



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Potomac Research International, Inc.

File: B-270697; B-270697.2

Date: April 9, 1996

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DIGEST

Where the agency properly determined that the awardee's initial proposal was technically acceptable and that its proposed cost was reasonable, and where the agency reserved the right to award on the basis of initial proposals without discussions, the award to the lower proposed cost, technically equal offeror was reasonable and consistent with the terms of the solicitation.

DECISION

Potomac Research International, Inc. (PRI) protests the award of a contract to COBRO Corporation under request for proposals (RFP) No. DAAD05-95-R-0018, issued by the Department of the Army for data collection services for the U.S. Army Aviation Technical Test Center, Ft. Rucker, Alabama. The protester challenges the technical acceptability of COBRO's proposal, the reasonableness of COBRO's proposed cost, and the agency's decision to award on the basis of initial proposals without discussions.

We deny the protest.

The RFP contemplated the award of a time-and-materials, cost-reimbursement contract for a base period with 4 option years. For each period of performance, the RFP schedule listed estimated hours for specified personnel positions. Offerors were required to insert on the schedule unit and extended hourly rates for each position (some of which were subject to applicable wage determinations). The RFP described "required" and "desired" education, experience, and skills qualifications for

each position. The RFP required offerors to "provide resumes, including training certificates and letters of intent, for all personnel, proposed subcontractors, and consultants to be used in this effort." The RFP also included a personnel replacement clause.

The RFP stated that the contract would be awarded to the firm whose proposal was deemed most advantageous to the government, cost and technical factors considered. Proposals would be evaluated in three areas--technical (with personnel qualifications considered significantly more important than understanding of the problem/objective), management (with an offeror's management plan considered significantly more important than its corporate background and past performance/corporate experience, which were considered equal in importance), and cost (whether an offeror's total proposed cost was consistent with its proposed approach).

The RFP stated that the award could be made on the basis of initial proposals without discussions; accordingly, offerors were advised that an initial proposal should contain the offeror's most favorable terms from a technical and cost standpoint. The RFP stated that the technical and management areas were slightly more important than cost, but between technically equal proposals cost would become more significant in awarding the contract.

Three firms, including PRI and COBRO, submitted initial proposals. The technical and management areas were evaluated by the agency's proposal evaluation board (PEB). In evaluating these areas, the PEB assigned points to each of the technical and management evaluation subfactors. An offeror's raw scores for the technical and management areas were subsequently weighted and added together to arrive at the offeror's total weighted technical and management score. In evaluating the reasonableness of an offeror's proposed cost, the contracting officer considered each offeror's proposal, the technical evaluations, the independent government estimate, applicable wage determinations, and the rate verifications requested from the Defense Contract Audit Agency (DCAA).

The proposals of PRI and COBRO received the following weighted technical and management scores:

	<u>PRI</u>	<u>COBRO</u>
Technical	54.7	53.9
Management	38.0	40.0
Total	92.7	93.9

COBRO's proposed cost was approximately 9 percent lower than PRI's proposed cost.

Since there was only an approximate 1-point difference in the total weighted technical and management scores for PRI and COBRO, the contracting officer determined that the proposals of PRI and COBRO were technically equal. In light of COBRO's lower proposed cost and on the basis of initial proposals, the contracting officer awarded the contract to COBRO whose proposal was deemed most advantageous to the government.

PRI does not challenge the underlying evaluation of the qualifications of its own or of COBRO's proposed personnel. For this reason, we have no basis to question the reasonableness of the agency's evaluation in this regard. Nevertheless, PRI argues that COBRO's proposal should have been rejected as technically unacceptable, contending that it should have been apparent to the evaluators that COBRO had no reasonable expectation that many of its proposed employees would actually perform the contract.¹ For example, for proposed personnel currently employed by COBRO, COBRO submitted resumes, but not letters of intent. As a result, PRI suggests that some of these proposed individuals, despite their current employment status, are not committed to performing the contract.

The RFP required offerors to furnish evidence of an employee's commitment and availability to perform the contract. The resumes of COBRO's proposed current employees confirmed that these individuals were currently employed by COBRO and were available to support this contract, on either a full-time or part-time basis, in particular positions. We have found this sufficient to satisfy a solicitation requirement for documentation showing commitment and/or availability. See Intermetrics, Inc., B-259254.2, Apr. 3, 1995, 95-1 CPD ¶ 215. Moreover, there is no evidence in the record which suggests that the evaluators had any basis to question

¹While initially characterizing this argument as one involving a "bait-and-switch," PRI abandoned this characterization in its consolidated comments on the agency's initial and supplemental administrative reports. We note that there is no evidence in the record that COBRO intends a wholesale substitution or replacement of personnel after award.

the commitment and availability of COBRO's current employees to perform this contract.²

In addition, for proposed personnel currently employed by the incumbent contractor, COBRO submitted letters of intent in which these individuals stated that they intended "to join COBRO should [it] be selected as the successful prime contractor," acknowledging that "[i]f COBRO is awarded a contract . . . the undersigned will be offered employment for the referenced position subject to salary negotiations." In its consolidated comments, PRI submitted statements from several former and current incumbent personnel which include the following:

"I provided a copy of my resume to COBRO representatives and granted COBRO permission to submit my resume as part of [its] proposal. I did so, however, with the understanding that I would be retained at my current level of pay. At no time did COBRO indicate to me in any way that I would be required to take a reduction in pay as a

²PRI specifically refers to three individuals who are currently employed by COBRO in the positions of project coordinator, computer system analyst, and quality control specialist. As evidenced by their resumes, COBRO proposed these individuals for various data collector positions. PRI speculates that absent COBRO's furnishing letters of intent, COBRO could not reasonably expect these currently employed individuals to perform in less prestigious and possibly lower paying positions.

There is nothing in the record that suggests that COBRO proposed these individuals in other than good faith. We also note that just as PRI speculates that these individuals might not perform the contract if they are "demoted," one can also speculate that depending on market conditions, an individual would accept a lower paying, less prestigious position to avoid unemployment. Further, the record shows that COBRO is promoting some currently employed personnel. For example, the individual who is currently performing as an office automation specialist will be promoted to the position of program manager, one of four designated managerial positions.

In any event, if these or other proposed individuals whose qualifications were evaluated choose not to perform the contract, COBRO will be required, in accordance with the personnel replacement clause in the RFP, to replace these individuals with others "whose qualifications are equal to or greater than the replaced employee." In its proposal, COBRO specifically acknowledged and took no exception to this clause.

condition for accepting employment with [it]. Had I known in advance that COBRO planned to reduce my compensation, I would not have given [it] permission to use my resume."

PRI contends that the "subject to salary negotiations" language in the letters of intent executed by incumbent personnel should have alerted the evaluators that COBRO may have deceived these individuals about compensation levels. For this reason, PRI challenges the validity of the commitments obtained by COBRO from these individuals and, therefore, the technical acceptability of COBRO's proposal.

Notwithstanding the position taken by incumbent personnel during these protests, these individuals furnished resumes and letters of intent to COBRO to submit as part of its proposal, thus confirming that they were committed and available to perform the contract. By signing the letters of intent containing the language "subject to salary negotiations," we think incumbent personnel were on notice, or should have at least contemplated absent a firm salary agreement from COBRO at the time the letters of intent were executed, that a salary reduction was possible if COBRO were awarded the contract. While the evaluators could reasonably expect post-award salary negotiations to be bilateral and conducted in good faith, in the event these negotiations are not ultimately successful, we do not believe this would necessarily show COBRO's bad faith in proposing these individuals. See Agusta Int'l S.A., 69 Comp. Gen. 326 (1990), 90-1 CPD ¶ 311. We conclude that prior to award, there was no basis for the evaluators to call into question the commitment and availability of the incumbent personnel.³

PRI next challenges as unreasonable COBRO's low proposed labor rates, despite acknowledging that COBRO may pay its employees more than it charges the government under this cost reimbursement contract and that COBRO may even willingly perform this contract at a loss.

We find no merit in PRI's challenge. The agency points out, and PRI does not dispute, that while for some labor categories PRI proposed higher rates than COBRO, for other labor categories COBRO proposed higher rates than PRI. Nevertheless, the contracting officer determined that for the nonmanagerial labor categories subject to applicable wage determinations, both PRI and COBRO met or exceeded the rates required by the wage determinations, and concluded that their labor rates for these positions were reasonable. For the managerial labor categories not subject to applicable wage determinations, including the program manager position, the contracting officer requested rate verifications from DCAA. The

³Again, COBRO will be bound by the terms of the personnel replacement clause if any incumbent personnel whose qualifications were evaluated for particular positions choose not to perform the contract.

contracting officer took no exception to the labor rates proposed by either PRI or COBRO for the managerial positions.

In arguing that COBRO's proposed labor rates were unreasonably low, PRI specifically points out that COBRO's proposed labor rate for the program manager position was approximately 18 percent below DCAA's audited rate for this position. (DCAA provided an audited rate only for COBRO's program manager position.) However, the record shows, and PRI does not rebut, that using DCAA's audited rate for COBRO's program manager position as the baseline, PRI's proposed labor rate for this position was approximately 29 percent below the audited rate. Furthermore, the record shows that both PRI's and COBRO's proposed labor rate for the program manager position was below the labor rate paid by the incumbent contractor for this position. In light of this information, we fail to see how COBRO's proposed labor rate for the program manager position can be viewed as unreasonably low without making a corresponding assessment about PRI's proposed labor rate for this position. In sum, we have no basis on this record to question the contracting officer's conclusion that COBRO's proposed labor rates were not unreasonably low.

PRI finally challenges the decision of the contracting officer to make award to COBRO on the basis of its initial proposal without discussions.

Award may be made on the basis of initial proposals where the RFP advised offerors of the agency's intention in this regard and discussions are not deemed necessary. 10 U.S.C. § 2305(b)(4)(A)(ii) (1994); Federal Acquisition Regulation § 15.610(a)(3). All offerors, including PRI, were on notice from the RFP that the agency might not conduct technical and cost discussions, and that their initial proposals should contain the most favorable terms that they were prepared to offer. PRI has not challenged in any meaningful manner the evaluation of its own proposal.⁴ As discussed above, we conclude, contrary to PRI's assertions, that the

⁴PRI complains that the contracting officer failed to recognize that its weighted score for the personnel qualifications technical evaluation subfactor, the most important evaluation subfactor, was slightly higher (by 1.5 weighted points) than COBRO's weighted score. However, this point differential was reflected in PRI's higher weighted technical score. Moreover, the RFP stated that the evaluation of four specific managerial positions would be weighted slightly higher than the evaluation of nonmanagerial positions. For the most important managerial position—program manager—COBRO received 4 more raw points than PRI, and for the other three managerial positions, COBRO and PRI received the same raw points. Consistent with the terms of the RFP, the contracting officer reasonably could consider that COBRO's slightly higher score for the program manager position

(continued...)

agency properly determined that COBRO's proposal was technically acceptable and its proposed cost was reasonable. In light of the approximate 1-point difference in total weighted technical and management scores for PRI and COBRO and consistent with the evaluation methodology described in the RFP, we think the contracting officer properly determined that the proposals of PRI and COBRO were technically equal and reasonably made award to COBRO as the most advantageous offeror on the basis of its technically equal, lower cost (by approximately 9 percent) initial proposal. See WB Inc., B-250954, Feb. 23, 1993, 93-1 CPD ¶ 173.

The protests are denied.

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⁴(...continued)

offset its slightly lower scores for nonmanagerial positions vis-a-vis PRI's scores for these positions. The contracting officer thus reasonably could conclude that PRI's slightly higher scores for the nonmanagerial positions did not justify the payment of a cost premium.

PRI also complains that there is no explanation in the record for why it received 2 fewer points than COBRO under an understanding of the problem/objective technical evaluation subfactor and 3 fewer points than COBRO under a management plan management evaluation subfactor. While we agree with PRI that the agency did not provide a supporting narrative for this scoring, we do not believe the agency's failure to provide a narrative explanation prejudiced PRI. In this regard, PRI has focused on raw points, not weighted scores. Assuming for the subfactors in question that PRI received the same raw points as COBRO, PRI's revised total weighted technical and management score would increase by 1.4 weighted points to 94.1 total weighted points, compared to COBRO's 93.9 total weighted points. The contracting officer states in the agency's administrative report in response to the protests that even if PRI's numerical rating exceeded COBRO's, the difference would have to have been significant to justify PRI's 9-percent cost premium. Accordingly, we do not believe this de minimis difference in total weighted scores would change the contracting officer's view that the proposals of PRI and COBRO were technically equal.