

DECISION

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

*Edelman
PL*

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FILE: B-218540 **DATE:** July 8, 1985
MATTER OF: EDG Engineering of Texas, Inc.

DIGEST:

1. Where a solicitation for a negotiated procurement advises offerors that technical and management factors are more important than cost, award may be made to an offeror with a superior technical and management proposal even though its price is higher than other technically acceptable proposal if the lower price is offset by the advantages of the technically superior proposal.
2. Protest that agency requested offeror during negotiations to reduce management proposal and then allegedly improperly penalized the offeror for the requested management reductions in the evaluation of best and final offers is denied where record shows that the ranking of protester's management proposal as lowest rated did not change based on its best and final offer. There is no indication that the protester was prejudiced by agency request which was made to all offerors.
3. Protest after award that price should have been the most significant factor for award and that the weight given certain RFP technical and management evaluation factors should have been reversed is untimely where RFP advised that technical and management areas were more important than cost and further indicated the relative importance of the evaluation factors.

EDG Engineering of Texas, Inc. (EDG), protests the award to Contel Page Systems (Contel) of a firm, fixed-price contract under request for proposals (RFP) No. DACW01-84-R-0004 issued by the Army Corps of Engineers (Army) for a hydrological data collection and microwave communications system. The RFP called for the design, manufacture, testing, installation and calibration of the system at various sites in Alabama and Mississippi.

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The Contel technical and management proposal was rated highest by the Army and, although the proposal was higher priced than EDG's offer, the Army decided the Contel proposal was most advantageous to the government. EDG alleges that its proposal is technically equal to Contel's proposal and that it should have received the award because it offered a lower price. Further, EDG contends that cost was to be more significant than technical and management factors.

We deny the protest in part and dismiss it in part.

The RFP, as amended, stated that award would be made to that responsible offeror whose offer conforming to the RFP was considered by the contracting officer to be most advantageous to the government, technical, management, price and other factors considered. It further provided that primary emphasis in the evaluation would be placed on the technical area and a lesser degree of importance on the management/personnel area and an even lesser degree on the cost/price area. The technical/management proposal evaluation was to be accomplished without reference to cost. A detailed list of technical evaluation areas in descending order of importance was provided and the RFP advised that each factor would be examined for soundness of approach, understanding of the requirements and compliance with the requirements. Under each factor, subfactors and their relative importance were also listed. The management section listed four areas of importance: program schedule and company ability and commitment to meet the required completion date, experience of personnel, past experience of the company, and program management controls. The RFP also advised that cost/price factors--realism, reasonableness and completeness--would be evaluated equally.

Three offerors submitted proposals. These proposals were found acceptable and all offerors were considered in the competitive range. Discussions were held with each offeror, best and finals submitted and the offerors were again evaluated. The Source Selection Evaluation Board (SSEB) recommended award to Contel on the basis that Contel's proposal was "far technically superior" to the other two proposals. The contracting officer made award to Contel because of the technical superiority of Contel's approach and second lowest cost.

EDG argues that the Army led it to believe that the project cost was "of extreme importance." In this regard, EDG argues that the Army failed to follow the stated RFP evaluation criteria which provided that the award would be made to the "lowest technically acceptable offeror," which EDG contends was EDG, not Contel. EDG also asserts that the assignment of points in the source selection evaluation plan for the four factors for evaluation under management was inconsistent with the ranking of importance provided in the RFP and adversely affected evaluation of EDG's offer. Thus, for example, EDG alleges that, while the RFP provided that the factor concerning the program schedule offered was third ranked of the four factors, the Army evaluation documents show that this factor was assigned the most points of the four categories. However, the record shows that amendment one to the RFP, issued contemporaneously with the RFP and acknowledged by EDG in its proposal, revised the method of award. Offerors were advised that technical and management were more important than cost, and award would not necessarily be made on the basis of cost. The amendment also revised the ranking of management factors. EDG erroneously bases its complaint on the preamendment evaluation provisions, but the record shows that the SSEB properly evaluated consistent with the revised RFP.

EDG also contends that during negotiations, the Army led it to believe that cost was important and refers to the Army's statement in the written discussions that:

"The amount of project management and engineering proposed seems excessive. Review the management proposal and try to reduce management time proposed to an absolute minimum needed. Other cost measures which do not affect the overall function of the system need to be proposed."

EDG argues that it reduced the management and engineering aspects of its proposal in order to comply with the Army's request to obtain lower prices resulting in EDG's decreasing its price \$900,000. However, EDG argues that it was subsequently penalized in the technical and management evaluation.

Initially, we note that under a negotiated procurement, discussions and best and final offers, including price changes, are normally contemplated. See Ron's Welding and Fabricating Inc., B-216742, Oct. 23, 1984, 84-2 C.P.D. ¶458.

As noted above, the revised RFP advised that cost was not a significant award factor. EDG's protest comments erroneously rely on the preamendment RFP. The record indicates that the ranking of offerors was consistent with the evaluation scheme and that EDG's contention that the agency disregarded the evaluation scheme is without merit.

Furthermore, EDG's argument that it was misled into downgrading its management proposal by the Army's request because it allegedly was penalized in the final evaluation for reducing its management proposal is not supported by the record. The record shows that EDG's management offer was third ranked based on evaluation of initial proposals and that, after final evaluation, EDG remained third ranked. There is no indication that EDG was prejudiced by the Army's request which was made to all offerors to reduce management time and propose additional cost savings measures.

EDG also contends that its proposal should have been considered equal to the one submitted by Contel and that EDG should have been awarded the contract because of its lower price. It does not believe it should have been rated 30 points lower than Contel's proposal and argues that the Army never indicated that the information in its proposal was insufficient.

We note that there is nothing improper, as was done in this procurement, in giving more weight to technical factors than price in a procurement which will result in a firm fixed-price contract. See, for example, General Management Systems, Inc., B-214246, Sept. 25, 1984, 84-2 C.P.D. ¶ 351, and Blue Cross-Blue Shield of Tennessee, B-210227, May 23, 1983, 83-1 C.P.D. ¶ 555.

The record indicates that EDG received the full points for price because its price was the lowest submitted. Its proposal was determined technically acceptable, but received 165.83 points compared to 196 points awarded Contel for its technical offer and 138 points compared to 169.16 points for management. The final overall ratings including all three factors, weighted according to importance, show that Contel received 167.21 points and EDG 144.21. Although more advantageous on price, the agency judged EDG's technical and management proposal less advantageous.

While the Army has advised that the detailed evaluation records and offerors' proposal are considered confidential and nonreleasable, we will point out generally the basis for the technical and management rankings and for the Army's

finding that Contel's offer was superior. The record shows that Contel's technical and management approach was considered more comprehensive, detailed and sound than EDG's, and in certain areas Contel's offer was found to be an improvement over the government's concept. EDG's approach was considered marginally acceptable and of a general nature which left the specifics of certain aspects of the project to be explained after contract award. Based on these findings, the SSEB concluded that EDG was the highest risk company.

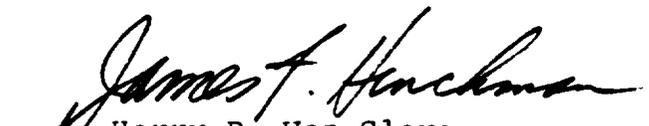
The determination that the proposal was within the competitive range clearly indicated the agency's judgment that the proposal was acceptable or reasonably capable of being made acceptable without major revisions. Barber-Nichols Engineering Co., B-216845, Mar. 25, 1985, 85-1 C.P.D. ¶ 343. A proposal within the competitive range, however, is not entitled to award automatically, even if its price is low, unless the solicitation so provides. Thus, in negotiated procurements such as this one, where offerors are on notice that technical considerations are more important than cost, award can be made to the offeror with a superior technical proposal, even though its price may be higher than those of other technically acceptable proposals, if the lower prices are offset by the advantages of the technically superior proposal. In this respect, the cost technical tradeoffs made by the procuring agency necessarily require the exercise of reasoned judgment as to the significance of the differences in technical merit among the proposals. Our Office will not question that judgment if it is reasonable and consistent with the evaluation factors set out in the solicitation. Systems Development Corp., B-213726, June 6, 1984, 84-1 C.P.D. ¶ 605.

We have no basis on this record to question the procuring agency's determination. The agency concluded that the difference between the two proposals with regard to technical and management considerations, as reflected by the SSEB evaluation scores, evidenced sufficient technical and management superiority to warrant selection of Contel's higher priced proposal. As noted by EDG, before awarding to Contel, the contracting officer specifically asked the SSEB if the technical and management point difference between EDG and Contel was worth the additional cost, and the SSEB confirmed it was, especially in view of the decision reflected in the RFP evaluation statement to emphasize

technical and management factors over cost for the work under this RFP. The record does not support EDG's contention that the proposals were judged to be essentially equal. Rather, it is clear that Contel's technical and management proposal was considered more advantageous to the government despite its higher price. Accordingly, we reject EDG's argument that it should have received the award based solely on its lower priced best and final offer.

To the extent that EDG protests after award that cost should have been the primary factor and that the RFP scheme improperly gave more emphasis to the most important management factor compared to any one technical factor, this constitutes an untimely challenge to the RFP's stated evaluation criteria. Sperry Flight Systems, B-212229, Jan. 19, 1984, 84-1 C.P.D. ¶ 82. Under the SSEB evaluation, the most important factor of the four factors under management, consistent with the RFP, was accorded more weight proportionally than any one of the technical factors which were distributed among 18 factors, despite the fact that the total points assigned the technical area were significantly greater than those assigned to the management area.

As indicated above, the RFP explicitly stated that cost would be the least important criteria for award and also that the technical area consisted of 18 factors and that management consisted of four factors. Thus, the relative importance of cost, technical and management factors was clear from the RFP. Our Bid Protest Regulations require that protests of alleged improprieties in an RFP which are apparent prior to the closing date for submission of initial proposals be filed prior to that date. 4 C.F.R. § 21.2(b) (1) (1985).


 Harry R. Van Cleve
 General Counsel