



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

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Matter of: The Arora Group, Inc.

File: B-277674

Date: November 10, 1997

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Saratoga Medical Center, Inc., an intervenor.

Douglas P. Larsen, Esq., and John R. Osing, Jr., Esq., Department of the Navy, for
the agency.

Linda C. Glass, Esq., and Paul I. Lieberman, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Agency unreasonably concluded protester's fixed-price offer lacked price realism because of the protester's failure to propose salary escalation and therefore its perceived inability to retain employees, where protester proposed to use part of general and administrative (G&A) budget for employee bonuses; agency's conclusion that G&A budget was inadequate to retain employees was premised on agency's miscalculation of amount of that budget.

DECISION

The Arora Group, Inc. protests the award of a fixed-price contract to Saratoga Medical Center, Inc. under request for proposals (RFP) No. N62645-96-R-0032, issued by the Naval Medical Logistics Command for the services of 10 pharmacists for the National Naval Medical Center, Bethesda, Maryland. Arora principally contends that the agency erred in its price realism analysis of Arora's proposal and deviated from the RFP's source selection criteria.

We sustain the protest.

The RFP, issued on August 22, 1996, as a competitive 8(a) set-aside under the Small Business Act, 15 U.S.C. § 637(a) (1994), sought offers to provide the services of 10 full-time pharmacists and 5 optional pharmacists for a base period with four option periods, for a total possible performance term of 5 years. The RFP provided that award would be made to the responsible offeror whose proposal, conforming to the specified minimum healthcare worker qualifications, offered the government the best combination of past performance and price. To be considered for contract

award the offeror had to provide proof that it would provide at least 10 individual healthcare workers who satisfied the specified minimum healthcare worker qualifications. The minimum healthcare worker qualifications were to be evaluated on a "Go/No-Go" basis. Past performance was to be evaluated on the basis of the merits of each offeror's corporate experience. The RFP provided that merit of an offeror's past performance was significantly more important than price, but that the closer the merits of the offerors' past performances were to one another, the greater the importance of price would be in the award decision.

The RFP advised offerors that price realism would be assessed as follows:

Realism. An attempt will be made to clarify suspected unrealistic pricing with the offeror during discussions. Unrealistically low cost estimates and/or inconsistencies between the technical and price proposal, which result in a suspected understatement of the costs or misunderstanding of the requirements, will be addressed in the evaluation of the offeror's past performance.

The agency received eight proposals by the September 24, 1996, closing date.¹ Technical evaluations were conducted and concerns were identified in both Arora's and Saratoga's proposals. Both proposals were rated "Good" under the past performance evaluation factor.

The price proposals were evaluated to determine reasonableness and realism by comparing the proposed prices to each other, to the Navy's market survey, and to the offeror's own market survey information, which was required to be submitted with proposals. The proposed escalation rates were compared to the annual 3-percent rate which the agency understood had been recommended in Federal Acquisition Circular (FAC) 90-23.²

Saratoga proposed an average healthcare worker compensation rate of \$[deleted] hour for the base period, and annual salary escalation of [deleted] percent. Saratoga's compensation rate was determined to be unrealistically low based on a comparison with the government market survey, the offeror's own market survey, and the certificates of availability provided by the offeror. The protester proposed an average compensation rate of \$[deleted] per hour for the base period with no

¹Because only Arora's and Saratoga's proposals are relevant to this protest, the other six are not discussed further.

²FAC 90-23 provides, for information purposes, the annual notice of rates of inflation used in conjunction with other factors to determine allowable costs for major contractors. For fiscal year 1997, the annual percentage rate was listed as 3 percent.

escalation for the option years. Based on its market survey and FAC 90-23, the Navy projected that the hourly wage for pharmacists in the area would range from \$[deleted] to \$[deleted] per hour during the last of the option periods covered by the RFP. Nonetheless, the Navy determined that Arora's failure to provide for any salary escalation presented a price realism concern because it created a risk that the contractor might not be able to retain qualified personnel or recruit suitable replacements.

After completion of the technical evaluations, the source selection authority (SSA) determined that the proposals of six of the initial offerors, including those of both the protester and Saratoga, should be included in the competitive range. On February 25, discussion letters were sent to the competitive range offerors raising a number of technical and price concerns. Among other things, the protester was advised that its failure to include any escalation for salaries during the option periods posed a realism concern because there was uncertainty concerning Arora's ability to retain the required healthcare workers without escalation.

Arora submitted a revised proposal which did not include salary escalation for the option years and offered no explanation for its failure to do so. Saratoga's revised total average compensation package was increased to \$[deleted], which was considered reasonable and realistic.

After review of the revised proposals, on May 20, a request for best and final offers (BAFO) was sent to all competitive range offerors. Arora was once again advised that its lack of salary escalation for the option periods still posed a realism concern that required correction or explanation, and that the protester's profit was not calculated properly.

Saratoga's BAFO price was \$6,032,858.64; Arora's was \$[deleted]. Both BAFOs were "Go" for the technical proposals, and both had past performance ratings of "Good." The protester declined to include salary escalation for the option periods, addressing the recruitment/retention realism concerns instead by stating that it had negotiated long term employment agreements, coextensive in term with the contract, and that its general and administrative costs (G&A) included budgets for recruitment if there was turnover. Arora's BAFO went on to state: "If there is no turnover, the aforementioned budget will be applied to employee bonuses in accordance with market variation." Despite Arora's explanation, the agency remained unconvinced that the protester would be able to retain qualified healthcare workers throughout the contract period without salary escalation.

Because of this, the agency concluded that Arora's prices were unrealistic, and it made award to Saratoga as representing the best value to the government. This protest followed. Contract performance has been stayed pending resolution of the protest.

Arora argues that the Navy did not evaluate proposals or make an award determination as called for in the solicitation because the Navy evaluated Saratoga and Arora as equal in past performance yet awarded the fixed-price contract to Saratoga, the higher-priced offeror, solely on the basis of price realism concerns. Arora maintains that the Navy did not address price realism in its past performance evaluation, as required by the RFP, but rather considered the matter separately. Alternatively, Arora asserts that if the agency did address price realism in its past performance evaluation, the agency failed to adhere to the RFP criteria that "the closer the merits of the offerors' past performance are to one another, the greater will be the importance of price in making the award determination." Arora also argues that the agency's price realism evaluation was plainly erroneous in that the Navy incorrectly based its analysis on the mistaken premise that Arora proposed total G&A of \$[deleted] per year for all 10 employees when Arora's supplemental pricing worksheet clearly stated that \$[deleted] was the G&A amount for each employee per year.

Price realism is not ordinarily considered in the evaluation of proposals for the award of a fixed-price contract, because these contracts place the risk of loss upon the contractor. However, an agency may provide, as here, for the use of a price realism analysis in a solicitation for the award of a fixed-price contract for the purpose of measuring an offeror's understanding of the solicitation's requirements or to assess the risk inherent in an offeror's proposal. PHP Healthcare Corp., B-251933, May 13, 1993, 93-1 CPD ¶ 381 at 5. In this regard, the risk of poor performance when a contractor is forced to provide services with an undercompensated work force is a legitimate concern in the evaluation of proposals. Trauma Serv. Group, B-242902.2, June 17, 1991, 91-1 CPD ¶ 573 at 4. We will review the price evaluation conducted to determine whether it was reasonable and consistent with the RFP evaluation criteria. Id.

Here, we find that the agency's determination to reject Arora's proposal because its flat compensation rates posed an unacceptable price realism risk was neither reasonable nor consistent with the evaluation criteria.

In response to the agency's stated concerns about Arora's failure to provide for any wage escalation in its price proposal, Arora explained in its BAFO that it would be able to retain and recruit qualified healthcare workers because it had negotiated long-term employment agreements and because its proposed G&A included a budget for recruitment if there was turnover, and if there was no turnover the recruitment budget would be "applied to employee bonuses in accordance with market variation."

The Navy declined to accept Arora's explanation of how it would be able to retain the healthcare workers throughout the 5-year term of the contract without escalation. Because the completed statements of availability submitted with Arora's proposal "only pertain to starting salary" and Arora did not submit "proof" of its

long-term employment agreements, the Navy decided that Arora had not provided "convincing evidence that they will be able to retain the health care workers throughout the five year term of the contract without escalation." In essence, the evaluators gave no credence to Arora's statement that it had negotiated such agreements and determined not to credit the arrangement. As to Arora's statement that it would use G&A to provide either for recruitment or for bonuses, the evaluators characterized the proposed bonuses as "vague." More to the point, the evaluators were concerned that "[e]ven if all of the G&A pool was applied to health care worker bonuses it would only be sufficient to provide \$[deleted] per year to each health care worker . . . [which] is less than the range [deleted] percent] specified in the IGCE [independent government cost estimate]." In short, the Navy viewed what it believed to be Arora's total G&A of \$[deleted] per year for 10 workers to be inadequate to provide bonuses or incentives in any meaningful amount. The Navy concluded that without escalation over the 5-year period of performance, there was a risk that Arora would not be able to retain the healthcare workers, and staffing vacancies would jeopardize patient care by causing unacceptable delays and limiting the amount of care available. The Navy also concluded that the lack of salary escalation would have an effect on Arora's ability to recruit qualified substitutes, should replacements be needed.

We recognize that the agency has legitimate concerns about recruitment and retention problems during contract performance. Further, the protester's explanation of its plans to mitigate these concerns lacks the specificity generally required to meet an offeror's obligation to submit an adequately written proposal which provides sufficient information for the agency to evaluate. Infotec Dev. Inc, B-258198 et al., Dec. 27, 1994, 95-1 CPD ¶ 52 at 6. Nonetheless, here the agency failed to adequately evaluate the information which was presented by Arora and the agency's determination that the price realism concerns presented by Arora's proposal represented a significant risk of poor performance because of the omission of salary escalation over the 5-year contract term lacked a reasonable basis. In its BAFO, the protester provided explanations of two processes that it had implemented to address and mitigate possible turnover problems. The first was that it had negotiated long-term employment contracts. While the agency might have been more reassured had Arora provided copies of these contracts, we do not believe that it was reasonable for the agency to essentially ignore the possible impact of this approach simply because Arora did not provide copies of these agreements.

More importantly, Arora also proposed the use of money which it stated it had budgeted into its G&A costs to provide for recruitment of replacement employees or bonuses for retention of current ones. In its evaluation, the agency discounted the efficacy of such an approach to retaining employees primarily because it believed that Arora had proposed to pay nonspecific bonus amounts out of a total of \$[deleted] per year in G&A for all 10 employees. The Navy viewed the total available G&A as amounting to approximately \$[deleted] per year per employee,

which it assessed to be insufficient to provide meaningful incentives (the Navy did not question the use of the G&A budget for such incentives). During the course of the protest, the agency conceded that it had misunderstood and misevaluated Arora's proposed G&A, and that Arora had, in fact, proposed \$[deleted] in G&A per year for each employee.³ Presumably because that much larger amount would appear to be sufficient to include the payment of incentives of more than the [deleted] percent per year that the Navy believes necessary to retain employees, the Navy effectively abandoned its contemporaneous position that Arora's G&A budget was inadequate for the bonuses. Instead, the Navy now argues that it was reasonable for the agency to have concern about Arora's ability to retain qualified staff because the protester did not make a firm commitment to provide specific employee bonuses from its G&A budget.

The Navy's initial evaluation rationale was clearly unreasonable and of little value in supporting the agency's conclusion, since it was based on an analysis that a sum of money amounting to one-tenth of the actual amount proposed was inadequate to provide meaningful bonuses. We find unpersuasive the Navy's post-protest reliance on other reasons to continue to justify its finding that Arora's prices were unrealistic, since the protester proposed an amount of G&A funds that should be adequate to address the most consequential concern raised contemporaneously by the agency. Moreover, while we consider the entire record, including statements and arguments made in response to a protest in determining whether an agency's selection decision is supportable, we accord much greater weight to contemporaneous source selection materials rather than judgments, such as the reassessment made here in response to a protest contention. Dyncorp, 71 Comp. Gen. 129, 134 n.12 (1991), 91-2 CPD ¶ 575 at 7 n.13; Southwest Marine, Inc.; Am. Sys. Eng'g Corp., B-265865.3, B-265865.4, Jan. 23, 1996, 96-1 CPD ¶ 56 at 10. We afford the agency's post-protest justification diminished weight because it was prepared in the heat of an adversarial process and may not represent the fair and considered judgment of the agency, which is a prerequisite of a rational evaluation and source selection process. Boeing Sikorsky Aircraft Support, B-277263.2, B-277263.3, Sept. 29, 1997, 97-2 CPD ¶ 91 at 15. Accordingly, we conclude that the agency's assessment of the price realism of the protester's proposal was unreasonable and not supported by the record.⁴

³In its evaluation, the agency appears to have simply incorrectly used the amount of G&A which Arora proposed for each employee as the total G&A available for all 10 healthcare employees.

⁴We note, in this regard, that Arora's proposed salaries for all periods of performance were within the range the agency considered realistic, even if no bonuses were paid. While Arora's salary level was static, Arora's average salary was sufficiently high \$[deleted] that it remained well within the government
(continued...)

The protester also argues that the agency evaluation was improper because it made price realism a separate and determinative evaluation factor, when the RFP stated that price realism was to be part of the past performance evaluation. We agree. The RFP specifically provided, under the price evaluation factor, that a price realism analysis would be conducted and that any suspected unrealistic pricing which result in a suspected understatement of the costs or misunderstanding of the requirements would be addressed in the evaluation of the offeror's past performance. While the protester's proposal consistently received a rating of "Good" for past performance, the protester's failure to provide for salary escalation was considered to present a risk of nonperformance that the agency was not willing to accept. Clearly, the Navy did not evaluate price realism as provided for by the solicitation, that is, within the context of Arora's past performance rating, which the Navy rated as "Good." In this regard, the RFP provided for award to the offeror with the best combination of past performance and price. Arora received a "Good" rating on past performance, as did Saratoga, and proposed a price that was more than \$[deleted] lower than that proposed by Saratoga. Rather than making a tradeoff determination on the basis of these evaluations, as called for by the RFP, the agency business clearance memorandum states that "Arora was not considered for award due to the price realism concerns associated with their offer." In essence, the Navy ignored the stated evaluation criteria.

Accordingly, we sustain the protest. We recommend that the Navy consider whether the price realism evaluation should be included under the past performance criterion and, if not, that the agency revise the evaluation criteria accordingly and request another round of BAFOs from the competitive range offerors. If the Navy believes that the current evaluation criteria are appropriate, we recommend that the Navy reevaluate, under the past performance criterion, the protester's price realism in light of the correct G&A figures. If this reevaluation results in the protester's proposal being selected for award, we recommend that Saratoga's contract be terminated and award be made to the protester. We also recommend that the protester be reimbursed its costs of filing and pursuing its protest. Bid Protest

⁴(...continued)

independent market survey amounts even in the final contract year (when the survey amounts ranged from \$[deleted]). Arora's high proposed salaries are a further reason that we find that the agency lacked a reasonable basis to conclude that Arora's salary level was not sufficient to ensure its ability to recruit and retain skilled healthcare workers.

Regulations 4 C.F.R. § 21.8(d)(1) (1997). The protester should submit its certified claim for such costs, detailing the time expended and costs incurred, directly to the contracting agency within 60 days of receiving this decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained.

Comptroller General
of the United States