

DOCUMENT RESUME

03003 - [A2073154]

[Protest against Technical Evaluation of Proposal]. B-188472.
July 20, 1977. 5 pp.

Decision re: Dynamic Science, Inc.; by Robert F. Keller, Deputy
Comptroller General.

Issue Area: Federal Procurement of Goods and Services (1900).

Contact: Office of the General Counsel: Procurement Law I.

Budget Function: National Defense: Department of Defense -
Procurement & Contracts (058).

Organization Concerned: Department of the Army: Army Air
Mobility Research and Development Laboratory, Ft. Eustis,
VA.

Authority: 55 Comp. Gen. 432. B-187630 (1977). B-183379 (1975).

Protester claimed that the agency's evaluation of their
proposal was biased and arbitrary. Protester did not answer the
technical needs of the solicitation so their exclusion from the
technical competitive range was reasonable. Alleged bias in
evaluation was unsupported by evidence; the bidder's technical
deficiencies presented a high risk for timely completion of the
work. The protest was denied. (Author/DJM)

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DECISION



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

FILE: B-188472

DATE: July 20, 1977

MATTER OF: Dynamic Science, Inc.

DIGEST:

1. Although the determination of whether proposal is within competitive range is primarily matter of administrative discretion, GAO will scrutinize closely decision to leave only one offeror within competitive range.
2. Exclusion of proposal from technical competitive range is reasonable where proposed program will not satisfy technical objectives of RFP and presents relatively high risk for timely completion, even though only one offeror remains in competitive range.
3. Consistency of point rating scores does not support allegation of biased evaluation where other interpretations are possible and other proposals exhibit similar range of ratings.

Dynamic Science, Inc. (DSI), protests the decision of the United States Army Air Mobility Research and Development Laboratory, Eustis Directorate, Fort Eustis, Virginia, not to negotiate with DSI under request for quotations (RFQ) DAAJ02-76-Q-0190. Since this is a negotiated procurement and award of a contract has been withheld pending our decision on this protest, our recitation of the facts will be limited.

The RFQ was issued on November 19, 1976, seeking proposals for the updating of a technical aviation safety publication, the "Crash Survival Design Guide," pertaining to the crashworthy design of rotary wing aircraft. The principal purpose of the procurement was to incorporate into the Guide the technological advances and improved design criteria reflective of the current state of the art since the last revision of the Guide in 1971. Proposals were reviewed by a Technical Evaluation Committee (TEC) and a Financial and Management Evaluation Committee. Each of the prospective contractors was considered to be financially and managerially acceptable. The TEC, however, determined that only one of the proposals submitted was technically acceptable and recommended that negotiations be conducted with only that offeror.

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The TEC findings were reviewed independently by a Procurement Advisory Board (PAB) established in response to contentions by the Acting Chief, Military Operations Technical Division, that negotiations should be conducted with all offerors. The PAB sustained the TEC findings and found no evidence of appreciable bias in the TEC evaluation. The PAB also recommended that negotiations be conducted with only one firm. The contracting officer adopted the recommendations of the TEC and PAB and determined that only one proposer was within the competitive range.

By letter dated February 15, 1977, the contracting officer advised DSI that it had been determined to be outside of the competitive range and that no negotiations would be conducted with it. DSI protests its exclusion from the competitive range and contends that the agency's evaluation of its proposal was biased and arbitrary.

We have held that the determination of whether a proposal is within the competitive range, particularly with respect to technical considerations, is primarily a matter of administrative discretion. We will not disturb such a determination absent a clear showing that it lacked a reasonable basis. Free State Contractors Association, Inc., B-187630, March 10, 1977, 77-1 CPD 180; Donald N. Humphries & Associates, et. al., 55 Comp. Gen. 432 (1975), 75-2 CPD 275. However, a decision to include only one offeror within the competitive range is subject to close scrutiny by our Office. As we stated in Comtcon-Comress, B-183379, June 30, 1975, 75-1 CPD 400:

"Determinations by contracting agencies that leave only one proposal within the competitive range are closely scrutinized by our Office. If there is a close question of acceptability; if there is an opportunity for significant cost savings; if the inadequacies of the solicitation contributed to the technical deficiency of the proposal; if the informational deficiency could be reasonably corrected by relatively limited discussions, then inclusion of the proposal in the competitive range and discussions are in order * * *."

For the reasons stated below, however, we are of the opinion that DSI's proposal falls short of these criteria and that the contracting officer did not act unreasonably in excluding DSI from the competitive range.

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We note at the outset that DSI's protest is based in part on an apparent misunderstanding of the point rating system applied to this procurement. DSI objects to the points it was awarded by the TEC in each of several evaluation categories and seeks through correction to be awarded the maximum possible points in these areas. It appears to be DSI's belief that each offeror is initially awarded the maximum obtainable point score and that deductions are made only for deficiencies. The record shows, however, that each proposal was rated in each evaluation category utilizing a 10-point scale ranging from 0 (nonresponsive) through 5 (adequate; generally meets minimum requirements) to 10 (outstanding; comprehensive and complete in all details; exceeds all requirements and objectives). Consequently, a proposal with no outstanding deficiencies but which only marginally meets the minimum requirements of the RFQ might reasonably be awarded 4 to 5 points in a specific category rather than the maximum of 10 points. We note parenthetically that no proposal was awarded the full 10 points in any evaluation category.

The RFQ clearly established the primacy of the technical evaluation and set forth three principal areas for consideration (stated here in order of priority): adequacy of technical approach; bidder's qualifications and capability; and general quality and responsiveness of the proposal. The TEC evaluation of DSI's proposal found deficiencies in each of three major categories. We will comment only on the most important.

A key area of disagreement between DSI and the agency is DSI's rating for "Qualifications and Experience of Personnel Proposed for the Program and the Percentage of Time Each will Devote to the Effort," a subfactor of bidder qualifications and capability. DSI asserts that the proposed project manager is highly qualified by virtue of his experience with prior revisions of the Design Guide. The agency, however, states that the proposed program manager's resume shows no engineering education or recent helicopter crashworthiness experience and indicates that his experience with prior revisions of the Guide was as a technical editor rather than a contributing technical or engineering specialist. The TEC summary reflects the committee's determination that the proposed program manager " * * * is not highly qualified in the areas of R&D necessary to this program," although he was considered an excellent editor. The TEC also expressed concern that the hours of technical effort proposed to be performed by DSI's technical committee (consultants) were not broken down into specific duties by individual nor by hours per individual. The TEC also concluded that some of the committee members were not experienced in crashworthiness on the basis of the resumes accompanying DSI's proposal.

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Our review of the personnel-related documents in DSI's proposal supports the views expressed by the agency. In these circumstances, we do not consider DSI's rating to be unreasonable.

The TEC also questioned the adequacy of DSI's proposed technical approach. The four subfactors within this category were:

- a. Depth and reasonableness of data collection procedures.
- b. Data analysis techniques.
- c. Criteria selection methodology.
- d. Scope and depth of tentative additions, deletions, or revisions to the Design Guide.

The evaluation reflects that DSI's lowest rating was under subcriteria "d" above. In this connection, we note that the approach generally taken in DSI's proposal was to highlight those portions of the text of the last issue of the Guide which stated that there was a necessity for further research or study and to suggest possible sources which might offer insight into those specific areas. The RFQ, however, contemplated the inclusion of a statement of the "Scope and depth of tentative additions, deletions, or revisions, and the rationale upon which the bidder bases his recommendation for Design Guide content and format * * *," as required by a note incorporated in the specifications and as stated in the evaluation criteria. The TEC noted that DSI failed to identify any of the several areas where the current Design Guide is known to be in error. On the other hand, a proposed format change was considered a strong point. On balance, we consider the record to support reasonably the rating given DSI for this subfactor.

DSI's proposed data analysis technique was also the subject of negative comment. The RFQ required contact with related agencies in the context of the "* * * research of state-of-the-art technology." The TEC was of the opinion, however, that DSI proposed to rely heavily upon such contacts to obtain and utilize assistance from Federal agencies in evaluating the 300-500 documents and reports which would form the basis for the Design Guide revision. The evaluators considered this expectation of assistance an unwarranted assumption by DSI. DSI contests this interpretation of its proposal.

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We have carefully read the draft contact letters and related materials in DSI's proposal. We think they are reasonably susceptible to the interpretation placed on them by the TEC.

DSI also contends that the consistency of the ratings assigned to its proposal provides evidence of bias. We do not agree. The range of ratings on each subfactor within DSI's proposal by each of the TEC members is more consistent with the interpretation that each of the members had a similar opinion of DSI's proposal. We are mindful also that each of the other proposals exhibited a similar range of ratings. We do not consider this evidence of prejudice.

We find no evidence of bias in the evaluation of the above subfactors, or of others not treated here. In each instance the record reasonably supports the rating assigned by the TEC. Furthermore, in view of the nature of the technical deficiencies, we are unable to disagree with the conclusion expressed by the TEC and PAB that DSI's proposed program would not satisfy the technical objectives of the RFQ and presented a relatively high risk for timely completion of the work.

We do not consider DSI's exclusion from the competitive range to be unreasonable in these circumstances. The protest is denied.


Deputy Comptroller General
of the United States