



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Gary Bailey Engineering Consultants

File: B-229943.2

Date: May 3, 1988

DIGEST

1. In reviewing protests concerning the evaluation of technical proposals, the General Accounting Office will not substitute its judgment for that of agency's evaluators but 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.
2. Protest that protester did not receive meaningful discussions is denied where the procuring agency advised protester of deficiencies in its proposal and provided protester with the opportunity to revise its proposal.
3. Protest against the use of mini source selection procedures to evaluate proposals is untimely where this alleged impropriety was apparent but not filed before the closing date for receipt of proposals.

DECISION

Gary Bailey Engineering Consultants protests the award of a contract to Southwest Research Institute (SwRI) under request for proposals (RFP) No. F41608-87-R-3754, issued by the Department of the Air Force. Bailey contends that the Air Force improperly evaluated proposals and failed to conduct meaningful discussions.

We deny the protest in part and dismiss it in part.

The RFP, issued April 14, 1987, contemplated the award of a time-and-materials contract for engineering services for the High Technology Metals, Technology Application Program Management (HTM-TAPM). The stated objective of HTM-TAPM is to utilize advances in high technology metals to improve the reliability and maintainability of Air Force systems and to develop support capabilities.

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The Statement of Work (SOW) sought services in three areas: analysis, engineering services and support. Offerors were informed that their analysis would involve evaluation of 15 high technology metals areas. Offerors were also informed that their proposals would be evaluated under Air Force Logistics Command Mini (Streamlined) Source Selection Procedures, AFLC FAR § 15.612-91 (1987), and evaluation would be based upon an integrated assessment of the offeror's ability to satisfy the RFP requirements. The integrated assessment would include evaluation under both general criteria (past performance and understanding the requirement) and specific criteria. The RFP listed the following specific criteria, in descending order of importance, with criteria (1) and (2) being of equal importance:

1. Technical experience
2. Personnel resources
3. Technical resources
4. Cost

Proposals were received from the protester and SwRI, with Battelle Columbus Division as SwRI's subcontractor. As a result of technical evaluations, the Air Force found SwRI's proposal to be technically acceptable. Bailey's proposal, however, was determined to be technically unacceptable in the areas of technical experience and personnel resources and determined to be only marginally acceptable in the area of technical resources. The Source Selection Authority (SSA), however, included Bailey in the competitive range as susceptible of being made acceptable through discussions.

In accordance with the Mini Source Selection Procedures, Bailey received two deficiency reports (DR) and one clarification request (CR). The DRs informed Bailey that its proposal did not meet the minimum requirements of the RFP in the areas of personnel resources and technical experience. The CR sought to clarify Bailey's access to a high technology metals library and data base to demonstrate its compliance with RFP requirements regarding technical resources. Bailey was given the opportunity to respond and supplement its proposal in response to the DRs and CR and to submit a BAFO. After BAFOs, the Air Force concluded that only SwRI was technically acceptable and, on September 30, 1987, awarded a contract to SwRI.

Bailey protests that the Air Force improperly evaluated its proposal and the proposal of SwRI. Bailey argues that its proposed personnel had expertise and experience in the design and application of high technology metals to the aerospace industry and that its proposed personnel satisfied

the requirements of the RFP. Bailey further argues that SwRI, and its proposed subcontractor Battelle, offered theoretical expertise which was not sought by the RFP.

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.

While Bailey argues that its proposed personnel and experience meet the requirements of the RFP, the record establishes that the Air Force properly concluded that Bailey's proposal was technically unacceptable. The RFP required experience in 15 high technology metals areas. Bailey's proposed personnel, however, had related experience in only 3 of the 15 areas. Furthermore, the protester showed no evidence of firm experience with high technology metals.

In response to the DRs informing Bailey that it had failed to propose personnel with sufficient high technology metals experience and to show sufficient firm experience, Bailey revised its proposal to offer to employ a technical writer and described two contracts it had performed. Because neither contract involved high technology metals and the offered technical writer had no high technology metals experience, these revisions did not satisfy the RFP requirements. The protester has not shown that the Air Force's evaluation of its proposal was unreasonable.

Bailey also argues that the Air Force improperly evaluated SwRI's proposal. Bailey contends that SwRI's proposal was overly theoretical and would be more responsive to a research and development effort, rather than a solicitation

seeking engineering applications services. We find no merit to this argument.^{1/} SwRI, and its subcontractor Battelle, in their proposal established firm and personnel experience in all 15 high technology metals areas. Furthermore, SwRI's proposal recited more than 50 contracts it, or Battelle, had performed in the high technology metals area. The Air Force's evaluation of SwRI's proposal was reasonable.

Bailey also argues that it was not informed that its proposal was technically unacceptable and, thus, was not given the opportunity to submit an acceptable BAFO. In effect, Bailey argues that it failed to receive meaningful discussions.

In order for discussions to be meaningful, offerors must be advised of deficiencies in their proposals and offered the opportunity to satisfy the government's requirements through the submission of a revised proposal. Federal Acquisition Regulation (FAR) § 15.610 (FAC 84-16); Data Resources, B-228494, Feb. 1, 1988, 88-1 CPD ¶ 94. The Air Force informed Bailey that its proposal failed to satisfy the minimum requirements of the RFP in the areas of personnel resources and experience. Bailey was allowed to revise its initial proposal in response to the Air Force's DRs. We find the discussions received by Bailey to be meaningful.

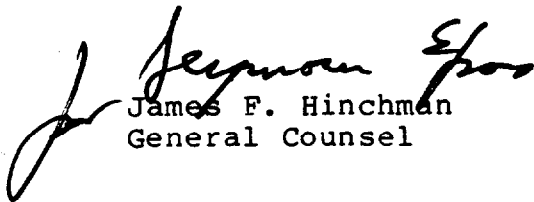
Bailey contends that the use of Mini (Streamlined) Source Selection Procedures was improper in this case. AFLC FAR § 15.612-91(c)(4) provides that the Mini (Streamlined) Source Selection Procedures should only be used where there is "a reasonable expectation of an interested and capable market to insure effective technical competition." Bailey argues that there was not a reasonable expectation of an interested and capable market because the RFP informed offerors that the Air Force would evaluate offerors' possible bias towards selecting insertion projects that the offeror could manufacture.^{2/}

^{1/} Bailey did not request documents pursuant to our Bid Protest Regulations, 4 C.F.R. § 21.3(c) (1988), and was not provided with SwRI's proposal or with documents in connection with the evaluation of its proposal. We have, however, reviewed these documents in camera in reaching our decision.

^{2/} Bailey states that it does not contest the legitimacy of this restriction, the intent of which is to avoid possible conflicts of interest.

Under our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1), a protest based upon alleged improprieties in a solicitation which are apparent prior to the closing date for receipt of proposals must be filed before that time. The alleged restriction of an available market was apparent from the face of the RFP, so that Bailey should have protested the use of the Mini (Streamlined) Source Selection Procedures prior to submitting its proposal. Bailey's protest on this issue is untimely and is dismissed. In any event, Bailey has failed to show that the Air Force did not have a reasonable expectation of obtaining an interested and capable market place.

The protest is denied in part and dismissed in part.


James F. Hinchman
General Counsel