Comptroller General
of the United States

Washington, D.C. 20548

Decision

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Matter of: EDAW, Inc.

File: B-272884

Date: November 1, 1996

G. Brian Busey, Esq., and Kenneth W. Irvin, Esq., Morrison & Foerster, LLP, for the protester.
Justin P. Patterson, Esq., Sherry Kinland Kaswell, Esq., and James L Weiner, Esq., Department of the Interior, for the agency.
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DIGEST

1. Where offeror for cost-type contract proposed certain contingency labor hours, contracting agency, in performing its cost realism analysis, may reasonably delete these proposed labor hours and costs where the record establishes that they were not required for successful performance of the contract services.

2. Where the two highest-rated technical proposals were reasonably determined to be essentially equal technically, award properly was made to the offeror with the lower evaluated costs, notwithstanding the solicitation's emphasis on technical merit over cost

DECISION

EDAW, Inc. protests the award of a contract to Dames & Moore (D&M) under request for proposal (RFP) No. 1425-6-SP-10-13840, issued by the Department of the Interior, Bureau of Reclamation (Reclamation), for the preparation of resource management plans (RMPs) in the Columbia Basin Area of Washington State. EDAW challenges the agency's evaluation of cost proposals, and the determination that D&M's proposal offered the lowest cost and best value to the government.

We deny the protest.

The RFP, as amended, contemplated the award of an indefinite delivery, indefinite quantity, labor hour contract for a base year with four 1-year options. The awardee will prepare RMPs for the development and management of the land and water resources at Potholes and Banks Lake Reservoirs. The RMP services include

developing a process to involve various public interest groups and agencies that have an interest in the management and related environmental issues at the two reservoirs and developing a method to provide the agency with all data acquired and mapping produced in the geographic information system (GIS). The initial task order is for work at the Potholes Reservoir and is expected to take approximately 60 months. A second task order for Banks Lake is expected to start in fiscal year 1998, run concurrently with the Potholes RMP, and use some of the same data developed for the Potholes Reservoir.

The RFP provided that award would be based on the best overall proposal received, considering the stated evaluation factors, listed in descending order of importance as: risk, program management, Potholes RMP plan, cost/price, key personnel, past performance/RMP experience, other information, and alternate proposals. Cost was to be evaluated for realism, understanding of the scope of work, and ability to perform the contract. Although the RFP stated that technical factors were more important than cost, cost would become primary if the offerors' technical competence were considered approximately the same.

The RFP contained detailed instructions for the preparation of proposals. Among other things, offerors were to submit a cost proposal for the Potholes RMP task order and, as part of their proposals, they were to include proposed costs for future task orders. In addition, offerors were to complete a cost data sheet matrix listing, among other things, the hourly rates for each of 11 specified labor categories, along with cost data identifying the applicable elements of cost, rationales for cost, and other cost information. The RFP, by amendment No. 005, normalized other direct costs, such as travel, car rental, and copying, by establishing for purposes of evaluation, an estimated number of trips to the study area, number of days for car rental, and number of pages of printing/reproduction that will be required under the various task orders.

The agency received four timely offers in response to the RFP, including offers from EDAW and D&M. A technical proposal evaluation committee (TPEC) evaluated initial proposals, and based on those results, three of the four proposals were included in the competitive range. The agency conducted discussions and after evaluating two rounds of revised proposals, best and final offers (BAFOs) were received and evaluated. EDAW's proposal was ranked first as its technical BAFO received the highest technical rating of the offerors, which was indicative of EDAW's experience in providing substantially similar services under other Reclamation contracts and its familiarity with the area to be served under this RMP contract. The TPEC noted, however, that EDAW proposed a significantly lower total number of labor hours [deleted] for the Potholes task order compared to the

level of effort offered by D&M [deleted] and Bio/West [deleted]. Although proposing fewer hours, as a result of higher labor rates for certain categories of labor EDAW's average hourly labor rates were significantly higher.[1] The evaluators further noted that any significant changes in the work to be performed would "be relatively more expensive compared to [EDAW's] competitors." However, the evaluators believed this cost overrun risk was mitigated by the fact that EDAW had absorbed some overrun costs under prior Reclamation contracts.

D&M's proposal was ranked second, with the next highest technical rating. D&M proposed the highest number of labor hours and a greater number of tasks to be performed with those hours using only one subcontractor to provide the professional labor.[2] The evaluators considered that D&M's proposal posed a low risk for significant cost overruns since the firm proposed approximately 20.3 percent more labor hours than EDAW and 7 percent more labor hours than Bio/West. BAFO costs were evaluated as follows:

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[1]Average labor rates were determined by dividing each offeror's proposed Potholes labor cost by their proposed labor hours as follows:

	Potholes Labor Cost w/o non-labor costs	Potholes Labor Hours	Average Labor Cost for Potholes
D&M w/ contingency hours	[deleted]	[deleted]	[deleted]
D&M w/o contingency hours	[deleted]	[deleted]	[deleted]
EDAW	[deleted]	[deleted]	[deleted]
Bio/West	[deleted]	[deleted]	[deleted]

[2]EDAW proposed a total of [deleted] hours, with [deleted] hours of professional labor, and [deleted] hours for editing, GIS services, and clerical work. Bio/West, the other competitive range offeror, proposed a total of [deleted] labor hours, with [deleted] hours of professional labor, and [deleted] hours for editing, GIS services, and clerical work. D&M proposed a total of [deleted] labor hours, with [deleted] hours of professional labor, plus an additional [deleted] hours for contingencies, and [deleted] hours for editing, GIS services, and clerical work.

	D&M	EDAW	Bio/West
Cost Reimbursable Charges Other than Labor	[deleted]	[deleted]	[deleted]
Potholes Task Order	[deleted]	[deleted]	[deleted]
Totals costs	[deleted]	[deleted]	[deleted]
Cost Proposal adjustment	[deleted]	-0-	-0-
Adjusted Total	[deleted]		

The contracting officer, the source selection official (SSO) for this procurement, reviewed the relative standing, including the evaluated advantages, disadvantages, and probable costs, of all offerors' proposals. The SSO agreed with TPEC's recommendation that cost should be the determining factor for award as there were no significant technical differences between EDAW's and D&M's proposals, although EDAW's proposal had received the highest technical rating. The SSO determined that D&M's offer represented the best value to the government and made award to that firm. This protest followed. Performance of D&M's contract has not been suspended based on the agency's determination that continued performance is in the best interest of the government.

EDAW objects to the cost evaluation, primarily complaining that the agency arbitrarily deleted [deleted] proposed contingency labor hours and costs from D&M's proposal; it asserts that without this "contrived" reduction, EDAW's proposal rather than D&M's would have had the lowest evaluated costs.

When an agency evaluates proposals for the award of cost-reimbursement contract, an offeror's proposed estimated costs of contract performance are not controlling, since the offeror's estimated costs may not provide valid indications of the final actual costs which the government is, within certain limits, required to pay. Federal Acquisition Regulation (FAR) § 15.605(c) (FAC 90-31); see DATEX, Inc., B-270268.2, Apr. 15, 1996, 96-1 CPD ¶ 240. Consequently, the agency must perform a cost realism analysis to determine the extent to which an offeror's proposed costs represent what the contract should cost, assuming reasonable economy and

efficiency. GTE Gov't Sys. Corp., B-260022; B-260022.2, May 16, 1995, 95-1 CPD ¶ 245. Because the contracting agency is in the best position to make this cost realism determination, our review is limited to determining whether the agency's judgment in this area is reasonably based and not arbitrary. Id.

EDAW contends that it was improper for the agency to eliminate D&M's contingent labor costs because under the terms of the RFP, offerors could include contingency labor costs in their proposals and D&M certified that its proposed costs for contingency hours were consistent with its cost accounting standards.

While EDAW is correct that the RFP allows an offeror to propose contingency labor hours, there is nothing in the solicitation which precludes the agency from deleting these labor hours. The record shows that in conducting a cost realism analysis of D&M's proposed costs, the agency considered the extent to which D&M's proposed costs represent a reasonable estimation of future costs. In the agency's judgment, the contingency hours were not related to D&M's ability to successfully perform the various RMP tasks. Stated differently, the agency concluded that [deleted] total labor hours [deleted] were all that were necessary, given D&M's technical approach to accomplishing the work. The agency's position is bolstered by the fact that, even without these contingent hours, D&M's proposal contained [deleted] more hours than EDAW proposed and [deleted] hours more than BIO/West proposed. In this instance, we do not think it makes sense for the agency to include contingent labor hours and costs, which it believes are not necessary for performance of the contract, simply because D&M certified that these costs were consistent with its cost accounting standards. D&M's certification that the costs proposed are consistent with its cost accounting standards simply is not relevant to the issue of whether the proposed contingency hours will actually be necessary for performance. In short, the protester has not shown that the deletion of the contingency hours was unreasonable.

While the protester further complains that there is no evidence that the cost analyst compared D&M's proposal against an independent government estimate, we point out that the purpose of a cost realism analysis is to determine what, in the government's view, it would realistically cost the offeror to perform given the offeror's own technical approach. Hager Sharp, Inc., B-258812, Feb. 17, 1995, 95-1 CPD ¶ 93. There is no requirement that any particular type of analysis be

performed provided the evaluation performed is reasonable. Satilla Rural Elec. Membership Corp., B-238187, May 7, 1990, 90-1 CPD ¶ 456. Here, in evaluating D&M's proposed costs for realism, the cost analyst reviewed D&M's proposed labor rates and labor hours based on D&M's technical approach, and conducted written and oral discussions with D&M before determining the realism of D&M's proposed costs. Under the circumstances, we see no reason why the agency also would have had to refer to a government estimate since it obviously was able to make the necessary determination without doing so.

Next, EDAW argues that the agency improperly averaged labor costs to determine the costs for performance of the Potholes and the Banks Lake task orders in evaluating the cost proposals. Assuming EDAW is correct that averaging the proposed labor costs for the Potholes task order to project the proposed costs for the agency's future Banks Lake requirements is inconsistent with the RFP, the record shows, as indicated above, that EDAW's evaluated proposed overall costs to perform only the Potholes task order is more than D&M's [deleted] versus [deleted]. In light of this, we fail to see how the agency's use of averaged labor rates can be viewed as improper or otherwise prejudicial to EDAW as D&M is low regardless of the method used to evaluate the offerors' proposed costs.

Moreover, we think the RFP did not preclude evaluation of the costs to perform the Banks Lake task order. The RFP specifically informed offerors that the agency expects to award other task orders in addition to the Potholes task order for which offerors were required to submit a cost proposal. In this regard, section L of the solicitation explicitly instructed offerors to describe how the Banks Lake task order, expected to begin in fiscal year 1998 and of "a similar magnitude as the Potholes RMP," would fit into the offeror's work schedule. The RFP also asked offerors in amendment No. 002 to include in their cost proposals for the Potholes RMP task order "costs associated with future task orders." We think the RFP reasonably contemplated, within the cost factor, the agency's consideration of cost projections for other task orders to be issued under this indefinite delivery, indefinite quantity contract. Consideration of such potential costs was consistent with the concept of having a single contractor perform the RMPs for the two reservoirs in the Columbia Basin area as the scope of work for each project was similar, were scheduled to run concurrently with each other, and data acquired under the first task order would be used in performing the second task order. Although the RFP did not specify how the agency would determine these cost projections, we find the agency's use of average labor costs was not inconsistent with the stated evaluation scheme. See Marine Animal Prods. Int'l, Inc., B-247150.2, July 13, 1992, 92-2 CPD ¶ 16.

Finally, EDAW contends, based on all its allegations, that the SSO's cost/technical tradeoff was flawed. EDAW insists that insufficient weight was given to its highest-rated technical proposal which offered the lowest proposed costs (before the agency's alleged improper adjustment of D&M's costs).

While the RFP stated that technical factors were more important than cost, it further provided that cost would become primary if the offerors' technical competence were considered approximately the same. The record shows that in performing his cost/technical tradeoff, the SSO relied upon the TPEC's report in determining that EDAW's proposal did not demonstrate any significant advantages compared to D&M's proposal. For example, the evaluators found that EDAW's advantages reflected in its higher rating were based on its good performance and familiarity with the area as the incumbent contractor. The TPEC believed these advantages were neutralized by EDAW's proposed use of four subcontractors for this RMP contract (D&M proposed use of only one subcontractor). The evaluators noted that the use of four subcontractors in a cost reimbursement contract would increase the administrative costs associated with oversight and contract administration and the risk of subcontractor overruns is greater as subcontractor overruns cannot be made up by underruns in areas performed by the prime contractor's own staff. The evaluators found that D&M had relevant experience in the type of work called for under the contract and that its key personnel were comparable to EDAW's. The SSO concluded that EDAW's higher technical rating did not represent significant technical advantages which merited paying a cost premium.

Based on our review of the evaluation record, we see nothing improper with the SSO's determination that EDAW's higher technical rating was attributable to its incumbency status. We have long recognized that source selection officials properly may conclude that a technical scoring advantage based primarily on incumbency does not indicate an actual technical superiority that would warrant paying a higher cost premium. Sparta, Inc., B-228216, Jan. 15, 1988, 88-1 CPD ¶ 37. We see nothing unreasonable about the SSO's conclusion that there were no significant technical differences between EDAW's and D&M's proposals. Accordingly, we think that the SSO's conclusion that EDAW's technical rating advantage did not reflect an actual technical superiority that would warrant paying its higher costs also was a reasonable exercise of the SSO's discretion. See NUS Corp.; The Austin Co., B-221863; B-221863.2, June 20, 1986, 86-1 CPD ¶ 574. Since D&M's total evaluated costs [deleted] were lower than EDAW's [deleted], the SSO thus could properly determine, consistent with the RFP language, that D&M's lower cost proposal

represented the best value to the government.[3] Id. In sum, EDAW has not shown that the SSO's judgment concerning the respective technical merit of the two firms' proposals or his determination to select the lower cost proposal, notwithstanding EDAW's evaluated technical superiority, was unreasonable.

The protest is denied.

Comptroller General
of the United States

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[3]The evaluated non-labor cost reimbursable charges proposed by EDAW and D&M in section B of their cost proposal were as follows:

	D&M	EDAW
Site visits - planned	[deleted]	[deleted]
Site visits - unplanned	[deleted]	[deleted]
Per diem	[deleted]	[deleted]
Rental car	[deleted]	[deleted]
Copying	[deleted]	[deleted]
Total, Matrix Cost	[deleted]	[deleted]