Corporation, B-184203, March 10, 1976, 76-1 CPD 167.

Since our decision contains a recommendation for corrective action, we have furnished a copy to the congressional committees referenced in section 236 of the Legislative Reorganization Act of 1970, 31 U.S.C. § 1176 (1970), which requires the submission of written statements by the agency to the Committees on Government Operations and Appropriations concerning the action taken with respect to our recommendations.

One remaining point for noting is URC's contention that the RFP failed to reveal the relative importance of cost in relation to technical factors. URC contends that it was misled by the RFP and by DOL's vague statements at the preproposal conference, supra, into believing that cost was secondary in importance to technical factors.

Many decisions of our Office have emphasized the necessity of providing in the RFP a clear indication of the importance of the various evaluation factors in relation to each other. See, for example, the Signatron decision, supra, where we stated:


"* * * [I]ntelligent competition requires, as a matter of sound procurement policy, that offerors be advised of the evaluation factors to be used and the relative importance of those factors. We believe that each offeror has a right to know whether the procurement is intended to achieve a minimum standard at the lowest cost or whether cost is secondary to quality.* * *"

See, generally, BDM Services Company, B-180245, May 9, 1974, 74-1 CPD 237 and decisions cited therein.

Further, in a recent decision we expressed the view that the mere statement that "cost and other factors" would be considered does not fully satisfy the requirement for a clear explanation of the relative importance of cost versus technical considerations. Iroquois Research Institute, 55 Comp. Gen. 787, 790,791 (1976), 76-1 CPD 123.

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In the present case, URC's objections to the evaluation factors are untimely and not for consideration. Under our Bid Protest Procedures, protests against alleged improprieties which are apparent in the RFP prior to the closing date for receipt of initial proposals must be filed prior to the closing date for receipt of initial proposals. See 4 CFR § 20.2(b)(1) (1976). However, our observations above concerning the principles applicable to statements of evaluation factors in an RFP may be pertinent to DOL's drafting of future RFP's for these services.


Acting Comptroller General
of the United States