

DECISION

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

WELSHOFF
R2-II

29752

FILE: B-215348

DATE: November 6, 1984

MATTER OF: New Mexico State University/Physical
Science Laboratory

DIGEST:

1. RFP "Cost" evaluation factor, worth 15 of 100 points, does not involve an evaluation of actual cost quantum where it is expressly defined to include only cost realism and comparison with the government estimate, and the RFP has a "Best Buy" provision stating that the selection decision will depend on whether differences in proposal merit are worth any added cost. The "Best Buy" provision essentially establishes that cost quantum is as important in the selection as the numerical ratings of proposals.
2. A source selection official's judgment as to the merits of competing proposals is not unreasonable only because it differs from the evaluation panel's, since selection officials are not bound by evaluators' numerical scoring or recommendations, although their use of the results of technical and cost evaluations must be reasonable and consistent with the stated evaluation factors.

New Mexico State University/Physical Science Laboratory (the University) protests the Army's proposed award of a contract under request for proposals No. DAAD07-84-R-0005 to Raytheon Service Corporation. The White Sands Missile Range in New Mexico issued the solicitation to obtain investigative support services, on a cost-plus-fixed fee basis, for projects involving special electromagnetic interference (SEMI) of missiles. The University, which is the incumbent contractor, basically argues that the contracting officer failed to adhere to the evaluation scheme set forth in the solicitation. The University also alleges that the contracting agency improperly found Raytheon Service's proposal technically acceptable based on its proposing to

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employ the University's current personnel, and on the qualities of Raytheon Service's parent company, Raytheon Company.

We deny the protest.

I. BACKGROUND:

A) The Solicitation

The solicitation identified the following three major evaluation criteria and their approximate respective weights:

Technical	3/5
Management	1/4
Cost Realism	1/6

The Technical and Management criteria encompassed several listed factors under which, the solicitation advised, a technical review panel would rate the proposals. These factors placed great emphasis on the experience and qualifications of proposed personnel. For example, the single most important Technical factor involved the offeror's "knowledge and capabilities in electronic warfare, SEMI vulnerability assessments and electromagnetics coupling analysis." Other Technical factors included the offeror's first hand experience or the potential to develop the required experience in the field of SEMI investigations and the offeror's proposed use of "personnel with the required technical skill and experience" to accomplish the contract projects. Under the Management criterion, the solicitation stated that the contracting activity would evaluate resumes for key management, supervisory and professional personnel and the extent to which a proposal indicated previous experience in related work.

The Cost criterion contained only two factors, cost realism and consistency with the government estimate.

The solicitation advised that proposals would receive numerical ratings for each of the evaluation factors, and that these ratings ultimately would be combined into an overall rating that would be given consideration for award. The solicitation provided, however, that overall ratings would not necessarily be determinative of the award. In this regard, the clause captioned "BEST BUY DECISION" provided:

"The ultimate source selection will not be made by the application of a mathematical formula, but by [the] exercise of human judgment on the part of the Contracting Officer. This decision will be based on the probable costs to the Government as compared with the evaluated numeral ratings of the proposal. Significant differences in measured proposal merit may or may not be deemed affordable or worth an additional amount of money depending upon the best interest of the Government."

B) The Evaluation

The agency in fact utilized an initial evaluation formula which assigned Technical 60 points, Management 25 points, and Cost 15 points.^{1/} Under the Cost factor, the agency allotted 9 points for cost realism as projected by the agency's price analyst, and the remaining 6 points to a comparison of the offeror's projected realistic costs with the government's estimate.

After the evaluation of best and final offerors, the proposals received the following scores:

	Technical and Management	Cost	Total
the University	83.80	14.16	97.96
Raytheon Service	64.34	14.52	78.86

The University's proposal thus enjoyed a point-score advantage.

C) The Contracting Officer's Decision

The contracting officer, in making his best buy decision, made a direct comparison of the ratios of the offerors' projected realistic costs to their combined Technical and Management scores, that is, he weighed projected cost equally against Technical/Management.

^{1/} Thus, the actual weights were precisely those stated in the solicitation, except for Cost for which the fractional weight was 3/20.

These ratios yielded the projected cost for each Technical and Management point assigned the offerors, and a comparison of the two figures basically amounted to what is colloquially termed a "bang-for-the-buck" analysis. This analysis indicated that the University's bang for the buck was only 6 percent higher than Raytheon Service's.

The contracting officer further compared the proposals using the "normalization" method, that is, by giving the proposal receiving the highest combined score for Technical and Management and the proposal evaluated at the lowest realistic total cost the maximum number of points available in those areas, while the other proposal received a proportionally lower score in each area. See SETAC, Inc., 62 Comp. Gen. 577 (1983), 83-2 CPD ¶ 121. The contracting officer again compared combined Technical and Management scores with projected costs on a direct, one-to-one basis. This comparison indicated that the University's proposal was less than 5 percent superior to Raytheon Service's.

Based on these analyses, the contracting officer determined that the slight advantage the University's proposal enjoyed, in a direct comparison of Technical and Management with projected costs, was not worth the difference between the offerors' projected costs.

The record shows that the contracting officer considered this determination to be supported by other factors as well. First, the contracting officer concluded that although the University achieved higher Technical and Management ratings than did Raytheon Service, the technical review panel overestimated the risks of acquiring a new contractor. The technical review panel had concluded that Raytheon Service could only perform the contract in a timely manner if it retained 50 percent of the incumbent's personnel, including certain key personnel. While recognizing this fact, the contracting officer noted that Raytheon Service had represented that all but one of the incumbent's employees had expressed a willingness to work for Raytheon Service if it received the award. The contracting officer considered the possibility that more than one of the incumbent's employees might not accept such employment, but concluded that Raytheon Service "has vast resources to draw from and could be on board performing satisfactorily within a very short period."

These purported vast resources apparently were a significant factor to the contracting officer in another

respect. In addition to citing Raytheon Service's own prime contracting experience, the offeror's proposal referred to several major contracts between the government and its parent company under which the offeror had some subcontracting roles. In a statement to our Office, the contracting officer cites some of these contracts as evidence that Raytheon Service is a firm with proven capabilities in government research and development contracts.

Last, the contracting officer noted that Raytheon Service offered ceilings on its reimbursement for labor overhead and general and administrative expenses, thus reducing the risk of cost overruns, whereas the University offered no such ceilings.

Based on the foregoing, the contracting officer proposes to award a contract to Raytheon Service.

II. ANALYSIS:

Initially, we point out that the protester has not had access to its competitor's proposal or to much of the evaluation material, since a contract has not yet been awarded. We therefore have reviewed the proposals and evaluation in camera. Further, in undertaking such a review, our Office does not independently determine the relative merits of proposals, since the evaluation of proposals is primarily a matter of the procuring agency's discretion. We generally limit our review to an examination of whether the evaluation was in accordance with the listed evaluation scheme and provided a rational basis for the source selection. See Eaton-Kenway, B-212575.2, June 20, 1984, 84-1 CPD ¶ 649.

We think the contracting officer's best buy and normalization analyses, based on a tradeoff between the combined areas of technical and management and projected costs, were consistent with the solicitation's evaluation criteria. It is true that the cost area accounted for only 15 of the 100 evaluation points. Only two factors were evaluated under this area, however, namely cost realism and consistency with the government estimate. Both offerors received more than 14 points based on these two factors because the evaluators found that they both had realistically priced their respective proposals. Moreover, their proposed costs were not inconsistent with the government's estimate, which was between the two

proposed costs. As a result, both offerors received approximately the same score in the cost area, although Raytheon Service's total probable cost was considerably less than the protester's.

The contracting officer then considered the difference in cost in accordance with the best buy provision of the solicitation. The best buy provision specifically stated that the ultimate source selection will not be made by the application of a mathematical formula. The selection was to be made instead "based on the probable costs to the Government as compared with the evaluated numerical ratings. . . ."

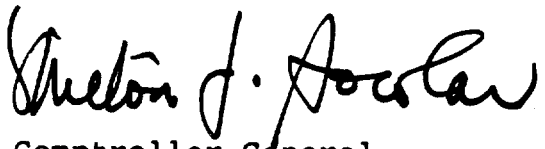
The contracting officer decided that while the protester's proposal was determined to offer a greater technical competence, this advantage was attributable to the protester's incumbency and the fact that the protester had experienced personnel in its employ. In the contracting officer's opinion, given the type of service contract involved here, with employee seniority, salary and fringe benefits being retained under a follow-on contract, it was reasonable to expect that Raytheon Service would be able to keep most of the work force and could furnish competent employees when retention was not possible. He noted that the offeror had represented that all but one of the incumbent's employees had expressed a willingness to work for the offeror in the event of an award.

In this respect, the contracting officer decision recognized the evaluation panel's view that there was no guarantee that Raytheon Service could hire the incumbent's employees, and that the alternative use of Raytheon Service's employees could cause a costly estimated 6-month slippage in current SEMI projects while these employees were phased in. The contracting officer, however, believed that the panel's scoring of Raytheon Service's proposal was too harsh, since the offeror purportedly had obtained informal commitments from all but one of the incumbent's employees. The contracting officer considered that even if the offeror failed to retain the incumbent's staff the chances of a 6-month slippage were "unlikely in view of Raytheon's vast personnel and financial resources."

We cannot say whose judgment--the evaluation panel's or the contracting officer's--is sounder on the retention

question. It may well be that the contracting officer's judgment as to Raytheon Service's ability to retain incumbent employees and to obtain competent employees from its own resources is too optimistic. Nevertheless, judgments of this nature must be made by source selection officials, here the contracting officer, who are not bound by the numerical scoring or recommendations of evaluators. Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 CPD ¶ 325. The record in this case does not provide a basis for us to say that the contracting officer's judgment is unreasonable or arbitrary, and that he was required to follow the evaluators' recommendation.

The protest is denied.

for 
Comptroller General
of the United States