Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Allied Technology Group, Inc.

File: B-271302; B-271302.2

Date: July 3, 1996

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Gena E. Cadieux, Esq., and Patrick M. Burke, Esq., Department of Energy, for the agency.
Paul E. Jordan, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Technical evaluation of proposals for environmental restoration and related services is unobjectionable where it is reasonably based and consistent with the evaluation criteria and protester's identification of alleged evaluation flaws lacks any support in the record.

2. Where solicitation provides specified level of effort and skill mix, agency's cost evaluation consisting primarily of analysis of direct labor rates is reasonable. Exclusion of certain subcontractor costs from agency's most probable cost analysis is reasonable where costs were insubstantial and solicitation did not call for these costs to be included in calculating proposal cost.

DECISION

Allied Technology Group, Inc. (ATG) protests the award of a contract to Weiss Associates under request for proposals (RFP) No. DE-RP03-95SF20686, issued by the Department of Energy for environmental restoration, decontamination and decommissioning, and waste management activities at the Laboratory for Energy Related Health Research (LEHR) and other selected sites in California. ATG contends that Energy's evaluation of the proposals was flawed, its cost evaluation was inadequate, and that the source selection official (SSO) failed to exercise his independent judgment.

We deny the protests.

The RFP, issued as a small business set-aside, contemplated the award of cost-plus-incentive-fee contract for a 2-year base period with three 1-year options. The successful contractor will be responsible for planning, managing, executing, reporting, and integrating various activities in Energy's Environmental Restoration and Waste Management Program at LEHR. LEHR is a Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 U.S.C. § 9601 et seq. (1994)) (Superfund) site. Contract activities include, but are not limited to, characterization and remediation of the site; application of innovative remediation technologies; decontamination and decommissioning of structures and facilities; managing hazardous, radioactive, and mixed wastes; waste disposal; and Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq. (1994)) (RCRA) permitting activities. The majority of work will be performed at LEHR with additional work, as directed, at other California sites.

Proposals were evaluated on the basis of four technical criteria: (1) technical requirements and technical approach; (2) capabilities of the offeror; (3) organization and management; and (4) other requirements. Criteria 1 and 3 were of equal weight with criterion 2 twice as important as 1 or 3, and criterion 4 half as important as 1 or 3. Final ratings were expressed in adjectival terms: poor, inadequate, adequate, and strong. Cost was not rated or scored, but was evaluated on the basis of reasonableness and realism, probable cost, and reasonableness of professional employee compensation. Award was to be made to the offeror whose proposal was most advantageous to the government, with technical considerations being of greater importance than cost. The RFP provided for award on the basis of initial proposals and thus, offerors were advised to include their best terms from a cost and technical standpoint.

Twelve offerors, including ATG and Weiss, submitted proposals by the November 30, 1995, closing date for receipt of proposals. A technical evaluation committee (TEC) evaluated the proposals and numerically scored them. The TEC scored Weiss's proposal at 88.38 points out of a possible 100 and scored ATG's proposal at 78.28 points. The contract evaluation board (CEB) then conducted an independent evaluation of the proposals, taking into consideration the TEC's evaluations. The CEB also evaluated each cost proposal to determine the probable costs to the government as well as the reasonableness and realism of the proposed costs. The CEB took no exceptions to the proposed costs of the offerors. The CEB rated Weiss's proposal "strong," meaning the proposal fully addressed the requirements of the technical evaluation criteria, with major strengths and only a few possible minor weaknesses. The CEB rated ATG's and five other proposals as "adequate," meaning the proposals addressed the requirements of the technical evaluation criteria, with strengths identified being judged to exceed the impact of weaknesses.

The CEB briefed the SSO on its findings. Based on his review of the CEB's findings, discussions with the CEB members, and his independent judgment, the SSO determined that Weiss's proposal was most advantageous to the government. His determination was based in part on Weiss's proposal being ranked the most technically superior at the lowest overall cost to the government (more than $2 million lower than ATG's proposal). The agency awarded Weiss a letter contract on February 21, 1996. After receiving a debriefing, ATG filed a protest with our Office. ATG subsequently amended its protest based on information provided in agency documents.

THE TECHNICAL EVALUATION

ATG contends that DOE misevaluated both its and Weiss's technical proposals. According to ATG, a proper evaluation would have resulted in its proposal being rated higher than Weiss's.[1] Where an evaluation is challenged, we will examine the evaluation to ensure that it was reasonable and consistent with the evaluation criteria and applicable statutes and regulations, since the relative merit of competing proposals is primarily a matter of administrative discretion. Information Sys. & Networks Corp., 69 Comp. Gen. 284 (1990), 90-1 CPD ¶ 203.

With regard to the evaluation of its own proposal, ATG contends that the agency erred in its evaluation under each of the four technical criteria and identifies 12 matters with which it disagrees with the agency assessments. We have examined each allegation and find no basis for objecting to the agency's evaluation.[2]

For example, under the first criterion, technical requirement and technical approach, the agency evaluated ATG's understanding of the waste management

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[1]In a related argument, ATG contends that the agency erred by numerically scoring the proposals despite the RFP's announcement that proposals would be adjectivally scored. While the proposals were numerically rated by the TEC, each score had a corresponding adjectival definition. For example, a score of 9-10 represented a proposal which fully addressed the requirements, with major strengths and only a few minor weaknesses. The CEB, using these numerical scores, then identified strengths and weaknesses, and assigned adjectival ratings to each proposal ranging from "poor" to "strong." Thus, the technical proposals were rated adjectivally.

[2]In a number of instances, ATG argues that the deficiencies in its proposal could easily be resolved through discussions. However, since the RFP provided for award on the basis of initial proposals without discussions and advised offerors to include their best terms from a price and technical standpoint, ATG was not entitled to discussions.

statement of work and pertinent environmental laws, regulations, guidelines, and issues. The evaluators found that ATG's experience in RCRA permitting and document preparation was not adequately demonstrated in the proposal. ATG identifies a table in its proposal where RCRA permitting is mentioned some nine times. It also has submitted statements from its president and a consultant to further establish its experience in this area. We have reviewed these items and agree with the agency's evaluation. The proposal references offer only sketchy information and fail to demonstrate experience in preparing RCRA permits in any meaningful way. While ATG's statements assert that experience in reviewing RCRA permits is sufficient, the agency maintains that there is a difference between preparing permits and simply reviewing them. We believe this represents a reasonable distinction; the ability to review a matter does not necessarily mean that the reviewer has appropriate experience in preparing the underlying document. In any event, an offeror must demonstrate affirmatively the merits of its proposal and runs the risk of rejection if it fails to do so. InterAmerica Research Assocs., Inc., B-253698.2, Nov. 19, 1993, 93-2 CPD ¶ 288. Here, ATG simply failed to include adequate information in its proposal.

The second criterion, capabilities of the offeror, included an evaluation of ATG's corporate experience and past performance in related work. The evaluators identified a number of weaknesses including an identified inconsistency between references to the depth of ATG's CERCLA experience. In this regard, the evaluators noted that some of ATG's descriptions of its responsibilities on a prior project appeared more extensive than other references to the same project. This led the evaluators to discount the protester's experience. For example, the evaluators noted that the proposal described ATG's work on the project as including recommending and implementing accelerated removal action and spoke in terms of the project's completion ahead of schedule. However, other references to the project, including the project manager's resume, described ATG's responsibility as preparation of plans, and indicated that it was currently preparing work plans for removal at one of the sites. The more detailed explanation also referred to work being accomplished in 6 weeks. In view of this relatively short performance period, differing descriptions of the work performed, and the apparent failure to implement all the plans, the evaluators concluded that the work described in the proposal represented a project of lesser scope than otherwise indicated. While the protester maintains that its proposal consistently demonstrated a successfully completed project, we believe the evaluators reasonably found the references to be inconsistent and, at best, ambiguous. Thus, they reasonably identified this as a weakness in the proposal.[3]

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[3]The agency acknowledges that one of its evaluators erroneously included an

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The third criterion, organization and management, encompassed the adequacy of the proposed organization to provide clear lines of communication and responsibilities, and ensure efficient coordination of tasks with the offeror's organization and its subcontractors. Under this criterion (and criterion 2), the evaluators identified weaknesses in ATG's reliance on a particular subcontractor. The principal of this subcontractor was proposed as the project/environmental engineer. Based on ATG's organizational chart, all seven technical specialties of work under the contract reported to the project/environmental engineer. The evaluators viewed this aspect of the proposal as presenting too great a reliance on the subcontractor. ATG argues that its proposal identified more than 90 percent of the staffing to be provided by ATG and subcontractors other than this one. However, the agency correctly points out that this proposed key engineer was identified as responsible for technical coordination of all task orders (TO); cost, scheduling, and quality performance of TOs; and adequate TO staffing with qualified personnel. Notwithstanding ATG's arguments, we believe its proposal indicates a significant role for this key engineer. Since this engineer works for a subcontractor, the evaluators reasonably could be concerned that ATG would be relying too heavily on this subcontractor for performance of the majority of contract work.[4]

An additional weakness noted was that ATG's proposal did not identify a lead employee for the waste management program, one of seven technical specialties. ATG argues that it had named itself as the lead for this specialty and that it was not required to identify key personnel for these positions. The agency explains that waste management is an important aspect of contract performance and that the key engineer, in charge of all TOs, had no apparent waste management experience outside the LEHR site. Since waste management activities will extend to other sites, the agency was concerned with ATG's failure to identify a specific lead for this work. Even though there was no requirement to name a specific lead, we

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[3](...continued)
incorrect statement concerning one of ATG's subcontractors as one of the weaknesses under this criterion. However, the agency has submitted statements from the evaluators on the TEC and CEB that its members either were aware of the error and gave it no weight or found the weakness to be so insignificant as to have no effect on their evaluation. The SSO also states that he did not focus on this weakness in making his source selection. Accordingly, ATG was not prejudiced by this error.

[4]Weiss proposed the same individual for the position of project engineer. However, it did not propose to use him in the same manner as that reflected in ATG's proposal. Thus, we find no inconsistency in the agency's determination not to downgrade Weiss's proposal on its use of this individual.

believe the agency's evaluation identified a legitimate concern. While ATG argues that this represented an unstated evaluation criterion, we believe that it was fairly included in the stated criterion. See Avogadro Energy Sys., B-244106, Sept. 9, 1991, 91-2 CPD ¶ 229.

ATG also contends that the agency's evaluation of Weiss's proposal was flawed because it did not consider as a weakness Weiss's lack of certain field worker personnel, a number of whom will be required for contract performance.[5] At the time of its proposal, Weiss advised the agency that it would need to hire more than 20 field workers to perform the contract. ATG argues that these workers are the personnel who actually handle hazardous, mixed, and radioactive wastes involved in this contract and so must possess a high degree of skill, experience, knowledge, and training. ATG infers that Weiss will have difficulty in hiring so many qualified workers.

The agency explains that the RFP did not require that all personnel be in an offeror's employ at the time of proposal. In its view, the real inquiry in its evaluation is whether the offeror has the ability to have on hand the correct number of these relatively low level employees. The agency maintains that hiring workers at this level will not represent a problem. In this regard, ATG does not assert that Weiss is incapable of hiring these new employees, only that the agency should have downgraded Weiss's proposed staffing because of the large number of new hires in this area. Under these circumstances we find nothing objectionable in the agency's determination that the need to hire these workers did not represent a weakness in Weiss's proposal. Moreover, in this regard, in essence the agency has made an affirmative determination of Weiss's responsibility to perform this contract. This is a matter which our Office does not review, absent circumstances not present here. Bid Protest Regulations, 4 C.F.R. § 21.5(c) (1996).

EVALUATION OF WEISS'S COSTS

ATG observes that the RFP required the agency to evaluate the reasonableness and realism of proposed costs and to determine the most probable cost for each offeror. ATG contends that the agency's cost analysis was nonexistent or flawed, specifically

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[5]ATG identified other flaws in the evaluation of Weiss's proposal based on alleged contradictory findings. The agency fully explained the rationale for the evaluation statements identified by ATG and ATG's comments provided no meaningful response on these matters. Our own review of the challenged evaluation statements discloses no inconsistency. We view these allegations as abandoned by the protester. Reach All, Inc., B-229772, Mar. 15, 1988, 88-1 CPD ¶ 267.

contending that in evaluating Weiss's most probable costs, the agency improperly failed to consider $1.5 million attributable to Weiss's subcontractors.

The purpose of a cost realism analysis under a level-of-effort, cost-type contract is to determine the extent to which the offeror's proposed labor rates are realistic and reasonable. ERC Envtl. and Energy Servs. Co., Inc., B-241549, Feb. 12, 1991, 91-1 CPD ¶ 155. In this regard, an agency is not required to conduct an in-depth cost analysis or to verify each and every item in conducting its cost realism analysis. Rather, the evaluation of competing cost proposals requires the exercise of informed judgment by the contracting agency involved, since it is in the best position to assess the realism of cost and technical approaches and must bear the difficulties or additional expenses resulting from a defective cost analysis. An agency may rely on information contained in offerors' cost proposals in performing a cost evaluation without seeking additional independent verification of each item of proposed costs, since the extent to which proposed costs will be examined is generally a matter for the agency to determine. See Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 CPD ¶ 325; Radian, Inc., B-256313.2; B-256313.4, June 27, 1994, 94-2 CPD ¶ 104. Since the cost realism analysis is a judgment function on the part of the contracting agency, our review is limited to a determination of whether an agency's cost evaluation was reasonably based and not arbitrary. General Research Corp., 70 Comp. Gen. 279 (1991), 91-1 CPD ¶ 183; The Warner/Osborn/G&T Joint Venture, B-256641.2, Aug. 23, 1994, 94-2 CPD ¶ 76.

Here, the CEB reviewed the cost proposals to determine the probable costs to the government and the reasonableness and realism of those costs. The CEB also evaluated the proposals to ensure that they reflected a clear understanding of the work to be performed and to verify whether the proposed compensation structure could support obtaining and keeping suitably qualified personnel. To this end the CEB evaluated the offers to ensure that the professional compensation was not unrealistically low, unreasonable in relationship to the various job categories, or reflective of an offeror's failure to comprehend the complexity of the contract requirements. Based on this review, the CEB took no exceptions to the costs proposed by Weiss and ATG. According to statements submitted by the agency, the members of the CEB had substantial experience with similar contracts, having estimated costs both from the contractor's and the government's perspective. Since the agency specified the level of effort and the skill mix necessary to perform the contract in the RFP, the offerors proposed costs on the same basis. In view of the evaluators' comparison of personnel labor rates, subcontractor costs, overhead rates, and general and administrative (G&A) rates, to determine whether they were reasonable or understated, we find that the agency evaluators performed an adequate cost evaluation.

The only issue identified by ATG with respect to Weiss's costs concerns the agency's evaluation of certain subcontractor costs. In its cost proposal, Weiss identified five subcontractors, two for which costs were proposed and three for which costs were not. Weiss estimated that the cost for these three subcontractors would be "significantly less than $100,000." The cost evaluators noted this and estimated the maximum potential impact as $1.5 million ($300,000 per year for 5 years). ATG contends that the agency should have added this amount to Weiss's proposal in calculating the most probable cost. We find this contention without merit.

The three uncosted subcontractors were identified as examples of specialty contractors which Weiss intended to use on a limited basis. Elsewhere in the cost proposal, Weiss identified these specialty contractors for potential use for "emergent response" requests. Under the terms of the RFP, offerors were expected to provide support for emergent response activities, meaning "unanticipated or non-routine" activities. The agency anticipated that these activities would be subject to a funding limit of $250,000 per event. The agency advised offerors that this dollar limit was not to be considered part of the offerors' costs. Since the proposals were evaluated on the basis of the specified labor mix and level of effort, and the agency determined that Weiss had fully costed its proposal on that basis, the agency did not include the potential subcontractor cost in its evaluation of the most probable cost. Further, the SSO was aware of the unpriced subcontractors when he made his source selection. The CEB advised the SSO of its assessment that such subcontractors were currently unnecessary and if used, would not cost nearly the $1.5 million estimate. Under these circumstances, we believe the agency reasonably declined to include the costs in its determining Weiss's most probable cost.

Moreover, ATG was not prejudiced by the omission of these subcontractor costs in the cost realism assessment. We believe that, reasonably construed, Weiss's proposal estimates the collective effort of these subcontractors as less than $100,000 per year, not $100,000 per subcontractor. Accordingly, less than $500,000 would be added to Weiss's proposal. Since ATG's proposal was more than $2 million higher than Weiss's, the selection decision would not change.[6]

ATG further asserts that the agency improperly ignored cost information which allegedly established that Weiss proposed to violate the small business set-aside

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[6]We note that the cost difference between ATG and Weiss would actually be greater than the $2 million difference in proposed costs. The agency believed that ATG's proposed costs were underestimated and, as permitted by the RFP, ATG proposed no set fee, unlike Weiss. Once a fee was negotiated, ATG's cost would inevitably increase, making the cost difference even greater.

limitations on subcontracting clause. See FAR § 52.219-14. This clause provides that at least 50 percent of the cost of contract performance incurred for personnel must be expended for employees of the prime contractor. Based on its analysis of Weiss's proposed costs, ATG contends that Weiss's subcontractor labor costs are greater than those attributable to Weiss's own employees. Both Weiss and the agency note that Weiss explicitly stated that it would perform a minimum of 51 percent of the work. They also argue that ATG's analysis is flawed because it includes the subcontractors' G&A costs which are included in the subcontractors' total proposed costs, and it includes the fee to be paid to the subcontractors. To compensate, Weiss argues that its G&A expenses should be included in its labor costs and the fee excluded from the subcontractors' costs.

The Small Business Administration (SBA), which has jurisdiction over size appeals, has ruled that in determining whether the 50-percent requirement has been met, the gross contract amount for the subcontractor is not to be considered. Rather, only labor-related costs, direct or indirect, are to be considered. See Size Appeal of Health Sys. Research, Inc., No. 3398 (Jan. 8, 1991). Based on our review of the record, we conclude that the agency reasonably accepted Weiss's representation that at least 50 percent of the contract's personnel costs will be expended for Weiss employees. When the non-labor cost of the subcontractor fee is deducted, even without accounting for the G&A expenses, Weiss's personnel costs exceed the subcontractors' costs by more than $100,000.[7]

SOURCE SELECTION OFFICIAL'S DETERMINATION

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[7]ATG argues that the cost of Weiss's other subcontractors must also be considered. While ATG contends that this cost is $1.5 million, we have found that the figure is at most $500,000 (see cost evaluation discussion, supra). While the addition of $500,000 would cause the subcontractors' costs to slightly exceed the 50-percent level, our conclusion on this issue is not changed. First, this amount was not reflected in Weiss's cost proposal; costs associated with the other subcontractors was "to be determined." Thus, it is not clear what impact, if any, these subcontractors would have on the cost proposal. Second, Weiss proposed a G&A rate in excess of 25 percent on its own labor costs. Applying even a significantly lower rate (e.g., 6 percent) to subcontractors costs reduces their labor costs below the 50-percent level. In any event, resolution of such issues is properly for the SBA and not our Office. In general, we do not consider these matters since they concern an affirmative determination of responsibility. 4 C.F.R. § 21.5(c); see Corvac, Inc., B-254757, Jan. 11, 1994, 94-1 CPD ¶ 14; Jasper Painting Serv., Inc., B-251092, Mar. 4, 1993, 93-1 CPD ¶ 204.

ATG contends that the SSO failed to exercise independent judgment in selecting Weiss. As "evidence" ATG notes that the SSO used the same findings as made by the CEB and that his source selection statement bears the same date as the CEB's report.

In a negotiated procurement, agency selection officials have broad discretion in determining the manner and extent to which they will make use of the technical and cost evaluation results in making their determinations. General Servs. Eng'g, Inc., B-245458, Jan. 9, 1992, 92-1 CPD ¶ 44. A source 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.

The record here contains detailed technical evaluations all of which support the technical scores given each proposal. The SSO states that his selection was based on his review of the CEB's findings and discussions with the CEB, as well as the exercise of his independent judgment. He concluded that the CEB's evaluation was thorough, fair, and consistent with the evaluation criteria in the RFP. Based on this, the SSO concluded that Weiss's proposal was clearly superior. He considered that some offerors had proposed lower prices, but concluded that their low technical ratings meant that none had any real possibility of improving its proposal score to a point where it would have a reasonable chance of award. Overall, he found that Weiss's superior technical proposal and low proposed cost represented the most advantageous proposal to the government. While the protester argues that this is insufficient, it has identified nothing in the record which would call into question the reasonableness or independent nature of the SSO's decision. The record provides no basis for concluding that the source selection was flawed; the mere fact that the SSO adopted language and findings made by the CEB does not indicate that he failed to exercise his independent judgment.

The protest is denied.

Comptroller General
of the United States