



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

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Matter of: Consolidated Services, Inc.

File: B-276111.4

Date: December 29, 1997

Jesse W. Rigby, Esq., Clark, Partington, Hart, Larry, Bond, Stackhouse & Stone, for the protester.

Joan K. Fiorino, Esq., and Donald E. Barnhill, Esq., East & Barnhill, for American Service Contractors, an intervenor.

Maj. Philip T. McCaffrey, Department of the Army, for the agency.

Marie Penny Ahearn, Esq. and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Where request for proposals stated that cost realism analysis would be performed to aid in evaluating offerors' understanding of requirements under fixed-price contract, agency reasonably concluded that awardee's price was realistic, and did not evidence lack of understanding, based on finding that adequate price competition existed, and that awardee's total price did not deviate significantly from average price.

DECISION

Consolidated Services, Inc. (CSI) protests the award of a contract to American Service Contractors (ASC) under Department of the Army request for proposals (RFP) No. DABT10-95-R-0010, for dining facility operations at Fort Benning, Georgia and two other locations. The award followed a reevaluation undertaken by the Army in response to an earlier protest by CSI against the award to ASC (B-276111.2, which we dismissed as academic by decision dated August 4, 1997). Based on the reevaluation, the agency affirmed its original decision and made award to ASC on September 5. CSI challenges the adequacy of the price evaluation. We deny the protest.

The RFP contemplated the award of a fixed-price, indefinite quantity, award fee type contract for a base year, with 4 option years. It sought unit and extended prices for estimated days of food service or number of feedings, by building or field area, for a total of more than 250 line items. The RFP listed various technical evaluation factors, including comprehension of the RFP requirements, which

included the subfactor staffing/methodology, and provided that award would be made to the offeror whose proposal was technically acceptable and whose aggregate price for all items (base and option years) was low.

Offerors were to submit separate technical and cost proposals. Cost and pricing data were not required, but offerors were to "submit information other than cost and pricing data to help establish price reasonableness or price realism." This information--including price breakdowns for each performance period showing cost elements such as direct and indirect labor rates/salaries, fringe benefits, overhead and total cost per position--was to be submitted on standard form (SF) 1448, "Proposal Cover Sheet (Cost and Pricing Data Not Required)." The RFP required that cost proposals "present a clear audit trail to all elements of cost" and that "all cost elements [be] fully explained and justified." The RFP further advised as follows:

Cost realism will be used as an aid to determine the offeror's comprehension of the requirements of the RFP as well as to assess the validity of the offeror's approach. Proposals will be evaluated to assess the degree to which proposed price accurately reflect[s] proposed performance. A price which is found to be either unreasonably high or unrealistically low in relation to the proposed work will result in the overall proposal being considered unacceptable, and further evaluation will be discontinued.

The agency reevaluated the five proposals at issue and confirmed their technical acceptability. In its price evaluation, the agency used the average total price of the five low proposals--[deleted]--as a baseline for comparison purposes.¹ ASC's total price of [deleted] was [deleted] percent under the average price, while CSI's price of [deleted] was [deleted] percent above the average. The difference in the two prices was [deleted] or [deleted] percent. The remaining three offers [deleted] and [deleted] ranged from [deleted] percent under to [deleted] percent above the average price. In light of the competition received--12 proposals, 8 of which were technically acceptable--the agency concluded that the price differences among the proposals and the average price "supported cost realism," and that a detailed analysis of the individual cost elements was not necessary. Nonetheless, the agency reports it did proceed to use a "[c]ost analysis . . . to compare various individual cost elements (productive man-hours, wage rates including benefits, profit and

¹The agency considered a price analysis based on a comparison with the [deleted] independent government estimate (IGE). However, since all five low competitive range offerors were below the IGE and the agency determined that a number of adjustments would be necessary to the IGE to make it useful for comparison purposes, the agency concluded that the average price was the most meaningful basis for comparison.

[general and administrative])." While the agency noted a few areas of "pricing fluctuations," it considered them to be "based on the unique composition of an offeror's organization and how the offeror propose[d] to accomplish the work," and concluded that "none of the prices were found to be either unreasonably high or unrealistically low to the degree where the overall proposal was considered unacceptable and further evaluation was discontinued."¹²

CSI argues that the Army improperly failed to perform a detailed line item cost analysis of offered pricing, which it maintains was required by the RFP.³ According to the protester, a proper cost analysis would have revealed that ASC's proposed prices for certain line items were unrealistically low, indicating inadequate staffing and/or inadequate fringe benefit rates to support the estimated work load, and therefore demonstrating a lack of comprehension of the requirements.

Specifically, CSI alleges that ASC's line item pricing was understated in [deleted] for a total of [deleted] (including options) and at least four dining facility attendant line items (which facilities the protester alleges [deleted] for a total of [deleted]). CSI reaches its conclusion by comparing ASC's line item prices with the IGE, the protester's own prices, and the prices of the three other offerors submitting total prices lower than CSI's. The protester specifically contends that in the area of the greatest alleged underpricing--[deleted]--ASC's productive hours indicates that the firm did not base its unit prices on the estimated requirements.⁴ Additionally, CSI contends that ASC's proposed fringe benefit rate was understated because it was based on an erroneous assumption of an average of [deleted] annual vacation days per employee rather than [deleted] days, which the protester contends is more realistic (given that the work force likely will consist largely of the incumbent's

²In this regard, the agency has submitted a graph (prepared by the contracting officer in response to the protest) of the acceptable offerors' line item prices for the dining facility attendants, which comprise the majority of the line items at issue here, showing "a close trend for all [five low] offerors which follows the same general path for increases and decreases."

³"Price analysis" is a process of examining and evaluating a proposed price without evaluating its separate cost elements; "cost analysis" involves the examination and evaluation of an offeror's separate cost elements and proposed profit. FAR § 15.801 (June 1997).

⁴In this regard, for the [deleted] the protester contends that ASC's cost breakdown of productive hours includes only [deleted] percent of the IGE's estimated productive hours necessary to perform the estimated work load.

employees, and the existence of a collective bargaining agreement (CBA)).⁵ The protester maintains that [deleted] should have been added to ASC's proposal in order to arrive at the most probable cost for the vacation rate.⁶ According to CSI, the alleged total underpricing of ASC's offer amounts to [deleted].⁷

Cost realism refers to the likely cost of performance, and ordinarily is not a factor in the evaluation of proposals where a fixed-price contract is to be awarded, since the government's liability is fixed and the risk of cost escalation is borne by the contractor. PHP Healthcare Corp.; Sisters of Charity of the Incarnate Word, B-251799 et al., May 4, 1993, 93-1 CPD ¶ 366 at 5. However, since the risk of poor performance when a contractor is forced to provide services at little or no profit or with an underestimated work force is a legitimate concern even where a fixed-price contract is to be awarded, an agency in its discretion may, as it did here, provide for a realism analysis as part of the evaluation. Id.

Based on our review of the record here, we conclude that the protest is without merit. While the RFP called for detailed cost information, it did not specify that a detailed cost analysis would be performed, or that the cost/price evaluation would be the sole or primary means of assessing offeror understanding or, in the final

⁵Under the Service Contract Act of 1965 and its implementing regulations, successor contractors are required to pay wage rates and fringe benefits to service employees they hire in accordance with the predecessor contractor's CBA. 41 U.S.C. § 353(c) (1994); 29 C.F.R. § 4.1b (1997). Here, the predecessor contractor's CBA required 1 to 4 weeks of vacation depending on the years of service.

⁶CSI also initially complained that ASC underpriced its offer with regard to state (Georgia) unemployment tax compensation. The protester contended that a realistic rate was the [deleted] percent it experienced as the incumbent. However, after review of the agency report and ASC's comments to the report, as well as discussion with the Georgia Department of Labor, the protester agrees that the [deleted] percent rate offered by ASC would apply (since ASC does not currently conduct business in Georgia) and that rate would remain in effect for at least 36 months. In light of this concession and in the absence of any indication by the protester of any remaining concern in this area regarding ASC, we deem this basis of protest abandoned. See Allied Tech. Group, Inc., B-271302, B-271302.2, July 3, 1996, 96-2 CPD ¶ 4 at 6 n.5.

⁷We note that, although CSI initially submitted a list of 12 ASC line items which were allegedly underpriced, the protester's argument as initially submitted and as contained in its comments on the agency report discusses only the six line items indicated above and the vacation rate. Additionally, since the protester's argument is specific only with regard to the [deleted]-it asserts only generally that the remaining items are underpriced--our discussion focuses on those two items.

analysis, technical acceptability. Rather, the stated purpose of the "cost realism" analysis was solely to aid in determining offerors' "comprehension of the requirements" and "the degree to which proposed price reflect[s] proposed performance."⁸ In light of the language of the RFP and the fixed-price nature of the contract, we see no basis to find that the agency was required to perform an in-depth cost analysis here.

The record shows that the agency evaluated cost/price in accordance with this stated purpose. The agency initially determined, in the technical evaluation, that ASC's proposal was technically acceptable under all elements, including the subfactor staffing/methodology, under the comprehension of the requirements factor. Specifically, the agency determined that ASC's proposal reflected sufficient direct and indirect staffing for the proposed work load in terms of the proposed mix of personnel and productive hours and further contained wages in compliance with the minimum required by the Department of Labor wage determination or the CBA.⁹ The protester does not challenge the evaluation of ASC's technical proposal in this area. The agency then undertook its cost/price evaluation for purposes of further assessing understanding. As discussed, the agency's approach consisted, in the first instance, of examining total prices, based on its view that an understated price could reflect a lack of understanding of the requirement. As indicated above, the agency concluded that since competition was adequate, and ASC's price was only [deleted] percent below the average of the five lowest prices, it did not reflect any lack of understanding. There simply is no basis for objecting to this conclusion--the facts that adequate price competition was received, the five low prices were within a narrow range, and ASC's price was only [deleted] percent lower than the protester's, all support the agency's conclusion that there was no basis for rejecting ASC's proposal for lack of understanding.¹⁰

⁸The protester further maintains that the source selection evaluation plan called for [deleted]. However, because allegations of deviations from a source selection plan do not constitute a basis for questioning the validity of an award selection, we need not consider this aspect of the protester's argument. EG&G Team, B-259917.2, July 5, 1995, 95-2 CPD ¶ 138 at 5 n.2.

⁹These findings are set out in individual evaluator and compilation work sheets with adjectival ratings of [deleted]. For all elements under staffing/methodology, ASC's proposal received either [deleted] or [deleted] ratings. These ratings were then rolled into an overall technically acceptable rating.

¹⁰Further, while we have found that the agency was not bound to do so, it is evident from the discussion letters sent to offerors that the agency in fact assessed the adequacy of individual cost elements during the original evaluation and requested responses from offerors where cost elements appeared unrealistic or

(continued...)

Further, the mere presence of some low line item prices would not necessarily reflect a lack of understanding of the overall requirements, such that ASC's proposal should have been found unacceptable. In this regard, there was considerable line item deviation in unit prices among offerors for the [deleted] at issue [deleted]. The prices ranged on the first item from ASC's low of [deleted] to a high of [deleted] and on the second item from ASC's low of [deleted] to the high of [deleted]. CSI's price for both items was [deleted], that is, toward the low end of the range. Although the record does not include a detailed explanation as to how the agency found these disparate prices related to offerors' approaches, whatever the reason for the pricing, the agency reasonably could conclude that ASC's low pricing of these two line items was not significant enough--given the closeness of the total prices and the technical evaluation finding of acceptability--to warrant rejecting ASC's proposal for lack of understanding. We reach the same conclusion regarding CSI's argument that ASC's vacation rate is understated. That is, whether or not the item is underpriced relative to the other offers, the protester has not established why this pricing equates with a lack of understanding in light of the close total prices and the technical evaluation conclusions. In any case, CSI has not shown that its assumption--that the seniority of the work force ASC ultimately will employ dictates a higher vacation rate--applies to ASC's approach or was otherwise reasonable.

Finally, since this was a fixed-price requirement and the RFP did not provide any mechanism for upward adjustment of prices in the event the agency found item prices too low, the agency could not properly have made upward price adjustments, as suggested by the protester. PHP Healthcare Corp; Sisters of Charity of the Incarnate Word, supra, at 6. We note, however, that such an upward adjustment, even in the full amount urged by CSI--[deleted]--would not be sufficient to eliminate ASC's [deleted] price advantage; ASC's price would remain [deleted] lower than CSI's.

The protest is denied.

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¹⁰(...continued)

otherwise inadequate. For example, prior to receipt of best and final offers (BAFO), the agency notified ASC that the firm's revised cost proposal appeared to reflect the cost of [deleted]. Additionally, the agency notified ASC that its revised proposal's [deleted] appeared [deleted] in comparison to the requirements.