



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

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REDACTED VERSION'

Decision

Matter of: DCT, Inc.
File: B-253545; B-253545.2
Date: September 28, 1993

Donald E. Barnhill, Esq., East and Barnhill, P.C., for the protester.
Mike Colvin, Esq., Department of Health and Human Services, for the agency.
Stephen J. Gary, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Allegation that agency improperly excluded protester from further consideration for award on the basis of its higher proposed cost without conducting adequate discussions is without merit where record shows protester was excluded not on the basis of cost, but primarily due to its significantly inferior technical proposal.
2. Determination that awardee's proposed cost was realistic was proper where based on review of the cost of its performance as the incumbent contractor, comparison of awardee's proposed costs with protester's, and the fact that awardee could pay lower wage rates than protester by virtue of its Department of Labor certificate of exemption from the Service Contract Act for handicapped organizations.

DECISION

DCT, Inc. protests a contract award to Jenkins Memorial Children's Center (JMC) under request for proposals (RFP) No. 222-93-2004(P), issued by the Department of Health and Human Services (HHS) for nontechnical support services. DCT contends that HHS failed to perform a proper cost-realism analysis and did not provide the protester meaningful discussions of its cost proposal.

'The decision issued on September 28, 1993, contained proprietary information and was subject to a General Accounting Office protective order. This version of the decision has been redacted. Deletions in text are indicated by "[deleted]."

We deny the protest.

The solicitation was issued as a total small business set-aside by HHS' National Center for Toxicological Research, located in Arkansas; based on the proposal offering the best value to the government, the RFP provided for award of a cost-reimbursement contract covering a period of 1 base year and 4 option years. With regard to the evaluation of proposals, the RFP stated that cost and technical factors would be approximately equal in weight. In the technical area, offerors' qualifications would account for 40 percent of the numerical score, technical approach 30 percent, and past experience 30 percent. Cost was to be evaluated on the basis of cost realism, defined as the offeror's ability to project costs that were reasonable and that indicated an understanding of the nature and extent of the work to be performed.

Two offerors submitted proposals by the February 26, 1993, closing date--DCT and JMC, the incumbent contractor, a nonprofit organization employing handicapped workers. Although DCT's initial proposed cost, [deleted], was [deleted] percent higher than the government estimate, both HHS and the Defense Contract Audit Agency (DCAA), which performed an independent analysis, concluded that DCT's costs were reasonable and realistic given the firm's technical approach. Consequently, in the absence of any significant weaknesses or deficiencies in DCT's cost proposal, HHS simply asked DCT to explain or clarify certain matters. HHS likewise concluded that JMC's proposed cost, [deleted], which was [deleted] percent below the government estimate, required clarification.

As for technical proposals, out of a maximum possible score of 100, DCT received a technical score of [deleted], compared to JMC's score of [deleted]. In contrast to DCT's cost proposal, HHS identified a number of deficiencies in DCT's technical proposal. Both DCT's and JMC's proposals were included in the competitive range for purposes of discussions. Both offerors were given an opportunity to improve their technical proposals by incorporating responses to specific questions in revised proposals; based on the revised proposals, DCT's technical score was increased only slightly, from [deleted] to [deleted] points, while JMC's score was increased from [deleted] to [deleted]. Despite the widened gap in technical scores, HHS included DCT's proposal in the competitive range for a second round of discussions that included cost matters. The agency then requested best and final offers (BAFO).

After evaluating the BAFOs, although DCT's proposed costs increased slightly (less than one percent), HHS determined there was essentially no change in the relative technical or

cost ranking of the proposals. Based on JMC's significantly superior technical proposal and its lower cost, HHS concluded that the contract should be awarded to that firm; however, the agency deferred making award until it could obtain further clarification of certain employee classifications and wage rates in JMC's cost proposal. At the same time, the agency determined, pursuant to Federal Acquisition Regulation (FAR) § 15.609(b), that since DCT had failed to improve its standing after two opportunities to revise its proposal, DCT's proposal no longer had a reasonable chance of being selected for award. HHS thus eliminated DCT's proposal from the competitive range. This protest followed.¹

MEANINGFUL COST DISCUSSIONS

DCT argues that it should have been included in a third round of cost discussions, and that its exclusion from further consideration for the award was improper. According to DCT, the reason it was not able to improve its standing in earlier rounds of discussions was that HHS treated the two offerors unequally; while the agency provided detailed questions to JMC concerning that firm's proposed costs--including the wage rates proposed by JMC for several key job classifications--it failed to provide similarly detailed discussions with respect to DCT's cost proposal. Since, DCT argues, DCT's proposal was excluded from the competitive range primarily because its proposed labor rates were higher than JMC's, had the agency conducted adequate discussions the protester would have adjusted its price and its proposal would have remained in the competitive range.

In negotiated procurements, contracting officers generally are required to conduct discussions with all offerors whose proposals are within the competitive range--that is, proposals that have a reasonable chance of being selected for award. J.G. Van Dyke & Assocs., B-248981; B-248981.2, Oct. 14, 1992, 92-2 CPD ¶ 245. Discussions must be meaningful; that is, an agency is required to point out weaknesses, excesses or deficiencies in proposals unless doing so would result in technical transfusion or technical leveling. Mikalix & Co., 70 Comp. Gen. 545 (1991), 91-1 CPD ¶ 527. In general, agencies must lead offerors into the areas of their proposals which require amplification or correction. Son's Quality Food Co., B-244528.2, Nov. 4, 1991, 91-2 CPD ¶ 424. However, the actual content and extent of discussions are matters of judgment primarily for determination by the agency involved, and we generally limit our review of the agency's judgments to a determination of

¹Award has been withheld pending resolution of the protest.

whether they are reasonable. GeoMet Data Servs., Inc., 71 Comp. Gen. 302 (1992), 92-1 CPD ¶ 259; Chadwick-Helmuth Co., Inc., 70 Comp. Gen. 88 (1990), 90-2 CPD ¶ 400.

As an initial matter, DCT's argument is based on an incorrect premise; although DCT asserts that its proposal was excluded from the competitive range primarily because HHS neglected to discuss labor rates perceived as too high, the record (as indicated above) shows that both the agency and DCAA in fact concluded that DCT's proposed costs were realistic and reasonable. The record shows that DCT was eliminated from further consideration, not on the basis of its proposed cost, but primarily because of technical weaknesses that, although amply discussed with the firm, had not been eliminated in its BAFO. As outlined above, notwithstanding DCT's significantly lower technical score, HHS included the firm in the competitive range for two successive rounds of discussions. Only after requesting and evaluating two revised proposals did HHS conclude that DCT did not have a reasonable chance of being selected--as reflected in the fact that, after two opportunities, DCT had improved its significantly lower-rated technical proposal only slightly, while JMC had improved its already [deleted] higher-rated proposal even further. DCT does not allege that the agency's technical evaluation was flawed, or that the technical discussions were inadequate, and the record discloses nothing that would call those matters into question.² It thus is not clear what effect, if any, discussions concerning DCT's cost proposal could have had on the award decision.

In any case, there is no merit to DCT's contention that it was denied meaningful cost discussions, or that the offerors were treated unequally. The type of questions HHS asked the two offerors regarding their cost proposals differed in the level of detail provided because the proposals themselves differed. As noted, both HHS and DCAA had found DCT's proposed costs to be reasonable and realistic; since the record shows that these findings encompassed the firm's proposed labor hours and rates, there was no need to ask detailed questions about these matters. On the other hand, the record shows the agency asked DCT a number of detailed questions in areas of its cost proposal--not related to labor hours as such--that were considered unclear. Specifically, HHS asked DCT to provide an explanation or breakdown of various proposed costs other than labor hours, such as those for telephone/communication, travel, postage, repairs and maintenance, bank fees, and meetings and

²Our own review indicates that the agency's technical discussions with DCT were more extensive than those with JMC.

education. At the same time, inconsistencies that HHS found in JMC's proposal required a higher level of detail in its questions. Detailed questions about JMC's proposed rates for the positions of mail handler, supply clerk/store worker, and supply technician, for example, arose from the agency's concern that JMC had proposed substantial wage increases for these positions [deleted]. We conclude that there is no valid basis for DCT's assertion that the offerors were treated unequally or that the discussions with DCT were inadequate.

COST REALISM

DCT objects to the agency's cost-realism analysis. According to DCT, it was improper for the agency to evaluate JMC's wage rates on the same basis as DCT's, since its own rates were based on the applicable Department of Labor (DOL) wage determination included in the solicitation, but JMC's were lower than the applicable rate included in the solicitation based on its handicap exemption to the current Service Contract Act (SCA) wage determination.³

The purpose of a cost-realism analysis by an agency under a cost-reimbursement contract is to determine the extent to which the offeror's proposed costs are realistic and reasonable. Such a determination must itself be reasonable. Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 CPD ¶ 325; JWK Int'l Corp., B-237527, Feb. 21, 1990, 90-1 CPD ¶ 198.

HHS' cost-realism analysis here was reasonable. The agency assessed the realism of JMC's proposed costs in light of its actual costs as the incumbent and, with the assistance of DCAA, analyzed each offeror's cost elements for realism. While the rates proposed by JMC were below the applicable SCA rate, this fact did not render the proposed rates unreasonable, since they were consistent with the firm's handicap exemption and reflected the rates JMC actually would pay under its contract. Such a realism analysis is reasonable, notwithstanding that one offeror is able to offer lower rates by virtue of a handicap exemption. See Donald Clark Assocs. Inc., supra.

³The handicap exemption is a Department of Labor certificate which permits contractors employing the handicapped to pay them at a rate which is 85 percent of the SCA wage determination for the procurement. See FAR § 19.501(k); Donald Clark Assocs. Inc., B-238857; B-238857.2, Aug. 2, 1990, 90-2 CPD ¶ 93.

CERTIFICATE OF PROCUREMENT INTEGRITY

DCT asserts that the award to JMC was improper because JMC failed to submit a properly executed procurement integrity certificate, as required by the Office of Federal Procurement Policy (OFPP) Act, 41 U.S.C. § 423 (1988 and Supp. III 1991), at the time it submitted its BAFO.⁴ DCT states that although the contracting officer asked JMC to submit a certificate with its BAFO, JMC failed to do so. Accordingly, DCT asserts, JMC's proposal must be rejected and award made to the protester. This argument is without merit. Both JMC's and DCT's initial proposals included a properly executed certificate. The contracting officer asked JMC to submit with its BAFO a completed RFP section K (certifications), which incidentally included the procurement integrity certificate, because he mistakenly believed JMC had failed to include a completed clause K-13 (Notice of Participation by Organizations for the Handicapped) in its initial proposal.⁵ Since JMC provided the integrity certificate in its initial proposal, as required by the RFP, JMC properly was found to have complied with the requirement.

The protest is denied.

James F. Hinchman
General Counsel

⁴The statute bars agencies from awarding contracts unless a bidder or offeror certifies in writing that neither it nor its employees have any information concerning violations or possible violations of the procurement integrity provisions of the Act set forth elsewhere in 41 U.S.C. § 423.

⁵On further review, the agency realized that JMC had submitted a completed clause K-13 with its initial proposal.