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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: MacAulay-Brown, Inc.

File: B-292515; B-292515.2

Date: September 30, 2003

Kevin P. Connelly, Esq., Joseph J. Dyer, Esq., and Z. Taylor Shultz, Esq., Seyfarth Shaw, for the protester.

G. Lindsay Simmons, Esq., Thad S. Huffman, Esq., Wm. David Byassee, Esq., and J. Eric Whytsell, Esq., Jackson Kelly, for Applied Research Associates, Inc., an intervenor.

Clarence D. Long, III, Esq., and LTC Carol L. Hubbard, Department of the Air Force, 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. Where protester's primary proposal was to hire incumbent staff, and it proposed higher salary rates but lower total compensation than the incumbent contractor, agency reasonably evaluated proposal as posing moderate risk based on potential inability to hire significant portion of incumbent workforce.
2. Agency satisfied requirement to conduct meaningful discussions by communicating evaluators' concerns with the protester's ability to recruit/retain the incumbent workforce, thus leading the protester into the area of its proposal needing improvement.
3. Agency's failure to adjust awardee's evaluated most probable cost upward to reflect awardee's proposed lowering of current salary rates and proposed low escalation rate was reasonable where agency fully considered these features of awardee's cost proposal and concluded that they were achievable and represented reasonable exercise of management control given current employment market conditions.
4. Cost/technical tradeoff was reasonable where source selection authority considered technical distinctions between competing proposals and specifically determined that higher technically rated proposal represented best value despite higher cost.

DECISION

MacAulay-Brown, Inc. (MacB) protests the award of a contract to Applied Research Associates, Inc. (ARA) under request for proposals (RFP) No. F08637-02-R-6001, issued by the Department of the Air Force for scientific engineering and manpower services (SEAMAS). MacB challenges the technical evaluation, the cost analysis, and the best value award determination.

We deny the protest.

BACKGROUND

The RFP sought proposals to provide SEAMAS support to assist the Air Force Research Laboratory, Air Expeditionary Forces Technologies Division (AFRL) in the execution of AFRL's assigned mission as the Air Force's lead agency for research and development (R&D) in the areas of deployed base systems, force protection, and weapon systems logistics. The scope of the work includes all aspects of planning, construction, instrumentation, testing, and conducting, managing, briefing, and reporting of R&D activities within the Expeditionary Forces Technology Division. Offerors were expected to propose all necessary personnel—physicists, engineers, chemists, technicians, financial and other managerial personnel, and robotics experts—to perform the required activities. The RFP contemplated the award of a cost-plus-award-fee contract for a base year, with 5 option years.

Proposals were to be evaluated under four factors: mission capability, proposal risk, past performance, and cost, with the non-cost factors of equal importance and, combined, of more importance than cost. The mission capability factor was further divided into the following subfactors (and sub-subfactors): technical performance (personnel plan; subcontracting plan; and safety plan) and program management (field director; overhead staff; processes for planning, documentation, and analysis of R&D tasks; and cost control). Proposals were to be rated under the technical factors as blue/exceptional, green/acceptable, yellow/marginal, or red/unacceptable. Proposal risk was to be evaluated as high, moderate, or low. Past performance was to be rated as exceptional, very good, satisfactory, neutral, and marginal. Cost was to be evaluated on the basis of reasonableness, realism, and most probable cost (MPC) based on the realism analysis. Award was to be made on a “best value” basis.

Three proposals, including those of MacB and ARA, were received and evaluated by the source selection team (SST). After completion of the initial evaluation, the SST conducted discussions with all offerors and obtained final proposal revisions. The final evaluation results for the three offerors were as follows:

| | MacB | ARA | Offeror 3 |
|-----------------------------|----------------|----------------|------------------|
| Mission Capability | | | |
| Technical Perf./Risk | Blue/Moderate | Blue/Low | Blue/Moderate |
| Program Mgmt./Risk | Blue/Low | Blue/Low | Green/Moderate |
| Past Performance | Exceptional | Exceptional | Satisfactory |
| Cost | \$77.4 million | \$82.6 million | \$76.5 million |

In making the award determination, the source selection authority (SSA) made an integrated assessment of the proposals under the RFP's evaluation criteria. The SSA concluded that the strengths associated with ARA's proposal, combined with the low risk associated with its approach, made ARA's proposal the best value, despite its higher cost. After receiving notice of the award and a debriefing, MacB filed this protest.¹

TECHNICAL EVALUATION

In reviewing a protest of an agency's proposal evaluation, it is not our role to reevaluate proposals. Rather, we will consider only whether the evaluation was reasonable and consistent with the terms of the solicitation and applicable statutes and regulations. CWIS, LLC, B-287521, July 2, 2001, 2001 CPD ¶ 119 at 2.

MacB's Proposal

In its evaluation of MacB's proposal under the technical subfactor of the mission capability factor, the agency found that MacB was "depending on hiring the technical experts that are currently filling positions." Agency Report (AR), Tab 8 at 24. In assessing risk, the agency considered each offeror's total compensation including fringe benefits and pension plans. Statement of SSA, July 11, 2003; Affidavit of SST Member, July 11, 2003. Because ARA's total compensation exceeded MacB's, the agency concluded that there was "moderate risk that some of these contract personnel will not accept an offer" and that this could "potentially cause some disruption of schedule, increased cost, or degradation of performance." AR, Tab 8, at 24; Contracting Officer's Statement at 4.

MacB asserts that the agency erred in evaluating its proposal as a moderate risk, disputing the assessment that its lower overall compensation rates represent an increased risk of its successful hiring of the incumbent workforce. In MacB's view,

¹ MacB raises a number of arguments. We have reviewed them all and find that none has merit. This decision addresses only the more significant issues.

its proposal should have been evaluated as low risk based on its proposal of salary rates higher than most of those proposed by ARA, and its proposal of escalation rates over the life of the contract that were significantly higher than those proposed by ARA.

This argument is without merit. While MacB proposed to hire the incumbent personnel at salary rates higher than those proposed by ARA in many labor categories, the agency based its risk assessment on a comparison of MacB's total compensation package to ARA's, on the theory that current ARA employees may not accept MacB's offer of employment for lower total compensation. In this regard, the agency found that ARA proposed higher fringe benefits and significantly higher pension benefits, which made ARA's total compensation package higher than MacB's, notwithstanding MacB's higher proposed salary rates. The agency concluded that it would be "irrational to assume that a professional employee would not consider the various components of compensation when considering employment opportunity [and that] [i]t is reasonable to assume that an employer's pension plan is a significant consideration" Contracting Officer's Statement at 4. We find nothing unreasonable in the agency's assessment; we thus find no basis to object to the agency's rating MacB's proposal a moderate performance risk. See Comprehensive Health Servs., Inc., B-285048.3 et al., Jan. 22, 2001, 2001 CPD ¶ 9 at 3-4 (where an offeror proposes to hire the incumbent workforce at lower compensation than the employees currently receive, it is reasonable for the agency to conclude that the proposal presents a risk that the offeror will not be able to hire all the incumbent workforce).

MacB asserts that the moderate risk rating failed to take into account the fact that, in addition to proposing to hire the incumbent employees, its proposal included detailed plans for recruiting and hiring replacement personnel. However, while MacB's proposal indeed included a plan for "recruiting and hiring additional and replacement personnel" (MacB Proposal at 71-72), it clearly emphasized MacB's primary "intention to recruit all qualified incumbent personnel," and emphasized its success rate in accomplishing that plan under other contracts. Id. at 2-6, 65-68. It thus was reasonable for the agency to focus on this principal approach in its evaluation.²

MacB asserts that the agency's reliance on differences in total compensation is suspect because the agency did not actually calculate total compensation as part of

² MacB also asserts that the rating of moderate risk is inconsistent with the assessments of a majority of the evaluators who recognized strengths in MacB's personnel plan. We note that, in fact, a majority of the SST--four of its six members--identified risk in MacB's proposal. In any case, differences in evaluator ratings do not establish that the evaluation process was flawed or otherwise irrational. Unisys Corp., B-232634, Jan. 25, 1989, 89-1 CPD ¶ 75.

the cost evaluation. This argument is without merit. While the agency did not prepare a formal calculation, it nonetheless clearly identified its basis for concluding that ARA's proposed total compensation exceeded MacB's by breaking out each offeror's base year direct labor, overhead, overhead rate, fringe benefits, pension, and pension as a percentage of direct labor; these figures support the agency's conclusions regarding ARA's offer of higher total compensation. The agency's conclusions regarding the firms' comparative compensation levels also is supported by MacB's and ARA's protest submissions. Specifically, MacB's calculation of the total compensation for 84 commonly proposed employees shows that ARA's total compensation exceeded that of MacB throughout the 6-year contract life by a total of some [deleted] million.³ Jackson Declaration 2, Sept. 1, 2003, Attach. 1. Similarly, ARA's calculation of the total compensation for all 125 proposed employees demonstrated that ARA's total compensation exceeded MacB's by some [deleted] million over the life of the contract. Kiraly Supplemental Report, Aug. 28, 2003, attach. B.

ARA's Proposal

MacB asserts that ARA's proposal unreasonably was rated blue/exceptional and low risk despite the fact that ARA's proposed salary rates are some [deleted] percent lower than ARA's current rates for 69 of the 125 proposed personnel, and that ARA has proposed to escalate labor costs by only [deleted] percent each year. It concludes that there is a risk that ARA will not be able to retain the incumbent workforce for the base year, retain a significant number of them over the life of the contract, will experience a cost increase to retain the workforce, or will replace its more experienced staff with minimally qualified personnel.

This argument is without merit. The agency was fully aware of ARA's proposed reduction in salary rates as well as its annual cost escalation factor. AR, Tab 22 at 10; Contracting Officer Statement at 5. While a number of ARA's job category salaries were reduced by [deleted] percent, a number of others were increased above

³ This assessment appeared to contradict Mr. Jackson's first declaration in which he included a chart depicting MacB's total compensation as exceeding ARA's between the second and third option years and continuing for the last 2 years. Jackson Declaration 1, Aug. 10, 2003 at ¶ 41. In response to our request, Mr. Jackson explained that the ¶ 41 chart was based on an agency report chart that calculated the total compensation for a single labor category for the base year. Jackson Declaration 3, Sept. 3, 2003. Mr. Jackson's original chart merely extrapolated the information for a single employee, as increased by the offerors' respective annual escalation rates. In addition, Mr. Jackson admitted that his original chart used incorrect information and, as corrected, showed that MacB's "total compensation" for the single employee did not exceed ARA's until after the third option year. *Id.* at ¶ 4.

the current levels, resulting in an overall reduction of only [deleted] percent, a reduction that the contracting officer did not consider significant.⁴ In any case, as discussed above, the risk assessment reasonably was based on the total compensation proposed by the offerors. Even with its somewhat lower salary rates for some employees, ARA's total compensation package was higher than MacB's. The agency reasoned that the difference in compensation packages, specifically retirement benefits, presented a greater employee retention risk to MacB than the salary rate reductions did to ARA. Further, there is nothing in ARA's initial or revised proposals that indicates ARA intends to downgrade or replace its incumbent workforce to achieve the proposed salary reductions. We thus find no basis for questioning the agency's assigning ARA's proposal a blue technical rating and a low performance risk rating.

DISCUSSIONS

MacB asserts that the agency failed to provide it with meaningful discussions because it did not specifically point out the moderate risk it associated with MacB's ability to hire incumbent personnel.

Although discussions must address at least deficiencies and significant weaknesses identified in proposals, the scope and extent of discussions are largely a matter of the contracting officer's judgment. In this regard, we review the adequacy of discussions to ensure that agencies point out weaknesses that, unless corrected, would prevent an offeror from having a reasonable chance for award. For discussions to be meaningful, they must lead offerors into the areas of their proposals requiring amplification or revision. The Communities Group, B-283147, Oct. 12, 1999, 99-2 CPD ¶ 101 at 4.

The agency provided MacB with meaningful discussions. Specifically, it issued several evaluation notices (EN), two of which requested clarification of MacB's plans to use incumbent personnel. The first sought clarification of the "commitment of individuals listed as key technical personnel . . . and . . . who they propose to fill key . . . positions if incumbents are not interested." AR 14 at 1. A second EN sought clarification of an apparent contradiction in MacB's proposal relating to its plan to offer the right of first refusal to incumbent personnel while at the same time proposing to have 30 percent of the effort staffed by subcontractor personnel. Id.

⁴ In addition, ARA explains that, while it proposed various salary rates lower than those under its current contract, it did not propose to reduce any incumbent employee's salary. Affidavit of ARA Senior Vice President, Aug. 19, 2003, at ¶ 7. Instead, it believed that it could implement the [deleted] percent wage rate reduction based on, among other things, historical growth under the predecessor contract, the low inflation environment, management's capability to control overall costs, and historical and predicted turnover. Id. at ¶ 6.

While these ENs did not specifically refer to “risk,” they clearly were sufficient to communicate the agency’s concerns about MacB’s ability to successfully acquire the incumbent workforce, upon which the moderate risk rating ultimately was based. This satisfied the requirement for meaningful discussions in this area.

COST EVALUATION

MacB asserts that the agency should have made an upward MPC adjustment to reflect ARA’s low proposed salary rates, escalation rates, and other costs. According to MacB, had the agency performed these adjustments, the difference between MacB’s and ARA’s costs would have been even greater.

Where an agency evaluates proposals for award of a cost-reimbursement contract, an offeror’s proposed estimated costs are not considered controlling, since these estimated costs may not provide valid indications of the final actual costs that the government is required, within certain limits, to pay. Advanced Communication Sys., Inc., B-283650 et al., Dec. 16, 1999, 2000 CPD ¶ 3 at 5. A cost realism analysis is the process of independently reviewing and evaluating specific elements of each offeror’s proposed 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 described in the offeror’s technical proposal. Federal Acquisition Regulation § 15.404-1(d)(1). Because the agency is in the best position to make this cost realism determination, our review is limited to determining whether its cost evaluation was reasonably based and not arbitrary. Kalman & Co., Inc., B-287442.2, Mar. 21, 2002, 2002 CPD ¶ 63 at 9.

The evaluation of ARA’s cost proposal was reasonable. In performing its realism analysis, the agency reviewed the cost proposals and relied on input from the Defense Contract Audit Agency. Specifically, the cost analysis included a comparison of each offeror’s labor costs to the government estimate; an evaluation of each offeror’s method of estimating labor costs, by labor category, and a comparison of labor costs by category; analysis and evaluation of the average rate per hour for all labor categories; verification of proposed indirect rates; assessment of accounting system adequacy and financial capability of each offeror; and evaluation of each offeror’s estimate to determine if it complied with the solicitation requirements relating to cost proposals. AR, Tab 22, at 9-10. The evaluation also included an analysis of the revised cost proposals submitted by the offerors. Id. at 9.

In reviewing ARA’s revised cost proposal, the agency specifically noted the firm’s reductions in various salary rates, escalation rates, overhead, and fee. With regard to the salary and escalation rates, while the agency found the reductions “unusual,” it concluded that they “were within management’s discretion and therefore reasonable to assume the reductions could be achieved.” AR, Tab 22, at 8. With regard to its decrease in overhead, the agency found the change reasonable in light of the changes in required labor categories. Even though the agency did not adjust the proposed

costs, it specifically considered the issues of the offerors' MPCs. Specifically, while the agency noted that all three offerors had proposed significantly lower costs than those in the government's estimate, based on its "evaluation of cost realism [it] found no rationale for applying any cost adjustment to any of the Offerors' proposal data." AR, Tab 22, at 8. In this regard, the agency also noted that the award fee clause in the RFP included a provision for cost management, and concluded that "[t]o the extent that the successful offeror [is] unable to perform within the estimated cost parameters, the award fee [could] be adjusted and the risk to the Government mitigated." AR, Tab 22 at 8-9. Thus, it is clear that the agency fully considered ARA's cost proposal, and specifically determined that ARA's salary, and escalation and overhead rates, while somewhat low, were achievable. The protester has provided no basis for us to conclude that this determination was unreasonable.

SOURCE SELECTION

MacB asserts that the SSA's decision was flawed because he failed to consider the impact of ARA's lower salary and escalation rates in making his selection decision. MacB also asserts that the SSA failed to accord MacB's lower cost appropriate weight in the tradeoff decision.

Source selection officials have broad discretion in determining the manner and extent to which they will make use of the technical and cost evaluation results, and their judgments are governed only by the tests of rationality and consistency with the stated evaluation criteria. Chemical Demilitarization Assocs., B-277700, Nov. 13, 1997, 98-1 CPD ¶ 171 at 6. Where, as here, the RFP allows for a cost/technical tradeoff, the selection official retains discretion to select a higher-priced, but technically higher-rated submission, if doing so is in the government's best interest and is consistent with the solicitation's stated evaluation and source selection scheme. 4-D Neuroimaging, B-286155.2, B-286155.3, Oct. 10, 2001, 2001 CPD ¶ 183 at 10.

MacB's arguments are without merit. The SSA explains that he was aware of ARA's lower and reduced salary rates and concluded that ARA could retain its personnel due to its higher total compensation, including its offer of a "good" pension plan, which MacB did not offer. SSA Declaration, Aug. 22, 2003, ¶¶ 4-6. While the SSA does not specifically mention his consideration of ARA's lower annual escalation rate, his declaration refers to the "comprehensive and reasonable" cost analysis performed by the evaluators, which "conclusions and findings [were] supported by the facts." Id. at ¶ 7. Since these conclusions and findings included consideration of ARA's low escalation rate, there is no basis to conclude that the SSA did not adequately consider this matter in making his selection decision.⁵

⁵ MacB also asserts that, had the SSA looked behind the blue ratings under the mission capability factor, it would have found that MacB's proposal was technically
(continued...)

In addition, the SSA specifically recognized the relative weights of the factors, including the increasing importance of cost as proposals became more equal. AR, Tab 7, at 1. He then concluded:

Based on my integrated assessment of all proposals submitted for SEAMAS and the specified evaluation criteria, it is my decision that the proposal submitted by ARA represents the best overall value to the Air Force. ARA's cost proposal is approximately 6 % higher than [MacB]'s proposal While [MacB] has an excellent Mission Capability rating and an excellent Past Performance rating, the moderate proposal risk rating associated with their Technical Performance caused me great concern. Therefore, it is my determination that the strengths evident in ARA's technical proposal combined with the low risk associated with their approach justifies the increased cost to the Air Force.

Id. at 6-7. We find nothing unreasonable in the SSA's determination that the strengths and lower risk associated with ARA's proposal warranted award to ARA despite its higher proposed cost.

The protest is denied.

Anthony H. Gamboa
General Counsel

(...continued)

superior. MacB bases this allegation on its proposal's receiving five "exceeded" ratings under the seven sub-subfactors, and ARA's receiving only four. However, while MacB's proposal apparently enjoyed a single sub-subfactor advantage, the detailed selection statement makes plain that the SSA was aware of and considered the relative strengths and differences in the two offerors' proposals under the relevant sub and sub-subfactors, and did not merely rely on the evaluators' ratings. AR, Tab 7, at 2-4.