



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Jack Faucett Associates
File: B-233224
Date: February 3, 1989

DIGEST

Protest against agency determination that technical proposals were essentially equal and to award to low cost offeror is sustained where source selection officials did not evaluate proposals in accordance with stated evaluation criteria which were listed in descending order of importance.

DECISION

Jack Faucett Associates protests the award of a contract to Apogee Research, Inc., under request for proposals (RFP) No. DTFH61-88-R-00104, issued by the Federal Highway Administration, Department of Transportation. Faucett contends that Transportation improperly evaluated its proposal and that the technical superiority of its proposal outweighed Apogee's lower cost. Performance has been stayed pending our decision.

We sustain the protest.

The RFP contemplated the award of a cost-reimbursement services contract for the revision of the Highway Revenue Forecasting Model (HRFM). The HRFM is a model used by Transportation to forecast highway revenues under existing, and alternative future, highway tax structures. The awardee is required to evaluate the current HRFM, to document current procedures, assumptions, data files and statistical tests, to recommend modifications to the HRFM, to implement approved modifications, and to prepare an instructional guide.

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The RFP provided that award would be made to the offeror whose proposal was the most advantageous to the government, cost or price and other factors considered and stated:

"Proposals will be evaluated and the prospective Contractor will be selected based principally on the following criteria listed in order of descending importance:

1. Offeror's Commitment of Resources as Evidenced by the Proposed Staffing Plan.

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2. Offeror's Responsiveness to the Technical Requirements of the RFP as Reflected in the Proposal.

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In addition, to the criteria listed above, relative costs will be considered in the ultimate award decision." (Emphasis in text.)

Five proposals were received, and the proposals of Faucett, Apogee and Price Waterhouse were found to be technically acceptable by the technical evaluation panel (TEP) and placed in the competitive range. The TEP concluded that the three offerors were essentially equal and found "that any of the three firms . . . is qualified and capable of accomplishing the desired work in a highly professional manner."

Discussions were held with the three offerors, and best and final offers (BAFO) were received and evaluated. The TEP did not rescore the BAFO technical proposals but found that the three offerors remained essentially equal. The proposals were scored as follows:

<u>Offeror</u>	<u>Technical Score</u>	<u>BAFO Price</u>
Faucett	8.56	\$147,456
Apogee	8.24	146,137
Price Waterhouse	8.06	228,017

Since the technical proposals were considered to be essentially equal, Transportation selected Apogee for award based upon its lower cost, and, on September 29, 1988, awarded a contract to Apogee for \$146,137.

Faucett argues that Transportation erred in awarding a contract to Apogee on the basis of cost. Faucett states that while the RFP provided that relative costs would be considered in the award decision that the prospective contractor would be selected principally based upon the technical criteria. Faucett contends that the technical criteria were of greater importance than cost and therefore that Apogee's 0.9 percent advantage in lower cost did not justify award where Faucett's technical score was 3.9 percent higher than Apogee's score.

Furthermore, Faucett argues that the technical scoring was not done in accordance with the stated RFP criteria. Faucett contends that the RFP provided that the technical criteria were listed in descending order of importance and, therefore, that criterion 1, "Offeror's Commitment of Resources" must be of greater worth than criterion 2, "Offeror's Responsiveness." Faucett states that the TEP in evaluating technical proposals gave greater weight to criterion 2 than to criterion 1 and that its technical proposal was clearly superior under the evaluation scheme announced in the RFP.

Transportation argues that proposals were evaluated in accordance with the stated evaluation criteria. The agency contends that because it found the Faucett and Apogee proposals to be essentially equal, the agency could properly base its award determination on cost.

We have held that where, as here, an RFP indicates that cost will be considered, without explicitly indicating the relative weight to be given to cost versus technical considerations, it must be presumed that cost will be considered approximately equal in weight. Transportation Research Corp., B-231914, Sept. 27, 1988, 88-2 CPD ¶ 290. Furthermore, where selection officials reasonably regard technical proposals as essentially equal, cost or price may become the determinative factor in making award, even where the solicitation scheme assigns cost less importance than technical factors. Id.; Sparta, Inc., B-228216, Jan. 15, 1988, 88-1 CPD ¶ 37. However, the extent to which source selection officials use the results of technical evaluations and make a tradeoff between cost and technical evaluations is governed by the tests of rationality and consistency with evaluation criteria stated in the RFP. Wormald Fire Systems, B-224514, Feb. 20, 1987, 87-1 CPD ¶ 189.

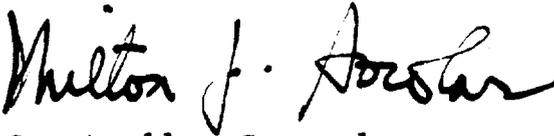
We find from our review of the record that Transportation did not evaluate proposals in accordance with the stated RFP criteria. While the RFP stated that the evaluation criteria were listed in descending order of importance, the instructions to the TEP provided that criterion 1 (Staffing Plan) was weighted 40 points while criterion 2 (Responsiveness to Technical Requirements) was weighted 60 points.

Although our Office affords broad discretion to an agency's determination as to which offeror will best fill its needs, this does not permit an agency to conduct evaluations that are unreasonable or inconsistent with the stated evaluation criteria. Programmatics, Inc., et al., B-228916.2 et al., Jan. 14, 1988, 88-1 CPD ¶ 35. The record shows that in this procurement the proposals were not evaluated in accordance with the stated criteria. Further, it appears from the record that under a proper weighing of the criteria Faucett's technical advantage over Apogee may have been greater and affected the determination that its proposals were essentially equal. For example, under the two subfactors of criterion 1 concerning the experience of the principal investigator in statistical and econometric forecasting models and in modeling transportation and economic relationships involving the application of large data bases, Faucett received technical scores of 9.0 and 8.6, respectively, out of a possible maximum of 10 points while Apogee received technical scores of 8.1 and 8.0. If criterion 1 had been accorded more weight than criterion 2, as envisioned by the RFP, Transportation may very well have concluded that the proposals were not equal but that Faucett's proposal was technically superior. Accordingly, we sustain Faucett's protest.

We also question Transportation's determination not to rescore the proposals after BAFOs. While we have generally held that an agency need not formally rescore technical proposals after submission of BAFOs, see VSE Corp., B-224397, Oct. 3, 1986, 86-2 CPD ¶ 392, the record here does not demonstrate that the agency assessed the impact of Faucett's increase in proposed hours for its principal investigators. Faucett, as requested during discussions, increased its proposed hours in its BAFO for its principal investigator by approximately 10 percent at an increased cost of about \$2,000. The experience and commitment of the principal investigator is an essential element of the most important evaluation criterion. Furthermore, Faucett's increase in the hours proposed for its principal investigator resulted in its BAFO price being higher than Apogee's BAFO price. Under these circumstances we believe Transportation should have evaluated and scored BAFOs.

We recommend that Transportation reevaluate Apogee's and Faucett's proposals, taking into consideration the BAFOs, consistent with the stated solicitation criteria. If the agency reasonably finds that the Faucett and Apogee proposals are essentially equal, then award to the low cost offeror under the RFP would be proper. However, if the evaluation reveals that the proposals are not essentially equal but that Faucett's proposal is technically superior, then Transportation should terminate Apogee's contract for the convenience of the government and award to Faucett.

We also find the protester to be entitled to its costs of filing and pursuing the protest. 4 C.F.R. § 21.6(d)(1) (1988). Faucett should submit its claim for such costs directly to Transportation. 4 C.F.R. § 21.6(e).

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