Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: The Cube Corporation

File: B-277353

Date: October 2, 1997

Katherine S. Nucci, Esq., Timothy Sullivan Esq., and Martin R. Fischer, Esq., Adduci, Mastriani & Schaumberg L.L.P., for the protester.
Vera Meza, Esq., Department of the Army, for the agency.
Henry J. Gorczycki, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency reasonably determined that the awardee's price was reasonable and realistic based on a price analysis, and properly based its award selection on price where the competing proposals were otherwise reasonably determined to be equal.

DECISION

The Cube Corporation protests an award of a fixed-price-with-award-fee contract to ORI Services Corporation (ORI) under request for proposals (RFP) No. DAAD01-97-R-0011, set aside for section 8(a) concerns, issued by the Department of the Army for installation support management services at Yuma Proving Ground, Arizona, for a base period with 7 option years.

We deny the protest.

The RFP stated a best value evaluation scheme with the management/technical factor being significantly more important than performance risk, and performance risk being slightly more important than cost. Under the management/technical factor, the RFP stated four subfactors; of particular relevance here are subfactors 1 and 3 which concern staffing and skill levels (journeyman to sub-journeyman), respectively. The subfactors were to be rated on a color scale of red (the lowest rating), yellow, blue, and green (the highest rating).[1] Under the cost factor, the RFP stated:

> The limited cost data will be evaluated by Government Cost/Price Analysts for completeness and cost realism in narrative format. It is a common practice for all offerors to include in their proposals certain potential cost reducing factors, i.e., attrition rates and insurance dividends. These cost reductions may or may not materialize during the contract, and the factors would be applicable to all offerors. Therefore, during the cost realism evaluation for this contract, no cost reduction factors will be allowed unless the offeror has accepted the risk and has included a guaranteed minimum for the proposed reduction. As with Performance Risk analysis, Management/Technical merit is significantly more important than cost for evaluation purposes for this requirement. The Government is willing to pay more if the management/technical advantages so warrant. However, as management/technical merit and performance risk tend to equalize, cost will become more important.

The RFP elsewhere stated that the "cost analyses will receive narrative ratings."

Three offerors, including Cube and ORI, submitted proposals. ORI's proposal received green ratings on all four management/technical subfactors and a low performance risk rating. Cube's proposal received yellow ratings on subfactors 1 and 3, blue ratings on subfactors 2 and 4, and a negligible performance risk rating. The reasons for Cube's proposal's yellow ratings were that it proposed fewer staff-years than the agency considered necessary, and it was contradictory and/or unclear regarding employment of sub-journeymen workers. The third offeror did not submit sufficient information to permit evaluation and was eliminated from the competitive range.

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[1]The RFP described each color rating as follows:

> Red - Fails to meet the requirements of the statement of work [(SOW)].
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> Yellow - Weak, however, with clarifications may be able to meet the requirements of the [SOW].
>
> Blue - Meets the minimum requirements of the [SOW].
>
> Green - Significantly exceeds the requirements of the [SOW].

ORI's $21.6 million price was 7 percent above the government estimate and Cube's $19.5 million price was 3.2 percent below the government estimate. Based on its analysis of the limited cost data submitted, the agency determined that both prices were fair and reasonable for their proposals, although it identified questions regarding specific costs of each proposal which were to be addressed during discussions.

In response to the discussions, Cube increased its staffing by 1 staff-year. The agency determined that, based on historical staffing requirements, Cube's revised staffing level was still inadequate. Assuming that Cube's lower price was attributable to its low staffing level, the Army eliminated Cube's proposal from the competitive range, and requested a best and final offer (BAFO) from ORI.

Cube requested and received a debriefing with regard to its proposal's elimination from the competitive range. During the debriefing, the contracting officer learned that the historical staffing level used by the agency to evaluate proposed staffing levels was incorrect, and was persuaded that Cube's evaluation ratings might be unreasonable. The contracting officer therefore conducted a neutral reevaluation of Cube's proposal. Based on this reevaluation, Cube's proposal's ratings for all management/technical subfactors were changed to green, except for the third subfactor which was changed from yellow to blue. Cube's proposal was readmitted to the competitive range and BAFOs were requested from Cube and ORI. Cube's and ORI's total BAFO prices were $16,092,299 and $15,666,417, respectively.

Based on its analysis of the proposals, the agency determined that the BAFO prices were fair and reasonable. The agency also determined that ORI's BAFO represented the best value because it was rated technically superior to Cube's proposal with a low performance risk and offered the lowest price. On June 16, the agency awarded the contract to ORI. Cube requested and received a debriefing. This protest followed.

Cube first alleges that its BAFO should have been rated superior, or at least equal, to ORI's BAFO, given its asserted superiority under the third management/technical subfactor, where its proposal was rated lower than ORI's by the agency.

In reviewing an agency's evaluation of proposals and source selection decision, our review is confined to a determination of whether the agency acted reasonably and consistent with the stated evaluation factors. PRC, Inc., B-274698.2, B-274698.3, Jan. 23, 1997, 97-1 CPD ¶ 115 at 4. 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-SKE, B-274769, B-274769.3, Jan. 6, 1997, 97-1 CPD ¶ 20 at 3.

Subfactor 3 under the management/technical factor concerns proposed plans for qualifying journeyman workers and for ensuring a qualified and balanced (journeyman to sub-journeyman) work force. This was the only subfactor after the reevaluation of Cube's proposal for which Cube was rated lower than ORI. In response to the protest, the agency states that, given the evaluation significance of the third subfactor, Cube's and ORI's BAFOs are actually considered "basically equal" under both the management/technical and performance risk factors, and therefore price was the determining factor for award. The agency states that the source selection decision was proper because award was made to the offeror with the lowest price.

Notwithstanding that the Contracting Officer revised her technical evaluation in documents prepared in defense of this protest, from ORI having a technical superiority in the contemporaneous source selection documents to "basically equal technically" in the Contracting Officer's Statement, the contemporaneous record supports this revised conclusion. Our review of the technical proposals shows no significant difference exists between the two technical/management proposals. Although Cube essentially contends that the section in its proposal discussing the training and use of its work force was longer than ORI's, and thus should be considered superior under subfactor 3, it does not identify anything which it proposed that was not also proposed by ORI. Since the stated evaluation plan contemplated that price would increase in importance as proposals become more equal under the other evaluation factors, and the record does not evidence any technical differences in the proposals to justify award based on a higher price, the agency's award selection based on lower price is reasonable and consistent with the terms of the RFP. See PRC, Inc., supra, at 12-14.

Cube also contends that ORI's low BAFO price is not realistic and that, if the Army had conducted a proper cost analysis of ORI's BAFO price as allegedly required, it could not have reasonably determined that ORI's BAFO price is reasonable, but rather should have recognized that ORI had submitted a below-cost BAFO.

Where, as here, a fixed-price contract is solicited, "cost realism" ordinarily is not considered in the evaluation since a firm, fixed-price contract provides for a definite price which places the risk and responsibility for all contract costs and resulting profit or loss upon the contractor. Sperry Corp., B-225492, B-225492.2, Mar. 25, 1987, 87-1 CPD ¶ 341 at 3. In this regard, a below-cost offer is legally unobjectionable and, in the case of a fixed-price offer, it cannot be rated lower or downgraded in the price evaluation for source selection by virtue of its low price. Id. at 4; Milcon Sys. Corp., B-255448.2, May 3, 1994, 94-1 CPD ¶ 339 at 9-10. However, agencies, in their discretion, may provide for a cost realism analysis in the solicitation of firm, fixed-priced proposals for such purposes as measuring an offeror's understanding of the solicitation requirements. Sperry Corp., supra, at 3; see American Lawn Serv., Inc., B-267715, Dec. 20, 1995, 95-2 CPD ¶ 278 at 4-5 (specifically stated intention to apply price realism analysis to technical evaluation ratings created requirement to do so).

Here, notwithstanding the RFP's use of the term "cost" to identify the evaluation factor and the statement that a cost or cost realism analysis would be performed, this does not mean that the evaluation factor was other than price, nor does it commit the agency to perform a cost analysis in accordance with Federal Acquisition Regulation (FAR) § 15.805-3. See ASI Personnel Serv., Inc., B-258537.7, June 14, 1995, 95-2 CPD ¶ 44 at 2 n.1, 5; Sperry Corp., supra, at 4. Instead, we think that the "cost" factor here contemplated that the agency would evaluate the relative prices after performing a price analysis in accordance with FAR § 15.805-2 to ascertain whether the offered prices were reasonable and realistic.[2] Sperry Corp., supra, at 4; see Computer Sys. Int'l, Inc., B-276955, B-276955.2, Aug. 13, 1997, 97-2 CPD ¶ 49 at 3.

Price analysis techniques that may be used to determine whether prices are reasonable and realistic include a comparison of the prices received with each other, FAR § 15.805-2(a); with prior contract prices for the same or similar services, FAR § 15.805-2(b); and with an independent government cost estimate, FAR § 15.805-2(e). 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 at 4; Ogden Gov't Servs., B-253794.2, Dec. 27, 1993, 93-2 CPD ¶ 339 at 7.

The Army's BAFO price analysis was based on a comparison of prices to each other and to the government estimate, as well as its evaluation of the limited cost information provided with initial proposals and during discussions. The record shows that both BAFO prices and the government estimate were significantly reduced to account for a reduction of the services required through RFP amendments, and that the final government estimate was 17 percent higher than ORI's BAFO price and 15 percent higher than Cube's BAFO price. The agency identified the difference between the estimate and the prices as resulting from an unnecessary escalation of wage rates used in the government estimate.[3] Considering this adjustment, the agency determined that both BAFO prices were reasonable in comparison to the government estimate. The agency also determined that ORI's price was within 3 percent of Cube's price and was reasonable. Moreover, based on the limited cost information submitted, the agency had

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[2]"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 review and evaluation of an offeror's separate cost elements and proposed profit. FAR § 15.801.

[3]The wage rates in question are governed by Department of Labor (DOL) wage determinations. Changes in DOL wage determinations will result in price modifications under this contract, and thus escalation of these costs is not applicable to evaluating price reasonableness.

determined that both Cube’s and ORI’s identified costs were complete and reasonable. The Army accordingly determined that ORI’s BAFO price was fair, reasonable, and realistic. Based on our review, we have no basis to disturb the agency’s determination.[4] See Computer Sys. Int'l, Inc., supra, at 4-5; Pearl Properties; DNL Properties, Inc., B-253614.6, B-253614.7, May 23, 1994, 94-1 CPD ¶ 357 at 11-12.

Cube also alleges that ORI’s cost data and low BAFO price evidence that ORI may not intend to provide the required level of effort under the contract. ORI’s technical proposal offered to provide an acceptable level of effort to fully perform the contract requirements. ORI did not propose any revisions to its initial technical proposal. Therefore, since this is a fixed-price contract, even assuming the cost data and low price indicate that ORI’s BAFO is below cost, the issue such evidence raises is whether ORI will be able to perform the contract requirements at the price proposed, not whether the offeror has taken exception to the contract requirements. See Milcon Sys. Corp., supra, at 9; Oshkosh Truck Corp., B-252708.2, Aug. 24, 1993, 93-2 CPD ¶ 115 at 6 n.3. The allegation thus concerns a matter of affirmative responsibility which our Office will not review absent a showing of possible fraud or bad faith by government officials, or the misapplication of definitive responsibility criteria, none of which are present here. 4 C.F.R. § 21.5(c) (1997); Oshkosh Truck Corp., supra.

In sum, the Army acted properly and reasonably in determining that ORI's BAFO price was fair, reasonable, and realistic based on a price analysis, and reasonably based its selection on price where the competing proposals were otherwise reasonably determined to be equal.

The protest is denied.

Comptroller General
of the United States

[4]In response to Cube's contention that ORI's use of 2,080 hours in its proposal, instead of 2,088 hours, shows that ORI's costs are understated and/or that it did not understand the level of effort required, the agency responds that the point is not a concern because 2,080 hours is the generally accepted standard workyear for calculating labor costs (2,080 hours is the product of multiplying 52 weeks per year by 40 work-hours per week). Accordingly, we agree with the agency that ORI's use of 2,080 hours per staff-year does not indicate that ORI did not understand the level of effort required. Moreover, to the extent that 2,080 hours does not represent the actual number of work hours in any given staff-year, the difference is not material.