



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

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Matter of: HSG-SKE

File: B-274769; B-274769.3

Date: January 6, 1997

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Reed L. von Maur, Esq., and J. Casey Fos, Esq., von Maur & Partners, and Kevin P. Mullen, Esq., Piper & Marbury, for Pacific Architects and Engineers GmbH Planning and Construction, an intervenor.
Laura Smith, Esq., Department of the Army, for the agency.
Adam Vodraska, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

In a solicitation for hospital facility operations and maintenance services, the agency reasonably, and in accordance with the evaluation criteria, found the awardee's low priced proposal, which was reasonably found to be essentially technically equivalent to the protester's proposal and realistically priced, represented the best value to the government.

DECISION

HSG-SKE, a joint venture of HSG-Holzmann Technischer Service GmbH and SKE Maintenance GmbH & Co. KG, protests the award of a contract to Pacific Architects and Engineers GmbH Planning and Construction (PAE) for physical plant operations and maintenance services at the 67th Combat Support Hospital, Würzburg, Germany, and its outlying clinics, under request for proposals (RFP) No. DACA90-96-R-0053, issued by the United States Army Corps of Engineers, Wiesbaden, Germany.

We deny the protests.

BACKGROUND

The RFP contemplated the award of a firm, fixed-price contract with an indefinite delivery/quantity feature for a base year with 2 option years to the offeror whose proposal represents the best value to the government. The RFP's evaluation

scheme consisted of 3 equally weighted evaluation factors: management; technical and experience; and price. The management, and technical and experience factors were each worth 150 points for a total possible 300 points. Price was not separately scored, but was to be evaluated for reasonableness and realism. The management, and technical and experience factors contained various stated subfactors.

Line items AA (management), AB (preventative maintenance-hospital), and AC (preventative maintenance-clinics and repair and new work) called for fixed lump sum prices for the base year and option years. Line items AL through AZ, BA through BZ, and CA through CL requested various fixed hourly rates for different types of crafts personnel (e.g. plumbers and electricians) for the base year and option years to perform demand maintenance, minor construction, and emergency work; when such demand services were required, the Corps would negotiate a work order with the contractor based on the proposed labor rates. The RFP informed offerors that prices, including the hourly labor rates, should be inclusive of all general administrative costs, direct/indirect costs, profit, and any other incidental costs associated with performance of the contract.

The agency received 4 proposals in response to the RFP, including HSG's and PAE's. After the management, and technical and experience proposals were evaluated by an evaluation team, the contracting officer, who was also the source selection authority, established a competitive range of 3 proposals, including HSG's and PAE's. The contracting officer conducted discussions with, and requested best and final offers (BAFO) from, the competitive range offerors. In the final evaluation, PAE's and HSG's proposals were considered to be essentially technically equivalent, with PAE's BAFO receiving a management/technical/experience score of 266 points and HSG's BAFO a score of 262 points.¹ Because PAE's BAFO had the lowest total evaluated price of Deutsche Mark (DM) [DELETED] (as compared with HSG's BAFO's DM [DELETED] total evaluated price), the contracting officer determined that PAE's proposal represented the best value to the government.

HSG protests that PAE's high technical score was unwarranted because PAE (1) failed to propose sufficient personnel to perform the contract; (2) lacked experience in operating and maintaining a fully operational hospital; and

¹After receiving the agency's report, the protester pointed out what it perceives was an error in the agency's calculation of HSG's final score which, when corrected, would result in an HSG final score of 267 points. The agency has explained why the point scores reported above are indeed correct, notwithstanding a clerical error in the initial evaluation, and this explanation is consistent with the record. Nonetheless, even if HSG's final technical score is as the protester claims, HSG's and PAE's proposals are still essentially technically equivalent.

(3) failed to submit a draft preventative maintenance plan for non-critical equipment as required by the RFP. HSG also contends that had the agency conducted a proper price evaluation, PAE's low prices would have been considered unreasonable and unrealistic.²

TECHNICAL EVALUATION

In reviewing protests against the propriety of an agency's evaluation of proposals, it is not the function of our Office to independently weigh the merits of the offers. Microeconomic Applications, Inc., B-258633.2, Feb. 14, 1995, 95-1 CPD ¶ 82. Rather, the evaluation of proposals is a matter within the discretion of the procuring agency since the agency is responsible for defining its needs and the best method of accommodating them and must bear the burden of any difficulties resulting from a defective evaluation. Engineering Inc., B-257822.5, Aug. 18, 1995, 95-2 CPD ¶ 130. Consequently, we will not question an agency's evaluation of proposals unless the agency deviated from the solicitation evaluation criteria or the evaluation was otherwise unreasonable. HSG-Intelcom, B-254750.2; B-254750.3, Feb. 7, 1994, 94-1 CPD ¶ 74.

The protester first complains that PAE's proposed preventative maintenance workforce of [DELETED] personnel was insufficient to perform this portion of the contract, and that this insufficiency was not adequately considered in the award selection. The record shows that the agency's evaluation team downgraded PAE under both the management staffing and structure subfactor of the management factor and the preventative maintenance program subfactor of the technical and experience factor because of the evaluators' concern that PAE may have proposed an inadequate preventative maintenance workforce. The contracting officer, with the concurrence of the evaluation team chairman, considered PAE's staffing level in this area to be merely a relative weakness of PAE's proposal, but noted that PAE's proposed staffing was consistent with the government's estimate of the [DELETED] person staffing level required to perform this line item. The protester has not persuasively shown that the contracting officer's judgment in this matter was unreasonable or that PAE's staffing level in this area should render its proposal unacceptable.

²HSG also initially alleged that PAE's pricing was unbalanced because PAE understated a significant portion of its prices. However, the protester has not alleged that PAE also overstated its prices for any items and appears to have abandoned its contention that PAE's prices are unbalanced. See Aumann, Inc., B-245898.3; B-245898.4, July 22, 1992, 92-2 CPD ¶ 35 (note 1).

The protester also contends that PAE failed to identify by name all of its key personnel as required. The RFP required names of individuals "from top management down to first-line management or project manager(s) level, technical personnel, master tradesmen, administrative personnel and any other person who will work in key roles on projects performed under the contract." The record shows that besides identifying its top management, PAE's proposal provided the names, resumes, and job descriptions of its [DELETED]-these are the individuals who will have the primary management roles for this project.³ Thus, PAE's proposal adequately identified the key personnel as required.

The protester next objects to PAE's receiving a higher score than HSG for the ability to organize and perform hospital facilities maintenance, and the same score as HSG for past performance and work completion, both subfactors of the technical and experience factor, because HSG is the incumbent contractor with directly relevant experience whereas PAE assertedly lacks experience in the operations and maintenance of a fully operational hospital.

With regard to the first mentioned of these subfactors, the RFP required offerors to provide evidence of their ability to organize and perform hospital facilities maintenance, repairs and operations in each of the following areas: facility maintenance; heating, ventilating, air conditioning, and refrigeration equipment; elevators and other moving equipment; gas and petroleum products storage and distribution systems; food service equipment; and communications systems and equipment. We find that this subfactor contemplated that more credit would be given a proposal demonstrating greater ability and experience in organizing and performing these specific operations and maintenance areas as opposed to merely showing experience with hospital facilities. Although both PAE and HSG were noted as having such hospital facilities experience, the evaluators found that operations and maintenance of the type identified in this subfactor was PAE's "primary business," and that PAE's "repair/maintenance approach is well-documented and very comprehensive." (In contrast, even though HSG was the incumbent, its proposal did not include some details of its approach.) Our review of the record confirms that PAE's proposal demonstrated its superior capabilities in this regard, and while HSG disagrees with the relative scores, it has not convinced us that PAE's higher score was unwarranted.

³HSG contends that PAE should have provided the names of individual crafts personnel. This contention is meritless, inasmuch as this information was not required by the RFP because these other positions are not key personnel positions. See DCT Inc., B-261894.2, Nov. 22, 1995, 95-2 CPD ¶ 237. We also note that HSG's proposal does not identify such craft personnel as key personnel.

Under the past performance subfactor, for which both PAE's and HSG's proposals received the same score, actual hospital maintenance experience was, according to the RFP, only one element to be evaluated. While the evaluators credited HSG's experience as the incumbent contractor, they noted that this contract represents HSG-SKE's only hospital facility maintenance contract experience and that PAE also has relevant, if "rather dissimilar," hospital maintenance experience at an inactive military contingency hospital. Because the record shows that PAE has "a very good range" of experience with the kind of operations and maintenance contemplated by the RFP, we cannot say that the evaluators' relative ratings of PAE and HSG under this subfactor were unjustified, despite PAE's more limited experience (as compared to HSG's) in actual operational hospital maintenance.

Finally, the protester argues that PAE failed to provide a draft of its preventative maintenance plan for non-critical equipment in its proposal, as required by the RFP's statement of work, and should have had its score lowered accordingly. This contention is meritless because PAE in fact submitted in its proposal a draft annual work schedule of recurring inspections and work including preventative maintenance for non-critical equipment and facility components, which was evaluated by the agency under the preventative maintenance program subfactor. In fact, PAE's preventative maintenance plan for the noncritical equipment was listed as a strength on one of the evaluator's scoresheets.

PRICE EVALUATION

The protester argues that the Corps did not perform an adequate price evaluation of PAE's price proposal. HSG contends in this regard that PAE proposed unrealistically low prices for the preventative maintenance line item and labor rates for the demand maintenance and emergency repairs line items, which allegedly demonstrates that PAE lacks a fundamental understanding of the RFP requirements and would present an unacceptable risk of poor performance.

Where, as here, the award of a fixed-price contract is contemplated, a proposal's "cost realism" is not ordinarily considered since a fixed-price contract places the risk and responsibility for contract costs and resulting profit or loss on the contractor. PHP Healthcare Corp.; Sisters of Charity of the Incarnate Word, B-251799 et al., May 4, 1993, 93-1 CPD ¶ 366. Rather, under the Federal Acquisition Regulation (FAR), the procuring agency in its discretion may provide for performance of a price analysis to determine that the proposed prices are fair and

reasonable.⁴ FAR §§ 15.805-1 and 15.805-2; Ogden Government Services, B-253794.2, Dec. 27, 1993, 93-2 CPD ¶ 339. The FAR provides a number of price analysis techniques that may be used to determine whether prices are fair and reasonable, including a comparison of the prices received with each other and with the independent government estimate. FAR § 15.805-2. The depth of an agency's price analysis is a matter within the sound exercise of the agency's discretion. Ameriko-OMSERV, B-252879.5, Dec. 5, 1994, 94-2 CPD ¶ 219.

Here, the RFP stated that price proposals would be evaluated for reasonableness and realism, but did not specify the manner or degree of analysis to which proposals would be subjected, nor did the RFP require offerors to provide a breakdown of their prices beyond the line items solicited. In our opinion, the Corps did all that was required in the way of a price analysis under the RFP. The record shows that in making her price analysis, the contracting officer compared PAE's prices with the other offerors's prices and with the independent government estimate for each line item, techniques recommended by the FAR for price analysis, and utilized an analysis of the offeror's prices by the agency's cost estimator. The contracting officer also compared the number of personnel proposed for each lump-sum line item with the government estimate.

With regard to PAE's price for the preventative maintenance line item, HSG alleges that PAE failed to include costs for special maintenance tasks to be performed by subcontractors as well as the costs of materials required for preventative maintenance. While PAE did not provide (nor was it required to provide) a cost breakdown demonstrating that these costs were included in this line item, PAE's proposal identified the subcontractors it planned to use for special maintenance tasks under the preventative maintenance line item. PAE specifically stated that its price included what it considered adequate material for scheduled routine preventative maintenance, and, in submitting its offer, obligated itself to provide all services, supplies and equipment/property necessary to carry out a comprehensive preventative maintenance program, as required by the RFP. PAE's price for this line item was also above the government estimate. Under the circumstances, we think that the agency could reasonably conclude that PAE's price for this item was realistic.

⁴"Price analysis" is a process of examining and evaluating a proposed price without evaluating its separate cost elements and proposed profit; "cost analysis" involves the examination and evaluation of an offeror's separate cost elements and proposed profit. FAR § 15.801.

Concerning PAE's hourly rates for such craft personnel as electricians, plumbers, carpenters, painters, mechanics, and plasterers under the demand maintenance, minor construction, and emergency repair work line items, it is true that the rates proposed by PAE are significantly below the government estimates. However, the agency's cost estimator informed the contracting officer that PAE's "low" hourly rates were "acceptable," given "the present situation in the German construction industry." While the protester disagrees that the craft personnel for this contract can properly be considered part of the German construction industry for purposes of labor rates, the protester has provided no convincing evidence to support its position.

Lastly, HSG alleges that the agency should have found PAE's BAFO prices unrealistic for not increasing more significantly when PAE, in response to a discussion question, removed an offer qualification relating to a German labor law, which, according to HSG, would require PAE, as the subsequent awardee of an existing contract, to hire the incumbent personnel at the same rates those workers are currently being paid. This allegation is meritless since PAE was obviously aware of the potential impact of the law on its costs, and when asked to remove the qualification, increased its prices accordingly.⁵

In sum, the record evidences that the agency reasonably evaluated the proposals consistent with the solicitation's evaluation criteria in determining PAE's proposal as representing the best value to the government.

The protests are denied.

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⁵We note that PAE was involved in a previous protest at our Office concerning the Army's decision not to adjust labor rates on the basis of this very same law which the agency maintains is also not applicable to the type of contract at issue here. See PAE GmbH Planning and Constr., B-250470, Jan. 29, 1993, 93-1 CPD ¶ 81, aff'd B-250470.2, July 22, 1993, 93-2 CPD ¶ 45.

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