



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Ecosometrics, Inc.  
File: B-229547  
Date: March 14, 1988

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### DIGEST

1. Protest that weaknesses found by contracting agency in protester's proposal concern areas unrelated to evaluation criteria in request for proposal is untimely where the matters were raised with protester during discussions but protest was not filed until after protester lost the competition.
2. Protest that agency failed to hold meaningful discussions is denied where protester was informed in discussions of all areas in which technical evaluators considered that protester's proposal was weak.
3. Where the record indicates that procuring agency reasonably evaluated protester's proposal in a manner consistent with the solicitation's evaluation criteria, protest that agency misapplied evaluation criteria is denied.

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### DECISION

Ecosometrics, Inc., protests the award of a contract to Urban Mobility Corporation under request for proposals (RFP) No. DTUM60-86-R-71189, issued by the Urban Mass Transportation Administration (UMTA) for special analyses in the area of private sector involvement in the urban transportation services industry. We dismiss the protest in part and deny it in part.

The RFP calls for a 2-year cost reimbursement, level of effort type contract for a total of 12,000 hours. Under the contract, as the need arises, UMTA's Office of Budget and Policy will issue task orders to the awardee; information and analysis provided by the awardee under those orders will be used by UMTA to formulate and assess UMTA policy and legislative positions. The solicitation requires offerors to have specialized skills in the disciplines underlying the areas of analysis and familiarity with the principles and

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practice of urban mass transportation. According to section 1.1 of the statement of work (SOW), performance of the contract will require background and experience in numerous areas, such as the transit environment and process, including current trends toward privatization; operation of the local transit planning process; sources of transit funding; private sector transportation service entities; the physical environment, including distribution of population, demographic factors, trip patterns and demand; influence of labor legislation and unions; and factors involving competition and free enterprise as they relate to transit.

The contractor is to provide personnel and facilities necessary to carry out the assigned tasks. The SOW indicates that the contractor may have to perform tasks outside of its area of expertise, in which case the firm is to obtain the services of a qualified subcontractor to carry out the task.

The RFP provides that award will be made to the responsible offeror whose proposal is deemed most advantageous to the government, cost and other factors considered. The solicitation also provided that technical merit would be of primary importance in determining the award and stressed that award would not necessarily be made to the technically acceptable offeror with the lowest estimated cost. The technical evaluation criteria, with subcriteria, were as follows:

- "A. Ability to carry out the project activities described in the statement of work (SOW) as evidenced by the following experience and background:
  - a. Grounding in the principles and practice of financial analysis
  - b. Background in the disciplines listed in Section 1.1 of the SOW, and related disciplines
  - c. Grounding in the principles and practice of urban mass transportation
  - d. Possession of special skills or background in urban mass transportation policy analysis
- B. Qualifications of personnel
- C. Experience as a technical support contractor with responsibility for activities and subject matters

similar to those described in the SOW

- D. Experience and capabilities in communication of information including evidence of effective dissemination of research results and the technical aspects of policy initiatives."

Criterion B was assigned the greatest weight, followed by A, C and D.

Twelve proposals were received by UMTA by the initial October 6, 1986 closing date. Of those, six proposals were determined to be within the competitive range.

By letters dated February 26, 1987, contracting officials sent all the offerors in the competitive range a series of questions on their technical proposals and informed the offerors that proposal revisions should be submitted by March 9. Ecosometrics was asked to provide information on the following:

- "1. Recent experience in encouraging and assisting local public transit agencies and local governments to implement competitively provided services.
2. Research and experience in dealing with transit/labor issues.
3. Financing techniques in transit (as opposed to financial analysis).
4. Operating experience of large transit systems.
5. Operating experience of private transit services.
6. Experience and background in dealing with local community and business leaders in implementing TSM [transportation system management] policies and practices.
7. Identify the key participants, their area of specialty as it relates to one or more of the skill areas required in this contract and the level of commitment of each of the key participants. Also provide the ratio of senior to junior researchers expected for this research."

After receipt of the revised proposals and oral negotiations with all competitive range offerors, best and final offers (BAFOs) were requested by July 21. The BAFOs were evaluated by the technical evaluation committee on August 7. As a

result, the six competitive range offerors were rescored; the initial and revised scores were as follows:

<u>Offeror</u>	<u>Technical Score</u>	<u>Revised Score</u>
Urban Mobility Corp.	95	95.7
ATE Management & Services	90	90.3
Ecosometrics, Inc.	77	73.2
ABT Associates	72	72.7
Touche Ross, Inc.	73.7	71.7
LTI Consultants	74	70

The technical evaluation panel determined that the two highest ranked proposals were clearly superior to the other four proposals as demonstrated by the wide difference in the scores, and that the five point difference between the two highest ranked proposals was also significant. Based on the RFP evaluation scheme, which established that technical factors would be paramount to cost, contracting officials determined that award to Urban Mobility would be most advantageous to the government although its proposed cost (\$824,721) was \$21,000 higher than the second ranked proposal. By letter dated October 16, Ecosometrics was informed of the award and of the weaknesses in its revised proposal, described as lack of in-depth coverage and limited experience in transit operation, hands-on labor negotiations, implementation of public/private cooperative services and working with business and community leaders in implementing transit management organizations in local and suburban communities.

Ecosometrics argues that the weaknesses described by UMTA in the October 16 letter should not have been used to downgrade its proposal because they were not directly related to the solicitation's evaluation criteria or SOW. The protester further argues that it was not adequately notified during discussions of these weaknesses. Finally, Ecosometrics concludes that in any event the alleged weaknesses were the result of UMTA's faulty evaluation of its compliant proposal.

To the extent Ecosometrics argues that the weaknesses in its proposal as described in UMTA's October 16 letter were based on factors unrelated to the evaluation criteria in the RFP, the protest is untimely. Each of the areas in which Ecosometrics' proposal was found to be weak was first raised in the February 26 negotiation letter UMTA sent to Ecosometrics. In this regard, Ecosometrics concedes that two of the weaknesses described in the October 16 letter (limited experience in transit operation and in implementation of public/private cooperative services) were raised in the February 26 letter. Ecosometrics contends, however,

that the two other weaknesses (limited experience in hands-on labor negotiations and in working with business and community leaders in implementing transit management organizations in local and suburban communities) were not encompassed by the negotiation letter. We disagree. As noted above, the UMTA letter asked Ecosometrics to discuss its "[r]esearch and experience in dealing with transit/labor issues." In our view, the specific reference to "experience," as distinct from "research," reasonably should have put Ecosometrics on notice that UMTA was asking for elaboration on any actual experience Ecosometrics had in the labor area, not only its consulting experience in that field. Similarly, the other weakness in Ecosometrics' proposal clearly was encompassed by the reference in the February 26 letter to Ecosometrics' "[e]xperience and background in dealing with local community and business leaders in implementing TSM [transportation system management] policies and practices."

Since the February 26 letter put Ecosometrics on notice that UMTA planned to consider the areas raised in the letter in evaluating proposals, Ecosometrics was required to file its protest challenging the evaluation of those areas as inconsistent with the RFP before March 9, the next due date for revised proposals established by the February 26 letter. Ecosometrics could not simply wait until award was made to another offeror to raise its challenge to an alleged deficiency of which it had notice earlier in the procurement. Accordingly, this ground of protest is untimely. See Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1987); C. Martin Co., Inc., B-228552, Jan. 20, 1988, 88-1 CPD ¶ 56.

In any event, we see no merit to Ecosometrics' argument that the four weaknesses described in UMTA's October 16 letter were inconsistent with the evaluation factors in the RFP. On the contrary, each of the weaknesses reasonably relates to the subfactors listed under the first evaluation factor in the RFP, set out above; specifically, the area of "transit operation" is reasonably related to several areas of expertise listed in section 1.1 of the SOW (which is incorporated in the evaluation scheme by subfactor A(b)), as well as subfactor A(c), which calls for "grounding in the principles and practice of urban mass transportation"; "hands-on labor negotiation" is reasonably related to an offeror's background and experience in labor legislation and unions, another discipline listed in section 1.1 of the SOW; and "implementation of public/private cooperative services and working with business and community leaders in implementing transit management organizations in local and suburban communities" is reasonably related to the fundamental purpose of the contract as described in

section 1.1 of the SOW, private sector involvement in the urban mass transportation area.

To the extent that Ecosometrics argues that it was not notified in sufficient detail of the deficiencies in its proposal during discussions, we find the protest to be without merit. The requirement that discussions with offerors in the competitive range be meaningful does not mean that offerors are entitled to all-encompassing discussions; rather, contracting agencies are only required to lead offerors into areas of their proposals needing amplification. Northwest Regional Educational Laboratory, B-222591.3, Jan. 21, 1987, 87-1 CPD ¶ 74. The actual content and extent of discussions are matters of judgment primarily for determination by the agency involved, and our Office will review the agency's judgment only to determine if it is reasonable. Tidewater Health Evaluation Center, Inc., B-223635.3, Nov. 17, 1986, 86-2 CPD ¶ 563.

Here, in our view, the February 26 negotiation letter adequately advised Ecosometrics of the need to provide further information in all areas in which the evaluators considered the proposal weak. With regard to Ecosometrics' principal complaint--that it was not informed of the need for "hands-on" experience in such areas as labor negotiations--we think it was clear from the February 26 negotiation letter that, in general, the technical evaluators thought the firm's proposal did not display sufficient operational or "hands-on" experience. In this respect, two of the seven issues raised in the February 26 letter specifically related to the firm's operational experience with large transit systems and private transit services.

We next consider the evaluation of Ecosometrics' proposal. As discussed in detail below, we see no basis to question UMTA's evaluation.

In reviewing protests against the propriety of an agency's evaluation of proposals, it is not the function of our Office to independently evaluate those proposals; rather, we examine the agency's evaluation to ensure that it is reasonable and consistent with the evaluation criteria. The protester bears the burden of showing that the evaluation is unreasonable and the mere fact that it disagrees with the agency does not render the evaluation unreasonable. Delaney, Siegel, Zorn & Associates, B-224578.2, Feb. 10, 1987, 87-1 CPD ¶ 144.

The UMTA technical evaluation board determined that, based on its revised proposal, Ecosometrics could have difficulty performing some of the tasks that could be called for under

the contract because of lack of experience and depth in such areas as business/community involvement, large operating systems and financing. The evaluators noted that the firm identified only consultant-type experience in these areas and with respect to labor negotiations.

The October 16 award notice sent to Ecosometrics described the weaknesses in the firm's proposal in a manner slightly different from the technical evaluation board's final assessment. Since the October 16 notice was the firm's first indication of why its proposal was rejected, Ecosometrics' protest was framed in response to the points contained in that letter. We need not consider whether the October 16 notice, standing alone, included sufficient justification for not selecting Ecosometrics' proposal. Our approach in reviewing an agency's technical evaluation is to examine the reasonableness of the agency's action in light of the entire record. See Centennial Computer Products, Inc., B-212979, Sept. 17, 1984, 84-2 CPD ¶ 295. Thus, our review of UMTA's conclusions concerning the protester's proposal is not limited to the points set forth in the October 16 letter.<sup>1/</sup>

Among the significant weaknesses found by the technical evaluators in Ecosometric's proposal was the firm's limited experience with large transit operations. Ecosometrics challenges UMTA's finding, arguing that under a contract with the Washington Metropolitan Area Transit Authority (WMATA), the firm has gained significant experience with a large transit system, and that it informed UMTA officials of that contract during oral negotiations. The record shows that in response to the February 26 negotiation letter, the protester's revised proposal listed a number of contracts, including a WMATA contract, under which the firm did studies and analysis, most of which related to transit fare collections. As UMTA points out, those contracts do not demonstrate transit operational experience. Thus, we have no basis to question the judgment of the technical evaluators that Ecosometrics' proposal did not demonstrate operating experience with large transit systems.

Another significant weakness noted by the technical evaluators in Ecosometrics' proposal was its limited experience and background in business/community involvement in transit issues. The technical evaluators expressed concern

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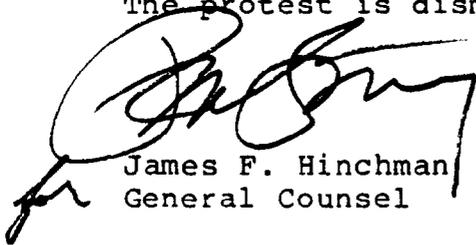
<sup>1/</sup> We note that the technical evaluation board's written assessments of Ecosometrics initial and revised proposals were released to the firm during the protest proceedings so the protester had an opportunity to review and respond to those documents.

that Ecosometrics' experience in these areas is limited to small transit systems and the firm lacks "hands-on" or operational experience, as opposed to experience in conducting studies. Although Ecosometrics' revised proposal included more information in these areas than did its initial proposals, we have no reason to disagree with the judgment of the technical evaluators that Ecosometrics lacked the type of experience contemplated by the RFP.

The technical evaluation board also found that Ecosometrics' revised proposal showed a lack of experience with financing. In this respect, the SOW indicated that the work would require, among other things, knowledge and experience with sources of transit funding. Also, the February 26 negotiation letter asked for information on the firm's experience with "[f]inancing techniques (as opposed to financial analysis)." In response to that question, Ecosometrics' revised proposal emphasized its previous experience with financial analysis. Since the firm was specifically asked in negotiations to discuss its experience with financing techniques rather than with financial analysis, and failed to do so, we have no reason to question the judgment of the technical evaluators that Ecosometrics' proposal was weak in this area.

Finally, Ecosometrics speculates that the awardee may have proposed unreasonable labor rates since, according to the protester, the firm proposed unreasonable labor rates in its proposal under another solicitation. Specifically, the protester argues that the labor rate for the awardee's president was rejected in a previous procurement and a cost ceiling was imposed on that individual. We note that the labor rate proposed by Urban Mobility for its president is lower than that proposed for Ecosometrics' president, and in any event, the contracting officials determined that rate to be reasonable. The protester's unsupported contention to the contrary provides no basis to question that determination.

The protest is dismissed in part and denied in part.



James F. Hinchman  
General Counsel