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Decision

Matter of: Integrated Concepts & Research Corporation

File: B-309803

Date: October 15, 2007

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David P. Metzger, Esq., Kristen E. Ittig, Esq., Caitlin K. Cloonan, Esq., and Jill R. Newell, Esq., Arnold & Porter, LLP, for Concurrent Technologies Corporation, an intervenor.
Michael J. O'Farrell Jr., Esq., Department of the Air Force, for the agency.
Paula A. Williams, Esq., and Ralph O. White, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency was not required to advise protester during discussions that its total proposed cost was not competitive since the protester's evaluated cost was not so high as to be unreasonable or unacceptable for award.
 2. Protest that award was tainted by organizational conflicts of interest is denied where the record does not support allegations that the awardee participated in the drafting of the statement of work or had access to non-public information that would have provided a competitive advantage.
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DECISION

Integrated Concepts & Research Corporation (ICRC) protests the award of a contract to Concurrent Technologies Corporation (CTC) under request for proposals (RFP) No. FA8519-06-R-72815, issued by the Department of the Air Force to perform various tasks, including those related to research and development for the Air Force's Advanced Power Technology Office (APTO). ICRC primarily challenges the adequacy of the agency's discussions with the firm and the agency's failure to properly consider a potential organizational conflict of interest (OCI) arising from the award to CTC.

We deny the protest.

The APTO is responsible for managing demonstration projects that will integrate advanced power technologies such as hybrid drive systems, fuel cells, alternative fuel formations, integration of solar power, biomass-to-energy systems, advanced battery storage devices, and hydrogen-powered systems into many different types of end items for Air Force missions. The agency plans to use the contract here to help improve weapon system logistical and sustainment support, weapon system capabilities, fuel efficiency, and to reduce harmful emissions and the agency's dependency on foreign energy sources. RFP amend. 1, Performance Work Statement (PWS) at 3.

The RFP contemplated the award of a single cost-plus-fixed-fee indefinite-delivery/indefinite-quantity (ID/IQ) contract, for a base period of 1-year and four 1-year option periods, for research, development, test, evaluation, and sustainment support services for the APTO. RFP at 35, 49. The contract was to contain a "price" ceiling of \$65 million. RFP at 34. The solicitation advised that award would be made using a "Technically Acceptable-Risk/Performance/Price Tradeoff" procedure.¹ That is, the RFP provided that proposals would first be evaluated for technical acceptability, and then subjected to a tradeoff between proposal risk, past performance and cost. In the tradeoff, proposal risk and past performance were of equal importance and, when combined, were significantly more important than cost. RFP at 55.

Under the technical acceptability factor, the RFP stated that the offeror's proposed solution to a sample task included in the RFP--involving the integration of a fuel cell into a hypothetical ground vehicle--would be evaluated "to determine if the offeror provides a sound, compliant approach that meets the requirements of this solicitation" and demonstrates understanding of the requirements. Id.

With regard to cost, offerors were required to propose costs for each of the contract line item numbers (CLIN) listed in the solicitation's schedule for the base and each option period.² RFP at 3-27. The solicitation also stated that the offeror's cost proposal would be evaluated for realism, reasonableness and balance. A total evaluated cost would be calculated based on the sum of the cost for the sample task

¹ Although this solicitation anticipates the award of a cost-plus-fixed-fee ID/IQ contract, the solicitation often refers to prices, and even anticipates calculating a "total evaluated price." RFP amend. 6 at 5. This decision will refer to costs, despite the language in the solicitation to the contrary.

² The solicitation schedule contained the following CLINs: CLIN 0001-the sample task (prototype); CLIN 0002-data; CLIN 0003-sustainment and repair; CLIN 0004-other direct costs; and CLIN-0005 travel. RFP at 3-7.

(CLIN 0001),³ CLIN 0002-data, and CLIN 0003-labor rates for two labor categories which would be multiplied by the estimated hours provided in the solicitation. RFP amend. 6, at 5-6. The solicitation also set forth a related schedule which essentially captured separate cost elements for both CLINs 0002 and 0003, which offerors were required to complete. Id.

The agency received initial proposals from CTC, ICRC, and a third offeror by the March 2, 2007 closing time.⁴ The Air Force determined that discussions were necessary and submitted to each offeror “Evaluation Notices” (EN) concerning multiple issues identified under the technical, past performance, and cost factors. Agency Report (AR) exh. 12, CTC EN and EN Responses; AR exh. 13, ICRC EN and EN Responses. As relevant here, during discussions with ICRC, the agency stated:

Your approach proposes [DELETED] hours to accomplish the task. Based on the Government’s analysis of your approach and the review of the associated cost, the hours proposed for the Sample Task appear to be high. Review the requirement and confirm the number of hours need[ed] to accomplish the Sample Task stated in your approach.

AR exh. 13, ICRC EN No. CP-01. ICRC responded to the agency’s concern regarding its proposed cost by reducing its overall proposed labor hours from [DELETED] to [DELETED]. Id. Final proposal revisions (FPR) were subsequently requested, received, and evaluated. The agency determined that all three proposals were technically acceptable and that the proposed costs for each were realistic, reasonable, and balanced, given the technical approach for addressing the sample task. AR exh. 16, Source Selection Decision, at 2-4, 7. The final overall ratings and evaluated costs are set forth below:

³ As clarified by the agency in response to questions from the offerors, sample task costs should include “all cost[s] required to fulfill the Sample Task.” RFP amend. 5, at question and answer (Q&A) 1.

⁴ The third offeror’s proposal is not relevant to the resolution of ICRC’s protest. Accordingly, our decision here does not further discuss that proposal.

	CTC	ICRC
Proposal Risk	Low ⁵	Low
Past Performance	High Confidence ⁶	High Confidence
Total Proposed Cost	\$319,776	\$979,264 ⁷
Total Evaluated Cost	\$316,973	\$1,186,127 ⁸

AR exh. 5, Technical Evaluation Report, at 5-13; AR exh. 6, Price Competition Memorandum, at 5-8; AR exh. 7, Assessment of Past Performance, at 3-17.

The contracting officer, as source selection authority, reviewed the evaluation findings and selected CTC for award after concluding that CTC's lower-cost proposal represented the best value to the government. AR exh. 16, Source Selection Decision, at 8. After receiving a debriefing, ICRC filed this protest.

DISCUSSION

In its protest, ICRC principally argues that the Air Force failed to engage in meaningful discussions because, in the protester's view, the agency should have advised the company that its proposed costs were too high. Although the protester acknowledges that the agency's discussion question advised that the number of hours proposed for the sample task appeared high, it argues that this question failed to give the company a meaningful understanding of the wide disparity between its proposed costs and those of CTC. Protest at 14-15; Protester's Comments at 6-8. In addition, ICRC contends that the disparity in costs was so great it had no reasonable possibility of award, so that the agency should have viewed its costs as a deficiency and raised the matter more clearly during discussions. Protester's Comments at 4.

⁵ Low risk reflected the evaluators' judgment that little doubt exists concerning the offeror's proposed approach to performing the requirements of the solicitation. RFP at 56.

⁶ An overall confidence rating was utilized by the agency to assess an offeror's past performance. High confidence reflects the agency's assessment that there is no doubt that the offeror will successfully perform the required effort. RFP at 57.

⁷ The protester's initial total proposed cost was [DELETED]; it was reduced to the level shown above, in response to discussions. AR exh. 6 at 2.

⁸ The record contains evidence that the difference between ICRC's total proposed costs of \$979,264 in its FPR and the total evaluated costs of \$1,186,127 is due to the cost of the material needed to accomplish the task. AR exh 6, Price Evaluation Memorandum, at 8.

It is a fundamental precept of negotiated procurements that discussions, when held, must be meaningful; that is, discussions may not mislead offerors and must identify deficiencies and significant weaknesses in each offeror's proposal that could reasonably be addressed in a manner to materially enhance the offeror's potential for receiving award. Federal Acquisition Regulation (FAR) § 15.306(d); Lockheed Martin Corp., B-293679 et al., May 27, 2004, 2004 CPD ¶ 115 at 7. Based on our review of the record, and for the reasons set forth below, we find that the agency's discussions with the protester were meaningful.

To the extent that ICRC argues that the agency was required to consider its proposed costs unacceptable, and thus a proposal deficiency, we note first that the contemporaneous evaluation record indicates that the agency did not consider the matter to be a proposal deficiency. Instead, the evaluators reached a different conclusion. Specifically, the agency conducted a detailed assessment of whether the number of hours identified was reasonably related to ICRC's approach to the sample task. This assessment led the agency to conclude that the proposed solution to the sample task was an acceptable one, but one that involved a high number of labor hours. As a result, the agency advised ICRC during discussions that the number of labor hours proposed appeared high. Upon receipt of this information, ICRC reduced its overall proposed labor hours, thereby altering its proposed costs.

Our review of the record here has revealed nothing to lead us to conclude that the agency's assessment was unreasonable. In fact, the cost realism analysis here fulfilled its purpose—i.e., it examined whether the costs proposed by ICRC's technical approach were consistent with the firm's likely actual cost of performance. While the protester claims that its own proposed costs were per se unreasonable, given the lower costs proposed by the awardee, it has not shown that the cost realism analysis produced an inaccurate measure of the likely cost of implementing the company's proposed technical solution. Moreover, the record shows that the contracting officer specifically noted in his source selection decision that the significant variance in evaluated costs was directly attributable to the significant differences in the technical approaches adopted by the competing offerors.

Finally, the protester has not shown that the discussions were misleading, or, in any way, inadequate. Where an offeror's proposed cost is high in comparison to competitors' costs, the agency may, but is not required to, inform the offeror that its costs are not as competitive as those of its competitors during discussions. See FAR §§ 15.306(d)(3), (e)(3); SOS Interpreting, Ltd., B-287477.2, May 16, 2001, 2001 CPD ¶ 84 at 3; see also Mechanical Equip. Co., Inc.; Highland Eng'g, Inc.; Etnyre Int'l, Ltd.; Kara Aerospace, Inc., B-292789.2 et al., Dec. 15, 2003, 2004 CPD ¶ 192 at 18; MarLaw-Arco MFPD Mgmt., B-291875, Apr. 23, 2003, 2003 CPD ¶ 85 at 6. In sum, since ICRC's proposed costs were not evaluated as either unreasonable or unrealistic, and since the agency was not obligated to advise the company that its

proposed costs were not competitive, we conclude that the agency's discussions with ICRC were adequate.⁹

Finally, ICRC contends that CTC was ineligible for award because of an OCI arising from the company's prior or current contractual relationships with the agency. In the agency report, the Air Force explained that the alleged facts underpinning the protester's OCI allegations were not as argued. Specifically, the Air Force explained that CTC is not a subcontractor, as ICRC alleges, under the agency's current technical, logistical and sustainment contract. As a result, ICRC expressly withdrew the portion of its OCI allegations which had no basis in fact. Protester's Comments, at 1 n.1. Instead, ICRC argued in its comments that our Office should investigate whether work performed by CTC under a task order during 2005 and 2006 might have given CTC unequal access to information about the instant procurement, or provided CTC an opportunity to assist the agency in setting the ground rules for this solicitation.

We find that ICRC's contentions furnish no basis upon which to question the award here since the protester has not shown that CTC enjoyed an unfair advantage over its competitors in responding to the RFP. Substantial facts and hard evidence are necessary to establish a conflict; mere inference or suspicion of an actual or apparent conflict is not enough. Snell Enters., Inc., B-290113, B-290113.2, June 10, 2002, 2002 CPD ¶ 115 at 4. The mere existence of a prior or current contractual relationship between a contracting agency and a firm, by itself, does not

⁹ As a result of the agency's conclusion that the protester's proposed costs were reasonable, given its technical approach, the situation here is different from the procurement discussed in Creative Information Tech., Inc., B-293073.10, Mar. 16, 2005, 2005 CPD ¶ 110, at 6-9, which the protester argues should lead to a decision sustaining the instant protest. In Creative Information, the agency concluded that the protester's price was unreasonably high based on the extraordinary disparity between the protester's price and the government estimate, as well as the other offerors' prices--the protester's price was almost 10 times higher than the awardee's. Nonetheless, during discussions, the agency advised the protester only that its price appeared "overstated." Here, as explained above, the protester's proposed costs were analyzed by the agency and found to be reasonable given the offeror's technical approach. As a result, we think the agency's discussion advice--that the hours appeared high--met its obligation to hold adequate and fair discussions.

create an OCI, and any advantage CTC may have enjoyed due to its prior performance of a similar requirement was not the result of preference or unfair action by the government. Id. at 8.

The protest is denied.¹⁰

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General Counsel

¹⁰ In its protest, ICRC argued that the procurement was flawed for various additional reasons, including that the agency improperly evaluated cost proposals and failed to make multiple awards. ICRC also expressly withdrew these allegations in its comments.