



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Tichenor & Eiche

File: B-228325

Date: December 28, 1987

DIGEST

1. Where the contracting agency reasonably determines that competing proposals are "very close technically," award based primarily upon cost savings to the government is reasonable.
2. Contracting agency properly did not evaluate start-up costs of a new contractor in evaluating the realism of the offerors' cost proposals since the solicitation did not provide for the evaluation of such costs.

DECISION

Tichenor & Eiche protests the award of an indefinite delivery/indefinite quantity labor-hour contract to Leonard G. Birnbaum & Company under request for proposals (RFP) No. WA87-A033, issued by the Environmental Protection Agency (EPA). The RFP was for audit services to assist EPA's Office of the Inspector General in its audit of the "Superfund" trust fund.^{1/} Tichenor, the incumbent, argues that EPA failed to follow its announced criteria and misevaluated proposals since Tichenor's technical proposal, properly evaluated, should have received nearly perfect maximum scores reflecting the firm's outstanding qualifications and extensive experience as the incumbent. Tichenor also argues that EPA did not properly evaluate the realism of Birnbaum's proposed cost.

We deny the protest.

^{1/} Generally, the Superfund trust fund finances removal of hazardous substances released into the environment from uncontrolled and abandoned waste sites. EPA is required to audit expenditures from the trust fund, including on-site audit of EPA contracts, grants and cooperative agreements nationwide.

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The evaluation of proposals was conducted under the provisions of EPA Source Selection Procedures contained in 48 C.F.R. Subpart § 1515.6 (1986). Specifically, the responsibilities for the evaluation and selection process are divided among a Technical Evaluation Panel (TEP), which evaluates and scores proposals,^{2/} develops summary facts and findings, and recommends selection of a source; a Business Evaluation Panel, which evaluates the business and contractual aspects of proposals; and the Source Selection Official, who selects an offeror for contract award. Award to Birnbaum followed the source selection process which resulted in the decision that selection of Birnbaum's proposal, rather than that submitted by Tichenor, would be more advantageous to the government. Specifically, EPA found the proposals of Tichenor and Birnbaum to be "very close technically" with only a "slight edge" to Birnbaum's proposal. Further, EPA specifically found that the Tichenor proposal "offer[ed] no significant reason for ignoring the cost advantage" of Birnbaum's lower-priced proposal. While our Office has been furnished the evaluation reports and other relevant exhibits concerning this protest, the agency considers many of 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 EPA.

The RFP, issued on April 15, 1987, provided that the government would award a contract to the responsible offeror whose offer conforming to the solicitation is the most advantageous to the government, cost or price and other factors considered. The RFP contemplated the submission of separate technical and cost proposals. For award purposes, the solicitation stated that technical quality was more important than cost in determining the most advantageous proposal. In descending order of importance, and as secondary factors, the solicitation listed small business and labor surplus area concern status and record of past

^{2/} The scoring of technical proposals is accomplished using standard "scoring plan" values expressed on a scale of zero through five; these values are applied to a particular technical evaluation criterion on a percentage basis. For example, a score of "4" applied to a criterion whose weight is 30 would result in a technical score of 24.

performance as general evaluation factors for award. The solicitation also specifically listed the following evaluation criteria and their respective weights:

A. Understanding of Work	300
1.a. Expanded Scope Auditing	100
1.b. Third Party Auditing	50
2. Discussion and Solution to Hypothetical Problem	150
B. Experience Auditing Government Activities	450
1. Federal Financial Records	150
2. Federal Grants and Contracts under Audit Agreements with Federal Agencies	125
3. Federal Grants and Contracts under Audit Agreements with Recipients	75
4. Individual Substantial Construction Projects	100
C. Qualification and Experience of Audit Staff	400
1. Academic Degrees and Professional Certifications:	
1.a. In-Charge and Senior Auditors	50
1.b. Audit Managers and Supervisors	100
2. Experience of Current Audit Staff	
2.a. Federal Grants and Contracts	75
2.b. Individual Substantial Construction Projects	75
2.c. Federal Financial Records	100
D. Project Management	100
TOTAL:	1,250 points

Concerning cost, the solicitation cautioned offerors that as proposals become more equal in technical merit, the evaluated cost becomes more important. The solicitation also stated that the government would evaluate proposals to determine cost realism which was defined as relating to "an offeror's demonstrating that the proposed cost or price provides an adequate reflection of its understanding of the requirements of this solicitation."

The solicitation also included precise minimum qualifications and level-of-effort estimates for required labor categories--partner, manager, senior accountant, and junior

accountant. The offeror's proposed labor rate (which included all direct and indirect costs and profit), times the estimated man-hours for each category, as well as certain other pre-established direct costs, basically provided the basis for cost evaluation.

Eight firms submitted proposals on May 15, 1987, the closing date for receipt of initial proposals. EPA evaluated the technical and cost proposals, and both Tichenor and Birnbaum were considered to have submitted "excellent" proposals and were therefore the two firms included in the competitive range. The scoring and cost results based on initial proposals were as follows:

<u>Offeror</u>	<u>Technical Score</u> (1,250 maximum)	<u>Cost</u>
Tichenor	1,100	\$8,459,306
Birnbaum	1,090	8,121,249

The contracting officer states that the TEP essentially found no weaknesses in either firm's initial proposal. Nevertheless, by letter dated August 27, 1987, EPA sent technical and cost "interrogatories" to both firms and requested best and final offers. After final evaluation, best and final results were as follows:

<u>Offeror</u>	<u>Technical Score</u>	<u>Cost</u>
Tichenor	1,115	\$8,101,554
Birnbaum	1,127.5	7,815,604

Since EPA considered both proposals to be "very close technically" and because Tichenor's proposal did not offer any significant reason for ignoring Birnbaum's lower cost (a savings of \$285,950), EPA awarded the contract to Birnbaum on September 18, 1987. This protest followed.

Initially, we point out that contracting agencies are given a considerable range of judgment and discretion in carrying out a technical evaluation. See Spectrum Leasing Corp., B-205781, Apr. 26, 1982, 82-1 CPD ¶ 383. Further it is not the function of this Office to rescore proposals nor will we make independent judgments as to the numerical scores which should have been assigned. Blurton, Banks and Associates, Inc., B-206429, Sept. 20, 1982, 82-2 CPD ¶ 238. Our review is limited to examining whether the evaluation was fair and reasonable and consistent with the stated evaluation criteria. Southwest Regional Laboratory, B-219985, Dec. 16, 1985, 85-2 CPD ¶ 666. The fact that the protester disagrees with the selecting official's conclusions does not in itself render the evaluation unreasonable. Id.

The crux of Tichenor's protest is that its technical proposal, properly evaluated, was significantly superior to Birnbaum's technical proposal and that award to Tichenor would have been the most advantageous to the government despite Birnbaum's lower proposed cost.^{3/} Specifically, Tichenor, in its conference comments, presents an exhaustive item-by-item rescoring of its proposal based on its claimed superior experience and qualifications (as well as correction of allegedly erroneous scoring by EPA), and contends that it was properly entitled to a technical score of 1,232.5 points instead of the 1,115 points awarded the firm by EPA. Apparently, Tichenor requests that our Office adopt its view of the scoring as the correct measure of the relative technical merit of its proposal and require EPA to reopen negotiations to rescore proposals correctly. The following examples illustrate Tichenor's claimed entitlement to higher scores.

Under criteria C.1.a. and C.1.b., EPA evaluated the experience and qualifications of each offeror's proposed in-charge auditors, senior auditors, audit managers and supervisors. A maximum of 150 points was awarded under these criteria. Section L.15 of the solicitation, which also contained the minimum qualification requirements for the various labor categories, provided that a BS degree plus two years of additional experience "in the proposed field of expertise" would be an acceptable substitute for a Masters degree and a Masters degree plus two years of additional experience would be an acceptable substitute for a Ph.D. degree. Tichenor believes that because some of its proposed senior accountants, audit managers, and supervisors had years of experience in addition to their academic degrees, EPA should have assigned a higher score for these individuals under C.1.a. and C.1.b., because the additional experience should have counted as advanced degrees.

However, we note that none of the labor categories were required by the RFP to have an academic degree higher than a bachelor degree in accounting. Further, EPA did not use the "substitution clause" to award "bonus" points to any offeror to reflect the equivalent of advanced degrees based on additional experience. As a result, even if we assume that the protester is correct in its contention that additional points should have been awarded for lengthy experience, the

^{3/} It should be noted that Tichenor also disputes EPA's Cost realism analysis of Birnbaum's cost proposal and maintains that its proposal represented a significant savings to the government. We address this issue below.

record shows that a similar rescoring of Birnbaum's proposal would increase that firm's score even more than Tichenor's score. This is because the individuals proposed by Birnbaum had years of experience far exceeding the minimum requirements for senior auditors and managers. In this regard, the agency reports that the "net result of this exercise [rescoring both proposals for additional experience], is that Birnbaum's overall technical score would be 1,157.5 points to Tichenor's 1,140 points, a net gain of 5 points [for Birnbaum]." Accordingly, we find that Tichenor was not competitively prejudiced even if EPA should have awarded additional points for experience exceeding the minimum required.

As another example, Tichenor also protests that the number of audits of federal grants and contracts that the firm was given credit for was understated by EPA. Thus, while EPA credited the firm with 400 audits, the true figure, according to Tichenor, is 465; for individual construction projects the true figure is 145, rather than 123.4/ Therefore, for these areas, Tichenor argues that EPA should have awarded the firm a score of "4.5," rather than "3.5." (After best and final offers, both firms almost uniformly received scores in the "4" to "5" range.) Tichenor also protests that TEP did not provide a narrative in the evaluation to explain the distinction between a score of "4" and "5," and also objects to the evaluation methodology employed by EPA in simply totaling the number of audits performed by a firm in evaluating experience and in arbitrarily determining the number of audits which entitled a firm to a score of "5." Tichenor, however, does not complain about the evaluation conducted under criteria B.1., B.2., B.3., B.4., and D, under which it received perfect scores ("5") from the TEP.

We are not persuaded by these arguments. Despite the assertions by the protester, and based on our review of the documents, we think that the record clearly shows that the two proposals were essentially equal from a technical standpoint. Stated differently, the protester, with its emphasis on scoring, has failed to show that there existed any significant technical differences between the two proposals; we find none.

4/ These figures are illustrative only for purposes of our decision; they are not the actual audit figures. Tichenor considers these figures proprietary, and we are not releasing them.

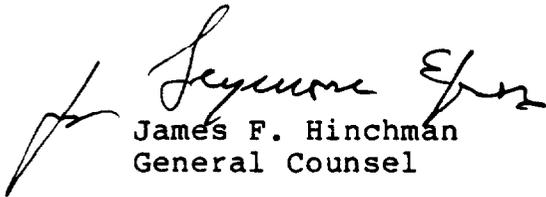
In this regard, although technical point ratings are useful as guides for intelligent decisionmaking in the procurement process, too much reliance should not be placed on them. Whether a given spread between two competing proposals indicates a significant superiority of one proposal over another depends upon the facts and circumstances of each procurement. See Wheeler Industries, Inc., B-193883, July 20, 1979, 79-2 CPD ¶ 41. Further, selection officials are generally not bound by recommendations made by a technical evaluation panel. Bell Aerospace Co., 55 Comp. Gen. 244 (1975), 75-2 CPD ¶ 168. Recognizing this, we have previously upheld source selection officials' determinations that technical proposals were essentially equal despite an evaluation point score differential of as much as 15.8 percent and despite an evaluation panel's recommendation that award be made to the offeror with the highest technical rating. Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 CPD ¶ 325. Award should not be based on the difference in technical score alone, but should reflect the procuring agency's considered judgment of the significance of that difference. 52 Comp. Gen. 358 (1972).

Here, since the record shows that both offerors submitted excellent proposals, Tichenor has failed to show that EPA's decision to award to the lower-cost proposal of Birnbaum was unreasonable. Simply, we again state that Tichenor has failed to show any significant technical differences between the two proposals, and we find none. In this connection, we view Tichenor's reliance on point scores, even as rescored, to be misplaced. Specifically, giving both offerors the additional points for "substitution" experience, and giving Tichenor all other points to which it claims to be entitled, the technical score would be 1,232.5 for Tichenor and 1,157.5 for Birnbaum, for a difference of approximately 7 percent. As stated above, such a difference does not require an agency to award to the higher scored offeror where, as here, the agency does not consider either proposal significantly superior. Accordingly, assuming the validity of the cost realism analysis indicating that Birnbaum was the lower-cost offeror (which we discuss below), we think that EPA could rationally have awarded to Birnbaum even if Tichenor is entitled to the technical scores it claims. We therefore deny this protest ground.

Finally, Tichenor asserts that EPA failed to properly evaluate Birnbaum's cost proposal for cost realism. As stated above, the RFP only defined cost realism as relating to "an offeror's demonstrating that the proposed cost or price provides an adequate reflection of its understanding of the requirements of this solicitation." We first note that where, as here, the solicitation contemplates a fixed-rate type contract, there is generally no requirement for a

cost realism study. See Clausing Machine Tools, B-216113, May 13, 1985, 85-1 CPD ¶ 533. Nevertheless, EPA here performed full audits of each offeror's cost proposal and negotiated lower costs with each offeror during discussions. Tichenor claims, however, that the firm has already experienced a substantial learning curve which would benefit EPA; that Birnbaum would incur additional expense for orientation meetings at 15 audit locations, and for training sessions, transition costs and other such costs so that award to Tichenor would actually represent a savings of \$312,789. The short answer is that these additional expenses are start-up costs which would be incurred during any changeover of contractors--the solicitation simply did not provide for the evaluation of such costs. Moreover, by submitting an excellent technical proposal along with a reasonable price which was supported by a detailed cost-breakdown, Birnbaum clearly demonstrated its understanding of the solicitation requirements, which was the stated basis for the cost realism evaluation.

The protest is denied.



James F. Hinchman
General Counsel