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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

*M. J. Boyle
Proc I*

FILE: E-187057

DATE: February 8, 1977

MATTER OF: Dynallectron Corporation

DIGEST:

1. Protester's contention that RFQ's 70-percent minimum technical and management score requirement was applied discriminatorily to eliminate one offeror while successful offeror, with relatively similar technical and management scores, was not eliminated is without merit because eliminated offeror's proposed price was determined to be outside competitive price range resulting in elimination from competition.
2. Contention, made after award, that RFQ provision that any proposal scoring less than 70 percent in technical factors and 70 percent in management factors shall not be considered for award unduly restricted competition, is untimely under section 20.2(b)(1) of Bid Protest Procedures, since alleged impropriety was apparent prior to closing date for receipt of initial proposals.
3. Where RFQ's evaluation scheme indicated that management and technical excellence were of equal importance and both were more important than realistic price, agency's evaluation of best and final offers, which ignored 6 of 12 evaluation subfactors and increased the relative importance of price from an intended 30 percent to 50 percent, was improper.
4. Where RFQ's evaluation scheme (i.e., relative importance of technical and management factors and subfactors to each other and to realistic price) is adequately disclosed but not followed in evaluating best and final offers, it is recommended that agency reevaluate offers in accord with RFQ's evaluation scheme and, if offeror other than contractor submitted best evaluated offer, terminate for convenience awarded contract and make award to offeror that submitted best reevaluated offer if that other offeror agrees to accept award.

Dynallectron Corporation protests the award made by the Department of the Army to Federal Electric International, Inc. (FEI), under request for quotations No. DAEA18-76-Q-0071 (RFQ), issued by the

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U.S. Army Communications Command for the operation and maintenance of the Area Maintenance and Supply Facility--Europe. The successful offeror was to furnish all personnel and expertise required by the statement of work for 1 year on a cost-plus-award-fee basis. Although these services were previously accomplished by Government personnel and a Government developed manning structure was available setting forth certain skills and staffing levels, each offeror was expected to propose a manning scheme necessary to accomplish the work under a method it proposed.

The solicitation contained the following evaluation factors for award; the number in parentheses, not included in the solicitation, is the maximum possible raw numerical score for each factor and subfactor and the weight is in brackets.

"D.2 EVALUATION FACTORS FOR AWARD"

" * * * Factors are set forth in order of equal or decreasing importance, with factors one and two being of equal weight and subfactors A and B within factor one being of equal weight and subfactors B, C, and D, within factor two being of equal weight and subfactors B and C within factor three being of equal weight.

"1. TECHNICAL FACTORS: The offeror must provide a response to each of the following paragraphs as a basis for Government evaluation of his technical qualifications and cognizance within the field of service required. (4,000 points) [35]

"a. Demonstrate a recognition and understanding of the requirements. (1,250 points)

"b. Provide a concise description of your proposed approach for the organization and total operation of the services. This shall include the workload capabilities for each service. (1,250 points)

"c. Extent of offeror's experience in work similar to the requirement of this solicitation. (750 points)

"d. Provide the education and experience qualifications for technical personnel, including supervisors, regarding technical staffing. (750 points)

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"2. MANAGEMENT FACTORS: The offeror must respond to each of the factors listed below in order for the Government to evaluate the offeror's capability to perform the services. (4,000 points)
[35]

"a. Understanding of the scope and level of effort required. (1,500 points)

"b. Provide a delineation of the total staffing and a detailed phase-in plan. (800 points)

"c. Identify education, experience, and qualifications for personnel proposed for management positions. (800 points)

"d. Methods and procedures proposed to accomplish specific contract operations, such as effecting liaison with the Government, recruitment and retention of specialized personnel, meeting performance schedules, etc. (800 points)

"e. Position of Project Manager in the Company hierarchy and identification of his immediate supervisor in this hierarchy. (100 points)

"3. FINANCIAL FACTORS: The offeror's detailed cost proposal will be evaluated for: (4,000 points)
[30]

"a. Realism of Cost Data. (2,800 points)

"b. The reasonableness of the proposed fees. (ASPR 3-808) (600 points)

"c. Record of performance on Government contracts considering final cost to estimated cost. (600 points)

"NOTE NO. 1: Pursuant to ASPR 3-805.1 and 3-805.2, negotiations will be conducted only with those offerors whose proposals are determined to be responsive and within a competitive range, on the basis of both price and the evaluation factors set forth in paragraphs D.2.1 through D.2.3. above. Additionally, the

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Government reserves the right not to evaluate proposals pursuant to paragraphs D.2.1 through D.2.3 above, where the initial proposed price, to include base and fee, is determined to be outside of the competitive price range.

"NOTE NO. 2: Proposals evaluated pursuant to paragraphs D.2.1 through D.2.3 above will be scored by Government personnel. Any proposal score of less than 70% in Technical Factors and 70% in Management Factors shall not be considered for award nor will any discussion be held with that quoter relative to his proposal.

"NOTE NO. 3: Award will be made to that responsive, responsible offeror whose evaluated proposal is considered to be within a competitive range, and can perform the contract in the manner most advantageous to the Government, price and evaluation factors considered."

With respect to the manning tables provided by the Government, the solicitation stated that:

"NOTE: The manning figures in this attachment represent an estimate of number of personnel required for the Government to perform the services and include time required for the performance of military duties and training. Also Government personnel generally possess single rather than multiple skills. The manning level provided in this attachment should be considered as quantitative information and should not be considered as a required level."

Nine firms responded to the solicitation by April 12, 1976, the closing date. The nine proposals were scored by a Source Selection Evaluation Board (Board) against the evaluation factors quoted above including the Government's estimate on the number of personnel required. A Source Selection Advisory Council (Council) then weighted those raw scores using weights decided upon and formalized prior to receipt of proposals. Those weights, which were not known by the Board evaluators, were indicated above. A summary of the Council's evaluation follows:

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<u>Company</u>	<u>Technical</u>	<u>Management</u>	<u>Financial</u>	<u>Composite</u>
Dynallectron	76.5	84.4	80.3	80.4
Bendix	81.7	82.8	74.1	79.8
RCA	79.1	82.4	72.8	78.4
Lockheed	73.7	83.3	71.1	76.3
Aeroutronics	75.5	75.2	71.8	74.3
FBI	68.8	78.9	72.2	73.4
Kentron	69.5	76.8	71.5	72.7
JETS	38.2	62.9	67.6	55.7
Space Age	48.7	58.1	67.4	57.6

NOTE -- All numbers represent weighted scores as percent of maximum score in each category.

The Council's recommendations were made through the Program Manager to the Source Selection Authority as to those firms with whom negotiations should be conducted. The Council recommended that negotiations not be conducted with JETS and Space Age because they failed to demonstrate an acceptable degree of understanding of the work to be performed nor with Kentron because its proposed price, which was about \$2,000,000 higher than the next highest offeror, was too high. The Council recommended that all other offerors be included in the negotiations.

Negotiations were conducted from May 19 through June 3, 1976. After receipt of initial proposals and after evaluation by the Board and Council, but before negotiations, it became clear to the Government that the number of personnel presented in the solicitation (439 plus 4 for value engineering) could be reduced significantly if personnel of multiple skills were employed or if a different management system was utilized. In fact, the Army later estimated that the maximum number of personnel required was 356, that a reasonable number was 285, and that the minimum number would be 218. During the negotiations, the strengths and weaknesses of each offeror's proposal were discussed. For example, the Army made several suggestions which enabled Dynallectron in its best and final offer to reduce the number of personnel proposed at various maintenance and supply facilities by 5 percent. On the other hand, in FBI's best and final offer, the number of personnel proposed increased by 14 percent. A summary of best and final proposed manning levels, the percent change from initial offer, best and final proposed cost, and the percent change from initial offer follows:

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<u>Company</u>	<u>Technical</u>	<u>Management</u>	<u>Financial</u>	<u>Composite</u>
Dynallectron	304	-5	\$4.721	-0.7
RCA	288	-15	4.370	-21
Bendix	286	-35	3.861	-39
Lockheed	295	+1	3.804	+4
Aeronutronics	264	+2	3.716	-15
FEI	234	+14	2.940	+11

Best and final offers were evaluated by the Council, but not the Board, and they were not numerically scored as the initial offers were. In the Council's final report dated June 14, 1976, it concluded that all six offerors were considered fully qualified to perform the required work. The Council's primary concern about FEI's offer was the realism of the proposed manning level and the associated estimated costs. To evaluate the realism of FEI's manning level, the Council examined FEI's proposed organizational structure in detail by work center and compared the manning levels of other proposals to FEI's. The variations, when viewed together with FEI's proposed management scheme, were not considered substantial. The Council concluded that FEI fully understood the mission and its approach reflected a judicious use of resources. To review FEI's proposed manning level, the Council considered FEI's superior-to-worker ratio relative to other offerors and the application of FEI's mean-time-to-repair-factors to the projected workloads. Also, the Council considered FEI's confidence in its ability to perform as reflected in its proposal to receive only 50 percent of the award fee while operating at an 80-percent efficiency rate. After considering these factors, FEI's average cost per man, best and final cost estimate, fee schedule, and experience relative to other offerors, the Council recommended that award be made to FEI. The contract awarded to FEI on June 17, 1976, provided a 100-day phase-in period. Actual contract performance for 1 year was to commence on October 1, 1976.

Dynallectron protests the award to FEI contending that (1) the Army's failure to enforce the 70-percent minimum score requirement of the solicitation (Note No. 2, quoted above) was discriminatory, and (2) the Army used unpublished evaluation criteria, thus precluding fair and meaningful competition.

With regard to the first contention, Dynallectron argues that the 70-percent minimum score requirement of the solicitation was used to eliminate Kantron from negotiations and FEI, with relatively

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similar technical and management scores, was not eliminated. Also, Dynallectron argues that the inclusion of the 70-percent minimum score requirement in the solicitation unduly restricted competition because other firms may have been deterred by that requirement from submitting a proposal. In its report dated October 12, 1976, the Army recognizes that the use of predetermined cutoff scores in a solicitation to determine competitive range is not in accord with the Armed Services Procurement Regulation (ASPR) or the decision of our Office; however, the Army contends that such scores were not solely relied on to establish the competitive range for this procurement.

It appears that Kantron was not found to be in the competitive range—because based on Note No. 1, quoted above—its proposed price was determined to be outside the competitive price range. Moreover, Note No. 2 does not disqualify FEI from discussions and consideration for award where it scores less than 70 percent on only one of the two stipulated factors. Furthermore, Dynallectron's contention, made after award, that the inclusion of the 70-percent minimum score requirement in the solicitation unduly restricted competition is untimely under section 20.2(b)(1) of our Bid Protest Procedures, 4 C.F.R. § 20.2(b)(1) (1976), since the alleged impropriety was apparent prior to the closing date for receipt of initial proposals.

Dynallectron's second contention is essentially that the Army (1) failed to disclose the "average cost per man" and "supervisor-to-worker-ratio" evaluation factors in the RFQ, and (2) failed to follow the evaluation approach set forth in the RFQ. It is well settled that offerors must be advised of the relative importance of price to the other evaluation factors. See, e.g., Tracor, Inc., B-186315, November 8, 1976, 56 Comp. Gen. , 76-2 CPD 386. The RFQ advised that award would be to that responsive, responsible offeror whose evaluated proposal is considered to be within a competitive range, and who can perform in the manner most advantageous to the Government, price and evaluation factors considered. The RFQ established a scheme of evaluation factors to be used as the basis for award. The principal factors were technical and management factors of equal weight, subsequently revealed to be 35 percent each, and financial factors of lesser importance, subsequently revealed to be 30 percent. Unquestionably, the RFQ disclosed that price was the least important principal factor. We also note that

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the evaluation of initial proposals involving numerical scoring of RFQ evaluation factors and the application of weights to those factors resulting in their numerical rankings appear to be in accord with the evaluation approach of the RFQ.

We recognize that those initial numerical rankings lost most of their significance when the Army realized after such scoring that the Government manning suggestions and the independent Government cost estimate used to evaluate such offers were greatly overstated. In any event, such initial numerical rankings are not outcome determinative but merely guides for rational decision making. See Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 CPD 325. During negotiations, it appears that the Army advised each offeror separately and in detail where proposed manning levels could be reduced although the manning levels suggested in the RFQ were not revised.

When best and final offers were submitted on June 7, 1976, they were evaluated separately by the contracting officer, a price analyst, and the Council. The Board was not reconvened to score offers relative to the latest established Government ranges of acceptable manning levels.

The contracting officer's recommendation for award to FEI was contained in a memorandum dated June 9, 1976, which concludes as follows:

"Based on these factors the Contracting Officer has made a determination that the price proposed by FEI is fair and reasonable. Based upon the foregoing, the Contracting Officer has concluded that full and free competition was sought and obtained, that negotiations were fairly conducted with all quoters who met the minimum requirements, that they were all afforded equitable opportunities to submit best and final offers for the contemplated contract. Therefore, the Contracting Officer recommends that it is in the best interest of the Government to award a contract to Federal Electric International (FEI) and that such action will likely result in obtaining the requisite services at the lowest total cost and within the total estimates stated."

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The price analyst's memorandum, concurred with by the contracting officer on June 9, 1976, notes that the procurement was primarily a level of effort with the contractor required to provide competent personnel to perform a multitude of tasks. That memorandum concluded as follows:

"The procurement procedures utilized for determining the best offer from qualified firms for the ANSF-Europe level of effort as set forth in the Statement of Work resulted in [FEI] being the lowest offeror for estimated cost and profit, of the company's technically qualified, and interested in the proposed requirements. Based upon these factors the proposed estimated cost and fee of \$2,939,847 is considered to be 'Fair and Reasonable.'"

The Council's Final Report dated June 14, 1976, also recommended that FEI be selected for award. Pertinent parts of that report follow:

"5. In commencing its final analysis on 9 June, the [Council] realized that in view of the results of the negotiations all six offerors were considered fully qualified to perform this contract. To substantiate this realization the [Council] discussed the negotiations with the Contracting Officer, the technical member of the negotiating team, and the price analyst. The discussions addressed those essential features of each offer which affected capabilities to do the job, the satisfaction of the Government. The [Council] was convinced that all necessary considerations had been given to capabilities and that despite the ranges from low to high in manning and estimated costs, all technical requirements would be fully met by all six.

"6. * * * The [Council's] prime concern was related to the realism of proposed manning and the associated estimated costs. It is the [Council's] view that the most realistic manning pattern would show the best understanding of the job to be done.

"a. A study of the offerors' organizational structures was made to determine how the workforces were distributed in terms of personnel in the categories of supervisors, supervisor-worker, support, and direct worker. * * *

* * * * *

"(3) It is seen that FEI showed an acceptable ratio of supervisors to workers, as did some of the others. * * * This was a positive indicator in favor of continuing to consider staying with the low offeror, because it reflected an excellent balance in the workforce and a judicial use of worker-supervisor team leaders.

"b. In pursuit of another indicator the SSAC examined the organization structures in detail, by work center, to see where there were variations in manning concepts using the FEI manning as a basis for comparison. * * * The variations were not considered substantive by the [Council] except in the [MMCT-CE]. Here the range was from plus 2 to plus 28. * * * It plans to place ten teams at four dispersed locations in Germany, and to cover the area on a well-defined schedule. * * * The [Council] was convinced that FEI fully understands the MMCT-CE mission and that in view of its studies approach to the task, FEI could perform. The SSAC concluded that the range in variation was not substantive and, in fact, was in favor of FEI in that it reflected a judicious use of resources.

"c. Another indicator was the FEI confidence in its ability to perform. This is reflected in its desire to receive only approximately 50% of the award fee while operating at an 80% efficiency rate * * *.

"d. Lastly, with respect to indicators, the [Council] was impressed with the FEI Mean Time to Repair Factors (MTTR). This company applied its MTTR to the Government workloads to arrive at its manning level. * * *

"7. In view of the indicators and the evidence that FEI fully understands the job to be done, the [Council] concluded that the low offeror fully merited being selected for this award. Using a

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matrix of areas evaluated on an overall basis the [Council] ranked all of the offers. Values of from 1 (highest) to 6 (lowest) were given to: average cost per man, manning, best and final cost estimate, fee scheme, supervisor to worker ratio, and experience. The rankings based upon these evaluations are:

1. FEI
2. Aeronutronics
3. Bendix
4. Lockheed
5. RCA
6. Dynalactron" (Emphasis supplied.)

Citing 53 Comp. Gen. 800 (1974) and Iroquois Research Institute, B-184318, February 23, 1976, 76-1 CPD 123, the Army contends that relative weights of subcriteria--definitively descriptive of principal factors--need not be disclosed. Also, citing 51 Comp. Gen. 397 (1972), the Army contends that detailed subcriteria used in the evaluation need not be disclosed if they are sufficiently related to disclosed principal factors. The Army concludes that the six factors used by the Council were definitively descriptive and sufficiently related to the factors and subfactors in the RFQ such that offerors were adequately advised of the evaluation factors and their relative importance. Here the method of evaluating initial offers was considerably different than the method used to evaluate and rank best and final offers. In considering only the six factors listed, which unquestionably are related to subfactors 1(b), 1(c), 2(a), 2(b), 3(a), and 3(b) listed in the RFQ, the Council apparently ignored subfactors 1(a), 1(d), 2(c), 2(d), 2(e), and 3(c). Furthermore, by treating all six considered factors equally--three of which related to price--price rose from a relative importance of 30 percent to 50 percent. Thus, the Council departed from the weighting scheme selected initially and it departed from the RFQ's established relative importance of technical and management excellence to realistic price.

Accordingly, by letter of today we are recommending that the Secretary of the Army direct an immediate reevaluation of best and final offers in accord with all the evaluation factors listed in the RFQ and in accord with the RFQ's established relative importance of technical and management excellence to realistic price. If the reevaluation shows that FEI submitted the best evaluated offer, no further action is required. If, however, another offeror submitted the best evaluated offer and it agrees to accept the award, we are recommending that action be taken to terminate for convenience FEI's contract.

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Since our decision contains a recommendation for corrective action, we have furnished a copy to the congressional committees referenced in section 236 of the Legislative Reorganization Act of 1970, 31 U.S.C. § 1176 (1970), which requires the submission of written statements by the agency to the Committee on Government Operations and Appropriations concerning the action taken with respect to our recommendation.

R. F. Kille
Deputy Comptroller General
of the United States