



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Data Resources  
File: B-228494  
Date: February 1, 1988

---

### DIGEST

1. Protest that agency improperly evaluated proposal is denied where the protester indicates its disagreement with the agency's evaluation but does not demonstrate that the evaluation was unreasonable.
2. A technically unacceptable proposal may be excluded from the competitive range irrespective of its low offered price.
3. Protest is denied where protester was not prejudiced even if there was a lack of meaningful discussions since meaningful discussions would not have cured technical deficiencies which resulted in protester's proposal being excluded from the competitive range.

---

### DECISION

Data Resources (DRI) protests the award of a contract to Jack Faucett Associates, Inc. under request for proposals (RFP) No. S0278050, issued by the U.S. Bureau of Mines (BOM) for a study of the United States mineral industry. DRI contends that the BOM improperly evaluated its proposal and failed to conduct meaningful discussions.

We deny the protest.

The RFP, issued July 8, 1987, contemplated the award of a firm, fixed-price contract to study the major factors that affect U.S. supply and demand for major industrial minerals. The work sought by the RFP was to be performed in three phases: phase I-literature search and methodology development; phase II-building and testing of a minerals industrial analytical system (software model); and phase III-applied analysis (using the methodology and software model developed in phases I and II). The RFP was structured so that phase I would be awarded as the basic contract requirement and

041163

phases II and III would be treated as fixed-price options. Price proposals were to be evaluated for award purposes by adding the total price of all options to the total price of the basic requirement.

The statement of work in Section C of the RFP provided that the methodology developed for this study should be suitable for use in assessing other minerals, but that its application in response to this RFP would be limited to the copper industry. The RFP further provided that each of the major factors affecting U.S. supply and demand should be assessed, including technological change, supply additions over time, changes in market structure, changes in demand as a result of substitution, other market changes such as downsizing, and public policy impacts such as tax changes and environmental regulations. Offerors were informed that "[their] analytical approach to assessing the evolution of U.S. supply and demand may be economic, engineering, statistical, econometric or a combination of these."

The following evaluation criteria were stated in Section M of the RFP:

"III. TECHNICAL EVALUATION

The following criteria shall be used in the technical proposal evaluation and are listed in descending order of importance:

- A. Experience of proposer's committed personnel in long-term minerals market forecasting.
- B. Understanding all elements of the Statement of Work and demonstrating that understanding by the thoroughness, soundness, and comprehension of the approach contained in the technical proposal.
- C. Capability of proposed methodology to effectively address major factors affecting supply and demand for minerals.
- D. Quantitative comprehension of the work to be accomplished as evidenced by the proposed level of effort and management plan.

Criterion A is of greatest importance and will be weighted accordingly. Criteria B and C are of lesser but equal importance. Criterion D is of least importance and will receive the least weight in technical evaluation.

IV. Technical and Price factors will be of equal importance (50/50)."

Seven proposals were received in response to the RFP. The Technical Evaluation Committee (TEC) found four proposals, including the protester's, to be technically acceptable. With regard to DRI's initial proposals, the TEC found that DRI had demonstrated a basic understanding of the RFP statement of work and appeared to be qualified to perform the analytical effort sought. The TEC, however, noted that DRI's methodological approach was basically an adaptation of DRI's econometric copper model, and it was unclear how the dynamics and interrelationships of key factors such as industry structure and technological change would be adequately addressed in this approach.

The contracting officer determined, after his review of the proposals and discussion with the TEC chairman, that the proposals of DRI, Faucett and Charles River Associates would be included in the competitive range as "susceptible of being made completely technically acceptable."<sup>1/</sup>

The BOM commenced negotiations with the three offerors in the competitive range and, with regard to DRI, focused its discussions on DRI's methodological approach. Specifically, DRI was questioned as to how its exclusively econometric approach would address the dynamics and lagged effects of key factors shifting the supply and demand functions such as new supply, changes in industry structure and technological changes.

At the close of discussions, all three offerors submitted best and final offers (BAFO). DRI's BAFO was determined to be technically unacceptable because DRI had failed to show how its econometric approach would address key factors causing mineral market supply and demand function shifts. In addition, the BOM concluded that DRI's proposed level of effort was seriously understated and that DRI had failed to provide sufficient commitment of industry expertise. DRI's proposal was found to be no longer in the competitive range, and the BOM only evaluated the proposed price of Faucett and Charles River. On September 29, 1987, the BOM awarded a \$73,667 contract to Faucett for phase I. Faucett's price for the basic and option phases was \$221,030 while DRI's price for the basic and option phases was \$74,827.

---

<sup>1/</sup> The contracting officer excluded the proposal of the University of Arizona from the competitive range because, of its high price.

DRI protests that the BOM improperly evaluated its proposal. DRI contends that the BOM required the use of an interdisciplinary approach when the RFP allowed offerors to propose an exclusively econometric approach. DRI also asserts that the BOM in its evaluation improperly assigned greater weight to level of effort than allowed by the evaluation criteria and that DRI's low price was not given sufficient weight in the evaluation.

Since the evaluation of technical proposals is inherently a subjective process, in reviewing protests of allegedly improper evaluations our Office will not substitute its judgment for that of the agency's evaluators but rather will examine the record to determine whether the evaluators' judgments were reasonable and in accordance with the listed criteria and whether there were any violations of procurement statutes and regulations. Dalfi, Inc., B-224248, Jan. 7, 1987, 87-1 CPD ¶ 24. In this regard, the protester bears the burden of proving that the agency's evaluation was unreasonable, and this burden is not met by the protester's disagreement with the evaluation or its good faith belief that its own proposal should have achieved a higher rating. Id., Pacord, Inc., B-224520.2, Mar. 6, 1987, 87-1 CPD ¶ 255.

The contracting officials awarded the BAFOs of DRI and Faucett the following technical scores:

	Maximum Points	DRI	Faucett
Personnel Experience	350	140	291.55
Understanding of Statement of Work	250	125	225.00
Methodology	250	125	225.00
Level of Effort	150	60	135.00
	<u>1,000</u>	<u>450</u>	<u>876.55</u>

DRI contends that its BAFO was improperly downgraded because it proposed primarily an econometric approach. DRI argues that it was entitled under the RFP to provide an analytical approach which "may be economic, engineering, statistical, econometric, or a combination of these." The government contends that while a specified analytical approach was not required by the RFP, the approach offered must be capable of addressing the major factors affecting mineral supply and demand. The government contends that DRI's econometric model does not accommodate those factors.

The RFP allowed offerors to propose a single analytical approach, but required that whatever approach was offered must address the identified major factors affecting mineral supply and demand. DRI was informed of this requirement in discussions and stated in its BAFO that "[it] recognize[d] the limitation of a purely econometric approach for the study." While DRI in its BAFO stated that it would consider the major factors affecting supply and demand, DRI does not state how it intends to accomplish this consideration using its econometric model. See Stay Inc., B-221305.2, June 24, 1986, 86-1 CPD ¶ 579. We find that the BOM's evaluation of DRI's technical approach was reasonable and consistent with the stated evaluation criteria.

DRI also contends that the BOM in its evaluation of DRI's BAFO assigned greater weight to level of effort than allowed by the evaluation criteria. It is clear from our review of the evaluation documents that the BOM was concerned with DRI's proposed level of effort, but we do not find that the BOM accorded this evaluation criterion undue weight. BOM's primary concern was that DRI's econometric approach did not adequately address the major factors affecting supply and demand. Level of effort was the least important of the evaluation criteria, and the BOM's scoring of BAFOs properly reflected the stated evaluation criteria.

DRI also protests that the BOM did not evaluate its low price. The government contends that it did not consider DRI's price because its BAFO was technically unacceptable and therefore no longer in the competitive range. We have long held that a technically unacceptable proposal can be excluded from the competitive range irrespective of its low offered price. 52 Comp. Gen. 382 (1972); CD Systems, Inc., B-217067, Apr. 5, 1985, 85-1 CPD ¶ 396.2/

DRI also protests that the BOM failed to conduct meaningful discussions. Specifically, DRI contends that it was never informed that its proposed level of effort was understated.

The governing provision of the Competition in Contracting Act of 1984, 10 U.S.C. § 2305(b)(4) (Supp. III 1985), as implemented by the Federal Acquisition Regulation (FAR) § 15.610(b) (FAC 84-16), requires that written or oral discussions be held with all responsible offerors whose proposals are in the competitive range. Price Waterhouse, 65 Comp. Gen. 205, 86-1 CPD ¶ 54, aff'd on reconsideration, B-220049.2, Apr. 7, 1986, 86-1 CPD ¶ 333. This fundamental

---

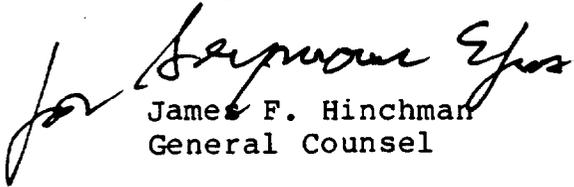
2/ We also note that had DRI's proposed level of effort increased to the level considered acceptable by the government that DRI proposed price would have increased significantly.

requirement includes advising offerors of deficiencies in their proposals and affording them the opportunity to satisfy the government's requirements through the submission of a revised proposal. FAR §§ 15.610(c)(2) and (5) (FAC 84-16); Furuno U.S.A., Inc., B-221814, Apr. 24, 1986, 86-1 CPD ¶ 400. Thus, it is well settled that for competitive range discussions to be meaningful, agencies must point out weaknesses, deficiencies, or excesses in proposals unless doing so would result in technical transfusion or technical leveling. Advanced Technology Systems, B-221068, Mar. 17, 1986, 86-1 CPD ¶ 260.

Even if we concluded that there was a lack of meaningful discussions we would sustain the protest only if the protester demonstrated that it was prejudiced by the government's actions. TM Systems, Inc., B-228220, Dec. 10, 1987, 87-2 CPD ¶ \_\_\_\_; B.K. Dynamics, Inc., 67 Comp. Gen. \_\_\_\_, 87-2 CPD ¶ 429. The record does not show that DRI was prejudiced here.

The BOM's primary concern in evaluation of DRI's BAFO was DRI's econometric approach. DRI's proposal was found to be significantly inferior to Faucett's proposal in this area. We note that even if DRI were given the maximum points for level of effort its proposal would still be scored significantly lower than Faucett's or Charles River Associates. Assuming that DRI received all 150 points under the criterion level of effort, its BAFO would only be rescored at 540 points as compared to the scores of Faucett (877) and Charles River (697). Based upon the statement of the BOM that its primary concern was DRI's technical approach and upon DRI's relatively low technical score, we are convinced that even if there had been meaningful discussions, DRI's BAFO would still have been technically unacceptable and excluded from the competitive range. Thus, DRI has not demonstrated that it was prejudiced even if there was a failure to hold meaningful discussions with DRI.

The protest is denied.

  
James F. Hinchman  
General Counsel