



G A O

Accountability * Integrity * Reliability

**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

Decision

Matter of: ARCADIS U.S., Inc.

File: B-411302; B-411302.2

Date: July 7, 2015

Alexander J. Brittin, Esq., Brittin Law Group, PLLC, for the protester.
Jon W. Burd, Esq., Wiley Rein LLP, for the intervenor.
Maria S. Kavouras, Esq., Environmental Protection Agency, for the agency.
Mary G. Curcio, Esq., and David A. Ashen, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

1. Protest that agency failed to perform an adequate cost realism analysis with respect to the awardee's low proposed indirect rates is denied where the awardee proposed its rates as ceiling rates, thus eliminating the risk of cost overruns, and the agency reasonably considered whether the proposed rates were so low as to create a performance risk.
 2. Protest that by requesting the protester to propose its indirect rates as ceiling rates the agency misled the protester into believing its rates were too low, is denied where the agency's discussion question explained that the request was based on fact that the proposed rates were lower than the protester's historic rates.
-

DECISION

ARCADIS U.S., Inc., of Highlands Ranch, Colorado, protests the Environmental Protection Agency's (EPA) award of a contract to Jacobs Technology, Inc., of Tullahoma, Tennessee, under request for proposals (RFP) No. SOL-CI-13-00050, for research laboratory support for the EPA's Office of Research and Development at Research Triangle Park, North Carolina. ARCADIS complains that the EPA failed to hold meaningful discussions, and failed to perform an adequate cost realism analysis of Jacobs' proposal.

We deny the protest.

The solicitation provided for award of a cost-plus-fixed-fee, level-of-effort contract, with a one-year base period and four option years, to the offeror whose proposal

represented the best value considering cost and non-cost factors. The non-cost factors were: demonstrated qualifications and availability of key personnel; demonstrated qualifications and availability of personnel other than key personnel; quality of proposed program management plan; adequacy of quality assurance programs; past performance; and participation of small disadvantaged businesses. The non-cost factors were worth a total of 1,000 points, and when combined were significantly more important than cost. RFP, attachment 7; RFP § M-3. Offerors were required to propose labor rates, indirect rates (overhead and general and administrative (G&A)), and a fee. RFP, attachment 10. The solicitation provided that the agency would evaluate cost realism. RFP § M-1.

Three offerors, including ARCADIS and Jacobs, responded to the solicitation, and following the initial evaluation, all three were included in the competitive range. Following discussions, the agency requested final proposal revisions (FPR). In the subsequent evaluation, ARCADIS's FPR received 800 technical points and had an evaluated cost of \$91,458,525, while Jacobs' FPR received 700 technical points and had an evaluated cost of \$67,516,042. Source Selection Decision (SSD) at 4-5. The agency concluded that Jacobs' lower technically-rated, but lower-cost proposal provided the best value to the government. Upon learning of the resulting award, ARCADIS filed this protest with our Office.

DISUSSION

ARCADIS asserts that the agency failed to perform an adequate cost realism analysis of Jacobs' proposal. Specifically, ARCADIS argues that the agency failed to reasonably evaluate the low indirect rates that Jacobs proposed, including overhead of [REDACTED] for the base period (versus [REDACTED] for ARCADIS), and G&A of [REDACTED] for the base period (versus [REDACTED] for ARCADIS). Jacobs Cost Advisory Report (CAR) at 3-4; ARCADIS CAR at 4. ARCADIS acknowledges that Jacobs agreed as a result of discussions to cap its proposed indirect rates, thus eliminating the risk to the agency of a cost overrun. ARCADIS argues, however, that the agency failed to consider that Jacobs' low proposed indirect rates would create a performance risk. Supplemental Comments, May 27, 2015, at 11.

A cost realism analysis is the process of independently reviewing and evaluating specific elements of each offeror's cost estimate to determine whether the estimated proposed cost elements are realistic for the work to be performed, reflect a clear understanding of the requirements, and are consistent with the unique methods of performance and materials described in the offeror's proposal. Federal

Acquisition Regulation (FAR) § 15.404-1(d)(1); Advanced Commc'n Sys., Inc., B-283650 et al., Dec. 16, 1999, 2000 CPD ¶ 3 at 5. An offeror's proposed costs should be adjusted, when appropriate, based on the results of the cost realism analysis. FAR § 15.404-1(d)(2)(ii). Our review of an agency's cost realism evaluation is limited to determining whether the cost analysis is reasonably based and not arbitrary. Metro Mach. Corp., B-402567, B-402567.2, June 3, 2010, 2010 CPD ¶ 132 at 6.

Here, Jacobs proposed **[REDACTED]** indirect rates that were **[REDACTED]**, and which the agency recognized were low. Jacobs Cost Proposal at 13; Jacobs CAR at 3-4. The Defense Contract Audit Agency (DCAA) reviewed the rates and concluded that since they were **[REDACTED]** it could not comment on them. Jacobs CAR at 3-4. DCAA, therefore, advised the agency to accept the rates, but to request that Jacobs propose them as ceiling rates for any awarded contract to avoid a potential cost overrun. Id. Jacobs subsequently agreed to the agency's request that it propose the rates as ceiling rates. Jacobs Interrogatory No. 3; Jacobs Response to Interrogatory No. 3. As a result, the agency found that the rates did not present a cost risk to the government. Jacobs CAR at 3-4; SSD at 5.

The agency also considered whether Jacobs' proposed low, **[REDACTED]** indirect rates nevertheless could result in performance problems. In this regard, the source selection official (SSO) was aware that Jacobs was currently successfully performing another EPA contract where it had used the same strategy of proposing low, **[REDACTED]** indirect rates as ceiling rates for that particular procurement. SSO Declaration, May 19, 2015, at 4. In addition, the SSO was aware from the past performance evaluation that Jacobs had a broad business base, and was successfully performing multiple billion dollar federal contracts where it was rated high for past performance, including in the cost control category. Id. The SSO concluded that, based on the multiple billion dollar contracts that Jacobs was performing, and given Jacobs' substantial business base, Jacobs' proposal did not present a performance risk notwithstanding the low indirect rates. Id. at 4-5. Based on this record, we conclude that the agency's cost analysis was reasonable, and that ARCADIS has failed to demonstrate otherwise. The fact that ARCADIS disagrees with the agency's judgment is not sufficient to establish that the agency acted unreasonably. See Trofholz Techs., Inc., B-404101, Jan. 5, 2011, 2011 CPD ¶ 144 at 3-4.

ARCADIS further asserts that the agency engaged in misleading discussions. In this regard, ARCADIS explains that during discussions the agency requested that it propose its indirect rates as ceiling rates. According to the protester, this misled the firm into believing that its indirect rates were too low. ARCADIS asserts that if not for the misleading discussions, it would have reduced its indirect rates, and would have become more competitive with respect to cost. Supplemental Protest at 3-9.

When an agency engages in discussions with an offeror the discussions must be meaningful, that is, sufficiently detailed so as to lead an offeror into the areas of its proposal requiring amplification or revision. Hanford Env'tl. Health Found., B-292858.2, B-292858.5, Apr. 7, 2004, 2004 CPD ¶ 164 at 8. An agency may not mislead an offeror through the framing of a discussion question into responding in a manner that does not address the agency's actual concerns, or otherwise misinform the offeror concerning a problem with its proposal. Metro Mach. Corp., B-281872 et al., Apr. 22, 1999, 99-1 CPD ¶ 101 at 6.

During the cost realism analysis DCAA reported that while ARCADIS's proposed indirect rates were reasonable, the rates were lower than its historic rates, which were over 3 years old. For example, ARCADIS proposed a fringe benefit rate of [REDACTED] for the base period, lower than its Fiscal Year (FY) 2010 rate of [REDACTED] and an office overhead rate of [REDACTED] for the base period, lower than its FY 2010 rate of [REDACTED]. ARCADIS CAR at 4. Consequently, DCAA recommended that ARCADIS incorporate the proposed rates into any resulting contract as ceiling rates. Id. As a result, the agency sent ARCADIS the following discussion question:

Since the proposed Overhead rate is below the historical rate, and the historical rates are over 3 years old, we request that ARCADIS propose its Overhead and G&A rates as ceilings.

ARCADIS Interrogatory No. 2.

We find no basis for concluding that the agency engaged in misleading discussions with ARCADIS. The discussion question sent to ARCADIS with respect to its indirect cost rates specifically informed ARCADIS that the agency was concerned that its proposed indirect rates were lower than ARCADIS' historic rates. There is nothing in that question that indicates that the agency thought the rates were per se too low, only that they were lower than its historical rates. Nor is there any indication that the question asked of ARCADIS otherwise misrepresented the agency's view of ARCADIS's proposal. Further, before FPR's were due, the agency, at ARCADIS's request, engaged in a telephone conference call with the protester in which the agency informed ARCADIS that it did not have any concerns with ARCADIS's cost elements as proposed. SSO Declaration, May 19, 2015, at 3. Furthermore, the agency encouraged ARCADIS to consider all potential approaches to reduce its overall cost in order to make its proposal more competitive. Id.; ARCADIS Supplemental Comments, May 27, 2015, at 5. In these circumstances, we see nothing in the agency's communications, including the discussion question as clarified in the subsequent telephone conference call, that should reasonably have led ARCADIS to believe that the agency considered its indirect rates too low. In any case, in its FPR ARCADIS did reduce its G&A rate by 1% and eliminate certain specialized services pool charges, thus indicating that

ARCADIS itself did not view its rates as too low. Supplemental AR at 5-6; ARCADIS Supplemental Comments, May 27, 2015, at 4.

The protest is denied.

Susan A. Poling
General Counsel