



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

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Matter of: DATEX, Inc.

File: B-270268.2

Date: April 15, 1996

Jonathan T. Cain, Esq., Devon E. Hewitt, Esq., and J. Russell Morrissey, Esq., Shaw, Pittman, Potts & Trowbridge, for the protester.

Paul F. Khoury, Esq., Mark H. Neblett, Esq., Wiley, Rein & Fielding, for Mendez England & Associates, the intervenor.

Gary M. Winter, U.S. Agency for International Development, for the agency.

John L. Formica, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency could reasonably consider the costs incurred under two similar predecessor contracts performed by the awardee and its proposed subcontractor in performing its cost realism analysis of the awardee's proposal, which was based upon a technical approach similar to that taken in the prior contracts.

2. Protest that the award of a contract to an offeror submitting the proposal with the second-highest combined technical and cost score was improper is denied; where solicitation sets forth detailed point-scoring scheme but does not state that award will be based on high score, award may be made to the offeror submitting the lower-cost, lower-scored proposal where the agency reasonably determines that there is no significant difference in technical merit that justifies the payment of a cost premium.

DECISION

DATEX, Inc. protests the award of a contract to Mendez England & Associates (MEA) under request for proposals (RFP) No. OP/A/FAO-95-P-002, issued by the U.S. Agency for International Development for administrative, technical, and program support for the agency's Bureau of Humanitarian Response, Office of Food for Peace. DATEX challenges the evaluation of its and MEA's cost proposals, and the agency's selection of MEA's lower cost proposal for award.

We deny the protest.¹

The RFP, issued as a competitive set-aside under section 8(a) of the Small Business Act, 15 U.S.C. § 637(a) (1994), provided for the award of a cost-plus-fixed-fee contract for a base period of 3 years with two 1-year options. The RFP informed offerors that award would be made to the responsible offeror whose proposal was determined most advantageous to the government, cost and other factors considered. The RFP listed seven technical evaluation criteria and their weighting, which totaled 100 points, and stated that the "cost evaluation would be given a total of 20 points."

The RFP requested the submission of technical and cost proposals, and provided detailed instructions for the preparation of proposals. Offerors were informed that technical proposals should be organized by the RFP's evaluation criteria, and should address how the offeror intends to carry out the RFP's statement of work (SOW). In this regard, the RFP stated that technical proposals were to "set forth in detail [the offeror's] approach and schedule, technical resources, technical experience and background, unique or specialized skills, and physical facilities." With regard to the cost proposals, the RFP required that each offeror provide a budget listing amounts for the following: total salaries; overhead; consultants; travel; per diem; [general and administrative]; subcontractors; fixed fee; and total price. Offerors were also to include "[s]upporting information in sufficient detail to allow a complete analysis [of] each of the costs proposed."

The agency received three proposals, including MEA's and DATEX's, by the RFP's August 2, 1995, closing date. The agency's technical evaluation committee (TEC) evaluated the offerors' technical proposals. DATEX's initial proposal received 82.7 out of 100 total technical points, at a proposed cost of \$9,496,694. MEA's proposal received 80.7 technical points, at a proposed cost of \$6,313,287.

The cost proposals were evaluated by the cognizant contracting specialist. In performing his evaluation, the contracting specialist considered the offerors' proposed costs relative to their technical approaches, and compared the offerors' proposed costs to the estimates set forth in the agency's illustrative budget. Because the RFP reflected, in large part, the combination of services currently provided under two separate contracts (one performed by MEA and the other performed by MEA's proposed subcontractor under this RFP--Advanced Resources

¹A hearing was held in this protest pursuant to our Bid Protest Regulations, section 21.7, 60 Fed. Reg. 40,737, 40,742 (Aug. 10, 1995) (to be codified at 4 C.F.R. § 21.7), at which certain of the issues raised were addressed by the parties. Our conclusions are based on the testimony at the hearing as well as the written submissions of the parties.

Technologies, Inc. (ARTI)), the agency also compared the proposed costs to the costs incurred under these predecessor contracts. The cost proposals were also reviewed by the agency's contract audit management branch.

The proposals of DATEX and MEA were included in the competitive range.² Discussions were conducted, during which, among other things, the offerors were asked questions regarding certain aspects of their cost proposals. Best and final offers (BAFO) were requested, received, and evaluated.

DATEX's BAFO received 89.7 technical points at a proposed cost of \$8,994,315, and MEA's BAFO received 85.3 technical points at a proposed cost of \$7,112,010. The agency determined that both offerors' cost proposals were realistic, and thus made no adjustments to the offerors' proposed costs. Because MEA's proposed the lowest overall total cost, it received 20 out of 20 points under the cost evaluation criterion, for a total technical and cost score of 105.3 points. DATEX's proposal received a score of 15 points under the cost evaluation criterion, which was calculated by dividing MEA's total cost by DATEX's and then multiplying the product by 20. The agency calculated DATEX's total technical and cost score as 104.7 points. The agency determined that MEA's proposal represented the best value to the government and made award to that firm. After being informed that MEA had received award, and being provided with a debriefing, DATEX filed this protest.

DATEX first protests that the agency failed to perform a proper cost realism analysis of its and MEA's proposals. When an agency evaluates a proposal for the award of a cost reimbursement contract, an offeror's proposed estimated costs are not dispositive because, regardless of the costs proposed, the government is bound to pay the contractor its actual and allowable costs. Federal Acquisition Regulation § 15.605(c). Consequently, a cost realism analysis must be performed by the agency to determine the extent to which an offeror's proposed costs represents what the contract should cost, assuming reasonable economy and efficiency. McDonnell Douglas Corp., B-259694.2; B-259694.3, June 16, 1995, 95-2 CPD ¶ 51. That is, 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 technical approach. Hager Sharp, Inc., B-258812, Feb. 17, 1995, 95-1 CPD ¶ 93. An agency is not required, however, to perform an in-depth analysis or to verify each item in conducting its cost realism analysis. 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 of an agency's judgment in this area is limited to determining whether the agency's cost evaluation

²The third proposal received a much lower technical score and was eliminated from the competitive range.

was reasonably based and not arbitrary. Infotec Dev., Inc., B-258198 et al., Dec. 27, 1994, 95-1 CPD ¶ 52.

The protester objects to the agency's reliance during its cost realism analysis of MEA's proposal on the costs incurred under the predecessor contracts. DATEX claims that the statements of work contained in the predecessor contracts and the RFP at issue are too dissimilar to allow for such an analysis to be valid. The protester specifically contends that MEA's proposed costs for consultants [DELETED], travel [DELETED], and meetings [DELETED], were unreasonably low and should have been adjusted upwards by the agency for evaluation purposes.³ In our view, the predecessor contracts, which were performed by MEA and its subcontractor, are substantially similar to the RFP in scope such that we see nothing unreasonable in the agency's reference to their costs in performing its cost realism analysis of MEA's proposal which, according to the agency, relied upon a technical approach similar to that used in the predecessor contracts. Hearing Transcript (Tr.) at 158. Although the protester notes that the RFP includes three analyst positions not provided for under either of the predecessor contracts, we do not see, nor has the protester explained, why this difference renders the contracts useless as a tool for the performance of the agency's cost realism analysis with regard to the proposed costs for meetings, travel, and the use of consultants, that is, for those aspects of MEA's cost proposal that the protester contends are understated.⁴

³The protester argues for the first time in its comments on the hearing, submitted on March 14, 1996, that MEA's proposed salaries are unreasonably low. Because the protester knew or should have known of this basis of protest on November 21, 1995, when it received the agency report in response to its initial protest to our Office of the award to MEA, this argument is untimely and will not be considered. Bid Protest Regulations, section 21.2(a)(2), 60 Fed. Reg. 40,737, 40,740 (Aug. 10, 1995) (to be codified at 4 C.F.R. § 21.2(a)(2)); GE Gov't Servs., B-235101, Aug. 11, 1989, 89-2 CPD ¶ 128.

⁴The agency's Chief of Programs Operations Division, who prepared the RFP's SOW and who was the contracting officer's technical representative for the predecessor contracts held by MEA and ARTI, testified that during the budgetary process the agency decided to combine the predecessor contracts into one contract, and that she prepared the RFP's SOW by combining the SOWs from the two predecessor contracts. Tr. at 12-13. She added that after further review within the agency, three new analyst positions were added, but that the contract to be awarded under the RFP is "pretty much the same as the combined two contracts," Tr. at 14, 15, and would not require more travel, meetings, or the use of consultants. Tr. at 64, 65.

With regard to the consultant costs, the contracting specialist determined that under the predecessor contracts the costs for consultants over a 4-1/2-year period totaled \$219,176, from which he deducted the costs associated with contract modifications for tasks not set forth in the SOWs of either of the predecessor RFPs or this RFP. For example, the contracting specialist deducted the consultant costs associated with a conference held in 1994 commemorating the 40th anniversary of the Food for Peace program. The contract specialist concluded that the predecessor contract consultant costs that should be used for comparison purposes was \$171,389.⁵ Tr. at 123. Based on this information, and the agency's conclusion that MEA's proposed consultant costs were consistent with its technical approach, the contracting specialist determined that MEA's proposed costs of [DELETED] for consultants were reasonable. The protester's view notwithstanding, we find reasonable the contracting specialist's calculation of consultant costs used for comparison purposes to assess the realism of MEA's proposed costs (for example, it is reasonable to conclude that another decennial commemorative conference would not occur during the 5-year contract period contemplated by this RFP).

The contracting specialist employed the same methods using the predecessor contract costs in determining that MEA's proposed costs for travel and meetings were realistic, which DATEX also has not shown were unreasonable. The protester argues that the RFP's SOW differs from that in the prior contracts in that the RFP requires greater contractor participation in site visits, which, according to the protester, relates to increased travel and meeting costs. However, neither the RFP's SOW nor those set forth in the contracts mandate any particular number of site visits or meetings to be held. Rather, the RFP and predecessor contracts mention these responsibilities in very general and, in our view, similar terms. Because of the similarity of the references in the RFP and predecessor contracts to site visits and meetings, the general terms used, as well as the agency's testimony at the hearing (which was not challenged by the protester) that the amount of travel and meetings required by the RFP's SOW is similar to the requirements of the predecessor contracts, the agency could reasonably refer to the costs incurred under the predecessor contracts for travel and meetings in performing its cost realism analysis of MEA's proposal.

⁵The contracting specialist also verified that the consultant costs incurred under the predecessor contract were consistent with those proposed by MEA for the predecessor contract. Tr. at 117, 118.

Although DATEX specifically argues that MEA's proposed costs for consultants, travel, and meetings are understated, it offers no explanation as to why this is the case.⁶ That is, despite DATEX's access to MEA's entire proposal and all of the evaluation documentation under a protective order issued by our Office, there is no reference in any of DATEX's submissions as to why the protester believes that MEA's proposed costs are unrealistic in view of MEA's technical approach. The protester merely continues to argue that the methodology employed by the agency in the conduct of its cost realism analysis was flawed. In the absence of any showing by the protester that MEA's proposed costs were inconsistent with its proposed technical approach or otherwise unreasonable, we find that the methodology employed by the agency, in which it primarily relied upon relevant historical costs in performing its cost realism analysis, was adequate to determine that MEA's proposed costs were reasonable. See United Int'l Eng'g, Inc. et al., 71 Comp. Gen. 177 (1992), 92-1 CPD ¶ 122.

DATEX also protests that the agency's evaluation of its own proposed costs was unreasonable. In addition to again arguing that the agency's method of performing its cost realism analysis was flawed, DATEX argues, for example, that a proper evaluation of its proposed costs would have resulted in a downward adjustment to its proposed direct costs because, according to DATEX, [DELETED].

This argument is without merit. Based upon our review, and as conceded by the protester, Tr. at 358, it was not readily apparent that [DELETED]. Since an agency's evaluation is dependent upon information furnished in a proposal, it is the offeror's burden to submit an adequately written proposal for the agency to evaluate, Infotec Dev., Inc., supra, and DATEX's failure to fulfill its obligation in this regard does not render the agency's evaluation unreasonable.

DATEX finally challenges the agency's determination that MEA's proposal represented the best value to the government based upon the evaluation criteria and their relative weighting. DATEX points out, and the agency concedes, that its score under the cost evaluation criterion should have been calculated as 15.8 points rather than 15 points, and that its combined technical and cost score should have been

⁶DATEX initially based this contention upon the differences between MEA's proposed costs and the costs set forth in the agency's illustrative budget. However, as evident from the record, the illustrative budget was not prepared as a cost estimate but rather as a funding request. Tr. at 26. Indeed, as now conceded by the protester, the illustrative budget was not a valid basis to determine the reasonableness of MEA's proposed costs in these areas. Tr. at 336-338. Although we fail to understand why the agency referenced this budget in its discussion of its cost realism analysis, this alone does not render unreasonable the cost realism analysis of MEA's proposal.

105.5 points. DATEX concludes here that because its properly calculated total cost/technical score of 105.5 points is higher than MEA's total score of 105.3 points, the terms of the RFP required that it be awarded the contract.

Contrary to the protester's assertion, the solicitation, while containing a precise evaluation formula, did not state that the award would be made to the offeror with the highest-scored proposal. It provided instead that award would be made to the offeror whose proposal was most advantageous to the government based on the cost and technical factors set forth in the RFP. Under such circumstances, if the contracting officer determines that there is no significant difference in the technical merit of the competing proposals, award may be made to the lower-cost offeror, even though its total point score is lower. Telecommunications Management Corp., 57 Comp. Gen. 251 (1978), 78-1 CPD ¶ 80.

Here, the contracting officer found that the proposals of MEA and DATEX, as evidenced by the difference of only four points in their relative technical scores, were substantially equal technically. Tr. at 308, 326-328. The contracting officer explained that in reaching this conclusion, she considered, among other things, the narratives prepared by the TEC, and determined that the slight difference in technical scores did not justify an additional \$1.9 million in costs. Tr. at 310, 327. The contracting officer thus concluded, consistent with the RFP's statement that "[t]he proposed price between substantially equal technical proposals shall be a major factor in selection of a proposal for award," that MEA's substantially technically equal but considerably lower cost proposal represented the best value to the government. Nothing in this record establishes that the contracting officer's determination was unreasonable.

Accordingly, the protest is denied.

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