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**Comptroller General
of the United States**

**United States General Accounting Office
Washington, DC 20548**

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Decision

Matter of: Camber Corporation

File: B-293930; B-293930.2

Date: July 7, 2004

Alan M. Grayson, Esq., Ira E. Hoffman, Esq., and Mark R. Mann, Esq., Grayson, Kubli & Hoffman, for the protester.

Robert J. Symon, Esq., and Christyne K. Brennan, Esq., Spriggs & Hollingsworth, for Sverdrup Technology, Inc., an intervenor.

Jeffrey I. Kessler, Esq., and Joseph M. Shemke, Esq., U.S. Army Materiel Command, for the agency.

Paul E. Jordan, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Evaluation finding that protester's initial quotation was unrealistic was unobjectionable where agency reasonably concluded that protester's allocation of labor hours [deleted] resulted in lower than historical composite rates and was inconsistent with proposed startup plan [deleted].

2. Where agency reasonably determined that vendors' quotations were technically equivalent notwithstanding protester's "advantage" as the incumbent under single technical factor, agency properly considered price as the determining factor in its "best value" decision.

DECISION

Camber Corporation protests the award of a blanket purchase agreement (BPA) to Sverdrup Technology, Inc. (STI) under request for quotations (RFQ) No. DAAE07-03-Q-N287, issued by the U.S. Army Tank-Automotive and Armaments Command for program and engineering services. Camber questions the manner in which discussions were conducted, and challenges the price realism evaluation and the source selection decision.

We deny the protest.

BACKGROUND

The RFQ, issued under the General Services Administration's Federal Supply Schedule (FSS), sought quotations to provide a range of program and engineering services to the Army's Program Executive Office, Ground Combat Systems. The RFQ called for vendors to provide labor hour pricing and a proposed labor skill mix comprised of the various job titles the vendor considered appropriate for staffing the tasks described in the RFQ. Price quotations were to include negotiated labor rates for prime contractor work; direct material costs and overhead recoverable on a cost, no-fee basis; and subcontractor labor and overhead performed and recoverable as "material" on a cost, no-fee basis. For evaluation purposes, the RFQ identified assumptions as to projected work on which vendors were to base their price quotations, including percentage estimates of hours to be performed at the government's and contractor's facilities; annual hours broken down into a labor category--program management, logistics, and engineering--profile; and a breakdown of hours by grade band based on historical data.¹ Vendors that significantly deviated from the agency's historical data in the guidelines were required to provide brief narrative support for their grade banding determinations. The RFQ contemplated the award of a BPA with task orders to be issued on a time-and-materials basis for a period of 5 years.

Quotations were to be evaluated on the basis of two factors--past performance and price--with past performance of slightly more importance. The past performance evaluation was to be a risk assessment of the probability that the prime vendor would successfully accomplish the required effort, and was to be based on the extent to which vendors' and subcontractors' records of past performance reflected successful achievement of contract requirements and objectives. Price was to be evaluated on the basis of the assumptions provided in section L of the RFQ and included an assessment of the reasonableness and realism of proposed prices. The realism evaluation was to determine whether the proposed direct and subcontractor labor rates, and proposed labor skill mixes were likely to achieve program requirements and objectives as described in the RFQ, and whether the proposed hourly rates were sufficient to attract and retain employees with the labor skills proposed. If the proposed labor skill mix appeared inappropriate to achieve the agency's requirements, or quoted labor rates did not appear likely to enable the firm

¹ These grade bands were established based on a review of the applicable FSS job titles and labor rates, in conjunction with historical task order data obtained from the current contract. The system banded labor descriptions and their associated hourly billing rates on the assumption that labor job titles and skill levels, and associated billing rates, generally equated to levels of experience and academic credentials. Labor rates were grouped into eight categories of corresponding levels of expertise, applied across the general disciplines of program management, engineering and science, technical support, and administrative support.

to hire or retain employees with the proposed skills, the agency reserved the right to adjust the quantity of proposed hours or the skill mix of the vendor or its subcontractors to reflect the most probable minimum hours, mix, or rates necessary to achieve agency requirements and objectives. Award was to be made to the vendor whose quotation represented the “best value” to the government.

Camber, the incumbent contractor, and STI were the only vendors that responded to the RFQ. After an initial evaluation, the agency opened discussions with both vendors. In discussions with Camber, the agency was concerned with the firm’s composite rates for prime and subcontractor labor, which were lower than the historical rates under the incumbent contract. After reviewing Camber’s response that it was constrained to follow the RFQ skill/grade banding mix, the agency engaged in a second round of discussions in which it expressed concern that Camber’s proposed labor mix did not track with its proposal to [deleted]. The agency also expressed concern that Camber could not retain [deleted] at the lower composite rates proposed and indicated that a realistic price, based on the firm’s current composite rates would be significantly higher. The agency requested that Camber either revise its quotation or explain how its current quotation was realistic. Camber responded by changing its labor mix to one more closely aligned with its current execution of the contract, which resulted in raising its price higher than that initially quoted, but not as high as the agency had indicated. The evaluators found the revised quotation to be reasonable and realistic. Neither vendor revised its price in the final round of discussions.

	Camber	STI
Past Performance	Excellent	Excellent
Price	\$143,509,770	\$130,100,946

In making his award determination, the source selection authority (SSA) considered the results of the price and past performance evaluations. The SSA noted an advantage in Camber’s past performance as being the precise work required in the RFQ. He noted that both vendors had excellent past performance, that both were considered very low risk, and that the two thus were equal under the factor. Based on STI’s price advantage, the SSA concluded that its quotation represented the best value to the government, and thus made award to STI. After receiving a debriefing, Camber filed this protest challenging the price realism evaluation, the conduct of discussions, and the selection decision.²

² Camber raised numerous issues in its submissions to our Office. We have considered them all and find that none has merit. This decision addresses the more significant issues raised.

PRICE REALISM EVALUATION

Camber observes that the RFQ identified three “tests” for price realism—whether the quotation accurately reflected the vendor’s proposed effort for meeting objectives; whether the proposed rates and skill mix were likely to achieve program requirements and objectives; and whether the hourly rates were realistic to hire and retain the labor skills proposed. RFQ §§ M.6.1.2 and M.6.1.2.1. Camber asserts that, because its initial quotation met all these criteria, the agency unreasonably found that the initial quote was unrealistic. In this regard, Camber asserts that its initial quotation contained [deleted] labor rates for all its prime and subcontractor personnel and its skill mix was based on the agency’s own guidance in the RFQ.³

As with fixed-price contracts, where, as here, the award of a fixed-rate contract is contemplated, the “realism” of offerors’ proposed labor rates is not ordinarily considered, since a fixed-rate contract, like a fixed-price contract, places the risk and responsibility for contract costs and resulting profit or loss on the contractor. See WinStar Fed. Servs., B-284617 et al., May 17, 2000, 2000 CPD ¶ 92 at 9. However, an agency may, at its discretion, provide for the use of a price realism analysis in a solicitation for the award of a fixed-rate or fixed-price contract for various reasons, such as to assess the risk in an offeror’s approach. PharmChem, Inc., B-291725.3, B-291725.4, B-291725.5, July 22, 2003, 2003 CPD ¶ 148 at 7. The nature and extent of an agency’s price realism analysis are matters within the agency’s discretion, and our review of such an evaluation is limited to determining whether it was reasonable and consistent with the solicitation’s evaluation criteria. Uniband, Inc., B-289305, Feb. 8, 2002, 2002 CPD ¶ 51 at 4.

The price realism evaluation was unobjectionable. Contrary to Camber’s assertions, the agency reviewed the firm’s proposed prices in accordance with the RFQ criteria and found that they were not realistic. Supplemental Report at 1. Specifically, while the firm complied with the RFQ’s grade banding guidance overall, and quoted labor rates verified by the Defense Contract Audit Agency (DCAA), Camber’s quotation indicated that it had priced its labor at the lower end of each grade band and had used prime contractor and subcontractor composite labor rates that were significantly below those found in Camber’s task order history. Contracting Officer’s

³ In a related argument, Camber questions the agency’s evaluation of its profit, overhead, and general and administrative rates as being improper in the context of a fixed-rate, time-and-materials contract. Camber Comments at 23. This argument is without merit. As part of the award recommendation to the SSA, the evaluators reported on a sensitivity analysis of the competing quotations that included the cited cost elements, for the purpose of facilitating the SSA’s understanding of the differences in the vendors’ total evaluated prices. Contracting Officer’s Statement at 18. However, there is no evidence that the agency’s review of these aspects of Camber’s quotation formed a part of the price evaluation.

Statement at ¶ 27; AR, Tab 28 (evaluation dated Jan. 23, 2004). The agency concluded that, while the rates were consistent with the RFQ guidance and had been verified by DCAA, the fact that the rates were lower than those under Camber's current contract made it uncertain that the rates were sufficient to attract and retain employees with the labor skills proposed. For this reason the agency asked Camber to explain how its staffing approach would allow it to hire and retain a qualified workforce and maintain the same quality of subcontracted services.

The agency's concerns were not resolved by Camber's response. Camber explained that it felt constrained by the RFQ's methodology and distribution of hours, and that its prime contractor labor rates fully supported its [deleted], but added that "this [RFQ] distribution did not reflect [its] [deleted]." Item for Discussion (IFD) Response 1a. Camber also attached a table that graphically illustrated the significant number of its current personnel who were [deleted]. IFD 1, figure 1. The agency found that this response contradicted Camber's startup plan, which provided for transitioning its "staff of [deleted] individuals supporting the current contract." Camber Startup Plan at ¶ 3.2. It was only when, in response to further discussions, Camber changed its quotation's skill mix to "accurately reflect [its] proposed effort for meeting program objectives and requirements," Camber IFD 2 Response, at 1, that the agency concluded that the quotation was realistic. The agency's conclusions were reasonable and consistent with the price realism criteria in the RFQ. That is, we think the agency reasonably could find that the deviation in Camber's rates from the pricing under its current contract brought into question whether the firm would be able to hire and retain a qualified workforce—including its proposed [deleted]—and whether it would be able to maintain the same quality of subcontracted services as under its current contract. Both of these were considerations within the ambit of a reasonable price realism evaluation. RFQ § M.6.1.2.1.

Camber asserts that the agency misled it during discussions; specifically, that after the firm explained that its pricing was based on the RFQ's guidelines, the agency improperly rejected its responses and threatened to significantly adjust its price upward, leaving Camber no choice but to raise its price through a reallocation of labor hours.

This argument is essentially an extension of Camber's challenge to the agency's price realism evaluation, and is without merit. As discussed, the realism evaluation was reasonable; thus, discussions aimed at providing Camber with the opportunity to allay the agency's concerns about price realism were not misleading or otherwise objectionable. To the extent Camber believed the agency's discussions were based on an incorrect reading of its quotation or the terms of the RFQ, it was free to respond to the agency by explaining how it would ensure retention of a qualified workforce using the distribution in its original quotation. Camber instead chose to revise its skill mix to reflect [deleted] under its startup plan. IFD 2 Response. This was purely an exercise of Camber's business judgment and in no way indicates that the agency acted improperly.

PAST PERFORMANCE

Camber asserts that the agency's award determination was flawed because its past performance was superior to STI's, even though the quotations were evaluated as equal. This is supported, Camber claims, by the language used by the evaluators in describing the firms' past performance.

In reviewing a protest of 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 terms of the solicitation and applicable statutes and regulations. United Def. LP, B-286925.3 et al., Apr. 9, 2001, 2001 CPD ¶ 75 at 10-11.

The past performance evaluation was reasonable. The evaluation was based on a review of questionnaires submitted by vendor-supplied references who rated the vendors' past performance in the areas of technical, delivery, and business relations. RFQ §§ L.2.2; M.5.1. The evaluators considered 9 contracts/task orders for Camber (14 questionnaires) and 7 contracts/task orders for STI (13 questionnaires) and rated both vendors as excellent based on their receipt of significantly more excellent than good ratings under all three areas. AR Tabs 24, 26. The record does not support Camber's assertion that its superiority is revealed by language used in the evaluators' narrative comments. For example, Camber points to the language used under the technical area, where the evaluators stated for Camber that "there is high confidence that [Camber will] be able to perform the tasks in an exceptional manner," and for STI simply that "[t]he contractor has shown that [it has] the technical ability to successfully perform this work with no doubt of success." AR, Tab 24 at 6, Tab 26 at 6. While the language is different in these individual summary statements, the language for both vendors is positive, and there is no indication that the evaluators intended to convey a qualitative difference between the firms' past performance records.

Camber also cites the SSA's comment that "[a]n advantage is noted that Camber's past performance is precisely the work that is required in this solicitation." SSA Decision at 3. However, while this statement indeed recognizes an advantage for Camber, Camber's argument ignores the fact that, despite this observation, the SSA concluded that "both contractors [were] equal." SSA Decision at 4. In this regard, when a selection official determines that two proposals, or quotations as here, are technically equal, it does not mean that the firms' submissions are identical in every respect. Rather, each quotation may well be superior to the other in a variety of areas. The finding of equality means that, while the vendors offer different advantages, overall there is no meaningful difference in what they have to offer. Schaeffer Eye Ctr., B-284268, Mar. 20, 2000, 2000 CPD ¶ 53 at 5. Thus, the mere fact

that Camber's quotation was identified as superior to STI's in one identifiable respect under the past performance factor does not establish a flaw in the agency's finding that the quotations were equivalent overall.

The protest is denied.

Anthony H. Gamboa
General Counsel