

*Rebman*



**The Comptroller General  
of the United States**

Washington, D.C. 20548

## **Decision**

**Matter of:** Econ Inc.  
**File:** B-223923  
**Date:** October 29, 1986

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### **DIGEST**

1. Procuring agency unreasonably evaluated protester's technical proposal by omitting from consideration the person offered by the protester as principal investigator where the solicitation provided that the principal investigator's qualifications constituted the most important factor in determining technical score.
2. Recovery of proposal preparation costs is allowed where the contracting agency unreasonably excluded the protester from the procurement and other remedies are not appropriate. Recovery of costs of filing and pursuing the protest is also allowed where the agency unreasonably excluded the protester and the General Accounting Office does not recommend that the protester be awarded the contract.

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### **DECISION**

Econ Inc., protests the award of a contract by the Forest Service, United States Department of Agriculture (Forest Service), to Stephen Cooper for "Landsat Sampling/Truthing" at the Lewis & Clark National Forest under request for proposals (RFP) No. R1-11-86-41. The RFP was to obtain contractor services at three park areas for vegetation and site surveys and derived predictive models concerning grizzly bear habitat.

We sustain the protest.

By the July 18 closing date, the Forest Service had received four proposals, which were evaluated by a board of contract award consisting of two Forest Service employees. The RFP evaluation criteria stated that award would be made to the contractor whose cost/technical relationship was most advantageous to the government, with cost secondary to technical considerations. The technical criteria were, in descending order of importance: (1) principal investigator's (PI) background and qualifications; (2) resumes of personnel

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assisting the PI; (3) camera equipment and experience of key personnel in field photography; and (4) ability of the PI and assigned personnel to use certain listed equipment required to complete the contract. The board assigned overall technical weights of 55 for criterion No. 1, 30 for criterion No. 2, 10 for criterion No. 3, and 5 for criterion No. 4.

Using these standards, the technical evaluations ranged from 35 for Econ to 72.8 for Cooper. While the board determined that all four proposals were technically acceptable, it recommended that only the top two be considered in the competitive range. The board further recommended award to Cooper. The contracting officer considered the board's recommendation, along with the 3-area total proposal prices which were \$42,995 for Cooper and \$39,500 for Econ, and determined that award to Cooper, on the basis of initial proposals, was most advantageous to the government based on the technical/cost relationship. Award was made to Cooper on July 24, 1986. Econ filed its protest on August 4, providing notice to the contracting officer on the same day. Because notice to the contracting agency was not provided within 10 calendar days of the date of award, the Forest Service did not suspend performance of the contract.<sup>1/</sup>

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<sup>1/</sup> Econ asserts that contract performance should have been suspended because the tenth calendar day after contract award was a Sunday, and Econ filed its protest with us and the Forest Service on the next day. Econ points to our Bid Protest Regulations, which at 4 C.F.R. § 21.0(d) (1986) provide that in computing a time period prescribed by our regulations the last day of the period is not counted if it is not a working day of the federal government. However, while 4 C.F.R. § 21.4 references the requirement for suspension of contract performance when a protest is filed in our Office, the requirement is imposed by the Competition in Contracting Act of 1984, 31 U.S.C. § 3553(d)(1) (Supp. III 1985), and are included in our regulations, as we note therein, for informational purposes only. Thus, the earlier definition for computing time periods on which the protester relies is inapplicable. Rather, the applicable implementing regulation is the Federal Acquisition Regulation (FAR), 48 C.F.R. § 33.104(c)(5) (1985), which refers to suspension only when the agency is notified within 10 calendar days of award, without provision for discounting any nonworking days of the federal government. See Fort Wainwright Developers Inc., et al., B-221374.2 et al., May 14, 1986, 65 Comp. Gen. \_\_\_, 86-1 C.P.D. ¶ 459.

Econ raises a number of objections to the evaluation procedures, mainly that the board incorrectly evaluated Econ's proposal as regards the proposed PI. Econ asserts that, prior to the closing date for receipt of initial proposals, it was advised by one of the Forest Service board members that Econ's intention to propose more than one PI was acceptable. Econ proposed an overall PI (Dr. Meyer), aided by two assistant PIs for specific areas. The Forest Service contends that it evaluated Econ's PI on the basis of the qualifications of the individual who scored highest of the three who were jointly listed by Econ, and that the board assigned the scores of the other two listed PIs to the assisting staff category. The Forest Service indicates that a similar scoring approach was adopted for one of the other proposals which also listed more than one PI.

In considering protests against an agency's evaluation of proposals, our Office will not evaluate the proposals anew and make our own determinations as to their acceptability or relative merits. Leo Kanner Assocs., B-213520, Mar. 13, 1984, 84-1 C.P.D. ¶ 299. However, we will examine the record to determine whether the evaluation was fair and reasonable and consistent with the evaluation criteria. Bendix Field Engineering Corp., B-219406, Oct. 31, 1985, 85-2 C.P.D. ¶ 496.

While the Forest Service argues that Econ was given credit for the technical score of its highest rated individual for the PI factor, our review of the evaluation scoring sheets discloses that one of Econ's listed PIs (Meyer) was not evaluated or scored. Econ's scoring sheet shows scores for the two assistant PIs and eight support staff, but Meyer's name does not appear anywhere in the evaluation. The board took the higher scored of the listed assistant PIs and counted it as Econ's PI score, and included the other listed assistant's score in the calculation of the assisting personnel factor. The Forest Service provides no explanation or justification for this exclusion which, in our view, had a material impact on Econ's technical evaluation. Meyer was proposed as the overall Project Coordinator, and as the lead person for the predictive model portion of the contract, which was one third of the total contract requirement. The proposal indicated that Meyer had 35 years experience and a doctorate in Forestry. As noted above, the PI category counted for 55 percent of the total technical score and Econ received only one-half of the points possible. Given Meyer's qualifications, we cannot say that, had Meyer been evaluated, the score for Econ in this area would not have been substantially higher. Accordingly, we find that the agency's evaluation of Econ's proposal was unreasonable.

While we sustain the protest, it is impracticable for our Office to recommend corrective action since the Forest Service has advised that a majority of the field work has been completed in all three areas, and approximately one-half of the total work required under the contract has been performed. However, where a protester had a substantial chance of receiving the award, but was unreasonably excluded from a procurement and where the other remedies enumerated in our regulations are not appropriate, the recovery of proposal preparation costs is allowable. 4 C.F.R. § 21.6(d) (1986); E.H. Pechan & Assocs., Inc., B-221058, Mar. 20, 1986, 86-1 C.P.D. ¶ 278. In addition, Econ should be allowed recovery of its costs of filing and pursuing the protest since, under the circumstances, we have been unable to recommend either an award to Econ, or an opportunity to compete for the award at issue. 4 C.F.R. § 21.6(e); Discount Machinery and Equipment, Inc., B-220949, Feb. 25, 1986, 86-1 C.P.D. ¶ 193.

The protest is sustained and the protester is entitled to proposal preparation costs and the costs of filing and pursuing the protest.

*for Milton J. Fowler*  
Comptroller General  
of the United States