Comptroller General
of the United States

Washington, D.C. 20548

Decision

DOCUMENT FOR PUBLIC RELEASE

A protected decision was issued on the date below and was subject to a GAO Protective Order. This version has been redacted or approved by the parties involved for public release.

Matter of: Systems Engineering & Management Company

File: B-275786

Date: March 26, 1997

John Dillon Clarke, Esq., D. Reuben Buck, Esq., and Lane L. McVey, Esq., McKenna & Cuneo, for the protester.
Richard L. Moorhouse, Esq., Dorn C. McGrath III, Esq., and Mary F. Withum, Esq., Holland & Knight, for RJO Enterprises, an intervenor.
John E. Lariccia, Esq., Department of the Air Force, for the agency.
C. Douglas McArthur, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency properly concluded that awardee's relatively low proposed wage rates were realistic where the awardee's proposal explained the assumptions behind its labor rates and indirect rates, and the agency reasonably accepted those assumptions based on the local labor market and economic situation.

2. Although awardee received some adverse (yellow/marginal) reports on its past performance, agency reasonably evaluated performance risk as low where there were a much greater number of blue/exceptional reports.

3. Agency reasonably evaluated awardee's proposal as exceptional under the subfactor of work force support where the solicitation provided for consideration of such support and record showed that awardee had an existing agreement with a large defense contractor to provide expert services on an as-needed basis.

DECISION

Systems Engineering & Management Company (SEMCO) protests the award of a contract to RJO Enterprises, Inc., under request for proposals (RFP) No. F33657-95-R-0083, issued by the Department of the Air Force for nonpersonal advisory and assistance services. SEMCO principally contends that the Air Force failed to conduct a reasonable price realism analysis of RJO's proposal.

We deny the protest.

BACKGROUND

On February 1, 1996, the agency issued the solicitation for award of three time and materials, indefinite delivery/indefinite quantity contracts for acquisition logistics support services, providing logistic studies and analysis and management support for acquisition in accordance with a statement of objective (SOO) attached to the solicitation.[1] The three awardees would compete for task orders issued in accordance with the SOO in support of system management staff and system program offices at the aeronautical systems center (ASC) at Wright-Patterson Air Force Base (AFB), in Dayton, Ohio; five Air Logistics Centers; and Eglin AFB, Florida.[2]

The schedule consisted of four contract line item numbers (CLIN), the principal effort being CLIN 0001, for studies, analyses, and management support as more specifically defined by the individual task orders. The other three CLINs were as follows: CLIN 0002, data; CLIN 0003, materials and subcontracting in support of CLIN 0001; and CLIN 0004, a cost reimbursable line item for travel and computer services. Paragraph H.11 of the solicitation provided that a contractor could only subcontract, under CLIN 0003, to satisfy a need for unique capabilities or specialized personnel not available from personnel regularly assigned to the

---

[1]The SOO identified 15 general categories of tasks to be performed, as follows: 4.1, integration of maintenance planning; 4.2, integration of manpower and personnel; 4.3, integration of supply support; 4.4, integration of support equipment; 4.5, integration of technical data; 4.6, integration of training and training support; 4.7, integration of computer resources support; 4.8, integration of facilities; 4.9, integration of packaging, handling, storage and transportation; 4.10, integration of design interface; and 4.11, other management support and integrated logistics support-related tasks, including assistance with logistics support analyses, life cycle cost management and design-to-cost programs, logistics composite models, warranties, and training and instruction.

[2]The RFP provided for two awards, not at issue here, under section 8(a) of the Small Business Act, 15 U.S.C. § 637(a) (1994), and included the clause at Federal Acquisition Regulation (FAR) § 52.216-28, Multiple Awards for Advisory and Assistance Services, providing that the three awardees would gain the opportunity to compete among themselves for task orders issued by the agency. FAR § 16.505(b)(1) (FAC 90-40). Exceptions to this competition requirement involve urgency, unique capabilities, and follow-on taskings, in addition to situations where it is necessary to place an order with a particular contractor to satisfy a minimum guarantee. FAR § 16.505(b)(2)(i)-(iv). The instant solicitation contained a ceiling price of $33 million and a minimum order guarantee of $25,000.

contract, and only with the prior approval of the contracting officer and provided for negotiation of a provisional burden rate for each task order so issued.

The RFP provided that the agency would conduct the source selection process in accordance with Appendix BB of the Air Force supplement to the FAR and award contracts to the offerors whose proposals appeared most advantageous to the government. The three selection criteria were technical; management and corporate capability; and price, in that order of importance. The RFP advised offerors that evaluators would assess each offeror's understanding of/compliance with requirements and the soundness of its approach, to judge how well each proposal satisfied the evaluation criteria. Further, the agency would develop a risk assessment under each evaluation factor--proposal risk, based on the offeror's proposal, and performance risk, based on the offeror's record of past performance as reported by other sources.[3]

In addition to the risk ratings, the RFP provided that proposals would be given color/adjectival ratings under the technical and management areas. There were two equally weighted technical subfactors, integration problem and sample task orders. The first required an offeror to respond to an integration problem provided with the RFP, for the purpose of demonstrating the ability to integrate logistics functions. The second required an offeror to propose a technical approach to each of three specific taskings, for the purpose of demonstrating procedures for controlling performance during the simultaneous performance of three tasks at two locations.

There were five, equally weighted management/corporate capability subfactors, including resumes, staffing and task order management plan, subcontract management, work force support, and additional resources. In pertinent part, the RFP stated that, under the second of these subfactors, staffing and task order management plan, the agency would evaluate each offeror's staffing plan, to assess its approach to recruiting, retaining, and training of a qualified work force. Under the third subfactor, subcontract management, the agency would evaluate the offeror's approach to subcontract management to assess effective management interfaces and adequate management control of subcontractor work. Under the fourth, work force support, the agency would evaluate the proposal to assess the quality of corporate support provided for the work force intended to be directly employed in performing task orders under the resulting contract, including access to expert services, research tools or other performance aids to increase the

---

[3]As defined in the source selection plan, "high" risk consisted of "significant doubt," based on the offeror's performance record, that the offeror could satisfactorily perform the proposed effort. "Moderate" risk meant that "some doubt exists," while "low" risk meant that "little doubt exists."

effectiveness of the work force.[4] Under the fifth, additional resources, the agency would evaluate the proposal to assess the quality of additional resources available to perform this contract such as facilities and other physical resources, and management of and communications with satellite locations.

Price evaluation factors included, in order of importance, composite rate and sample task total price. The RFP provided that the agency would develop a composite rate for each offeror--one rate representative of the offeror's labor prices---by weighting each labor category according to a formula established by the RFP. In this formula, for example, the labor category of "project manager" would represent 16 percent of the labor price, with logistics clerks representing 3 percent of the labor price.[5] The labor rates for off-site and on-site work would receive equal weight within each category; subcontractor labor rates would receive equal weight with the prime's labor rates. Paragraph M.3.3 of the RFP described this evaluation scheme as follows:

> " . . . For evaluation purposes, this [labor category] mix is equally divided between on-site and off-site for all locations, and equally divided between prime contractor and subcontractor (if more than one subcontractor, work will be equally allocated among them)."

The second price factor, sample task total price, consisted of the price evaluation team's estimate of the most probable price for three sample tasks described elsewhere in the solicitation. This estimate would represent the sum of labor, materials and subcontracting, and other direct costs. The RFP also indicated that the agency would evaluate prices to ensure reasonableness, realism, and completeness.

On March 4, 1996, the agency received 21 proposals, 10 from section 8(a) contractors; RJO, SEMCO and nine other offerors were eligible only for the one, non-8(a) award at issue here. The agency performed an initial evaluation of all proposals, identified a competitive range, held discussions, and requested best and final offers (BAFO), submitted on August 1. The agency evaluated BAFOs and assigned ratings. Under the technical factor, the protester's and the awardee's

---

[4] Paragraph L.3.4.4 of the RFP directed offerors to describe any routinely available support resources that would increase the effectiveness of employees directly employed in performance of the contract.

[5]The five other labor categories represented the following percentages of the labor price: ops research analyst, 8 percent; senior logistician, 25 percent; journeyman logistician, 25 percent; associate logistician, 8 percent, and administrative management assistant, 15 percent.

proposals received blue/exceptional ratings with low proposal and performance risk. Under the management factor, RJO's proposal received a blue/exceptional rating, versus SEMCO's green/acceptable rating; the evaluators found both proposals to represent low proposal and performance risk. In regard to price, RJO submitted a lower composite rate than SEMCO did and its proposed performance of the sample task resulted in a lower probable cost. Based on the higher rating of RJO's proposal under the management factor and its lower price, the source selection authority selected RJO for award on December 6, 1996. After receiving a debriefing on December 16, SEMCO filed this protest with our Office.

DISCUSSION

Realism of RJO's Proposed Rates

The protester argues that the Air Force failed to conduct a proper realism analysis of RJO's proposed wage rates. Specifically, SEMCO contends that the agency improperly failed to consider the effect of RJO's failure to include any [DELETED] in its wage rates in the [DELETED]. The protester alleges further that the Air Force failed to consider that RJO's burdened labor rates were based on an overhead rate [DELETED] than RJO's historical rates and a general and administrative (G&A) rate [DELETED] than that of the preceding fiscal year, and included [DELETED] over the 5-year term of the contract. SEMCO also contends that the agency improperly allowed RJO to base these indirect rates on a 90-10 split between on-site and off-site tasks that departed, SEMCO contends, from the RFP's instructions to prepare offers on the basis of a 50-50 split between on-site and off-site work.

The purpose of a price realism analysis by an agency under a time and materials contract is to determine the extent to which the offeror's proposed labor rates and other costs are realistic and reasonable. Since an evaluation of this nature involves the exercise of informed judgment, the agency clearly is in the best position to make this determination; consequently, we will not disturb such a determination absent a showing that it was unreasonable. Koba Assocs., Inc., B-251356, Mar. 25, 1993, 93-1 CPD ¶ 267 at 5. We find nothing in the record showing that the agency's determination here was other than reasonable.

The agency states that it compared the labor rates proposed by RJO with rates proposed by other offerors, as well as with salaries for comparable positions in the civil service; this is a reasonable method of comparison. FAR § 15.805-2(a); Earle Palmer Brown Cos., Inc., 70 Comp. Gen. 667, 674 (1991), 91-2 CPD ¶ 134 at 8-9. The unescalated rates fell within the range of rates offered by other offerors. Further, RJO's proposal acknowledged and addressed the lack of [DELETED], explaining its assumption that defense cutbacks would continue to place downward pressure on wages. The agency asserts further that it considered this assumption reasonable, inasmuch as the inflation rate has been particularly low in the Dayton

area recently. According to the agency, both it and General Motors, the two largest employers in the area, have reduced staff, and the labor market has been filled with personnel experienced in the logistics area, many of whom are military retirees. Given these facts, which the protester does not refute, we see no basis to conclude that it was unreasonable for the agency to accept RJO's explanation for the lack of [DELETED] and to conclude that RJO's rates were realistic. Moreover, as the Air Force notes, even if it had applied the same [DELETED] escalation rate that SEMCO used to RJO's proposed rates, RJO'S composite rate would still be lower than SEMCO's.

With regard to the indirect rates, RJO's proposal similarly acknowledges and provides a rationale for its low price. RJO states that its overhead and G&A rates were [DELETED] to increase its cost competitiveness, and asserts that it anticipates certain economies--resulting from an increased business base and increases in operating efficiencies--to obtain the projected rates. Further, RJO asserts, whether or not these assumptions prove correct, the fixed rates will not change, and RJO still must compete for work under the contract with the other two awardees. RJO also states that it proposed [DELETED] due to competitive pressures, and acknowledges that the contract could be a [DELETED] vehicle, which will nevertheless allow RJO to maintain the skills of its existing work force in the face of a declining market.

In short, as with the direct rates, the record shows that the awardee's proposal identified and explained the issue, and that the agency found the explanation reasonable and the cost realistic. In essence, RJO explained that, even assuming its projected internal economies did not materialize, it would effectively cap its rates in an effort to remain competitive in the field. We see no basis to conclude that this position--or the agency's acceptance of it as a viable economic strategy--was unreasonable. On the contrary, the agency's conclusions represented the type of informed judgment that is within its discretion to make in evaluating the realism of an offeror's proposed rates under a time and materials contract.

Finally, SEMCO asserts that RJO improperly based its indirect rates on a [DELETED] split between on-site and off-site tasks, given that the RFP directed offerors to prepare their offers on the basis of a 50-50 split. SEMCO's position rests on its interpretation of paragraph M.3.3, quoted above, as an instruction to offerors to base their proposals on a 50-50 split. The protester's interpretation is unreasonable, as explained below.

Attachment 4 to the RFP consisted of 28 tables, each consisting of 35 blocks, into which offerors were to insert the rates for the seven labor categories for each of 5 years of performance. The 28 charts represented proposed rates for the prime contractor, on-site and off-site, and for its subcontractors, on-site and off-site, for each of the 7 locations where the contractors were to perform work. Paragraph

M.3.3 states merely that, in calculating a composite labor rate for purposes of the price evaluation, the agency will give ("for evaluation purposes only") equal weight to prime contractor rates, subcontractor rates, and on-site and off-site rates.[6] Paragraph M.3.3 is therefore not an instruction to offerors but merely the agency's method of describing its evaluation process, so that offerors will know the common basis for evaluation. Thus, to the extent RJO's proposal states that it offered the [DELETED] indirect rates for on-site and off-site work, based on the assumption that the actual split would be [DELETED], there was nothing in paragraph M.3.3 that prohibited RJO from doing so.[7]

Evaluation of RJO's Proposal

SEMCO asserts that the agency improperly evaluated the proposal risk of RJO's proposal, in that SEMCO contends that the awardee's wages are too low for RJO to retain qualified personnel over the course of contract performance.[8] In addition,

---

[6]For example, the offeror inserts the proposed rate for the project manager into the appropriate block of the tables in attachment 4. Table 1 represents the prime contractor's on-site rates; table 2, the prime's off-site rates. Table 3 represents the subcontractor's on-site rates; table 4, the subcontractor's off-site rates. There are seven sets of tables, one for each location. To compute the project manager rate, the prime's one-site rate for Wright-Patterson AFB is added to the subcontractor's on-site rate; these are added to the off-site rates. In the case of RJO, there is [DELETED] applicable for the four tables at Wright-Patterson AFB. In the case of SEMCO, there are [DELETED] (the subcontractor rate being further calculated by averaging the subcontractors' proposed rates). The rate for Wright-Patterson AFB is calculated by averaging these rates--[DELETED] for RJO and [DELETED] for SEMCO. The Wright-Patterson AFB rates are then averaged with similarly derived rates for each of the other six locations, with Wright-Patterson AFB receiving a weight 14 times that of any other location (or two and one-third times the value of all the other rates combined). The process is repeated for each labor category, and the rates weighted, as described in footnote 4. The agency derives a composite rate for each year. The solicitation described the automated process for these calculations, known as "COMPRATE."

[7]The potential problem here is unbalancing, if for example, RJO had inflated its on-site prices in the knowledge that the evaluation would place disproportionate weight on off-site prices. SEMCO makes no such allegation and our review of RJO's proposal shows that the rates proposed for on-site work are [DELETED] or, in some cases, [DELETED] than the rates for off-site work.

[8]Initially, SEMCO asserted that, in failing to include the clause at FAR § 52.222-46,
(continued...)

SEMCO questions the evaluation of RJO's performance risk as low under the management and cost factors. SEMCO notes that the past performance reports received by the agency include at least four yellow/marginal ratings, which, SEMCO contends, should have resulted in lowering the performance risk rating to "moderate." SEMCO also challenges the assignment of a blue/exceptional rating to RJO's proposal under the work force support subfactor. SEMCO argues that the agency improperly considered a basic ordering agreement that RJO had with [DELETED] as a strength under the work force support subfactor, without informing other offerors that it would consider such arrangements in the evaluation.

The evaluation of technical proposals is a matter within the discretion of the contracting agency because the agency is responsible for defining its needs and the best method of accommodating them. McDonnell Douglas Corp., B-259694.2; B-259694.3, June 16, 1995, 95-2 CPD ¶ 51 at 17. In reviewing an agency's evaluation, we will not reevaluate technical proposals, but will examine the record to determine whether the agency's judgment was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations. ESCO, Inc., 66 Comp. Gen. 404, 410 (1987), 87-1 CPD ¶ 450 at 7.

The protester first argues that the agency's conclusion that RJO's proposal posed a low proposal risk ignores the possibility that RJO would be unable to retain qualified personnel due to its low wage rates. Our analysis of the agency's price realism evaluation of RJO's proposed wage rates applies as well to the agency's determination that the proposal risk of RJO's proposal was low. In essence, the awardee's proposal acknowledged the low wages and provided a convincing rationale for its ability to offer such wages, which the agency reasonably accepted, given the local labor market and economic conditions. The protester has presented nothing, apart from its disagreement, to demonstrate that the agency was unreasonable in its assessment of proposal risk.

---

[8](...continued)
Evaluation of Compensation for Professional Employees, the agency violated Office of Federal Procurement Policy (OFPP) Policy letter No. 78-2. Such allegations of impropriety apparent on the face of the solicitation must be filed prior to the submission of initial proposals, which took place here more than 9 months prior to the filing of the protest. Bid Protest Regulations, § 21.2(a)(1), 61 Fed. Reg. 39039, 39043 (1996) (to be codified at 4 C.F.R. § 21.2(a)(1)). Our Office discussed this issue with the parties prior to the submission of the agency report, and dismissed it, insofar as it pertains to the FAR clause and the failure to follow OFPP policy. See also Systems & Programming Resources Inc., B-192190, Aug. 16, 1978, 78-2 CPD ¶ 124 at 2 (GAO will not consider allegations that agency did not comply with executive branch policy represented by OFPP letter No. 78-2).

With regard to the evaluation of performance risk, the Air Force states that it received 22 documents containing information on RJO's past performance--eight functional area evaluator periodic surveillance reports and 14 past performance questionnaires. Only one of these indicated a problem in the [DELETED] area; three concerned the [DELETED] area. Our review shows that of these four yellow/marginal ratings, two came from the same source, related to the same problem arising early in performance regarding RJO's [DELETED]. This problem did not preclude the respondent from recommending further awards to RJO. One other report concerned problems with a subcontractor, which, in view of RJO's proposal not to subcontract, had little relevance to the present effort. Ultimately, the record shows one yellow rating[9] to be weighed against dozens of blue ones; the protester's disagreement with the agency's assessment that, based on the reports as a whole, the performance risk was low, does not show that the agency's judgment was unreasonable. McDonnell Douglas Corp.., supra.

Finally, the protester challenges the agency's reliance upon RJO's agreement with [DELETED] to assign RJO's proposal a blue/exceptional rating under the work force support subfactor. The awardee's proposal discusses its basic ordering agreement with [DELETED] for engineering, software development, and related services. The agreement includes elements of the instant scope of work, and RJO discussed its intention to utilize the agreement on an as-needed basis. The evaluators considered this agreement a major strength of the proposal, under the work force support subfactor. Under that subfactor, the RFP specifically stated that offerors were to describe any routinely available support resources, including access to expert services. Thus, contrary to the protester's allegations, the RFP clearly provides for consideration of such agreements; moreover, even if the RFP language describing the elements to be considered under the work force support subfactor were not so specific, such support is logically encompassed by the subfactor itself. Cobra Technologies, Inc., B-272041; B-272041.2, Aug. 20, 1996, 96-2 CPD ¶ 73 at 3 (matters logically encompassed by the stated evaluation criteria properly may be taken into account in proposal evaluation). The record therefore supports the agency's consideration of the basic ordering agreement under the subfactor of work force support.

---

[9]This past performance questionnaire reported inadequacies in RJO's [DELETED] and its [DELETED]. The respondents referred evaluators to the Defense Contract Audit Agency for details, but indicated that they would still award a contract to RJO.

In response to the agency report, SEMCO raised several other issues relative to this agreement between RJO and [DELETED].[10] The protester's arguments--that the agency should have considered the costs of the agreement and that the agreement is inconsistent with RJO's professed intention not to subcontract--appear to confuse the concepts of work force support and subcontracting. As the agency points out, unlike the subcontracts proposed by SEMCO,[11] RJO and [DELETED] did not enter into the agreement in expectation of this award. There are no direct labor costs proposed for [DELETED] personnel, and the relationship, as described in the proposal, is not for accomplishing specific task orders but for no-notice, quick-reaction provision of specialized expertise. RJO's proposal does suggest that the agreement could be utilized to subcontract for unique capabilities or specialized personnel, as contemplated under CLIN 0003, but as the agency points out, such subcontracting is limited to unique situations and requires the approval of the contracting officer. Given the nature of the role for [DELETED] proposed by RJO, we think the agency reasonably evaluated it, not as a proposed subcontractor, but as the type of work force support--i.e., access to expert services--contemplated under the management and corporate capability factor.

The protest is denied.

Comptroller General
of the United States

---

[10]In its response to the agency report, SEMCO asserted that the proposed use of [DELETED] for such support creates a conflict of interest with another contract involving RJO's role in overseeing [DELETED] performance as the prime contractor on the AC-130 Gunship. How RJO's role in overseeing [DELETED] performance conflicts with its role as a prime contractor should it use [DELETED] as a subcontractor under the instant effort is not readily apparent from the record, and SEMCO's subsequent comments shed no light on the matter. The agency speculates that if RJO assigned [DELETED] a certain number of the tasks in the SOO, [DELETED] could have a conflict with its role as a prime under other contracts, but correctly points out that the time to address such a conflict would be when and if it arises.

[11]Of 15 sections in the SOO, SEMCO proposed the use of [DELETED] for performance of [DELETED] and a second subcontractor, [DELETED], including [DELETED] of those for which [DELETED] was proposed. SEMCO thus proposed to subcontract work under [DELETED] of 15 sections; the subcontractors submitted supplemental proposals in support of SEMCO.