



**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: Am-Pro Protective Agency, Inc.; MVM, Inc.

File: B-271385.4; B-271385.5; B-271385.6; B-271385.7; B-271385.8

Date: September 23, 1996

John E. McCarthy, Jr., Esq., James J. Regan, Esq., and Paul Shnitzer, Esq., Crowell & Moring, for Am-Pro Protective Agency, Inc.; Barbara S. Kinosky, Esq., Bean, Kinney & Korman, and James S. Phillips, Esq., for MVM, Inc., the protesters. Neil H. O'Donnell, Esq., and Patricia A. Meagher, Esq., Rogers, Joseph, O'Donnell & Quinn, for Inter-Con Security Systems, Inc., an intervenor. Kathleen D. Martin, Esq., Department of State, for the agency. Katherine I. Riback, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Allegation that agency improperly evaluated the awardee's proposal is denied where evaluation documentation shows that the ratings assigned to the proposal were reasonable and reflected the solicitation's stated evaluation criteria.
2. Protest that awardee's proposal was unbalanced is denied where there is no doubt that the awardee's proposal will result in the lowest ultimate cost to the government because the solicitation's estimates reasonably reflect the government's anticipated requirements.
3. "Cost realism" ordinarily is not considered in the evaluation regarding the award of a fixed-price contract, since the contract places upon the contractor the risk and responsibility for loss. Moreover, the fact that an offer may not include any profit or may be an attempted buy-in (below cost) does not, in itself, render an otherwise responsible firm ineligible for award.
4. Protest that the agency failed to adequately analyze the awardee's low price in making the award selection is denied where (1) the agency's price analysis was reasonably based on comparing the awardee's price with the other prices that it received in response to the solicitation and performing a crosswalk analysis to ensure that the awardee's proposed methodology for meeting certain technical requirements was supported by the awardee's proposed prices, and (2) the awardee's price remains low under any adjustment scenario.

DECISION

Am-Pro Protective Agency, Inc. and MVM, Inc. protest the Department of State's (DOS) award of a contract to Inter-Con Security Systems, Inc. to provide uniformed armed and unarmed guard services at various State Department facilities under request for proposals (RFP) No. S-OPRAQ-94-R-0434.

We deny the protest.

The RFP sought proposals to provide qualified professional security and managerial personnel to perform uniformed guard services, such as access control, security for special events, and security inspections, at various State Department facilities. The RFP contemplated the award of an indefinite delivery, indefinite quantity labor hours contract with firm, fixed hourly rates for a base year, with 4 option years. The solicitation advised offerors of the various specified management and security officer positions and the labor hour estimates for each facility. Offerors were required to provide a base hourly rate and a loaded hourly rate for each year for each of the various positions specified in the RFP. The RFP provided that this contract was subject to the Service Contract Act (SCA), 41 U.S.C. §§ 351-358 (1994), which requires the contractor to pay its covered employees minimum wages and fringe benefits, as determined by the Department of Labor. Amendment No. 10 stated that:

"The only CLIN labor category in this solicitation covered by the Service Contract Act is the position of Uniformed Security Technician (Unarmed), CLIN 12. This position is covered by the Department of Labor (DOL) category of 'Guard II', and is subject to the minimum wage determination attached thereto."

The RFP designated technical factors and their relative weights, and stated that award would be made on a best value basis with technical factors more important than price.

The agency received 10 proposals. Following evaluation of initial proposals, the technical evaluation panel (TEP) established a competitive range of six proposals, including those of MVM, Am-Pro, and Inter-Con. The agency conducted written discussions with each competitive range offeror and requested revised proposals. The agency evaluated the revised proposals, conducted further discussions with each competitive range offeror, and received a second round of revised proposals.

After eliminating another three proposals from the competitive range,¹ the agency requested that the three remaining offerors, MVM, Am-Pro, and Inter-Con, submit best and final offers (BAFO). The BAFOs were evaluated as follows:

Offeror	Technical Score (500 points maximum)	Price
MVM	[DELETED]	\$(DELETED)
Inter-Con	[DELETED]	\$(DELETED)
Am-Pro	[DELETED]	\$(DELETED)

The TEP concluded that there were no significant technical differences between the three proposals. Since the three proposals were essentially technically equal, the source selection advisory council (SSAC) recommended that the contract be awarded to Inter-Con because it had submitted the lowest-priced offer. The contracting officer concurred and awarded the contract to Inter-Con. These protests followed.

TECHNICAL EVALUATION OF INTER-CON'S PROPOSAL

Am-Pro and MVM raise numerous arguments to the effect that the technical evaluation of Inter-Con's proposal was improper. The evaluation of technical proposals is primarily the responsibility of the contracting agency. Our Office will not make an independent determination of the merits of technical proposals; rather, we will examine the record to ensure that the agency's evaluation was reasonable and consistent with the stated evaluation criteria. Litton Sys., Inc., B-237596.3, Aug. 8, 1990, 90-2 CPD ¶ 115. Here, as set forth below, we find the agency's technical evaluation unobjectionable.

Protective Security Personnel

This evaluation factor assessed the offeror's ability to provide personnel as specified. Inter-Con's proposal received the maximum [DELETED] points available under this factor. Inter-Con proposed to retain a significant number of the incumbent's staff, and to pay its armed and unarmed guards the same base wage rate [DELETED] for the base year. Am-Pro, the incumbent contractor, argues that the agency improperly failed to assess the technical risk inherent in Inter-Con's low

¹Two of these offerors filed protests in our Office concerning the elimination of their proposals from the competitive range. One protest was withdrawn, and one was denied (Akal Sec., Inc., B-271385; B-271385.3, July 10, 1996, 96-2 CPD ¶ 77).

wages for armed guards. Am-Pro contends that Inter-Con will have difficulty retaining armed guards because these guards will receive the same base wage as unarmed guards and less than they were receiving from Am-Pro.²

[DELETED] The SSAC determined that Am-Pro's proposed rate for armed guard positions at most locations was [DELETED] higher than that of Inter-Con and recognized that this might have some impact on Inter-Con's ability to attract employees from the incumbent's labor force. However, the SSAC concluded that the competitive market for jobs of this nature and Inter-Con's clear commitment to staffing with qualified employees was sufficient to offset this possible impact. In short, the rate difference was not considered significant enough by the SSAC or the source selection authority (SSA) to result in a performance risk for Inter-Con. Rather, the SSA and the SSAC concluded that Inter-Con would be able to attract appropriate staffing, and that in a full and open competitive environment market forces produced more competitive prices than experienced under Am-Pro's existing contract, which had been awarded on a sole-source basis. We find nothing unreasonable in that view.

Corporate Experience

Under this evaluation factor, offerors were to list similar contracts that they have performed in the past 3 years. Am-Pro, which received the maximum possible score [DELETED], contends that this contract is unique and that the agency improperly also awarded Inter-Con the maximum score under this evaluation factor even though Inter-Con lacked the unique experience that Am-Pro alone possessed as the incumbent contractor.

The TEP noted that Inter-Con currently provides security for the DOS' diplomatic communities in Mexico, Jamaica, Thailand, Barbados, the Dominican Republic, Colombia, Liberia, and the Turkish Consulate in California. These contracts require more than 1,500 people and amount to approximately 3 million man-hours per year. In all, Inter-Con has provided approximately 15 million man-hours of security services to DOS facilities throughout the world. The TEP also noted that Inter-Con has successfully managed several contracts of the size of this contract (approximately 350 personnel) or significantly larger. For example, Inter-Con is currently providing security services for all Kaiser Permanente Foundation facilities, which includes an 850 person guard force. In light of this experience, we see no basis to object to the agency's awarding Inter-Con's proposal the maximum score under this evaluation factor, which pertains to similar, and not to identical, contract

²Am-Pro also alleged in a supplemental protest that Inter-Con's proposed assistant manager lacked the supervisory experience necessary for the position. Am-Pro subsequently withdrew this issue.

experience. The fact that a protester disagrees with the contracting agency's judgment does not establish that the evaluation was unreasonable. Ionsep Corp., Inc., B-255122, Feb. 10, 1994, 94-1 CPD ¶ 97.

PRICE EVALUATION

MVM and Am-Pro raise various arguments concerning Inter-Con's price. MVM argues that Inter-Con's proposal is unbalanced, while Am-Pro argues that, in view of what Am-Pro considers faulty solicitation estimates, Inter-Con's prices present "unacceptable cost risks" to the agency. The protesters also argue that the agency performed a faulty analysis of Inter-Con's price and, as a result, improperly determined that the awardee's price was reasonable.

Unbalanced Pricing

The concept of unbalanced pricing may apply in negotiated procurements where, as here, price constitutes the primary basis for the source selection. Stocker & Yale, Inc., B-249466.2, Jan. 29, 1993, 93-1 CPD ¶ 88. Unbalanced pricing has two aspects. First, the offer must be evaluated to determine whether each item carries its share of the cost of the work specified for that item as well as overhead and profit. If the offer is based on nominal prices for some of the work and enhanced prices for other work, it is mathematically unbalanced. The second part of the test is to ascertain whether a mathematically unbalanced offer is materially unbalanced by determining whether there is a reasonable doubt that award on the basis of that offer will result in the lowest overall cost to the government. Id. With respect to a requirements contract, determination of the materiality of unbalancing usually turns on the accuracy of the solicitation's estimate of the agency's anticipated needs, since the mathematically unbalanced offer will only become less advantageous than it appears if the government ultimately requires a greater quantity of the overpriced items and/or a lesser quantity of the underpriced items. Duramed Homecare, 71 Comp. Gen. 193 (1992), 92-1 CPD ¶ 126.

Here, Inter-Con's proposal differentially allocates indirect costs to various positions with the result that its loaded rates are substantially higher in some cases and lower in others than those of its competitors. While Inter-Con explains that these cost allocations are accurate and reflect a pricing strategy based on a realistic assessment of indirect cost allocation, the firm does not explain the basis for the differential allocation. On this record, however, it is not clear that these price differences are sufficiently large and unrelated to cost share to be considered nominal and enhanced, and thus to be mathematically unbalanced.³

³[DELETED]

In any case, we see no basis to object to the accuracy of the solicitation's estimates. The agency reported and confirmed that its estimates for the labor hours were based on the current year requirements of the incumbent (Am-Pro) at the time that the RFP was issued. Notwithstanding MVM's contrary assertion, the agency reasonably fashioned the solicitation's estimates on the current contract performance data, and its best assessment of likely future changes to these requirements. MVM simply has not provided any credible basis to call into question the reliability or validity of the agency's estimates.⁴ Thus, even if Inter-Con's low proposal were mathematically unbalanced, the solicitation's estimates reasonably accurately represent the agency's anticipated needs, and the proposal is not materially unbalanced as there would be no reasonable basis for viewing the proposal as representing other than the lowest cost to the government. Earth Eng'g and Sciences, Inc., B-248219, July 30, 1992, 92-2 CPD ¶ 72.

Price Analysis

Am-Pro and MVM both contend that the agency should have rejected Inter-Con's proposal because its price was below cost. In this regard, Am-Pro argues that Inter-Con's low price shows that Inter-Con does not understand the solicitation requirements and that the firm's proposal should have been rejected because the firm's income from the contract will be insufficient to cover the cost of providing the required level of service. Am-Pro and MVM both style their allegations in the form of a protest that the agency did not adequately evaluate the "cost realism" of Inter-Con's price.

"Cost realism" ordinarily is not considered in the evaluation regarding the award of a fixed-price contract, since the contract places upon the contractor the risk and responsibility for loss. See Culver Health Corp., B-242902, June 10, 1991, 91-1 CPD ¶ 556.⁵ (An agency does, however, review price reasonableness prior to the award

⁴Am-Pro, based on its own experience as the incumbent contractor, knew or should have known of defects it alleges were in the government's estimate, which form the basis for Am-Pro's argument that Inter-Con's proposal presented "unacceptable cost risks" to the government, before submitting a proposal. Accordingly, we consider this argument to be untimely under our Bid Protest Regulations, which require that a protest based upon alleged improprieties apparent on the face of a solicitation be filed prior to the time set for receipt of initial proposals. 4 C.F.R. § 21.2(a)(1) (1996); see Allstate Van & Storage, Inc., B-247463, May 22, 1992, 92-1 CPD ¶ 465.

⁵An agency nonetheless may provide in a solicitation for a realism analysis of fixed price proposals essentially to avoid the risk of poor performance by a contractor "forced" to provide services at little or no profit or with an undercompensated workforce. See Culver Health Corp., supra.

of a fixed-price contract, focusing primarily on whether the offered prices are higher than warranted based on the offeror's costs, and using the evaluation in negotiating reasonable prices. See Ebonex, Inc., B-213023, May 2, 1984, 84-1 CPD ¶ 495.) Moreover, the fact that an offer may not include any profit or may be an attempted buy-in (below cost) does not, in itself, render an otherwise responsible firm ineligible for award. Ebonex, Inc., *supra*; Norden Sys., Inc., B-227106.9, Aug. 11, 1988, 88-2 CPD ¶ 131.

Specifically regarding the relationship of Inter-Con's price to the solicitation's requirements, the RFP required each offeror to provide a total loaded price for each line item and a breakout of each discrete cost element in a cost derivation table. The cost evaluation team performed a price analysis of Inter-Con's proposal by comparing Inter-Con's price proposal to the other price proposals received in response to the solicitation, and by performing a technical/price crosswalk analysis, which entailed comparing information provided in Inter-Con's technical proposal to the cost information found in its price proposal. The agency performed the crosswalk analysis to ensure that Inter-Con's proposed methodology for meeting certain technical requirements was supported by its proposed price.

Although Am-Pro and MVM question the quality of the price analysis, the protesters' allegations establish, at best, the agency's recognition that while Inter-Con may have submitted a below-cost offer, this low price did not reflect a defective technical approach or lack of understanding on Inter-Con's part. Indeed, the agency concluded that Inter-Con's low price resulted from its particular pricing strategy, which included lower support costs, lower general and administrative costs, and lower profit. From our review, we have determined that there is no reason to question the agency's price analysis methods.

Moreover, we note that regardless of the precision of the agency's assessment of Inter-Con's price,⁶ neither protester argues that an accurate assessment would result in a price higher than its own offer. This is because even if Inter-Con's proposed prices were upwardly adjusted as argued, Inter-Con still proposed a significantly lower profit margin and to absorb gear-up/gear-down costs--that proposal, under any adjustment scenario, would result in Inter-Con's fixed price remaining significantly lower than Am-Pro's or MVM's. Since all three offers were evaluated as technically equal, and the award decision turned, as a result, on price, the plain fact is that none of the price analyses to which the protesters object could have had any material impact on the ultimate award determination here.

⁶The protests challenge the assessment's accuracy principally with respect to gear up/gear down (the time spent by guards getting into and out of uniform, drawing and returning weapons, and going to and returning from assignments); Inter-Con's wage rates; and the escalation of labor rates.

MVM next argues that award to Inter-Con was improper because the agency knew that Inter-Con intended to violate the contract cost principles and procedures of FAR Part 31 and the cost accounting standards (CAS) as set forth at 48 C.F.R. Chapter 99 (1995). Specifically, MVM argues that during discussions Inter-Con informed the agency that it would treat the costs of staff training, training facilities and support facilities as indirect costs. MVM argues that under the FAR Part 31 cost principles, a direct cost, such as staff training, cannot be treated as an indirect cost. MVM also alleges that Inter-Con is a CAS-covered contractor and that Inter-Con's proposed accounting treatment of these costs also violates CAS.

The CAS requirements and contract accounting principles establish rules for the consistent accumulation and reporting of cost data, and do not require that a contractor base its fixed prices upon any particular allocation of costs. MVM, Inc.; Burns Int'l Sec. Servs., 73 Comp. Gen. 124 (1994), 94-1 CPD ¶ 279. Further, to the extent that MVM suggests that Inter-Con may attempt to recoup direct costs of this contract indirectly from the government under other contracts, this concerns a matter of contract administration that our Office does not review under our bid protest function. 4 C.F.R. § 21.5(a).

AWARD DECISION

Finally, Am-Pro contends that the contracting officer improperly awarded the contract to Inter-Con on the basis of Inter-Con's low price. Am-Pro asserts that the contracting officer improperly converted the RFP's evaluation scheme from one in which technical merit was considered more important than price to one based upon award to the offeror that submitted the lowest-priced, technically acceptable offer.

This allegation is simply without merit. Where, as here, selection officials reasonably regard proposals as being essentially technically equal, price may properly become the determining factor in making award even if the solicitation accords price less importance than technical factors. Burco Sys. Dev., Inc., B-256267.2, Dec. 5, 1994, 94-2 CPD ¶ 220. On this record, we have no basis to find the award determination unreasonable or inconsistent with the evaluation criteria set forth in the RFP.

The protest is denied.

Comptroller General
of the United States