



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

DECISION 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: Energy and Environmental Services Corporation--Reconsideration

File: B-258139.5

Date: February 26, 1996

Jay W. Maynard, Esq., for the protester.

John Van Schaik, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Request for reconsideration based on original decision's failure to address protester's argument that contracting agency failed to perform cost realism analysis of awardee's proposal, as required by Defense Federal Acquisition Regulation Supplement (DFARS) § 215.801, is denied; while original decision did not set forth and directly address the requirements of DFARS § 215.801, the decision did address and deny protester's numerous allegations that, in contravention of DFARS § 215.801, the agency failed to determine if awardee's proposed costs for environmental services were (1) realistic for the work to be performed, (2) demonstrated that awardee understood the requirements of the solicitation, and (3) were consistent with its technical approach.

DECISION

Energy and Environmental Services Corporation (EES) requests reconsideration of our decision Energy and Env'tl. Servs. Corp., B-258139.4, May 15, 1995, 95-2 CPD ¶ 32, in which we denied EES' protest against the award of a contract to ASCR Contracting Company, Inc. (ACCI) under request for proposals (RFP) No. DAAD01-93-R-0046, issued by the Department of the Army for the acquisition of caretaker and environmental services for the U.S. Army Jefferson Proving Ground.

We deny the request.

The RFP contemplated the award of a cost-plus-fixed-fee contract and advised offerors that the contract would be awarded on the basis of the best value to the government and that the government would be willing to pay more for a superior technical/management proposal. The solicitation also informed offerors that the government intended to award the contract without holding discussions.

Of eight offers received in response to the RFP, ACCI's proposal was ranked first technically with a score of 985 out of a possible 1,000 points and EES' proposal was ranked second with a score of 874. The EES and ACCI proposals both received low risk ratings. ACCI proposed the second lowest cost of \$5,659,732, and EES proposed the second highest cost of \$14,168,513. The third ranked technical proposal, with a score of 782.6, was the lowest in cost, \$5,474,866. The fourth ranked technical proposal had a score of 761.3 and, at \$6,743,299, was fourth low.

As explained in our decision, in recommending award to ACCI, the contracting officer noted that ACCI's proposal was rated low risk for performance; was technically superior to the others by a significant margin; had no deficiencies and a number of advantages; and was only 3.3 percent higher in cost than the lowest-cost proposal, which had two major deficiencies, a significant number of weaknesses, and only one advantage. Award was made to ACCI based on its initial proposal.

In its protest, EES principally argued that the Army did not perform a cost realism analysis of ACCI's cost proposal, as required by Defense Federal Acquisition Regulation Supplement (DFARS) § 215.801. As EES noted, that provision defines a cost realism analysis as "a review of the overall costs of an offeror's proposal to determine if they--(1) Are realistic for the work to be performed; (2) Reflect a clear understanding of the requirements; and (3) Are consistent with the various elements of the offeror's technical proposal." EES asserted that, in contravention of DFARS § 215.801, the Army failed to determine if ACCI's proposed costs for environmental services were realistic for the work to be performed, demonstrated that ACCI understood the requirements of the solicitation, or were consistent with its technical approach. In making these arguments, EES focused on various alleged inconsistencies between ACCI's technical and cost proposals and argued that the agency failed to analyze the realism of ACCI's proposed costs because agency officials failed to compare ACCI's cost and technical proposals and therefore did not appreciate these inconsistencies. In our decision, we concluded that the agency had conducted an adequate cost realism analysis.

In its reconsideration request, EES' principal contention is that our decision ignored the firm's primary basis for protest--that the Army did not conduct a cost realism analysis because it failed to follow the DFARS requirement that a cost realism analysis include a comparison of each offeror's technical proposal to its cost proposal. EES notes that our decision stated:

"Given that the PEB [proposal evaluation board] examined both the technical and cost proposals and concluded that they were consistent and accurately reflected [ACCI's] understanding and proposed approach, there was no requirement that the cost analyst also compare the two parts of the proposal. Rather, in view of the PEB's

determination, the cost analysis properly was based on the assumption that the proposed staffing reflected in the cost proposal was consistent with ACCI's technical proposal."

EES argues that this paragraph misstates the facts. First, according to EES, no agency official (including the PEB, the cost-price analyst, and the contracting officer) ever compared each offeror's technical proposal to its cost proposal, as required by DFARS § 215.801. Second, EES argues that the Army never asserted that it compared cost and technical proposals during the evaluation and also did not contradict the protester's claim that such a comparison was required by the DFARS. EES also maintains that, in its protest submissions, it showed that the Army's cost analyst did not understand the process involved in conducting a cost realism analysis but simply accepted the offerors' costs as proposed. Additionally, EES states that, although the Army claimed during the protest that the PEB chairman examined the cost proposal, it is not clear whether anyone other than the PEB chairman examined the proposal.¹

Although our decision did not directly address the requirements of DFARS § 215.801, we did find that these requirements were met. Specifically, we addressed the agency's conclusion that the costs of ACCI's proposal were realistic (we addressed EES' contentions that ACCI's proposal was unrealistic because it did not include travel costs for environmental services, did not include overhead other than fringe benefits for caretaker services, and included a low general and administrative rate), that ACCI's proposal reflected a clear understanding of the requirements (we addressed EES' contention that if the PEB had been aware of the low staffing level for environmental services reflected in ACCI's cost proposal it would have concluded that ACCI did not understand the requirements of the solicitation and would have lowered ACCI's technical score under the qualification of personnel factor on the environmental services portion of the contract), and that ACCI's overall costs were consistent with the various elements of its technical proposal (we considered EES' assertion that the cost realism analysis and the technical

¹EES also states that it was denied a hearing concerning its contention that the Army failed to compare the cost and technical proposals during the evaluation of the offers since the Army did not contradict that contention. EES complains that, after its request for a hearing was denied, the protester found "a different set of facts stated by GAO in its decision." As EES states, we concluded that there was no reason to conduct a hearing to determine whether, during the evaluation of the proposals, agency officials performed the type of comparison of ACCI's technical and cost proposals which EES maintains was required. Since the Army did not argue that it had performed such a comparison, there was no factual dispute that required a hearing for resolution. Nothing in EES' reconsideration request changes that conclusion.

evaluation did not take into account alleged inconsistencies between the staffing proposed in ACCI's technical proposal and the staffing costs reflected in ACCI's cost proposal), and determined that the agency had effectively complied with those DFARS provisions. Moreover, despite its assertions, EES had not demonstrated any substantial inconsistency between ACCI's technical and cost proposals. In addition, we noted that after the protest was filed, the PEB considered ACCI's cost proposal and determined that ACCI could in fact perform the contract with the effort proposed. Although EES now argues that only the PEB chairman examined ACCI's cost proposal, this contention does not contradict the point which we made in our original decision—that during the protest, the agency considered ACCI's cost proposal and concluded that ACCI could perform the contract with the effort proposed in its cost proposal.

In short, although EES again argues that the cost realism analysis required by DFARS § 215.801 was not performed, the protester is essentially disagreeing with our decision in this respect. That disagreement provides no basis for reconsideration. R.E. Scherrer, Inc.—Recon., B-231101.3, Sept. 21, 1988, 88-2 CPD ¶ 274.

EES also raises other specific objections to the propriety of the evaluation. It contends that, after the cost analyst reviewed each of the cost proposals, she reduced the government estimate so that it matched the awardee's proposed costs. EES maintains that the cost analyst then recommended award to ACCI because that firm's costs matched the government estimate. According to EES, this was a "bootstrap analysis," not the cost realism analysis that was required; had the required analysis been performed, a question would have been raised as to the ability of ACCI to perform 50 percent of the contract with its own personnel as required by the solicitation. EES argues that, at a minimum, the cost realism analysis of ACCI's offer would have led to questions about ACCI's offer and "presumably [questions about] other offerors that would have [led] the Army to conduct discussions with those in the competitive range." According to EES, this issue was not addressed in our decision.

Although EES now challenges the revised government estimate, in comments submitted during the development of the protest record EES stated that "[a]lthough the protester believes that the [g]overnment improperly revised its estimate, it has accepted that estimate for purposes of analysis and for its arguments." As a result of EES' position, in our decision we declined to address EES' contentions concerning the estimate. Under the circumstances, we will not now consider EES' contentions concerning the estimate.

EES also maintains that our decision "incorrectly states the facts surrounding the disparity of personnel proposed in the technical proposal and in the cost proposal." In its protest submissions, EES argued that ACCI's technical score for the qualification of personnel factor under the environmental services portion of the contract was too high because it was based on the evaluators' erroneous conclusion that ACCI proposed a full-time, [deleted] person staff for environmental services. In our decision, we addressed this contention by noting that the Army did not assume that ACCI proposed [deleted] full-time personnel for environmental services. Rather, the Army explained that ACCI would draw on [deleted] listed people on an as-needed basis.

EES now maintains that our decision incorrectly stated the facts because, according to the protester, agency officials did not know there was such a disparity between ACCI's technical and cost proposals because they did not review those proposals until they were forced to do so by the protest. EES also argues that our decision incorrectly states that ACCI's proposal stated that ACCI would draw on the [deleted] people listed on an as-needed basis.

Finally, EES once again argues that, in spite of the offer of [deleted] people in the firm's technical proposal, ACCI's cost proposal included costs for only [deleted] personnel. According to EES, ACCI's technical proposal did not explain how [deleted] personnel would be able to perform the work of the six positions required by the contract, much less the [deleted] or [deleted] positions identified in the technical proposal. Again, EES maintains that, had the Army compared ACCI's technical and cost proposals, it would have discovered this disparity and, according to the protester, at a minimum, discovery of this disparity would have precluded award to ACCI on the basis of initial offers.

First, agency evaluators did not base their evaluation on the assumption that ACCI had proposed a full-time staff of [deleted] people for environmental services. Rather, as we stated in our earlier decision, agency evaluators read ACCI's proposal as offering to draw on [deleted] listed people on an as-needed basis. While EES now argues that ACCI's proposal did not state that, the protester does not, by reference to ACCI's proposal or by other means, demonstrate that this was an unreasonable conclusion by the evaluators. In fact, our review of ACCI's technical proposal reveals no full-time commitment of a specific number of people to environmental services.

Second, while EES continues to argue that there was a disparity between the staff described in ACCI's technical proposal and the staffing costs set out in ACCI's cost proposal, and that agency officials failed to discover this disparity, this contention also provides no basis for reconsideration. We again point out that the PEB examined both parts of the proposal and concluded that they were consistent and accurately reflected EES' understanding and proposed approach. We noted in our

prior decision that the agency specifically determined that in light of its approach to the work, ACCI could meet the requirements with [deleted] full-time equivalent personnel for environmental services, and that nothing in the record established that this determination was unreasonable. EES' continuing disagreement does not provide a basis for reconsideration.

The reconsideration request is denied.

Comptroller General
of the United States