

DECISION



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

FILE: B-218961 **DATE:** August 28, 1985
MATTER OF: PE Systems, Inc.

DIGEST:

Protest that proposal, lower in cost than awardee's, offered equal technical competence and therefore was improperly not selected for award is denied since the successful proposal reasonably was considered better technically, the evaluated cost difference was not great, and technical considerations under the solicitation were of greater importance to the government than cost.

PE Systems, Inc. protests the award of a fixed-price incentive contract to Communications Manufacturing Company (CMC) by the Department of the Air Force under request for proposals (RFP) No. F04701-82-R-0120. The RFP was a total small business set-aside for providing a complete security system at a government installation for a period of 17 months with options for 2 additional years.

PE protests that the Air Force awarded the contract to a higher-cost offeror whose proposal was relatively equal from a technical standpoint to PE's and also complains that the Air Force has not released information concerning the evaluation of proposals. PE additionally claims reimbursement for the costs of filing and pursuing its protest, including attorney's fees.

We deny the protest and the claim.

The evaluation of proposals was conducted under the provisions of Air Force Regulation (AFR) 70-15. Specifically, the responsibilities for the evaluation and selection process were divided among a Proposal Evaluation and Analysis Group (PEAG), which evaluates proposals, develops summary facts and findings, and recommends selection of a source; and the Source Selection Authority (SSA), who selects an offeror for contract award. Award to CMC followed the formal source selection process which

resulted in the decision that selection of CMC's proposal, rather than that submitted by PE, would be more advantageous to the government. While our Office has been furnished the evaluation reports and other relevant exhibits concerning this protest, the agency considers these documents to be privileged and has not provided them to the protester. Although we therefore are unable to reveal technical and cost details concerning the evaluation, our decision is based on a review of all relevant reports and exhibits submitted to our Office by the Air Force.

As stated above, the solicitation was for the acquisition of a complete security system. The solicitation, among other things, required the following: 1) that a single contractor be responsible for acquiring, integrating, and interfacing the system; 2) that the contractor acquire intrusion detection sensors, closed circuit television, automated entry control mechanisms, and other equipment; 3) that the contractor install and integrate the equipment into a complete physical security system; and 4) that the contractor provide support equipment, training, maintenance and supply support. Proposals were to be measured against the following specific evaluation factors:

1. Technical Area

a. Technical Area Specific Criteria

- (1) System Engineering
- (2) Implementation

b. Technical Area Assessment Criteria

- (1) Understanding the Requirements
- (2) Soundness of Approach
- (3) Relevant Past Performance

2. Management Area

a. Management Area Specific Criteria

- (1) Project Plan
- (2) Organization of Work
- (3) Configuration Management

b. Management Area Assessment Criteria

- (1) Soundness of Approach
- (2) Relevant Past Performance

3. Support Area

- a. Support Area Items
 - (1) Logistics Engineering Data
 - (2) Logistics and Maintenance Support
 - (3) Supply Support
- b. Support Area Assessment Criteria
 - (1) Soundness of Approach
 - (2) Relevant Past Performance

4. Cost Area

- a. Completeness
- b. Credibility
- c. Realism
- d. Relevant Past Performance

The solicitation provided that factor 1 was of paramount importance while factors 2, 3, and 4 were of equal, but lesser, importance. The most important aspect of factor 1 was that the offerors demonstrate viable design and implementation approaches to meet the requirements. Further, an assessment of risk was to be made in evaluating an offeror's understanding of the technical requirements.

While five proposals that were received by the closing date subsequently were determined to be within the competitive range, we will limit our discussion to the proposals of PE and CMC.

The PEAG found that PE's proposal offered a centralized off-the-shelf commercial hardware system based upon the preliminary design document contained in the RFP. With regard to system engineering (factor 1.a.(1)), the PEAG considered PE's initial proposal as "vague" and as raising serious questions in several areas. While PE clarified its proposal with respect to some of these areas during discussions, the PEAG still considered PE to have a weak approach in perimeter surveillance, perimeter intrusion detection, software selection, and software integration. Overall, the PEAG found that PE demonstrated a lack of technical expertise with electronic security systems. Thus, PE's proposal in this area was categorized as "high risk," because of weaknesses remaining in its proposal.

With regard to implementation approach (factor 1.a.(2)), the PEAG found PE's proposal to be minimally acceptable. Perceived risks associated with PE's proposal were categorized as "medium" because of an unrealistic installation schedule and poor installation capability. PEAG further found that PE had not provided the government with adequate test methodology and did not adequately discuss requirement verification. While discussions corrected most of these deficiencies, the PEAG remained skeptical about PE's installation schedule and its perceived questionable installation capabilities.

The PEAG, in evaluating CMC's proposal with respect to system engineering (factor 1.a.(1)), found that CMC's proposal was especially strong in its proposed hardware/software acquisition process, modular hardware/software expansion capability, understanding of technical requirements as illustrated by comprehensive subsystem functional block diagrams, and general awareness of risk considerations. With the exception of one item, all problems in CMC's proposal were corrected during discussions and the proposal was rated as representing a "low risk" primarily because of a sound hardware and software approach.

The PEAG also considered CMC's proposal superior to PE's in the area of implementation approach (factor 1.a.(2)). While there were many incorrect assumptions and weak points concerning installation in its initial proposal, CMC corrected all deficiencies in its best and final offer and the PEAG awarded a "low risk" rating to its proposal from a technical, schedule, and cost standpoint.

The PEAG's summary of evaluation results characterized PE's proposal as weak in the technical area. Conversely, the PEAG considered CMC's proposal as generally excellent. The PEAG found CMC's approach to hardware selection, modular approach to software, and testing to be excellent. Our review of the evaluation files indicates that this technical area, which according to the solicitation was of paramount importance, was in fact determinative in the selection of CMC over PE. In the areas of management and support (factors 2 and 3), PE's proposal was deemed more than adequate. With respect to cost, the PEAG, during evaluation, adjusted each offeror's proposed cost to determine the "most probable cost" over the contract period. While our review shows that PE's proposed price was substantially lower than that of CMC, the PEAG found that PE's most probable cost was not significantly lower than that of CMC. Accordingly, CMC was awarded the contract because its proposal was judged to be an excellent

technical proposal in the major technical areas while its most probable cost was the second lowest of the five offerors and therefore the most advantageous as a whole.

In reviewing selection decisions, we have pointed out that the contracting agency is primarily responsible for determining which technical proposal best meets its needs, since it must bear the major burden of any difficulties incurred by reason of a defective evaluation. Training Corp. of America, Inc., B-181539, Dec. 13, 1974, 74-2 CPD ¶ 337. Accordingly, we consistently have held that procuring officials enjoy a reasonable range of discretion in the evaluation of proposals and in the determination of which offer or proposal is to be accepted for award, and that such determinations are entitled to great weight and must not be disturbed unless shown to be unreasonable or in violation of the procurement statutes or regulations. See METIS Corp., 54 Comp. Gen. 612 (1975), 75-1 CPD ¶ 44. Further, where the solicitation indicates that technical excellence is more important than cost considerations to the procuring agency, we have upheld awards to concerns submitting superior technical proposals even though the awards were made at costs higher than those proposed in lower rated technical proposals. See Riggins & Williamson Machine Co., Inc., et al., 54 Comp. Gen. 783 (1975), 75-1 CPD 168.

As stated previously, the Air Force has not released any of its evaluation reports to the protester. Thus, the sole factual basis for PE's allegations concerning improper evaluation is essentially the Air Force's decision to select CMC for award despite the submission by PE of a sound technical approach at a lower cost. Our review of the record provides no legal basis to object to the Air Force's decision. Our review indicates that the Air Force strictly adhered to the stated RFP evaluation criteria and that PE's proposal was simply not evaluated to be technically equal to CMC's proposal nor was its evaluated most probable cost significantly lower than that of CMC. It appears to us that the Air Force evaluators could rationally evaluate the proposals as they did. The fact that the protester objects to the evaluation, and perhaps believes its own proposal was better than as evaluated by the Air Force, does not render the evaluation unreasonable. Honeywell, Inc., B-181170, Aug. 8, 1974, 74-2 CPD ¶ 87.

PE also complains that it unsuccessfully has attempted to obtain information concerning the evaluation of its proposal from the Air Force under the Freedom of Information Act (FOIA). However, our Office has no authority

under FOIA to determine what information must be disclosed by government agencies. While information in an agency report which the agency believes is exempt from disclosure under FOIA will be considered by our Office in reaching a decision on the merits of the protest, we will not disclose it outside the government. The protester's recourse in such situations is to pursue its disclosure remedy under the procedures provided by the statute itself. INTASA, B-191877, Nov. 15, 1978, 78-2 CPD ¶ 347. Further, although the Competition in Contracting Act of 1984 (CICA), 31 U.S.C. §§ 3551-3556, as added by § 2741(a) of Pub. L. 98-369, also requires each Federal agency to provide an interested party any document relevant to a protested procurement action that would not give the party a competitive advantage and that the party is otherwise authorized by law to receive, the contracting agency clearly has the primary responsibility for determining which documents are subject to release under CICA. Therefore, we will not question the agency determination in the absence of a showing of fraud or bad faith on the part of contracting officials. Employment Perspectives, B-218338, June 24, 1985, 85-1 CPD ¶ 715. No such showing has been made here.

Finally, PE objects to the Air Force's inclusion of a clause in the solicitation entitled "Rights in Technical Data and Computer Software," which was incorporated by an amendment to the solicitation. Thereafter, the Air Force conducted discussions with those offerors, including PE, that objected to the clause at the time. A modified version of the clause was subsequently incorporated as a part of best and final offers submitted by PE and the other offerors. PE did not protest the incorporation of the clause to our Office until after evaluation, selection, and award of the contract to the successful offeror, CMC.

Our Bid Protest Regulations provide that protests based upon alleged solicitation improprieties in negotiated procurements which did not exist in the initial RFP, but which are subsequently incorporated therein, must be filed with either the contracting agency or our Office not later than the next closing date for receipt of proposals following the incorporation of the alleged impropriety. 4 C.F.R. § 21.2(a)(1) (1985). Since PE waited until after award of the contract to protest this provision, its protest on this ground is clearly untimely and will not be considered. See Logus Mfg. Corp., B-216775, Jan. 8, 1985, 85-1 CPD ¶ 25.

The protest is denied.

PE has requested reimbursement for the costs of filing and pursuing its protest, including attorney's fees. Such costs can only be recovered, however, if the government has unreasonably excluded the protester from the procurement. 4 C.F.R. § 21.6(e). In view of our conclusions above, the claim is denied.



for Harry R. Van Cleave
General Counsel