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**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

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Decision

Matter of: Serco, Inc.

File: B-298266

Date: August 9, 2006

Claude P. Goddard, Jr., Esq., Stephen B. Hurlbut, Esq., J. Michael Littlejohn, Esq., and Daniel J. Donohue, Esq., Akerman Senterfitt Wickwire Gavin, for the protester. James J. McCullough, Esq., Deneen J. Melander, Esq., and Steven A. Alerding, Esq., Fried, Frank, Harris, Shriver & Jacobson LLP, for AMSEC LLC, an intervenor. Michael S. Roys, Esq., Space and Naval Warfare Systems Command, Department of the Navy, for the agency. Paul N. Wengert, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest is sustained where the agency rejected the awardee's rationale for proposed staffing levels under sample tasks, which led the agency, as part of a cost realism analysis, to more than double the hours proposed by the awardee to correspond with the government estimate, but the contemporaneous record did not demonstrate that the agency, in light of its cost realism adjustment, reviewed the awardee's understanding of the contract requirements, as required by the solicitation.

DECISION

Serco, Inc. protests the award of a contract to AMSEC LLC under request for proposals (RFP) No. N65236-05-R-0501, issued by the Department of the Navy, Space and Naval Warfare Systems Command, for program management, engineering design, industrial work, operational verification and other installation support services necessary to accomplish the Navy's command, control, communications, computer, intelligence, surveillance, and reconnaissance maintenance, modernization, and new system installation for requirements on the West Coast.¹ Serco objects that the Navy failed to consider the potential impact of the Navy's cost adjustments in the technical evaluation of AMSEC's proposal.

¹ The solicitation also resulted in the award of a separate contract for requirements on the East Coast which is not at issue in this protest.

We sustain the protest.

BACKGROUND

The RFP contemplated the award of a single indefinite-delivery/indefinite-quantity, cost-plus-incentive-fee and fixed-fee, performance-based contract for all West Coast requirements.² The RFP specified that the non-price evaluation factors were significantly more important than price.³ When issued, the RFP specified two non-price evaluation factors (specifically, professional employee compensation plan and small business subcontracting plan) that would be evaluated on an “acceptable/unacceptable” basis, while the remaining non-price evaluation factors (as relevant here, understanding of work–sample tasks, and management plan) would be assigned points. Offerors also were required to provide responses to three sample tasks,⁴ including pricing each task, and offerors were advised that the cost/price evaluation would be based on the total cost proposed for the sample tasks. The RFP specified that award would be made to the offeror whose proposal was determined to provide the “best value” to the government. RFP at 125.

Both AMSEC and Resource Consultants, Inc. (RCI)⁵ submitted timely proposals to perform the West Coast portion of the RFP. Upon evaluating the proposals, the Navy “determined that it was not possible to perform a proper cost realism evaluation on the offerors['] proposals.” Pre-Negotiation Business Clearance Memorandum at 8. Among the reasons for that conclusion were that some offerors had assumed that

² The Navy estimates that it will place over \$312 million in orders with the awardee of the contract for West Coast requirements.

³ The evaluation factors were as follows: (A) corporate experience; (B) past performance; (C) management plan; (D) understanding of work–sample tasks; (E) small business participation; (F) cost/price; (G) professional employee compensation plan; and (H) small business subcontracting plan. While price was listed among the evaluation factors, under the RFP, price was not to be scored. Pre-Negotiation Business Clearance Memorandum at 10.

⁴ While the RFP contained six sample tasks, only three of the sample tasks were applicable to proposals for the West Coast work at issue here.

⁵ The Navy initially argued that Serco was not an interested party to pursue the protest because RCI, not Serco, submitted a proposal. After further development of this issue, the Navy conceded that Serco had standing to protest. In this regard, the Navy stated that “Serco has provided evidence that it is the ‘parent’ firm for protest ‘standing’ purposes, having purchased 100% of RCI Holdings’ stock.” Legal Memorandum at 30. Accordingly, we have no basis on this record to question Serco’s standing to protest on behalf of RCI. In this decision, we identify the protester’s proposal submissions as those of RCI.

other vendors (such as shipyards) would perform some elements of the sample tasks, some offerors' amounts for other direct costs appeared flawed, and "none of the offerors appeared to have enough hours to perform the taskings in comparison with the [independent government estimate (IGE)]," which had not been disclosed to offerors. Id. at 8-9.

The Navy then determined that it would disclose the IGE, amend the RFP, hold discussions, and ultimately obtain revised proposals. The Navy issued amendment No. 5 to the RFP on December 14, 2005. The amendment now included the IGE staffing levels for the sample tasks⁶ and, as relevant here, instructed offerors as follows:

Factor F -- Cost/Price Proposal, the instructions in the pricing model for the sample task cost proposal submissions are revised to include the following additional information:

- The IGE hours for each sample task and subtask will be provided.
- Offerors will be directed to provide data to substantiate any deviations from the IGE hours.
- Insufficient substantiation will result in cost realism adjustments to proposed hours using the average hourly rate as the multiplier.

RFP amend. 5, at 2.

Amendment No. 5 also removed two of the four subfactors within the understanding of work evaluation factor, and modified this factor from the assignment of points to a pass/fail evaluation. Pre-Negotiation Business Clearance Memorandum at 14. The deleted subfactors had provided for an evaluation of sample task staffing and sample task project critical path schedules and milestones. After revision, the understanding of work factor read, in relevant part, as follows:

The sample tasking is intended to review each offeror's ability to perform tasks set forth in the Statement of Work. This information shall demonstrate that offerors fully understand the specific and unique requirements of the efforts. . . .

On each Sample Task, the following two subfactors shall be submitted for review:

Subfactor D1 -- Detailed Statement of Work based on government provided Statement of Objectives (SOO) (at time of formal RFP release) outlining all contractor and government responsibilities.

⁶ Prior to the deadline for submission of final proposal revisions (FPR), the Navy issued additional amendments that made revisions to the IGE staffing model.

Subfactor D2 – Offeror shall address all foreseeable changes in assumptions and cost impacts of those changes should they occur (i.e., compressed work schedule, planning ship yard drawing quality, etc.)

Id. at 3.

In implementing this change, the amendment reiterated that the understanding of work evaluation factor would be “used to evaluate each offeror’s depth of understanding and knowledge of the solicitation requirements and [the offeror’s] demonstrated ability to perform tasks set forth in the Solicitation Statement of Work.” Id. at 7.

Amendment No. 5 also reconfirmed that the Navy would consider the link between an offeror’s pricing of the sample tasks and the offeror’s technical approach by stating the following:

Cost realism pertains to the offeror’s ability to project costs which are reasonable and which indicate the offeror’s understanding of the nature and scope of the work to be performed. The purpose of this evaluation shall be: (1) to verify the offeror’s understanding of the requirements; (2) to assess the degree to which the cost/price reflects the approaches and/or risk assessments made in the technical proposal as well as the risk that the offeror will provide the supplies or services for the offered prices/cost; and (3) to assess the degree to which the costs included in the cost/price proposal accurately represent the work efforts included in the proposal and/or other cost-related information available to the Contracting Officer.

Id. at 7-8.

Amendment No. 5 further noted, as follows:

In addition to easily identifiable cost adjustments, unrealistic cost proposals may result in a re-evaluation and concurrent rescoring of technical proposals. Such re-evaluation based on the cost realism analysis could negatively impact the technical rating and ranking of the proposal.

Id. at 8.

It also cautioned offerors, as follows:

Proposals which are unrealistic in terms of technical or schedule commitments, or unrealistically high or low in terms of cost, may be deemed reflective of an inherent lack of technical competence, or

indicative of a failure to comprehend the complexity of risks of the proposed work and may be grounds for rejection of the proposal.

Id. at 7.

Both RCI and AMSEC submitted FPRs addressing issues raised in discussions and responding to the sample task pricing instructions in amendment No. 5. RCI submitted sample task pricing [deleted] Navy's IGE. However, AMSEC provided an explanation that the IGE did not reflect AMSEC's performance and, thus, AMSEC would rely on its own much lower staffing estimate, as it had in its initial proposal. AMSEC FPR, Sea Enterprise Basis of Estimate, at 1. This "Sea Enterprise Basis of Estimate," along with accompanying documentation, was an effort by AMSEC to provide the persuasive explanation, as required by amendment No. 5, for its decision not to utilize the IGE for the pricing of the sample tasks.

Notwithstanding AMSEC's attempts at justifying its lower staffing, the Navy rejected those justifications, finding that "there was insufficient substantiating rationale to support the alternate proposed hours." Source Selection Decision at 9. With respect to AMSEC's claim to be able to perform tasks at significantly reduced levels of effort, as compared with the Navy's historical experience, the Navy found that AMSEC's claims "rest on an unsubstantiated assumption that contractor hours are substantially lower for work customarily performed by shipyards." Post-Negotiation Business Clearance Memorandum at 39, 59. For example, some of the Navy's "concerns regarding AMSEC's rationale" included the following:

- While AMSEC may have performed some taskings at a level of effort comparable to their proposed hours, they have, by their own admission, proposed hours that do not take into account changes that historically occur on such installations and are relying on "word of mouth" to support proposing hours that are less than shipyards.
- AMSEC provided no substantiation to support their claim that support contractors required less hours than shipyards for the same tasking.

Source Selection Decision at 10.

After finding that AMSEC's deviations from the IGE were unsupported, the Navy determined that it would increase AMSEC's evaluated cost to reflect the level of effort represented by the IGE. To do so, the Navy multiplied the average hourly rate⁷ for AMSEC by the difference in labor hours between the IGE (118,248 hours) and AMSEC's proposed level of effort ([deleted] hours), resulting in a [deleted] percent

⁷ Amendment No. 5 provided that in the case of unrealistic pricing, the Navy would adjust the unrealistic offeror's pricing by utilizing the offeror's average hourly rate.

increase in AMSEC's overall evaluated price. Affidavit of Navy Cost and Price Analyst at 2.

The Navy's source selection decision observed that "AMSEC achieved a total technical rating of 82.3 (Exceptional), and RCI achieved a total technical rating of 81.9 (Exceptional)" and that both firms had received a "pass" rating for the understanding of work evaluation factor. Although listing the factors and subfactors, with their respective point scores and corresponding adjectival ratings, which showed some differences, the source selection authority stated as follows:

Within each of the Factors/Subfactors, AMSEC and RCI have demonstrated comparable strengths. Each of these offerors has the capability to perform the planned tasking with little risk and [they] are, therefore, considered technically equal.

Source Selection Decision at 14-15.

After noting the significant cost realism adjustments made to AMSEC's proposal, as well as the Navy's concerns with AMSEC's proposed staffing, as quoted above, the source selection authority stated, without elaboration, that "[e]ven with these adjustments, the Government has determined that an award to AMSEC does not propose any significant risk." She concluded, "Therefore, I have determined that award to AMSEC--the technically equal, lower proposed and evaluated cost offeror--represents the 'best value' to the Government." Id. at 16.

ISSUE AND ANALYSIS

Serco protests that the significance of the Navy's cost realism adjustments should have led the Navy to conclude that AMSEC's proposal "reflect[ed] an inherent lack of technical competence." Alternatively, Serco argues that the cost adjustments should have caused the Navy to find AMSEC's proposal unacceptable under the understanding of work evaluation factor, or should have resulted in the Navy downgrading AMSEC's proposal under the management plan evaluation factor. Protest at 8-9.

The Navy argues that the technical evaluation factors identified by Serco--understanding of work and management plan (particularly, the staffing plan subfactor)--had no significant relationship to the sample task staffing. Legal Memorandum at 17-19. The Navy also argues that "[t]he fact the Government did not accept AMSEC's justification for using fewer hours in its cost proposal and increased AMSEC's hours and cost as it said it would in Amendment 0005, did not alter the fact that AMSEC's proposal was compliant with the solicitation." Navy Supplemental Comments at 4. Finally, the Navy argues that there was no requirement in the

revised RFP to reassess the initial technical evaluation in light of the FPRs. Legal Memorandum at 20.⁸

Typically, where an agency concludes in the course of a cost realism analysis that an offeror's proposed staffing levels are unrealistically low, but the corresponding technical approach is evaluated as appropriate, the agency must reconcile those conclusions. See Information Ventures, Inc., B-297276.2 et al., Mar. 1, 2006, 2006 CPD ¶ 45 at 6. Here, however, although the Navy cost realism analysis concluded that the awardee's proposed staffing levels were unrealistically low, the Navy had removed from the evaluation scheme, through amendment No. 5, the subfactors that were most directly relevant to assessing the awardee's understanding of the RFP's requirements. Nonetheless, the RFP retained the broader assessment of whether an offeror's sample task responses evidenced a full understanding of the specific and unique requirements of the sample task efforts. In addition, the amendment retained and reiterated a requirement to review the impact of any cost realism adjustments on the offeror's technical evaluation. As reflected in the discussion below, the Navy failed to reevaluate AMSEC's technical understanding of the RFP requirements, or explain why no reevaluation was needed, in light of the cost realism adjustments made to AMSEC's proposal.

In its FPR, AMSEC declared that it "stands by the hours originally proposed" in its initial proposal which, as discussed above, the Navy concluded it could not properly evaluate. As one example of the types of understaffing that Serco argues should have caused the Navy to revise the technical ratings assigned to AMSEC's proposal, Serco points to AMSEC's response to sample task No. 5, subtask No. 6, for installation of Navigation Sensor System Interface equipment on a surface ship. For that subtask, the IGE estimated 4,155 hours, while AMSEC proposed to perform the subtask in [deleted] hours—less than [deleted] of the IGE effort. AMSEC FPR, Sea Enterprise Basis of Estimate, at 20; Serco Supplemental Comments at 7. In its FPR explaining its lower staffing for the subtask, AMSEC emphasized that "[t]he basis for the IGE must vary greatly from the scope of the sample task." AMSEC FPR, Sea Enterprise Basis of Estimate, at 20. More generally, the AMSEC FPR stated five separate times that "Raising our hours to that of the IGE is inappropriate." *Id.* at 6, 8, 10, 13, 20. As noted previously, the Navy's cost realism evaluation found AMSEC's deviations rested on unsubstantiated assumptions and AMSEC's explanation lacked a "substantiating rationale." Source Selection Decision at 9.

⁸ In fact, the technical evaluators completed their evaluation of the understanding of work evaluation factor (Factor D) before the Navy concluded that AMSEC's deviations from the IGE in pricing the sample tasks were unsubstantiated, resulting in the upward adjustment of AMSEC's evaluated cost. Post-Negotiation Business Clearance Memorandum at 39 ("no further analysis was performed on [AMSEC's] rationale for proposing alternate hours" beyond increasing its evaluated cost).

While the Navy adjusted AMSEC's costs upward as part of its cost realism analysis, the contemporaneous record provides no evidence that the Navy considered the potential effect of AMSEC's dramatically lower proposed hours in the technical evaluation, particularly in the evaluation of AMSEC's proposal under the understanding of work and management plan evaluation factors. Despite having listed concerns with the approach proposed by AMSEC in its sample task responses, and ultimately concluding that AMSEC's sample task hours should be more than doubled to correspond to the IGE, the Navy's business clearance memorandum did no more than summarily conclude that "[e]ven with these adjustments, the Government has determined that an award to AMSEC does not propose any significant risk." Post-Negotiation Business Clearance Memorandum at 59.

In this regard, the record appears to show that prior to holding discussions and prior to receiving revised sample task responses in the FPRs, the Navy had already determined that all offerors would receive a "pass" rating under the planned revision to the evaluation methodology for the understanding of work evaluation factor (that is, deleting two subfactors and changing from a points-based to a pass/fail-based evaluation scheme). Pre-Negotiation Business Clearance Memorandum at 15.⁹ Further, the Navy's contemporaneous explanation is that "[b]ecause the resultant adjustment did not cause AMSEC's price to become the higher price[d] offer, no further analysis was performed on [AMSEC's] rationale for proposing alternate hours." Post-Negotiation Business Clearance Memorandum at 39. Thus, the record confirms that the Navy gave no meaningful consideration to reviewing its earlier technical evaluation in light of the concern that arose that AMSEC had substantially underestimated--by more than 50 percent--the level of effort needed to perform the contract.

An agency is obligated to conduct an evaluation consistent with the evaluation scheme set forth in the RFP. Federal Acquisition Regulation § 15.305(a); Dismas Charities, Inc., B-292091, June 25, 2003, 2003 CPD ¶ 125 at 9. In our view, the Navy's failure to reevaluate AMSEC's technical proposal in light of its cost realism adjustments was contrary to the RFP. As relevant here, under the RFP cost realism language, the Navy was required "to verify the offeror's understanding of the requirements." In addition, the amended RFP requesting FPRs stated that the Navy would require offerors to "demonstrate that offerors fully understand the specific and unique requirements of the efforts" in their sample task responses, and that the Navy would "evaluate each offeror's depth of understanding and knowledge of the solicitation requirements and [the offeror's] demonstrated ability to perform tasks set forth in the Solicitation Statement of Work." Notwithstanding this RFP language, the record reflects, as described above, that the Navy never meaningfully reviewed

⁹ This pre-FPR document included a table labeled "Technical Evaluation Summary with Removal of Factor D Points" that already showed all offerors rated "PASS" for the understanding of work evaluation factor (Factor D).

technical proposals after the evaluation of initial proposals in light of the agency's conclusion, after reviewing the FPR, that AMSEC had underestimated the level of effort to perform the sample task requirements by more than 50 percent.¹⁰

On this record, we cannot determine what, if any, revisions the Navy evaluators would have made to the technical ratings of AMSEC's proposal, particularly under the pass/fail evaluation scheme for the understanding of work evaluation factor and for the technical evaluation aspects of the cost realism evaluation described in amendment No. 5, given the magnitude of the cost realism adjustments made to AMSEC's proposal. However, the facts set forth above raise a substantial chance that, because of the very close technical ratings here, such a review could have resulted in an award to RCI. We conclude, therefore, that RCI was competitively prejudiced by the Navy's failure to demonstrate a reasonable consideration of the impact of the conclusions of the cost realism evaluation on AMSEC's technical evaluation. Accordingly, we sustain the protest.

RECOMMENDATION

We recommend that the Navy reevaluate the FPR of AMSEC and adequately document whether the cost realism adjustments made by the Navy require revision to AMSEC's technical evaluation ratings.¹¹ The Navy should then make a new source

¹⁰ As an example, Serco points out that AMSEC's supporting rationale for sample task No. 5, subtask No. 6, referenced similar work performed by AMSEC on the USS Shiloh, but that AMSEC explicitly acknowledged that the structural work on the USS Shiloh had been performed by another contractor. In its FPR, AMSEC expressly stated that "[w]e need another example other than SHILOH to compare the effort for the structural work." Nevertheless, AMSEC then essentially reiterated its lower estimate for the structural portion of the subtask without providing another example to explain how it could perform the work on the basis of its lower staffing. AMSEC FPR, Sea Enterprise Basis of Estimate, at 19. The Navy did not pursue an explanation of how AMSEC would perform such a requirement in light of the firm's low staffing for this task.

¹¹ Serco also challenges the Navy's position that, contrary to AMSEC's FPR, the Navy could require AMSEC to issue only fixed-price subcontracts to one subcontractor, in order to control the risk posed by that subcontractor. The risk arose from the inability of the Defense Contract Audit Agency to verify the subcontractor's indirect rates (which had been "significantly lowered" in AMSEC's FPR, while that subcontractor's share of the work had increased to nearly 25 percent). Affidavit of Navy Cost and Price Analyst at 2; Post-Negotiation Business Clearance Memorandum at 37. The record is not clear about how the Navy ultimately resolved this cost issue. In implementing our recommendation for corrective action, the Navy should consider AMSEC's proposal for this subcontractor and the significance of the subcontractor's unverified indirect rates.

selection decision. If, after the new evaluation, the Navy determines that RCI's proposal represents the best value to the government, the Navy should terminate AMSEC's contract and make an award to RCI.

We further recommend that the agency reimburse the protester the reasonable costs of filing and pursuing its protest, including reasonable attorneys' fees. The protester's certified claim for costs, detailing the time expended and the costs incurred, must be submitted to the agency within 60 days of receiving this decision. Bid Protest Regulations, 4 C.F.R. § 21.8(f)(1) (2006).

The protest is sustained.

Gary L. Kepplinger
General Counsel