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United States Government Accountability Office
Washington, DC 20548

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Decision

Matter of: ITT Systems Corporation

File: B-405865; B-405865.2

Date: January 6, 2011

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Marcia G. Madsen, Esq., Cameron S. Hamrick, Esq., David F. Dowd, Esq., Luke Levasseur, Esq., and Kristina M. Portner, Esq., Mayer Brown LLP, for Lockheed Martin Integrated Systems, Inc., an intervenor.
Brian Bentley, Esq., Department of the Army, for the agency.
Scott H. Riback, Esq., and David A. Ashen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency misevaluated proposals for a cost reimbursement contract is sustained where the record shows that there was no logical connection between the agency's technical evaluation conclusions and its most probable cost evaluation conclusions, and there is no information in the record to explain the apparent discrepancies between the technical and cost evaluations.

DECISION

ITT Systems Corporation, of Colorado Springs, Colorado, protests the issuance of a task order to Lockheed Martin Integrated Systems, Inc. of Centreville, Virginia, under request for task order responses (RTOR) No. W91247-10-TOR-0001, issued by the Department of the Army for logistics support services at Fort Bragg, North Carolina.¹ ITT maintains that the agency misevaluated proposals.

We sustain the protest.

¹ This solicitation was issued to all contract holders under the Army's field and installation support team multiple award indefinite-delivery, indefinite-quantity contract program.

BACKGROUND

The solicitation contemplated the issuance, on a “best value” basis, of a cost-reimbursable task order for a one-year base period and two one-year option periods. Firms were advised that proposals would be evaluated based on three considerations, mission suitability, small business participation and cost. The mission suitability factor was significantly more important than the small business participation factor and the two non-cost factors combined were approximately equal to the cost factor. RTOR at 57-58. Under the mission suitability factor, there were three subfactors, management approach, staffing approach and relevant technical experience. RTOR at 58. Offerors were advised the agency would evaluate the small business factor on a go/no go basis, and that proposals would be assigned an adjectival rating under the mission suitability factor of either excellent, good, acceptable, marginal or unacceptable based on the agency’s identification of significant strengths, strengths, weaknesses, significant weaknesses or deficiencies under the various subfactors. RTOR at 59-61. The RTOR further provided that the agency would evaluate cost proposals for both reasonableness and realism, and that a most probable cost estimate would be developed for each proposal based on the cost realism analysis. RTOR at 59-60.

In response to the RTOR, the agency received a number of proposals.² The agency evaluated these proposals and determined that a number of the offerors were not eligible for award because their proposals had been assigned either marginal or unacceptable ratings under the mission suitability factor. Contracting Officer’s Statement at 8. ITT and Lockheed both were considered eligible for award because both proposals had been assigned a “go” rating under the small business participation factor. The ITT proposal was assigned [deleted] under the mission suitability factor and the Lockheed proposal was assigned [deleted] under the mission suitability factor. Id.

In the area of cost, ITT proposed a cost of \$[deleted]. After performing its cost realism evaluation, the agency adjusted ITT’s costs upward by approximately \$14 million for a most probable cost of \$[deleted]. Contracting Officer’s Statement at 8. Lockheed’s proposed cost was \$[deleted], and the agency adjusted its cost upward by approximately \$[deleted] for a most probable cost of \$[deleted]. Id.

On the basis of these evaluation results, the agency made award to Lockheed without discussions, finding that, because its proposal had received the highest rating under the mission suitability factor and had [deleted] most probable cost

² Proposals initially were received on June 7, 2011, but, because of several revisions to the RTOR, the agency obtained revised or modified proposals on August 16. Contracting Officer’s Statement at 4.

adjustment and the lowest evaluated cost, it offered the best value to the government. Agency Report (AR), exh. 8. After being advised of the agency's award decision and receiving a debriefing, ITT filed this protest.

PROTEST

ITT challenges the agency's cost and technical evaluations and maintains that, because the agency's evaluation of proposals was not reasonable, its best value source selection also is unreasonable. We have carefully considered all of ITT's assertions and sustain its protest for the reasons discussed below.³

ITT principally maintains that, although the agency made substantial adjustments to the offerors' proposals in performing its most probable cost evaluation, the record contains no explanation for why the adjustments were made. The protester also challenges the agency's technical evaluation, maintaining that the Army either misevaluated its proposal or treated the offerors disparately during the technical evaluation.

As a general matter, in reviewing protests against allegedly improper evaluations, our Office examines the record to determine whether the agency's conclusions are reasonable and consistent with the terms of the solicitation and applicable statutes and regulations. SOS Int'l, Ltd., B-402558.3, B-402558.9, June 3, 2010, 2010 CPD ¶ 131 at 2. Additionally, when an agency evaluates proposals for the award of a cost-reimbursement contract, an offeror's proposed estimated cost of contract performance is not considered controlling since, regardless of the costs proposed by the offeror, the government is bound to pay the contractor its actual and allowable costs. Magellan Health Servs., B-298912, Jan. 5, 2007, 2007 CPD ¶ 81 at 13; Metro Machine Corp., B-295744, B-295744.2, Apr. 21, 2005, 2005 CPD ¶ 112 at 9; Federal Acquisition Regulation (FAR) § 16.301. Consequently, a cost realism analysis must be performed by the agency to determine the extent to which an offeror's proposed costs represent what the contract costs are likely to be under the offeror's unique technical approach, assuming reasonable economy and efficiency.

³ ITT also contends that the agency abused its discretion by not engaging in discussions. Here, the RTOR specifically provided that the agency contemplated making award without discussions. RTOR at 57. In such circumstances, since there are no statutory or regulatory criteria specifying when an agency should or should not initiate discussions, and there also is no requirement that an agency document its decision not to initiate discussions, we generally will not review an agency's decision not to hold discussions. Trace Sys., Inc., B-404811.4, B-404811.7, June 2, 2011, 2011 CPD ¶ 116 at 5; Kiewit Louisiana Co., B-403736, Oct. 14, 2010, 2010 CPD ¶ 243 at 3.

FAR §§ 15.305(a)(1), 15.404-1(d)(1), (2); The Futures Group Int'l, B-281274.2, Mar. 3, 1999, 2000 CPD ¶ 147 at 3.

Finally, in considering an agency's evaluation of cost and technical proposals in a cost reimbursement setting, it is axiomatic that the agency's evaluation must be adequately documented, such that the record reflects the agency's reconciliation of its technical and cost evaluation conclusions. Serco, Inc., B-298266, Aug. 9, 2006, 2006 CPD ¶ 120 at 7. Based on our review of the record, we find the agency's evaluation unreasonable.

The record shows that, in performing its technical evaluation, the agency identified [deleted] significant strengths, [deleted] weaknesses, and no significant weaknesses or deficiencies in the ITT proposal. AR, exh. 5, at 22-25. For Lockheed, the agency's technical evaluation identified [deleted] significant strengths, [deleted] strengths, [deleted] weaknesses, and [deleted] significant weaknesses or deficiencies. Id. at 25-28. Among the overall total of [deleted] weaknesses identified in both proposals combined, [deleted] were under the staffing approach subfactor.

In performing its most probable cost evaluation, the record shows that, for both proposals, the agency's cost adjustments were confined to changes in the offerors' proposed staffing approach, and that the agency took no exception to any other cost element proposed by either offeror. AR, exh. 6, at 14-19, 41-45.

Both firms proposed [deleted] quantities of staffing to perform the requirement, with ITT proposing [deleted] staff hours and Lockheed proposing [deleted] staff hours. Protester's Comments, Nov. 17, 2011, at exh. A, attach. 3, at 11.⁴ The record further shows that the agency made significant changes to the offerors' proposed staffing when performing its most probable cost evaluation.

⁴ During the course of the protest, ITT submitted an affidavit from an expert consultant. That affidavit includes several attachments to which we refer in this decision. We refer to the data in these attachments as a matter of convenience because they are the only place in the record where widely disparate data has been consolidated and organized. After the affidavit and accompanying attachments were submitted, both the agency's and the intervenor's counsel requested additional information regarding the record source of the information contained in the affidavit and attachments. In response to that request, the protester's expert consultant submitted a second affidavit describing where the data were found in the record and the method that he used to consolidate and organize the data. E-mail from Protester's Counsel, Nov. 29, 2011, and accompanying attachment. Neither the agency nor the intervenor has questioned the accuracy of the data included in the original affidavit or attachments.

With respect to ITT, the agency increased its proposed staffing in various areas by a total of [deleted] staff hours and reduced its staffing in other areas by [deleted] staff hours, for a combined change in ITT's proposed staffing of [deleted] staff hours. Protester's Comments, Nov. 17, 2011, at exh. A, attach. 1. These changes were made in approximately [deleted] percent of the labor categories ([deleted]) considered by the agency in its evaluation of ITT's proposal.

In evaluating the Lockheed proposal, the agency made upward adjustments to its proposed staffing of [deleted] staff hours and downward adjustments of [deleted] staff hours, for a combined change in Lockheed's proposed staffing of [deleted]. Protester's Comments, Nov. 17, 2011, at exh. A, attach. 2. These changes were made in approximately [deleted] percent of the labor categories ([deleted]) considered by the agency in its evaluation of the Lockheed proposal. Id.

Despite these significant changes in the offerors' proposed staffing for cost evaluation purposes, the record contains no explanation of why the changes were made. In particular, the changes are memorialized in Excel spreadsheets that reflect the agency's mathematical calculations of the changes, but these spreadsheets include no narrative explanation of the reasons for the changes. AR, exhs. 16a-16e. Additionally, although the record includes a separate narrative cost report, the report makes no mention of the reasons underlying the agency's staffing adjustments for cost evaluation purposes, and instead simply describes the agency's approach to making the changes. For example, in the case of the Lockheed proposal, the cost report simply states, without elaboration, that:

[deleted]

AR, exh. 6, at 16. The record includes [deleted] language describing the changes made to the ITT proposal. Id. at 43.⁵

⁵ The record also includes affidavits from the agency's cost analyst and the chairman of the technical evaluation board in which they describe the process more fully. Briefly, the record shows that the Excel spreadsheets included in the record were prepared by the cost analyst and included information reflecting the offerors' proposed staffing. The spreadsheets had another column entitled "required FTEs" (full time equivalents) that was left blank. These spreadsheets were provided to the technical evaluators who filled in the "required FTE" column with the staffing they thought was appropriate for each firm for each area of the requirement. The cost analyst then used the functionality of the Excel spreadsheets to arrive at the offerors' respective most probable cost calculations. Supplemental AR, exhs. 3, 4. Neither affidavit explains, however, the underlying rationale for the significant adjustments in staffing made to both proposals during the cost evaluation.

In addition to the lack of any explanation for the extensive staffing changes in the agency's cost evaluation materials, an examination of the agency's technical evaluation report reveals no apparent connection between the agency's technical evaluation findings on the one hand, and its cost evaluation findings on the other.

For example, the agency specifically identified [deleted] weaknesses in its technical evaluation of the ITT proposal relating to the firm's use of [deleted] positions, finding that these positions (which appear to total [deleted] full time equivalents (FTEs)) are not required by the statement of work (SOW). AR, exh. 5, at 23. Notwithstanding this finding, the record shows that, in its cost evaluation, the agency did not reduce ITT's staffing for [deleted] personnel. Protester's Comments, Nov. 17, 2011, at exh. A, attach. 1, at 1. Thus, the agency's cost evaluation appears inconsistent with the technical evaluation finding that these positions are not necessary to perform the SOW.

In contrast, there were areas where, in its cost evaluation, the agency concluded that Lockheed's staffing was significantly overstated (for example, the record shows that the agency adjusted Lockheed's proposed [deleted] personnel downward by approximately [deleted] FTEs, Protester's Comments, Nov. 17, 2011, at exh. A, attach. 2, at 2), but the agency did not assign the proposal a weakness in its technical evaluation for this identified overstaffing, as it did in evaluating the ITT proposal in the area of computer operators. This essentially amounts to disparate treatment of the two firms, since the agency assigned a technical evaluation weakness for overstaffing to one firm's proposal, but not to the other firm's proposal.

In other instances, the agency made significant upward adjustments to the offerors' proposed staffing in numerous areas, but the technical evaluation is silent with respect to the apparent weaknesses that these staffing shortages would suggest. For example, the agency increased Lockheed's proposed staffing for [deleted] by [deleted] FTEs and its [deleted] personnel by [deleted] FTEs, Protester's Comments, Nov. 17, 2011, at exh. A, attach. 2, at 2. Despite these significant upward adjustments to Lockheed's staffing for cost evaluation purposes, there is no assignment of a weakness to the Lockheed proposal (or even a mention in the agency's technical evaluation report) based on these significant staffing shortfalls.

In sum, the record shows that the agency made significant changes to the offerors' proposed staffing in the overwhelming majority of their proposed labor categories when conducting its most probable cost evaluation, but the underlying basis for these changes is not memorialized in the record. In addition, the record shows that the agency failed to reconcile its evaluation in a manner that demonstrates consistency between its cost and technical evaluation findings. We conclude that the agency's evaluation of proposals is unsupported in the record and, thus, is unreasonable. Correspondingly, the agency's source selection decision, based on this fundamentally flawed evaluation, is likewise unreasonable. We therefore sustain ITT's protest.

RECOMMENDATION

In light of the foregoing discussion, we recommend that the agency reevaluate proposals in a manner consistent with this decision. In addition, considering the significant number of adjustments that were made to the cost proposals, the agency may want to consider holding discussions. At the end of its review, the agency should make a new source selection based on its reevaluation. Should the agency find that a firm other than Lockheed is properly in line for award, we recommend that the agency terminate Lockheed's task order for the convenience of the government and issue a task order to the firm selected, if otherwise proper. Finally, we recommend that the agency reimburse the protester the costs of filing and pursuing the protest. 4 C.F.R. § 21.8(d)(1) (2011). ITT's certified claim for costs, detailing the time expended and costs incurred, must be submitted to the agency within 60 days after receipt of this decision. Id. § 21.8(f)(1).

The protest is sustained.

Lynn H. Gibson
General Counsel