



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Wheeler Industries, Inc.

File: B-230972; B-230972.2

Date: August 16, 1988

DIGEST

Protest that agency's evaluation of protester's proposal was unreasonable is denied where the agency had a reasonable basis for concluding that (1) a performance risk was created by the protester's reduction of proposed costs in its best and final offer by almost 20 percent through a reduction in the fringe benefits and hourly wages of its professional employees, and (2) the protester's stated support-to-professional staffing ratio was inaccurate since research assistants (requiring only a high school diploma and 3 years experience) should have been classified as support, rather than professional, staff.

DECISION

Wheeler Industries, Inc., protests the proposed award of a contract to ANADAC, Inc., under request for proposals (RFP) No. N00024-86-R-5199(Q), issued by the Naval Sea Systems Command for engineering and technical services for the AEGIS shipbuilding program. We deny the protest in part and dismiss it in part.

The solicitation, which contemplated the award of a cost-plus-fixed-fee contract, advised offerors that the Navy would evaluate proposals for both technical merit and cost, but that technical factors would be significantly more important than cost. Award was to be based on the proposal considered most advantageous to the government overall. The Navy received four proposals in response to RFP. A technical evaluation review panel (TERP) evaluated the technical proposals and determined that one was unacceptable. The TERP recommended that discussions be held concerning the three proposals determined to be in the competitive range, and a contract award review panel (CARP) agreed. There were two rounds of discussions, each followed by the submission of best and final offers (BAFOs).

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The Navy reports that during the final stages of the evaluation process the contracting officer determined that the TERP had failed to evaluate the proposals in accordance with the evaluation criteria set forth in the RFP. In addition, the Navy reports receiving several anonymous telephone calls concerning alleged efforts by a prospective subcontractor to one of the offerors to influence a member of the CARP and alleged efforts by the chairman of the CARP to influence the TERP in favor of one of the offerors. Both the contracting officer and the Navy's Inspector General conducted separate investigations of these allegations, but neither investigation produced proof of any impropriety. Nevertheless, given the improper evaluation by the TERP, as well as the allegations of impropriety, the Navy decided to appoint a new TERP and CARP to evaluate the original proposals, and so notified the offerors.

Following an evaluation by the new TERP, the new CARP decided to request BAFOs from the offerors in the competitive range, primarily to allow the offerors to update cost data and advise of any changes in proposed subcontractors or key personnel. The request for BAFOs advised offerors to document any change in technical approach. The TERP evaluated the BAFOs, resulting in a slight improvement in the technical scores for each offeror.

Meanwhile, in accordance with the source selection plan, the contracting officer completed his review of the revised cost proposals and prepared a cost report. With respect to Wheeler, that report noted a discrepancy between Wheeler's technical and cost proposals relating to the percentage of effort to be performed by professional staff versus the effort to be performed by support staff. The report also noted that Wheeler was able to reduce its proposed costs by almost 20 percent by proposing in its BAFO to increase the hours worked per week by its professional staff while reducing fringe benefits.

The CARP reviewed the separate technical and cost reports and decided to revise downward the raw scores received by Wheeler's technical proposal in light of the discrepancies noted in the cost report. After application of the technical evaluation weights, the combined technical and cost score for Wheeler was 88.24. The ANADAC proposal received a combined weighted score of 88.78. The CARP recommended award to ANADAC, and the source selection official concurred.

When the Navy announced the proposed award, Wheeler filed a protest with this Office on April 8, 1988, alleging that the Navy had acted improperly by permitting the technical

transfusion of aspects of Wheeler's proposal to ANADAC, allowing the submission of revised technical proposals in response to the last request for BAFOs, and downgrading Wheeler's cost proposal based on the firm's plan to use a "modified work week," which Wheeler said is sometimes also referred to as "uncompensated overtime." After the Navy submitted its report on the protest, Wheeler filed a second protest here alleging that the Navy had failed to conduct adequate discussions with the firm.

There is no support in the record for Wheeler's allegation that the Navy engaged in improper technical transfusion. With respect to the allegation that the Navy improperly allowed the offerors to revise their technical proposals in response to the final request for BAFOs, the issue is untimely. The Navy's letter requesting BAFOs, dated December 4, 1987, specifically stated that offerors should document any change in technical approach, thus indicating that revisions to technical proposals would be permitted. If Wheeler thought that the agency should not have allowed such revisions, it should have protested that issue prior to December 16, the revised closing date for receipt of BAFOs. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1988); Wabash DataTech, B-224550, Feb. 11, 1987, 87-1 CPD ¶ 149.

The central issue in this protest is whether the CARP's downgrading of Wheeler's technical proposal was reasonable. In this regard, it is not our function to reevaluate or rescore technical proposals. Fischer & Porter Co., B-229764, Mar. 17, 1988, 88-1 CPD ¶ 279. Rather, it is the contracting agency that has the primary responsibility for determining the relative merits of competing proposals, McLaughlin Enterprises Inc., B-229521, Mar. 4, 1988, 88-1 CPD ¶ 232, since the agency is most familiar with its need and must bear the burden of any difficulties resulting from a defective evaluation. Fisher & Porter Co., B-229764, supra. An agency enjoys a reasonable range of discretion in evaluating proposals, and we will not question the agency's judgment in this regard in the absence of a clear showing of unreasonableness. Kay and Associates, Inc., B-228434, Jan. 27, 1988, 88-1 CPD ¶ 81.

The CARP adjusted downward the raw scores received by Wheeler's technical proposal under two of the evaluation criteria: individual experience and staffing. With respect to experience, the CARP reduced Wheeler's rating from excellent to good because Wheeler's modified work week would have increased the standard work week of its top and middle managers to 50 and 45 hours per week, respectively. The CARP reported that this plan could affect the number of top and middle managers working on the project and could lead to

cost overruns. The CARP report indicates concern over Wheeler's ability to retain the personnel offered in the technical proposal, particularly since Wheeler had indicated in its BAFO cost submission that it had reduced employee fringe benefits.

With respect to staffing, the CARP reduced Wheeler's rating from excellent to good under this criterion as well, based on what was perceived as a discrepancy involving research assistants. The TERP had rated Wheeler's staffing plan as excellent based in part on Wheeler's representation in its technical proposal that only 15 percent of the work in the base year would be performed by support staff. In reviewing the BAFO cost submission, however, the contracting officer calculated the percentage of effort to be performed by support staff as substantially higher by combining the man-years indicated by Wheeler for research assistants and technical assistants. The contracting officer and the CARP believed that research assistants (requiring only a high school diploma and 3 years experience) should be considered support staff, rather than professional staff, whereas Wheeler's calculation of its support-to-professional ratio appeared to have been based on the firm's classification of at least some of its research assistants as professionals.

Wheeler contends that the rescoring of its technical proposal under both the individual experience and the staffing criteria was unreasonable. According to Wheeler, the Navy misunderstood its proposed modified work week and therefore improperly adjusted the firm's man-hours per year for purposes of evaluation. As explained in Wheeler's best and final cost submission, the firm's modified work week plan called for the hourly wage rate for some of its employees to be recalculated by dividing the employee's weekly salary by either 45 or 50 hours, instead of 40. The result in each case would be a reduction in the hourly rate of pay, which allowed Wheeler to reduce its proposed costs in its BAFO. Wheeler points out, however, that no employee would be required under its modified work week plan to work more than 40 hours per week, and that both its technical and cost BAFO submissions clearly stated that the firm based its proposal on 40-hour weeks, as the solicitation required. Wheeler argues now that its proposal does not provide for a single hour of uncompensated overtime and that none of the agency's concerns about the firm's modified work week is justified.

With respect to the staffing criterion, Wheeler points out that both its technical and cost submissions contained identical information concerning the number of man-years it would provide for both research assistants and technical

assistants. Thus, argues Wheeler, the Navy's claim that a discrepancy existed is erroneous. Further, Wheeler contends, while some of its research assistants would perform some professional tasks, the Navy concluded incorrectly that Wheeler had classified all of its research assistants as professionals.

Under the source selection plan for this procurement, the CARP was to review the separate TERP and cost reports and modify the adjective ratings and numeric scores as appropriate. Here, we cannot say that the adjustments made by the CARP to the scoring of Wheeler's technical proposal were unreasonable.

Under Wheeler's modified work week, the hourly rate of pay for many of Wheeler's key employees would have been reduced, for some rather substantially. While no employee would be required to work more than 40 hours per week, many employees would have had to work 45 or 50 hours per week in order to maintain the salary earned prior to implementation of the plan.^{1/} From the government's perspective, introduction of this plan in Wheeler's BAFO made the proposal less desirable technically than earlier perceived because the government would be buying the services of professional personnel that now would be forced to choose between a substantial cut in pay or a substantially longer work week. Fringe benefits also had been reduced, according to Wheeler's BAFO. We find reasonable the agency's conclusion that it was unlikely to receive the same level of service in a 40-hour work week under Wheeler's BAFO as it would have under the firm's initial proposal, and that a downgrading of Wheeler's technical proposal therefore was warranted.^{2/}

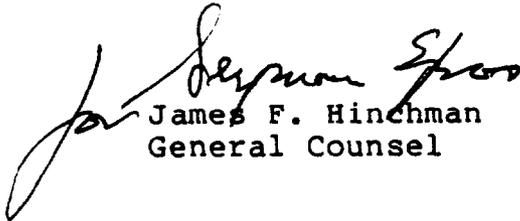
We conclude further that the agency's downgrading of the Wheeler proposal under the staffing criterion had a reasonable basis. The agency reports that the TERP's rating of excellent for Wheeler's initial proposal was based in part on the firm's indication that only 15 percent of the work would be performed by support staff. The CARP found, however, that the ratio of support effort would be much

^{1/} Wheeler's BAFO stated that if an employee chose to work in excess of 40 hours, the excess hours could be spent on the subject contract, if needed, but otherwise would be spent on other work.

^{2/} The agency made no adjustment in its cost evaluation to account for the modified work week, and based its cost evaluation on a 40-hour week.

higher if research assistants were classified solely as support staff. While Wheeler says that it planned to use its research assistants to perform professional tasks, we find reasonable the agency's conclusion that personnel with the qualifications required (high school plus 3 years experience) were support, rather than professional, staff. Reclassifying all of Wheeler's research assistants as support staff would increase the percentage of effort to be performed by support staff, thus justifying a downward adjustment for Wheeler's proposal under the staffing criterion.

Finally, we find no merit to Wheeler's argument that the agency was required to discuss the perceived deficiencies that surfaced in connection with the evaluation of the firm's BAFO, primarily involving the use of a modified work week. In our view, Wheeler assumed the risk that making substantial reductions in proposed costs would have an impact on the agency's assessment of its technical proposal.


James F. Hinchman
General Counsel