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Decision

Matter of: ITT Federal Services International Corporation

File: B-289863.4; B-289863.6; B-289863.7; B-289863.8

Date: December 16, 2002

Kevin Connelly, Esq., and Joseph J. Dyer, Esq., Seyfarth Shaw, for the protester.
Carl J. Peckinpugh, Esq., and Charles S. McNeish, Esq., for DynCorp International, LLC, an intervenor.
Richard C. Bennett, Esq., and Nancy J. Williams, Esq., U.S. Army Corps of Engineers, for the agency.
Scott H. Riback, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging agency's cost realism evaluation is sustained where record shows that evaluation contained errors that, if corrected, could significantly reduce the amount of awardee's cost advantage, and also could affect the agency's technical evaluation of proposals, so that the award decision could be different.

DECISION

ITT Federal Services International Corporation protests the award of a contract to DynCorp International, LLC under request for proposals (RFP) No. DACA78-01-R-0016, issued by the U.S. Army Corps of Engineers to acquire base operations and security services at Camp As Sayliyah, Qatar. ITT argues that the agency misevaluated proposals and made an unreasonable source selection decision.

We sustain the protest.

BACKGROUND

This is the second award decision that has been protested to our Office. In an earlier decision, DynCorp Int'l, LLC, B-289863, B-289863.2, May 13, 2002, 2002 CPD ¶ 83, aff'd, DynCorp Int'l, LLC--Recon., B-289863.3, July 1, 2002, we sustained a protest filed by DynCorp against the award of this contract to ITT, finding that the agency had made errors in evaluating proposals and selecting ITT for award. We recommended that the agency amend the solicitation, obtain and evaluate revised proposals and make a new source selection decision, and terminate the contract

awarded to ITT for the convenience of the government should the agency conclude that a firm other than ITT is in line for award. The agency implemented our recommendation: it amended the RFP, sought revised proposals and made a new source selection, awarding the contract to DynCorp.

The solicitation, as amended after DynCorp's earlier protest, contemplated the award of a cost-reimbursement contract and provided that proposals would be evaluated on the basis of four equally-weighted, non-cost factors: management capability, technical capability, experience documentation and past performance documentation. RFP, Amendment No. 6, at 3-7. Proposals were assigned adjectival ratings of either excellent, good, satisfactory, marginal or unsatisfactory for each of the non-cost factors. As for cost, the RFP provided that proposed costs would be evaluated for reasonableness, completeness and realism. Id. at 7. Finally, the solicitation provided that the agency would evaluate performance risk in connection with all cost and non-cost evaluation areas. Id. at 3. For source selection purposes, the RFP stated that award would be made to the firm whose proposal represented the best overall value to the government, considering all of the cost and non-cost evaluation criteria, with non-cost considerations collectively being more important than cost-related considerations. Id. at 3.

After receiving and evaluating the revised proposals, the agency assigned ratings to the ITT and DynCorp proposals as follows:

Firm	Management Capability	Technical Capability	Experience Doc.	Past Perf. Doc.	Evaluated Cost
ITT	[deleted]	[deleted]	[deleted]	[deleted]	[deleted]
DynCorp	[deleted]	[deleted]	[deleted]	[deleted]	[deleted]

Based on these evaluation results, the agency made award to DynCorp, finding that, although ITT's proposal had in general received higher non-cost ratings, the perceived superiority of the proposal was not worth the associated cost premium. Based on the agency's award decision, ITT filed the instant protest.

DISCUSSION

ITT raises a large number of allegations in its protest. We have carefully examined the allegations and find them all without merit, except for those discussed below, which lead us to sustain the protest.

ITT's protest raises numerous allegations relating to the agency's cost evaluation of the proposals. We note at the outset that, because the solicitation contemplated the award of a cost-reimbursement contract, the offerors' proposed costs of contract performance are not controlling since these may not provide valid indications of the

final actual cost that the government is required, within certain limits, to pay. Advanced Comm. Sys., Inc., B-283650 *et al.*, Dec. 16, 1999, 2000 CPD

¶ 3 at 5. Accordingly, a cost realism analysis must be performed to determine the probable cost of performance for each offeror. Federal Acquisition Regulation (FAR) § 15.404-1(d)(2). Such an analysis involves independently reviewing and evaluating elements of each offeror's proposed cost (and making adjustments thereto) to determine whether the proposed cost elements are realistic for the work to be performed, reflect a clear understanding of the requirements, and are consistent with the methods of performance and materials described in the offeror's technical proposal. FAR § 15.404-1(d)(1). Our review is limited to determining whether the agency's cost realism analysis was reasonable. NV Servs., B-284119.2, Feb. 25, 2000, 2000 CPD ¶ 64 at 7.

Low Rates of Compensation

ITT asserts that the agency improperly failed to make an upward adjustment in DynCorp's evaluated cost to account for what it describes as unreasonably low rates of compensation for certain employees. The labor categories for this contract include what are referred to as "third-country nationals." In the case of DynCorp, for example, its proposal states that it intends to employ Nepalese Gurkhas as security personnel. The record shows that DynCorp (the incumbent security contractor at the installation) proposed to maintain its current rates of compensation (including salary and daily subsistence allowance) for third-country national security personnel for the first year of contract performance, but then proposed to reduce that compensation by [deleted] percent in succeeding years of the contract. DynCorp Proposal at 6.0-5. DynCorp also proposed to pay new hires (apparently necessary because of expanded requirements, and to meet demand created by attrition) at the lower rates of compensation. ITT maintains that it was improper for the agency not to increase DynCorp's evaluated cost based on the firm's proposal to reduce compensation for existing personnel, and hire new employees at the lower rates, because the lower rates are unrealistically low.

The record shows that, in evaluating DynCorp's third-country national rates of compensation, the cost evaluators relied exclusively on a Defense Contract Audit Agency (DCAA) report prepared in connection with an extension of DynCorp's current contract (as noted, DynCorp is the incumbent security contractor) in concluding that DynCorp's proposed rates of compensation were realistic. Cost Realism and Probable Cost Memorandum, Aug. 26, 2002, at 3. The cost evaluators specifically concluded:

Since a majority of proposed personnel are security services and the government has audited DynCorp's labor rates for these personnel presently onsite, DynCorp's labor rates must be considered realistic and cannot be adjusted as part of a most probable cost [evaluation].

Id. The record shows, however, that DynCorp had been specifically directed by the government to [deleted] its rates of compensation for third-country nationals during the course of performing the current contract. In this regard, DynCorp's proposal specifically provides:

[The lower rate of compensation] is the same rate of compensation for these employees as when they originally began work on the [current] contract in Qatar. This compensation was very successful in recruiting and retaining the initial Gurkha security force but at the direction of the government, the salaries were [deleted].

DynCorp Proposal at 6.0-5. It was these higher rates of compensation that were evaluated and found realistic by DCAA at the time it audited DynCorp's rates of compensation in anticipation of extending the current contract. DCAA Audit Report, Aug. 22, 2001, at 4. In effect, therefore, DCAA never audited or found realistic the lower rates of compensation currently proposed by DynCorp for third-country nationals during the second and subsequent years of contract performance.

DynCorp maintains that its lower proposed rates of compensation are supported in its proposal by quotes from third-party vendors. DynCorp Proposal at 6.0-7-6.0-8. While we acknowledge that these quotes were included in the DynCorp proposal, and while it may be possible for DynCorp to obtain personnel at the lower rates of compensation (as evidenced by the quotes), the record is devoid of any explanation--either from the agency or DynCorp--regarding why DynCorp was required by the government under the current contract to [deleted] its rates of compensation for third-country nationals, or why such a [deleted] of compensation would not ultimately be required under the current contract.¹ For its part, the agency states--inexplicably--that:

neither the SSA [Source Selection Authority] nor the CET [Cost Evaluation Team] has any direct knowledge of the government requirement to [deleted] the TCN [third-country national] security guard labor rates. . . . In any event, the SSA is not and was not aware of any legitimate basis to arbitrarily require DynCorp, or any other offeror, to maintain a certain labor rate for TCN security guards.

Agency Supplemental Report, Nov. 8, 2002, at 25. We are at a loss to understand the Corps's position in light of the explicit statement in DynCorp's proposal that it had been required by the Army to [deleted] its rates of compensation for third-country

¹Although the question of why DynCorp was required to [deleted] its rates of compensation for third-country nationals was specifically raised during the protest, ITT's Third Supplemental Protest, Nov. 18, 2002, at 4, the agency did not provide a substantive response to the assertion. Third Agency Report, Nov. 26, 2002, at 1.

nationals during performance of the current contract. We recognize that the agency could have concluded, based on a reasoned analysis, that the proposed rates were realistic and that there was no risk of potential cost growth, notwithstanding the government's earlier requirement for DynCorp to [deleted] its rates of compensation. The record before our Office, however, contains no such analysis and, in fact, does not even reflect an awareness on the part of the cost evaluators that DynCorp had been required to [deleted] its rates of compensation under the current contract. Rather, as noted, the cost evaluators relied on the conclusions arrived at by DCAA that were based on the higher rates of compensation. We also note that there is nothing in the record indicating that the agency's non-cost evaluators considered the potential impact of DynCorp's low rates of compensation on its performance of the contract.²

In sum, the current record shows that the agency (1) failed to quantify the potential cost growth associated with DynCorp's low proposed rates of compensation during its cost realism evaluation; (2) failed to assess the non-cost considerations associated with DynCorp's low rates of compensation; and (3) failed to seek an explanation for why DynCorp was required under its current contract to [deleted] its initial rates of compensation—even though those initial rates were the same as the rates currently being proposed. Under these circumstances, we find this aspect of the agency's evaluation unreasonable.

ITT further asserts that, although DynCorp proposed to hire [deleted] percent of the incumbent non-security personnel, DynCorp Technical Proposal at 98, its proposed rates of compensation for these personnel are [deleted] than the rates of compensation currently being paid. (ITT is the current incumbent contractor for the non-security functions and has included information in its protest relating to the rates of compensation it currently is paying for purposes of comparison.) According to ITT, its current rates of compensation for the non-security functions are from [deleted] to [deleted] percent higher (for selected categories of personnel) than the rates proposed by DynCorp for the same labor categories.

² This is especially troubling in view of the agency's actions during its previous evaluation of proposals. The record from the prior protest showed that the agency had significant concerns relating to the adequacy of DynCorp's proposed rates of compensation (which were the same as those currently being proposed). Affidavit of Chief, Contracting Division, Mar. 21, 2002, at 1. As a consequence, the agency assigned a high performance risk rating to DynCorp's proposal due to the potential for cost growth associated with the low proposed rates of compensation. *Id.* The basis for the agency's original concern—low proposed rates of compensation—remains. During the current evaluation, however, rather than quantify the potential for cost growth for the offerors and/or consider the question in connection with the agency's non-cost evaluation (or both, as recommended in our earlier decision), the agency did neither.

The record contains nothing to indicate that either the cost or technical evaluators gave any consideration to the potential impact of DynCorp's proposed rates of compensation for non-security personnel. We note that the adequacy of DynCorp's compensation more generally was a matter of concern to the agency in its earlier evaluation of proposals, and resulted in the assignment of a high risk rating to the DynCorp proposal. Given that DynCorp's technical approach relies on retaining [deleted] percent of the incumbent workforce, and in view of the agency's earlier concern relating to the adequacy of DynCorp's proposed rates of compensation, we think the agency, at a minimum, should have performed a more thorough evaluation of the adequacy of DynCorp's proposed rates for non-security personnel.

Lapse Rates

ITT maintains that the agency acted unreasonably in its treatment of what is referred to in the DynCorp proposal as the firm's "lapse rate," that is, the percentage of staffing vacancies expected at any given time during performance. For example, DynCorp proposed to meet the security function using [deleted] U.S. nationals and [deleted] third-country nationals. DynCorp Proposal at I-12. In preparing its cost proposal, however, DynCorp applied an [deleted] percent lapse rate for U.S. nationals and a [deleted] percent lapse rate for third-country nationals, DynCorp Proposal at 6.0-12, which resulted in DynCorp's including only [deleted] percent of the cost of its U.S. national employees and [deleted] percent of the cost of its third-country national employees in its total proposed cost. ITT concludes that, if a lapse rate was properly factored into the analysis for DynCorp, it should have been taken into account in the calculation of ITT's most probable cost as well.

DynCorp responds that it fully staffed the requirement, and that its cost proposal merely reflects the actual cost experience it will have during performance because, on average, it will experience vacancies approximately equal to the lapse rates included in its proposal. Based on its determination that it will experience a [deleted] to [deleted] percent job vacancy rate (depending on the job category) throughout contract performance, DynCorp costed only [deleted] to [deleted] percent of its proposed staffing. [deleted]. DynCorp further suggests that ITT likely experiences a lapse rate, but merely failed to factor it into its proposed costs. DynCorp Supplemental Comments, Nov. 15, 2002, at 9.

We recognize that taking into account anticipated turnover and the resulting vacancies--and thus cost savings--may reasonably be viewed as a sensible refinement of the most probable cost analysis. What the agency did here, however, was not reasonable, because the agency failed to resolve the apparent inconsistency between DynCorp's technical and cost proposals, and failed to treat the offerors equally. As in other areas of the evaluation, the agency had discretion to reach a reasonable conclusion regarding the lapse rate and the appropriate staffing levels, as long as the agency had a reasonable basis for whatever conclusion it reached. There is, however, no indication in the record that the agency was even aware of this aspect

of DynCorp's proposal in the evaluation, or considered the effect that a [deleted] or [deleted] percent deficiency in available personnel might have on DynCorp's performance. Instead, it appears that in the evaluation of proposed staffing, the agency used DynCorp's proposed staffing level for the security personnel (the bulk of the staffing under the solicitation) as the appropriate level to which other offerors' proposals were "normalized." To the extent that the agency made a reasonable judgment that the full complement of staffing at that level is necessary to perform the work, DynCorp's lapse rate calculation in its cost proposal essentially represented an admission that that firm was not proposing to meet the "normalized" staffing level--yet the agency failed to take that into account. Alternatively, if the agency believed that the normalized staffing level could safely be reduced by the anticipated vacancy rate, as DynCorp apparently believed, it was inappropriate to adjust ITT's proposal up to the full complement. For all staffing--both security and non-security--either the agency should have adjusted DynCorp's proposed costs upward to include the cost of the full complement of employees proposed (thus eliminating the cost reduction associated with the firm's lapse rate) or it should have recognized that other offerors would also experience a vacancy rate that was not reflected in their proposals and reduced the other offerors' proposed costs accordingly.

DynCorp's Indirect Rates

In an apparent attempt to show that no prejudice resulted from any flaws in the agency's evaluation of cost proposals, DynCorp asserts that the agency improperly added approximately \$[deleted] million to its evaluated cost for purposes of calculating its indirect cost. In this regard, the record shows that DynCorp used an indirect rate that ranged from [deleted] percent to [deleted] percent (differing by period of performance) in calculating its proposed cost. DynCorp Proposal at 9.0-2. DynCorp's proposal explains that these are new rates based on its development of what it refers to as a "strategic business unit for security programs." *Id.* In evaluating the DynCorp proposal, the cost evaluators escalated DynCorp's indirect rates to a total of [deleted] percent (an approximate net increase of [deleted] percent). Cost Realism and Probable Cost Memorandum, Aug. 26, 2002, at 2. The evaluators based the increase on DynCorp's historical indirect rates in performing as the current security guard contractor at this facility (these rates were approved in the DCAA report mentioned earlier). According to DynCorp, the agency improperly escalated its indirect rate to include, for example, intermediate home offices (such as its Middle East office) that, in fact, will not be involved in the administration of the current contract. DynCorp maintains that this contract will be an autonomous business unit that reports directly to the president of DynCorp International.

This argument is without merit. DynCorp's proposal merely states--without any supporting cost data or other rationale--that its yet-to-be-established strategic business unit will somehow experience this dramatically lower indirect rate in performing this contract. The cost evaluators thus had no information with which to

evaluate the realism of the proposed rate, either in terms of DynCorp's calculations in arriving at the new rate, or in terms of actual cost experience during performance of this--or any other--requirement. In contrast, the rates approved in the DCAA report reflect DynCorp's actual recent cost experience in performing at this same facility over a period of time. In the absence of supporting cost data or actual cost experience on the part of DynCorp, the agency could reasonably rely on DynCorp's historical, DCAA-approved rates in evaluating the firm's proposed cost. See Capstone Corp., B-247902, July 9, 1992, 92-2 CPD ¶ 2 at 6.

Prejudice

Competitive prejudice is an essential element of every viable protest; where the record establishes no reasonable possibility of prejudice, we will not sustain a protest even if a defect in the procurement is found. McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3; Statistica, Inc. v Christopher, 102 F. 3d 1577 (Fed. Cir. 1996). On the other hand, where the record establishes that, but for the agency's errors, the protester's proposal would have had a substantial chance of being selected for award, we generally will sustain the protest. Metro Mach. Corp., B-281872 et al., Apr. 22, 1999, 99-1 CPD ¶ 101 at 9.

Here, we find that the errors in the agency's evaluation of proposals discussed above may have had a substantial impact on the cost evaluation. In the area of DynCorp's proposed labor rates, the protester's uncontroverted calculations show that increasing DynCorp's proposed third-country national rates of compensation by [deleted] percent (that is, to the level under its current contract) would have added approximately \$[deleted] million to DynCorp's evaluated cost. Protester's Comments, Oct. 21, 2002, exh. 1, at 10. With respect to DynCorp's lapse rates, the record does not include a calculation of the impact of the [deleted] percent lapse rate on DynCorp's evaluated cost (instead, ITT calculates the impact at \$[deleted] million, but this is based in large part on reducing its own cost to make it equivalent to DynCorp's).³ We are uncertain of all of the factors that should be included in this calculation (due to, for example, the uncertainty associated with any required adjustments to DynCorp's apparently low proposed rates of compensation), but it seems clear that an appropriate upward adjustment in DynCorp's proposed cost would have a potentially significant impact on the overall cost difference between its and ITT's proposals.

³ ITT does assert that, in the non-security area, the agency improperly failed to account for [deleted] full-time equivalents in the DynCorp proposal because of the firm's proposed lapse rate, and its uncontroverted calculations show that the cost of adding these employees to the DynCorp proposal would be approximately \$[deleted] million. Id. at 14-16.

In addition to the above, the agency concedes several errors in its calculations of the offerors' most probable cost. First, the agency states that it improperly added base and/or award fee to the offerors' proposals in arriving at its most probable cost estimates; the agency states that it improperly added \$[deleted] to the ITT proposal and \$[deleted] to the DynCorp proposal in fees. Accordingly, the difference in the two firms' evaluated costs should have been \$[deleted] less than indicated in the evaluation. Agency Supplemental Report, Nov. 8, 2002, at 17. Second, the agency states that it failed to notice arithmetic mistakes in the DynCorp proposal that should have resulted in the firm's evaluated costs being adjusted upward by \$[deleted]. (Additionally, while not an error in its calculation of most probable cost, the agency also concedes that the source selection decision document improperly criticized ITT for proposing approximately \$[deleted] more in material costs during the base year than any other offeror; in fact, however, the \$[deleted] disparity was explained by the fact that ITT included housing costs in its base-year material costs while the other offerors apparently accounted for their housing costs separately.)

In sum, while the agency based its source selection on the conclusion that DynCorp's cost proposal represented a savings over ITT's in the amount of \$[deleted], the matters discussed above could reduce that difference substantially, such that the tradeoff between DynCorp's lower cost proposal and ITT's higher technically rated proposal could result in a different award decision. In addition, as discussed, the non-cost evaluators were apparently unaware of DynCorp's seemingly low rates of compensation and lapse rate cost reduction (which effectively provided for reduced staffing), which could have affected their evaluation conclusions.

RECOMMENDATION

We recommend that the agency reevaluate the proposals submitted with a view to performing a thorough, integrated cost and technical evaluation, taking into consideration our conclusions discussed above. If, at the conclusion of that reevaluation, the agency determines that a firm other than DynCorp is properly in line for award, we recommend that the agency terminate DynCorp's contract for the convenience of the government. We also recommend that ITT be reimbursed the costs of filing and pursuing its protest, including reasonable attorneys' fees. 4 C.F.R. § 21.8(d)(1) (2002). ITT's certified claim, detailing the time spent and the costs incurred, should be submitted to the agency within 60 days of receiving this decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained.

Anthony H. Gamboa
General Counsel