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DECISION

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

FILE: B-195858

DATE: May 20, 1980

MATTER OF: PRC Energy Analysis Company

DIGEST:

1. *Protest Alleging* Allegation that agency improperly evaluated proposal due to failure to understand merit of proposal is not supported by record which shows agency properly evaluated proposal based in part on agency disagreement with proposed technical approach concerning role of project manager.
2. Allegation that evaluation was inconsistent with RFP due to: (1) failure to give proper weight to portion of proposal; and (2) use of undisclosed evaluation criteria is not supported by record.
3. Allegation that discussions were not meaningful is not supported by evidence sufficient to substantiate allegation where agency reports that questions were asked specifically addressing significant technical deficiencies in proposal.

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PRC Energy Analysis Company (PRC) protests the award of a cost reimbursement contract to Booz, Allen & Hamilton, Inc. (BAH), under request for proposals (RFP) No. DE-RP01-79CS30047 issued by the Office of Solar Applications (OSA), Department of Energy (DOE), for engineering and management support services. PRC was the incumbent contractor.

PRC contends: (1) DOE did not understand the merit of PRC's offer; (2) the evaluation procedure was inconsistent with the RFP; (3) DOE failed to conduct meaningful discussions by not advising PRC of

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perceived weaknesses in its proposal; and (4) as a consequence of the failure to conduct meaningful discussions, PRC was denied an opportunity to submit a true best and final offer (B&FO). PRC requests termination of BAH's contract and award to PRC following further evaluation and negotiation.

We are denying the protest since the record does not substantiate the PRC contentions.

BACKGROUND

The Requirement

The RFP calls for an estimated 116,000 man-hours to back up DOE efforts in the general areas of solar technologies, new product commercialization, and energy issues. It seeks a contractor organized to quickly and consistently provide DOE with highly skilled personnel (and/or their work product) on an "as required" basis. The contract is for 1 year with options for two additional 1-year periods.

Evaluation Criteria

The RFP stated that evaluation would be in accordance with the Energy Research & Development Administration's Source Evaluation Board (SEB) Handbook, June 1977 (Handbook) in three areas: (1) technical; (2) business/management; and (3) cost--designated Parts II, III, and IV, respectively. The technical evaluation would assess the relative merits of a proposal; the business/management evaluation would determine the offeror's performance potential; and the cost evaluation would weigh the realism and reasonableness of the proposed costs and aid in determining the offeror's understanding and approach.

The SEB established the following weights to the RFP's technical evaluation criteria:

"Project Management		45
a. Organization Structure	* * *	
b. Project Planning and Control	* * *	
c. Personnel Management	* * *	
Personnel Qualifications and Ability		30
a. Staffing Plan	* * *	
b. Key Personnel Qualifications	* * *	
c. Support Personnel	* * *	
Corporate Qualifications		15
a. Corporate Experience	* * *	
b. Other Corporate Resources	* * *	
Understanding of Requirement		10
	TOTAL	100"

Although the RFP did not disclose the weights, it did explicitly advise what was encompassed within each criterion and the relative importance. Part II would be point-scored. Part III would be "evaluated"; its relative importance was "approximately one-half of the Technical Proposal [Part II]." Offerors were advised that while the Cost Proposal (Part IV) was a significant factor, its relative importance was less than technical and business/management.

The Project Management criteria emphasized the role of the Project Manager (PM). For example, the Organization Structure subcriterion sought a full description of the PM's decision-making authority, relationship to resources, authority over interdepartmental work transfers and subcontracts, and procedure to obtain "decisions beyond his authority and [process used] in resolving priority conflicts for resources not under direct control." The Project Planning and Control subcriterion required offerors to show "corporate structure and lines of authority to the * * * [PM]." It also required the offeror to "demonstrate his ability to respond in a timely fashion to Task Assignments."

The role of the PM was also to be evaluated in the Personnel Qualifications and Ability criteria under the Key Personnel Qualifications subcriterion. The PM, among others, was considered critical to the procurement, and information concerning such key personnel would be derived from the proposals, reference checks and the information presented at oral discussions.

Initial SEB Evaluation

The SEB determined that four offers were within the competitive range. The SEB was favorably impressed with BAH's PM ("* * * a corporate Vice President who can bind the firms contractually, hire and fire, make on-the-spot decisions"), and BAH's discussion of its system of personnel management ("* * * a text book treatise on good personnel management concepts"). The SEB noted that PRC's PM reported directly to a Vice President. While it was noted that PRC's proposed Steering Committee (consisting of senior PRC and sub-contractor officials) "could be an asset," the SEB expressed reservations in two regards: (1) the use of an Executive Assistant to the Vice President as a "sounding board" for the PM was viewed as "superfluous"; and (2) the presence of the Executive Assistant and the Steering Committee casts doubt on the amount of actual control the PM would exercise. The SEB favorably evaluated PRC's presentation of its personnel management program.

Discussions

Accompanying the invitations to oral discussions were "mock task assignments." All offerors received the same mock task. Each offeror was allotted 2 hours in which its designated PM presented the technical proposal, resolved the mock task (15 minutes), and answered the SEB's extemporaneous questions on all parts of the proposals.

At the end of oral discussions, each offeror received several general, and several "offeror-specific," written questions. Each offeror was required to furnish a written

response to the questions along with any proposal revisions by an established common cutoff date.

Final SEB Evaluation

After reviewing the answers and the revised proposals, the SEB established the following final ranking:

<u>Firm</u>	<u>Initial Technical Score</u>	<u>Final Technical Score</u>	<u>Change +/-</u>	<u>3-Yr. Probable Cost</u>
1. BAH	771	857	+ 86	\$10,732,185
2. PRC	676	704	+ 28	8,841,365
3. Franklin Research Center	755	652	-103	9,583,796
4. Stone & Webster Engineering Corporation	401	606	+205	13,724,446

The SEB continued to note the strengths of BAH's PM and other key staff as compared to PRC's.

Selection

The Source Selection Official (SSO) selected BAH for negotiations after the SEB presented its report, notwithstanding the cost differential. The SSO concurred with the SEB's assessment of the strong position of BAH's PM and the experience of BAH's other key personnel as well as BAH's strong discussion of personnel management concepts which the SSO found to "evidence a well defined ability to manage the number of people required for the proposed contractual effort."

The SSO concurred in the SEB's concerns relative to the possibility that PRC's Executive Assistant might be superfluous in the role of "sounding board" to the PM. The SSO saw weakness in the position of PRC's PM because of a lack of ultimate control over the project and staffing

changes. Other SSO concerns were: (1) a weakness in solar-related experience among key PRC personnel as compared to the experience of BAH's key personnel; and (2) what was perceived as a lack of understanding of the market development aspects of the commercialization process.

TIMELINESS

DOE and BAH have argued that PRC's protest is substantially untimely for failure to protest solicitation improprieties prior to the two closing dates. As the following indicates, the thrust of the PRC's protest is the manner in which DOE evaluated the proposals and conducted discussions. We therefore believe the protest to be timely since PRC was unaware of the bases of protest until DOE debriefing after selection.

PRC'S PROTEST

1. SEB failure to understand the merits of PRC's Parts II, III, & IV proposals.

PRC believes that DOE's concern as to the role of PRC's PM stems from a misunderstanding of common management principles as follows. There is no basis for the SEB's observation that the PM "* * *" does not appear to have total control over the project" in view of the statement in its proposal that:

"The * * * [PM] will also be the principal point of contact with OSA and will have authority to commit the company on matters within the scope of the project."

Requiring the PM to obtain the concurrence of the Vice President for hiring and firing of personnel is part of its organizational system of "checks and balances"; the Vice President's concurrence is limited to situations involving senior-level personnel. The SEB was advised during the oral presentation that its PM could fire personnel "from the project" (emphasis in original), but not from the corporation; this policy has been followed for 25 years. This check on the PM is consistent with Government regulations "concerning affirmative

action, EEOC considerations, and other non-discriminatory actions in the hiring and firing of personnel."

The SEB characterizations of its proposed Steering Committee and Executive Assistant as "mechanisms to bolster the role of a * * * [PM]" reflect a lack of understanding. Although PRC was advised at its debriefing that the Steering Committee was "superfluous," the committee was only to be made available to DOE on an "as desired" basis.

The Executive Assistant is part of "a long-used PRC management principle assigned to senior-level PRC managers as part of our 'check and balance' system." The Executive Assistant checks "personnel performance and adherence to the long range project goals." PRC thinks this function important because of the problem of long-term support services contracts degrading into personal services contracts.

PRC does not understand how its key personnel could be seen as "weak in solar related experience" in view of previous work for OSA on the original contract and the sole-source follow-on contract. PRC also objects to the SEB's observation that PRC's proposed personnel, while good, were not as good as BAH's in "market development." In PRC's opinion, "market development" was not so significant to justify the discrepancy between PRC's and BAH's technical scores. PRC challenges the SEB remarks that its proposal "did not exhibit an understanding of the market development aspects of the commercialization process."

Finally, PRC doubts that DOE realized the merit of its low cost. PRC believes that DOE ought to have compared and rationalized the differences between its proposed costs and those of BAH in view of the Statement of Work (SOW) and accounting for PRC's incumbency.

We see no merit in the above contentions.

The RFP clearly indicated the importance placed by DOE on the PM's role. While BAH's proposal assigned the role to a Vice President, PRC's proposal assigned the role to a subordinate of PRC's Vice President. The role of PRC's PM was further "checked" in two regards.

First, PRC's proposed Executive Assistant was to:
(1) have "special responsibility for project overview" reporting independently to PRC's Vice President; and
(2) "interface with senior DOE OSA personnel on a regular basis." Second, PRC's proposed Steering Committee, containing PRC's President, among others, was to review the program once each month and outline actions that PRC's PM would implement under "the overall supervision" of PRC's Vice President. Bearing in mind that it is not our function to independently evaluate PRC's proposal, The Ohio State University Research Foundation, B-190530, January 11, 1979, 79-1 CPD 15, the record only shows strong disagreement between DOE and PRC over the degree of check an organization should appropriately exercise over its PM, DOE favoring less restraint for the performance of this contract. In our opinion, it raises no basis upon which to conclude that DOE failed to understand the role of PRC's PM or that DOE improperly evaluated this aspect of PRC's proposal. As to PRC's claim that BAH's PM was similarly "checked," BAH proposed three committees. Two of the three consist of the PM's subordinates. The third committee, while similar to PRC's Steering Committee in that it contained a Senior Vice President (presumably organizationally superior to the PM - Vice President), differed significantly in that it only met at the call of the PM.

Turning to PRC's assertions regarding the solar-related and market development experience of its key personnel and PRC's overall understanding of the market development aspects of the commercialization process, the SEB expressed concern in these areas during initial evaluation. One aspect of the mock task assignment required offerors to:

"Consider the product development sequence used by industry to develop testing and marketing of new products."

The record shows that PRC's "oral presentation essentially confirmed the * * * [SEB's] evaluation of the proposal." It is DOE's position that PRC's personnel are qualified. However, DOE reports that PRC's personnel qualifications were weak in comparison to BAH's personnel qualifications.

We cannot find that DOE misunderstood the nature of PRC's key personnel and/or their solar-related and market development experience.

Finally, we find no merit to PRC's contention that DOE paid insufficient attention to its Part IV proposal. This contention evolves from the RFP statement that each Part IV proposal will be evaluated to determine "cost realism, reasonableness, the probable cost to the Government, understanding the magnitude of effort, as well as being the basis for any cost negotiation * * *." Initially, PRC alleged that DOE failed to analyze relative fee arrangements and/or overhead structures. PRC argued that the SSO's determination that BAH's proposed cost was reasonable was "essentially incorrect under the circumstances and could not have been reached by measurement against objective criteria." DOE's report shows it conducted an essentially mathematical analysis of the Part IV proposals as well as DOE's continuing awareness that PRC's probable cost for 3 years was lowest of all the offers received. Moreover, DOE reports that it (1) reviewed all proposals for compliance with RFP cost requirements; (2) compared the rates proposed against in-house information; (3) assessed reasonableness of proposed costs against each offeror's own accounting system; and (4) reviewed the overhead, G&A bases, and expense pools of each offeror. DOE also arrayed proposals by cost element, labor rates, overhead and G&A rates, escalation rates, and fees. Cost questions were asked of each offeror during oral and written discussions. Following receipt of the revised cost proposals, another cost evaluation was performed. DOE found that the differences in the respective cost proposals were attributable to labor rates and overhead and G&A rates. The rate differences in turn resulted from the offerors' different compensation and accounting systems.

PRC's response to this shifted the emphasis from DOE's alleged failure to make an objective determination to DOE's alleged failure to compare the SOW to the proposed costs, arguing that a valid assessment of "cost realism" requires such a comparison. PRC appears to believe that whenever an incumbent's lower cost offer

is found to be within the competitive range, the Government is obligated to review the SOW in conjunction with the proposed costs since the incumbent, with real cost experience in performing the SOW, is presumed to offer realistic costs. DOE disagrees with PRC taking the position that it was only necessary to compare the rates of the respective offerors since each offer was premised on the RFP's preset mix of skill, labor hours, travel, reproduction, and computer support. DOE reports that the SOW is only a representation of what may ultimately be required in actual support and there is no other basis upon which to found an offer. Consequently, DOE takes the position that:

"* * * the cost proposed by any offeror, for a support services contract, is a direct result of an offer supplying its company's rates to the Government's requirement for a specific labor skill mix and labor hours."

We agree with DOE's analysis. In our opinion, what PRC is arguing would not impact adversely on the validity of DOE's cost comparison since the consequence of PRC's position only establishes that PRC's cost was substantially less than BAH's, which DOE found to be the case. In any event, the RFP clearly stated that, while significant, the Cost Proposal was less significant than the Technical and Business/Management proposals.

2. Evaluation Procedure Inconsistent with RFP.

PRC contends that: DOE failed to weigh the Part III proposals in accordance with the RFP, or evaluate critical elements of the Part III proposals. Also, DOE allegedly utilized undisclosed evaluation criteria in evaluating the proposals.

The RFP provided that Part III was to be evaluated with a relative importance of one-half of Part II which was point-scored. Interpreting the words "relative importance" to mean "relative weight," PRC argues that,

although the criteria composing the Part III proposal are not to be point-scored, the Part III proposal, as a whole, is to be. Thus, PRC argues, DOE's failure to weigh the Part III proposal results in ignoring PRC's unsurpassed past performance (subcriteria No. 4) and its outstanding small business and small-disadvantaged business subcontracting performance (subcriteria No. 7).

DOE used an adjectival rating system set out in the Handbook for the Part III proposals. All offers were determined to be "satisfactory" throughout the evaluation and selection process. DOE argues that all offerors were on notice that the Part III proposals would not be point-scored and that this fact is clearly spelled out in the Handbook which is incorporated by reference into the RFP. Our review of the SEB's report shows that a separate analysis was made of each offeror's business/management proposal and that under the category, "Additional Considerations for Offerors in Competitive Range," it was noted that PRC would place 18 percent of its effort with small business; whereas, BAH did not propose any significant subcontracts with small business. PRC thinks it "mathematically impossible for both bidders to have scored so closely that both were merely 'satisfactory.'" It appears that the differences which did exist between the business/management proposals were not considered by DOE to be of such magnitude as to distinguish one proposal from the others. In addition, various business/management aspects were considered in the technical evaluation. The RFP recognized that portions of the Part II proposals would necessarily be duplicative of portions of the Part III proposals. Approximately half of Part III subject matter is duplicative of Part II.

We therefore find that DOE's evaluation was consistent with the RFP and have no basis to question the DOE conclusion that all offerors had exhibited satisfactory Part III performance potentials. We also find no inconsistency between DOE's use of an adjectival rating and the RFP's representation that Part III had a relative importance equal to one-half of Part II's importance. Consequently, we find no merit to this PRC objection.

PRC's principal objection to DOE's alleged use of undisclosed evaluation criteria involves the mock task. PRC objects to the use of and emphasis placed on the mock task in that "There is no mention in the RFP of the requirement or the criteria for evaluating mock tasks," and there was no indicia of its significance. PRC also believes that the subject matter of the mock task excessively favored BAH. PRC saw the mock task merely as a point of departure for oral discussions.

DOE reports that it designed the mock task as a "generic, mainstream" assignment so that all offerors would be able to respond. DOE used the task to observe the reactions of the various offerors to the contract work. The presentations were neither point-scored nor adjectivally rated. However, DOE reports that the presentations affected the SEB's overall perception of each offeror in light of the evaluation criteria. For example, the SEB's chairman found BAH's presentation to be "superlative." On the other hand, "PRC's treatment of the mock task assignment can be described as pedestrian."

We believe PRC's challenge of DOE's evaluation of the mock task is without merit for two reasons: (1) the RFP required a demonstration of the PM's ability to timely respond to task assignments and, in our view, the mock task constitutes such a demonstration; and (2) the Part II evaluation criteria, designed to evaluate the power and ability of the PM to command required resources, are, in our opinion, applicable to the assessment of the mock task. We have taken the position that even though agencies are required to identify major evaluation factors, they are not required to explicitly identify the various aspects of each factor which might be taken into account. Checchi and Company, 56 Comp. Gen. 473 (1977), 77-1 CPD 232.

As to the mock task's subject matter allegedly favoring BAH, DOE reports that BAH has a contract for computer modeling for solar incentives and that it was modified in July 1979 to provide for work involving solar heating and cooling systems. However, DOE also points out that the mock task included neither modeling nor analysis and that BAH's contract does not include any product development work as the mock task required.

DOE notes that PRC, as incumbent, "knows more about OSA than anyone else outside the Government." DOE further notes that PRC has itself performed subtasks with titles such as: "Solar International Commercialization Planning"; "Evaluate Standards for Solar Systems"; "Evaluate Demonstration Project Solar System Performance"; and "Analysis of Solar Heating and Cooling for Commercial Buildings."

In view of the above, we see no validity to PRC's claim that DOE used undisclosed evaluation criteria.

3. Failure to Conduct Meaningful Discussions.

PRC urges that DOE failed to conduct meaningful discussions by not advising PRC of perceived weaknesses in its proposal. It is PRC's position that since there were many areas of PRC's proposal "where DOE either misunderstood or was in error in its evaluation," DOE was obliged to ask PRC "significant technical questions" during the oral and written discussions. PRC states that "no significant technical questions were ever posed at the oral discussions."

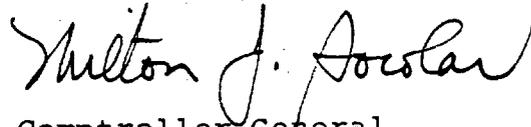
DOE agrees that meaningful discussions usually require advising offerors of deficiencies. Here, DOE reports that the SEB raised technical questions during the oral discussions which treated PRC's deficiencies in proposed project organization and the role of the PM--two significant technical areas where BAH outscored PRC. We note PRC's revised technical proposal contained a general discussion of the PM's role, this together with DOE's assertion that significant technical questions were posed to PRC and in the absence of any information or evidence other than PRC's assertion to the contrary, we can only conclude that PRC has failed to substantiate its case. Kurz-Kasch, Inc., B-192604, September 8, 1978, 78-2 CPD 181.

4. Denial of Opportunity to Submit Best and Final Offer.

PRC's argument here assumes that there were no meaningful discussions. In view of our conclusion immediately above, we find that PRC was afforded an equal and meaningful opportunity to submit a B&FO.

CONCLUSION

The protest is denied.

A handwritten signature in cursive script that reads "Milton J. Fowler".

For the Comptroller General
of the United States