



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Cardinal Scientific, Inc.

File: B-270309

Date: February 12, 1996

Richard Martinez for the protester.

Michael Trovarelli, Esq., and J. Albert Calluso, Esq., Defense Logistics Agency, for the agency.

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

DIGEST

1. Agency's use of adjectival rather than numerical rating system in evaluation of proposals is appropriate and provides a rational basis for source selection.
2. In award of a firm, fixed-price contract, agency's price realism evaluation is unobjectionable where it is based on cost and price information submitted by the offerors which reasonably supports conclusion that offerors' proposed prices are realistic.
3. Where corporate experience/past performance evaluation criterion did not restrict offerors' submission of information concerning production of item identical to that solicited, agency properly evaluated as acceptable, similar experience of offeror which had not previously produced the identical item.

DECISION

Cardinal Scientific, Inc. (CSI) protests the award of a contract to Defiance Electronics Inc. under request for proposals (RFP) No. SPO200-95-R-8084, issued by the Defense Logistics Agency (DLA), for portable x-ray darkrooms. CSI contends that the RFP contained defective instructions and evaluation factors and challenges the agency's evaluation of proposals.

We deny the protest.

The RFP was issued on June 2, 1995, for a basic quantity of 202 portable x-ray darkrooms with an option for an additional 202 units. The units are designed as portable, light weight, rapidly assembled/disassembled darkrooms that provide a light-free environment for the processing of medical x-ray film within a modular, portable tent. The complete ensemble fits into a carrying case and includes a

tubular aluminum frame with covers, door flaps, safety light, and fan. The RFP called for the award of a firm, fixed-price contract to the offeror whose proposal represented the best value to the government.

The RFP identified the darkroom by its national stock number (NSN 6525-01-369-7178) and listed 22 salient characteristics which units were required to meet. The RFP instructed offerors to describe the item offered and how it failed to meet, met, or exceeded the specified salient characteristics. Offerors also were instructed to complete a checklist corresponding to the salient characteristics, identifying for each characteristic whether the item was compliant, non-compliant, or represented an alternate proposal. Pricing information was to be provided in a separate business proposal.

Proposals were to be evaluated on the basis of price and three factors (listed in descending order of importance): technical approach, management approach, and corporate experience/past performance. Technical factors were more important than price, but the RFP advised that as proposals became more equal in technical merit, price became more important.

While 30 potential offerors were solicited, only CSI and Defiance submitted proposals. A technical evaluation panel (TEP) reviewed the proposals, conducted discussions with the offerors, and obtained limited cost and pricing information from both. At the close of negotiations, the agency requested best and final offers (BAFO) from both offerors. The TEP evaluated the revised proposals and found both proposals to be acceptable overall. CSI had three strong points under management approach and past performance while Defiance had one strong point under management approach. Defiance's BAFO was \$894,658, approximately half as much as CSI's BAFO.

The contracting officer reviewed the technical and price evaluations and concluded that Defiance's proposal represented the best value to the government. She recognized that CSI's proposal contained more strong points than did Defiance's proposal and that technical considerations were more important than price. She concluded that CSI's technical advantages did not greatly exceed the technical advantages in Defiance's proposal and did not warrant the payment of the significant price premium associated with CSI's proposal; accordingly, she recommended that the source selection authority (SSA) select Defiance for award. The SSA approved the contracting officer's recommendation and, on October 11, DLA awarded Defiance the contract. This protest followed.

CSI argues that a number of solicitation instructions and evaluation factors are defective, ambiguous, or otherwise indefinite.¹ For example, CSI contends that the instructions concerning the technical proposal checklist were defective because they did not clearly set forth how offerors were to complete the checklist. The RFP listed 22 salient characteristics as well as provided a corresponding checklist on which offerors were required to identify the technical status (compliant, non-compliant, or an alternate proposal) of the proposed unit. The checklist only contained 18 places to describe a unit's technical status. Prior to submission of its proposal, CSI sought clarification and was advised by the agency to "determine the salient characteristics and assign the appropriate [technical] status". In CSI's view, requiring it to decide which characteristics were salient did not provide a clear foundation by which to compare and evaluate multiple offers. This contention is untimely filed as it concerns an alleged solicitation impropriety which CSI was required to raise prior to the closing time for receipt of proposals. Bid Protest Regulations, section 21.2(a)(1), 60 Fed. Reg. 40,737, 40,740 (Aug. 10, 1995) (to be codified at 4 C.F.R. § 21.2(a)(1)).²

CSI next contends that the agency improperly used adjectives to rate the proposals.³ The protester believes that only numerical scoring can properly distinguish among competing proposals. This is not the case. Whatever evaluation method is used

¹CSI's submissions raised numerous protest grounds. We have considered all of the protester's arguments concerning the solicitation, the agency's evaluation of the proposals, and its award determination and find that none has merit. Our decision addresses a representative selection of these grounds.

²Also untimely is CSI's contention that its unit should represent the minimum standard for technical acceptability. While the NSN identified by the agency is the same as that assigned to the protester's darkroom, the agency did not issue this solicitation on a brand name or equal basis. Rather, the salient characteristics of the unit were listed and offerors were invited to propose items meeting these characteristics or to propose alternate items. Any protest of this methodology had to be made prior to the closing time for receipt of proposals.

³In a related argument, CSI contends that it was improper to use "highly acceptable" as one of the scoring adjectives because offerors were instructed to identify how their units were compliant, non-compliant, or represented an alternate proposal. We find nothing improper in the agency's use of "highly acceptable" as a rating to denote proposal aspects which exceed the specifications. In this regard, section L of the RFP advised offerors to describe how each one's unit fails to meet, meets, or exceeds the specification salient characteristics. Since offerors were plainly invited to propose units exceeding the stated specifications, CSI's protest of this alleged solicitation impropriety is now untimely.

must give the selection authority a clear understanding of the relative merits of proposals; the use of adjectival rating schemes, supported as here by narrative assessments of the individual proposals, can reasonably convey a proper appreciation of the strengths and weaknesses of individual proposals. See Ferguson-Williams, Inc., 68 Comp. Gen. 25 (1988), 88-2 CPD ¶ 344. We have no basis to conclude that the evaluation scheme used here created any artificial equality of proposals; the record demonstrates that the adjectival scheme, in conjunction with the narrative assessments of individual proposals, provided a reasonable method for discerning the relative strengths and weaknesses perceived by the evaluators and a reasonable method for recognizing the advantages and disadvantages of award to one offeror as opposed to another. See Tennier Indus., Inc., B-252338, June 18, 1993, 93-1 CPD ¶ 471.

CSI also challenges the agency's price evaluation. The RFP provided that the agency would evaluate cost or pricing data or limited pricing information with the initial proposals or during discussions. The RFP also provided that the agency would evaluate proposals for realism, that is, as it relates to an offeror's demonstration that the proposed price provides an adequate reflection of the offeror's understanding of the requirements of the solicitation. Based on its experience with production and material costs for manufacture of portable darkrooms, CSI contends that the agency could not have properly evaluated the realism of Defiance's costs as reflected in the awardee's significantly lower proposed price.⁴

Generally, cost realism (a measurement of the likely cost of performance in a cost reimbursement contract) is not a factor in the evaluation of proposals when a fixed-price contract is to be awarded, since the government's liability is fixed, and the risk of cost escalation is borne by the contractor. PHP Healthcare Corp.; Sisters of Charity of the Incarnate Word, B-251799 *et al.*, May 4, 1993, 93-1 CPD ¶ 366. However, since the risk of poor performance when a contractor is forced to provide services at little or no profit is a legitimate concern in evaluating proposals, an agency in its discretion may, as it did here, provide for a price realism analysis in the solicitation of fixed-priced proposals. *Id.* The depth of an agency's price realism analysis is a matter within the sound exercise of the agency's discretion. See Family Realty, B-247772, July 6, 1992, 92-2 CPD ¶ 6.

⁴Although CSI appears concerned that Defiance's offer is unreasonably low priced, the submission of a below-cost offer is not itself legally objectionable. See H. Angelo & Co., Inc., B-244682.2, Oct. 30, 1991, 91-2 CPD ¶ 407. Whether a contract can be performed at the offered price is a matter of the offeror's responsibility, the determination of which we will not review absent circumstances not alleged here. Virginia Mfg. Co., Inc., B-241404, Feb. 4, 1991, 91-1 CPD ¶ 113.

Here, the agency was initially concerned with the significant price difference in the proposals. Accordingly, it requested and obtained limited cost and pricing information from both offerors. The information from Defiance detailed its labor, materials, burden, and profit for each unit to be produced. Based on her review of this material, the contracting officer concluded that Defiance had demonstrated that its expected costs and overhead would allow it to successfully perform the contract and achieve a reasonable profit. Our own review of this cost information discloses nothing objectionable or unreasonable. While the protester disagrees with the agency's conclusion, there is nothing in the record to indicate that the contracting officer's analysis or conclusions about Defiance's ability were erroneous. In this regard, we note that the technical evaluators were convinced from Defiance's proposal that it could successfully produce portable darkrooms meeting the agency's requirements. Our conclusion is not changed by the fact that the technical evaluators were unaware of the prices proposed by the offerors. The integrated evaluation of price and technical factors was performed by the contracting officer.⁵

CSI also contends that the agency's evaluation of Defiance's proposal under the corporate experience/past performance criterion was flawed. CSI argues that the section L instructions for this criterion required offerors to submit data on contracts "for the same item" performed in the last 3-year period. Since Defiance has not previously produced a portable darkroom, CSI argues that the awardee should have been rated "unacceptable" under this criterion.

Where an evaluation is challenged, we will examine the evaluation to ensure that it was reasonable and consistent with the evaluation criteria and applicable statutes and regulations, since the relative merit of competing proposals is primarily a matter of administrative discretion. Information Sys. & Networks Corp., 69 Comp. Gen. 284 (1990), 90-1 CPD ¶ 203. Our review of the record provides no basis for objecting to the agency's evaluation.

The agency takes the position that the corporate experience/past performance evaluation criterion did not require that offerors provide evidence of experience in manufacturing the exact item solicited in order to receive an "acceptable" rating. We agree. When the instructions in section L and the evaluation criteria in section M are considered together, it is plain that the agency intended to consider all experience, not just that concerning portable darkroom production.

⁵CSI also alleges that it was informed by agency personnel that the price evaluation was "incomplete." Whether one evaluator may have believed that additional price analysis was warranted is not material here. The record indicates that the contracting officer, who is responsible for determining whether the proposed price is fair and reasonable (Federal Acquisition Regulation § 15.805-2), was satisfied with the analysis.

Notwithstanding section L's language regarding prior "same item" contracts, the evaluation criterion encompasses all corporate experience/past performance and its first subfactor is entitled "similar work." In section M, the RFP provides detailed information on the extent of the evaluation and nowhere indicates that only experience in producing the same item will be considered. In this regard, it defines past experience as the offeror's record of conforming to specification/commercial product descriptions and to standards of good workmanship; adherence to contract schedules; and reputation for reasonable and cooperative behavior. It also provides that the evaluation will include consideration of past performance information obtained apart from that submitted by the offerors. Thus, offerors could submit, as did Defiance, and the agency could properly credit, information concerning "similar" contract performance.

Here, Defiance submitted information showing that it had successfully produced hundreds of units of portable medical equipment for use in a field environment. From this information, the evaluators could find that Defiance's past experience was relevant and indicated that the offeror could successfully produce portable field x-ray darkrooms. Thus, the evaluators reasonably rated Defiance's experience as "acceptable" under the similar work subfactor and "acceptable" overall for the experience evaluation criterion. CSI, with its directly relevant experience producing the darkrooms, was rated "highly acceptable" under the similar work subfactor and "acceptable" overall under the experience criterion. Since the RFP allowed for consideration of "similar" experience and Defiance's experience appears relevant, the agency's evaluation is unobjectionable. CSI's contentions to the contrary merely reflect disagreement with the agency's evaluation, which does not render the evaluation unreasonable. Litton Sys., Inc., B-237596.3, Aug. 8, 1990, 90-2 CPD ¶ 115.

The protest is denied.

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