



**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: Theta Engineering, Inc.

File: B-271065; B-271065.2

Date: June 12, 1996

Thomas B. Archbold, Esq., Fredrikson & Byron, P.A., for the protester.
Gerald T. Nielsen, Esq., Thomas F. Williamson, Esq., and Marcia G. Madsen, Esq.,
Morgan, Lewis & Bockius, for Engineering/Documentation Systems, Inc., an
intervenor.

Colonel Nicholas P. Retson and Major Michael J. O'Farrell, Jr., Department of the
Army, for the agency.

Andrew T. Pogany, Esq., and Michael R. Golden, Esq., Office of the General
Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that agency misevaluated cost proposals by upwardly adjusting protester's proposed costs and conversely failing to upwardly adjust awardee's proposed cost in certain cost elements, with result that the protester's cost was higher than the awardee's is denied, where upward adjustment of protester's cost was reasonable in two challenged areas, and other adjustments in the protester's or awardee's cost proposal would not displace awardee as the low offeror.
2. Where protester fails to show that its proposal was technically superior to awardee's proposal—and even assuming the protester's argument to be valid that its technical proposal should have been rated technically equal to awardee's technical proposal—cost properly became the important factor for selection, and protester was not entitled to the award because its evaluated cost was not low.

DECISION

Theta Engineering, Inc., the incumbent contractor, protests the award of a cost-plus-base/award fee contract to Engineering/Documentation Systems, Inc. (EDSI) under request for proposal (RFP) No. DAKF36-95-R-0002, issued by the Department of the Army, Fort Drum, New York for direct support and general support (DS/GS) maintenance services and repair of commercial and tactical equipment in various commodity groups at several military facilities. Theta principally challenges the evaluation of cost and technical proposals.

We deny the protest.

BACKGROUND

The RFP, as amended, contemplated the award of the cost reimbursement contract for a base period with 5 option years. The DS/GS maintenance services to be furnished by the successful contractor include planning and control, maintenance supply, quality control and associated services in the following major commodity groups, among others: (1) automotive equipment; (2) combat vehicles; (3) construction equipment; (4) electronic and communication equipment; (5) weapons/armaments; and (6) other general equipment. The agency reports that because of the current "downsizing" of the Army--here, the inactivation of a separate infantry brigade--the RFP's estimated work load reflected a 25-percent reduction for calendar year 1996 from calendar year 1994 levels.

The RFP provided that award would be based on the best overall proposal considering the stated evaluation factors. The RFP listed the following two major factors: (1) quality; and (2) cost. The RFP stated that "quality [was] significantly more important than cost." The subfactors of the quality factor, listed in order of importance, were technical, management, and past performance. The subfactors of the cost factor, again listed in order of importance, were most probable cost/cost realism, cost tracking and control system, total estimated cost, and fee structure.

Although the RFP stated that technical ("quality") factors were more important than cost, offerors were advised that the importance of cost would increase "as relative differences between the overall quality of proposals decrease." As relevant here, the RFP stated that under the subfactor, most probable cost/cost realism, the agency would assess the cost realism of each offer by developing a most probable cost estimate for the proposal based on the offeror's total overall approach. The RFP required offerors to complete a cost data sheet matrix listing every labor classification required to accomplish the tasks, the quantities of each classification required, the labor rate, any overtime hours needed, as well as other financial information. The RFP contained wage rate determinations by the Department of Labor for each facility to be furnished. Finally, the RFP, by amendment No. 0001, "normalized" other direct costs (ODCs), such as travel and postage/shipping, by establishing a specified sum in the RFP that all offerors were required to use in their cost proposals for purposes of evaluation.

The agency received six proposals by the closing date, including proposals from Theta and EDSI. The agency's source selection evaluation board (SSEB) evaluated

the proposals with a numerical rating scheme.¹ Based on the evaluation results, the contracting officer included the proposals of five firms in the competitive range, including the proposals of Theta and EDSI. Face-to-face and telephonic discussions were then conducted with each firm. The agency received and evaluated five best and final offers (BAFO).² The results of the final evaluation were as follows:

EVALUATION FACTORS	THETA	EDSI
Quality (70 percent)		
Technical	[Deleted]	[Deleted]
Management	[Deleted]	[Deleted]
Total Quality Points	[Deleted]	[Deleted]
Past Performance	[Deleted]	[Deleted]
Cost (30 percent)		
Proposed Cost	[Deleted]	[Deleted]
Evaluated Most Probable Cost (MPC)	[Deleted]	[Deleted]

The agency's source selection authority (SSA) made the following determination:

"[EDSI] received the highest Technical score . . . and a Management score second only to [Theta]. One significant aspect of [EDSI's] Management approach was the complete authority and autonomy that will be given to the site Project Manager. The degree of autonomy is reflected in the cost proposal in the extremely low corporate overhead/G&A pools. . . . [My decision to select EDSI] is based on the overall superior quality of [EDSI's] proposal as compared to all other Offerors and considers the cost of achieving this quality to include the risk of a cost overrun. . . . I believe there is a great probability that [Theta] would require resources above those identified in [its] proposal in order to perform the requirement of the RFP [and that] the cost of these additional resources would be approximately [deleted] over the five year life of the contract, thereby negating any apparent proposed cost advantage [Theta] had over [EDSI]."

¹The agency employed the following "grade scale": outstanding (90 - 100 points); excellent (80 - 89); satisfactory (70 - 79); poor (60 - 69); and substandard (less than 60).

²We limit our discussion to the evaluation of Theta's and EDSI's proposals.

The agency awarded the contract to EDSI; this protest followed.

COST REALISM ANALYSIS

When a cost reimbursement contract is to be awarded, a cost realism analysis must be performed by the agency; however, an agency is not required to conduct an in-depth cost analysis or to verify each and every item in conducting its analysis. The Warner/Osborn/G&T Joint Venture, B-256641.2, Aug. 23, 1994, 94-2 CPD ¶ 76. The evaluation of competing cost proposals requires the exercise of informed judgment by the contracting agency involved, since it is in the best position to assess what the contract should cost, assuming reasonable economy and efficiency, and must bear the difficulties or additional expenses resulting from a defective cost analysis. Id. Consequently, our review is limited to a determination of whether an agency's cost evaluation was reasonably based and not arbitrary. General Research Corp., 70 Comp. Gen. 279 (1991), 91-1 CPD ¶ 183; Science Applications Int'l Corp., B-238136.2, June 1, 1990, 90-1 CPD ¶ 517. We find the agency's determination that Theta was other than the low cost offeror to be reasonable.

Theta argues that the agency's cost realism analysis which resulted in adjustments to both offerors' proposed costs was faulty and resulted in the agency "award[ing] the contract to a higher cost offeror." Theta believes that it had the "lower most probable cost" and should have been awarded the contract since its proposal "should have been evaluated, at a minimum, as essentially equal to EDSI's technical proposal." Because of the difference in MPC between the two offerors, we need only decide two issues to determine that the agency properly evaluated EDSI's cost proposal as low.

As shown above, Theta proposed a total cost of [deleted]; after cost evaluation by the agency, Theta's MPC was upwardly adjusted to [deleted]. EDSI's proposed a total cost of [deleted], which was downwardly adjusted by the agency during cost evaluation to an MPC of [deleted].³ First, the protester challenges the agency's

³Theta advances several arguments as to why the agency should not have downwardly adjusted EDSI's proposed costs during MPC evaluation. For purposes of our decision, we will assume the validity of the protester's arguments. Additionally, the protester argues that EDSI's proposal should have been upwardly adjusted because three of numerous proposed employees were allegedly improperly "misclassified" under the applicable wage rates by EDSI. For example, Theta allegedly proposed an "Electronics Technician, Maintenance [Level] II" with an hourly wage rate of [deleted] at one facility while EDSI proposed a "Photooptics Technician" for the same position at an hourly rate of [deleted]. The agency denies this and alleges that EDSI also proposed an Electronics Technician. In any event,

(continued...)

upward adjustment of its proposed costs by [deleted] in ODCs. As amended prior to receipt of initial proposals, the RFP specifically required all offerors to propose a total of \$525,000 for ODCs (this amount was printed in the amended RFP). The RFP was amended to "normalize" these costs after offerors submitted questions to the agency expressing their lack of knowledge of historical ODCs and requesting the agency to specify an ODC amount for proposal evaluation. This the agency did. Theta's initial proposal contained [deleted] for ODCs. During discussions, the agency specifically advised Theta to use the normalized ODC cost figures contained in the RFP. Nevertheless, in its BAFO, Theta again proposed only [deleted] because the firm believed that its figures were "more valid." The agency made an upward adjustment of [deleted] (which includes an amount for associated fee pools).

To the extent that the protester is arguing that the ODC amounts specified in the RFP were invalid and constituted an impropriety in the solicitation, its protest is untimely. Protests based upon alleged improprieties in a solicitation must be filed prior to the time set for the closing time for receipt of initial proposals. See 4 C.F.R. § 21.2(a)(1) (1996). To the extent that the protester is challenging the upward adjustment by the agency during its evaluation, contracting agencies are required to adhere to the evaluation methodology contained in an RFP—which is exactly what the agency did here. See Olympic Container Corp., B-219424, July 24, 1985, 85-2 CPD ¶ 83. This protest ground is denied.

Second, Theta questions the agency's decision to increase Theta's MPC by [deleted] for understaffing a facility at Fort Indiantown Gap (FIG) by [deleted]. Theta argues that as the incumbent, it submitted proposed manning based on its extensive experience; the experience of its employees; the cross-training of its employees; and innovative and proven techniques. Theta argues that the agency's 25-percent reduction in the RFP work load data shows that the inclusion of [deleted] in its cost proposal was unreasonable. Theta also argues that the Army simply "formulated its estimate of the required staff hours and used that estimate to adjust each offeror's

³(...continued)

the amounts involved are so minimal that, in the absence of any showing by the protester otherwise, we conclude that these three allegedly erroneous wage classifications by EDSI had no significant impact on the cost evaluation. The protester also argues that EDSI has proposed to hire its incumbent employees at unreasonable low rates as compared with their current salaries. The protester identifies only two such employee positions: quality control employee (paid [deleted] per hour by the protester and proposed at [deleted] per hour by EDSI), and heavy equipment mechanic (paid by the protester at [deleted] per hour and proposed at [deleted] per hour by EDSI). Again, we believe these costs are de minimis and there has been no showing that they had any effect on the selection decision.

proposed costs [without any effort] to independently analyze the realism of the offeror's proposed costs based on each offeror's [approach]." Theta concludes that the agency used a "flawed mechanical approach which improperly raised Theta's cost." We disagree.

The agency determined in its Independent Government Estimate (IGE) that [deleted] of effort would be required to perform the work at FIG. The basis of the estimate was an automated maintenance management system named "GARSMMS." This system records the actual labor and inspection (quality control) man-hours expended by the incumbent contractor in performing work orders issued under the current maintenance contract. Further, the agency's IGE projections for 1996 reflected the 25-percent reduction in work load from 1994 levels. The IGE showed that [deleted] of labor were required to perform the work in six commodity groups during 1996. Additionally, based on historical data, the IGE showed that [deleted] were required to perform the associated work in the four functional areas of Planning Production and Control, Supply, and Project Management. This overall estimated staffing level of [deleted] is consistent with the current staffing of Theta, the incumbent.⁴ (Theta currently employs [deleted] people to perform the direct labor in the commodity groups, as compared to [deleted] contained in its proposal. Additionally, Theta currently employs [deleted] at FIG, as compared to the [deleted] contained in its proposal for quality control. The record shows that Theta recently attempted to further reduce the number of quality control personnel at FIG to [deleted], as proposed in its offer, but this manning was found to be insufficient to do the work.)

We think that a contracting agency may properly rely in a cost realism analysis on an incumbent's actual performance and actual staffing levels in currently performing the work rather than unsubstantiated proposed staffing in evaluating the realism of proposed costs. See Marine Design Technologies, Inc., B-221897, May 29, 1986, 86-1 CPD ¶ 502. Here, the agency considered the actual cost history of the program, the current staffing levels of the incumbent contractor, and the inability of Theta to perform the level of work with fewer than [deleted] employees in the commodity groups and [deleted] in quality control personnel, and, in our view, reasonably determined that an evaluation adjustment of [deleted] was necessary. (During discussions, the agency specifically advised Theta to review its labor hours proposal for FIG. Nevertheless, Theta did not increase its manning levels at FIG in its BAFO.) Further, the protester, in its proposal, did not reflect any new "innovative" technical approach suggesting that the work could be done with fewer people or

⁴The agency states and the protester does not dispute that "[i]n the past, the incumbent contractor has had a significantly larger workforce, but this workforce has [already] undergone a significant reduction to match the corresponding reduction in workload."

provide additional explanation as to why its previous experience in performing the work was not indicative of the actual staffing required for successful performance of the contract. In the absence of a persuasive explanation by the protester to support its staffing level, we think the agency could reasonably rely on the actual performance staffing levels to upwardly adjust the protesters' proposed cost.

The record clearly shows that these two cost adjustments by the agency, which we find to be reasonable, render the protester's proposal other than low even assuming the validity of all of its other arguments concerning its own and EDSI's cost proposal adjustments. Therefore, for Theta to prevail, it must show that its technical proposal was significantly superior to EDSI's technical proposal.

TECHNICAL (QUALITY) EVALUATION

In its initial protest, in its supplemental protest, in its comments on the agency report, as well as its surrebuttal to the agency's rebuttal of its comments, the protester did not expressly state that it should have been awarded the contract at a premium cost. While the protester did generally argue that EDSI's technical proposal should have been downgraded in certain areas (such as excessive reliance on subcontracting with a large business) and that its proposal should have received higher technical scores because it submitted a superior technical proposal (such as in staffing), the protester's arguments concerning the agency's evaluation of cost and the weight to be given cost in the selection decision were limited to its contention that its proposal offered the lower cost as compared with the proposal of EDSI. For example, in its comments, the protester argues as follows:

"[Based on] the quality of Theta's proposal, any determination that EDSI's technical proposal was materially superior to Theta's would be unreasonable, unsupported by the proposal record, inconsistent with the RFP evaluation criteria, and arbitrary. Accordingly, Theta's technical proposal was or should have been evaluated, at a minimum, as essentially equal to EDSI's technical proposal. Therefore, based on the preceding cost analysis in which Theta has a lower most probable cost than EDSI, Theta should be awarded the contract under established Government procurement law which [provides for award to the low, technically equal offeror]."⁵

⁵The protester also argued that even if the point scores were not "statistically equal," there was no rational basis by which the agency could have determined that a higher point or adjectival score was indicative of real technical superiority to

(continued...)

Nevertheless, the protester, in a later submission, argues that its previous protest submissions contained sufficient assertions that its proposal was "excessively downgraded" and that EDSI's proposal was not appropriately downgraded to have reasonably raised the issue of whether "its technical rating should have been [technically] superior to EDSI's technical rating." Theta argues that its supplemental protest "discussed factors which support Theta's proposal as being significantly technically superior to EDSI's proposal." We will examine the protester's major arguments as to why it believes that its technical proposal was allegedly superior.

First, Theta, while acknowledging that the RFP did not contain any prohibition against subcontracting, states that EDSI proposed to use Dynamic Sciences, Inc. (DSI), an "ineligible" firm,⁶ to perform 47 percent of the work, including almost all the work to be performed at one of the two central sites covered by the contract.⁷ Theta essentially argues that the agency failed to evaluate the risks associated with such a significant amount of subcontracting and to appropriately downgrade EDSI's proposal. Theta believes that "[t]o permit EDSI to subcontract the work of one of two central sites to DSI is unconscionable [and unfair]." Theta also believes that its technical proposal was superior because it proposed to perform the work in-house without subcontracting.

The agency responds by stating that both EDSI and DSI are experienced maintenance contractors. Specifically, EDSI currently holds the cost contract for vehicle and equipment maintenance at Aberdeen Proving Grounds, Maryland in the estimated amount of [deleted] for 5 years of work. Similarly, DSI performed the same work under a past cost contract at Aberdeen in the amount of [deleted] for more than 5 years. The agency further states as follows:

⁵(...continued)

justify a "cost premium" to EDSI, a higher-cost offeror. Indeed, Theta, citing Lockheed Corp., B-199741.2, July 31, 1981, 81-2 CPD ¶ 71, argues essentially that the agency should have found "essential equality" between EDSI and Theta even if there were a 15 percent difference in technical scores. Consequently, the protester's submissions do not contain any significant argument or analysis in the context of Theta having been properly evaluated as the higher cost offeror.

⁶The record shows that the protester bases its argument of ineligibility on the fact that DSI is a large business.

⁷Theta also raises a size issue (improper affiliation) between EDSI and DSI and their principals. As the agency states, this matter is strictly for the Small Business Administration (SBA) to decide pursuant to a size protest and is not within our jurisdiction. See 4 C.F.R. § 21.5(b)(1).

"The SSEB considered the risk to the Government with EDSI's proposed subcontracting arrangement with DSI, and in a reasonable exercise of discretion, determined that there was no undue risk to the Government with this arrangement, and that there was no reason to downgrade EDSI's proposal in this area. There could actually be some advantage to the Government, rather than a disadvantage, in having all subcontracting centrally located at one site. Consolidation of subcontracting activity at one centrally located site could make it easier for the prime contractor to exercise supervision and control over its subcontractor, rather than having subcontracting activity spread out over several, geographically separate, locations."

Based on this record, we cannot conclude that the agency should have downgraded EDSI for its subcontracting plans, especially since both firms (the prime contractor and its subcontractor) were highly experienced and were assigned discrete areas of responsibility to perform the work at different locations under EDSI's proposed technical approach. The record shows the agency considered the risk of EDSI's approach, but found that the subcontracting approach posed no significant risk. We have no basis to disturb this determination.

The protester's second major technical argument is that the agency should not have downgraded its technical proposal for offering [deleted] employees at FIG than the Army estimated were necessary. As discussed above, the agency provided a reasonable analysis based on historical and current staffing levels for concluding that Theta's proposal of [deleted] employees at FIG constituted insufficient staff to perform the required work which raised questions about the firm's understanding of the work requirements. Thus, we think the downgrading of Theta's technical proposal in this regard was reasonable. Theta also argues that EDSI's technical proposal should have been downgraded for offering [deleted] employee at one location than the Army's estimate for that location. We think that the agency was reasonable in finding that EDSI's offer of [deleted] more than the agency's estimate for servicing a single location was not indicative of a lack of understanding by EDSI of the work to be performed. We find no merit to this protest issue and consider the matter insignificant.

We have reviewed other arguments advanced by the protester and find them to be without merit. There is nothing in the record to show that the protester was technically superior so as to have been entitled to an award at its higher cost. Further, even if, as the protester also argues, its proposal should have been rated technically equal to EDSI's, the solicitation provided that in the case of substantially equal technical proposals, cost would become the important factor. Since EDSI's proposal was reasonably found to offer a lower cost, Theta would not have been in

line for award even if its proposal was rated technically equal to EDSI's. See TDS, Inc., B-261827.3, Feb. 1, 1996, 96-1 CPD ¶ 151.

The protest is denied.

Comptroller General
of the United States