



**The Comptroller General  
of the United States**

Washington, D.C. 20548

---

## Decision

**Matter of:** EG&G Washington Analytical Services Center, Inc.

**File:** B-233141

**Date:** February 21, 1989

---

### DIGEST

1. When responsibility-type factors such as experience are included as technical evaluation factors in a request for proposals, they do not constitute definitive responsibility criteria. The General Accounting Office will review the agency's evaluation of them in the same manner as it does any other technical evaluation factor, i.e., to determine whether the evaluation was reasonable and complied with applicable statutes and regulations.
2. Although contracting agency should have amended solicitation to express reduced experience requirements included as a technical evaluation factor, the failure to do so did not prejudice the protester, whose competitive standing was not adversely affected as a result of the reduction.
3. There is no requirement for a cost realism analysis before the award of a competitive, fixed-price contract, and there is no legal basis to challenge a below-cost award to a contractor which has been determined responsible by the contracting officer.

---

### DECISION

EG&G Washington Analytical Services Center, Inc., protests the award of a firm, fixed-price contract by the Department of the Army, Corps of Engineers, to Pacific Crest Contractors, Inc., under request for proposals (RFP) No. DACW67-88-R-0006. EG&G contends that Pacific does not satisfy certain definitive responsibility criteria contained in the RFP, and that Pacific submitted an unrealistically low price.

We deny the protest.

044674/137996

The RFP solicited offers for a security system to be designed, manufactured, and installed at Chief Joseph Dam in Bridgeport, Washington. The RFP included clause L.5, "BIDDERS' QUALIFICATIONS," which provides:

"A. The bidder shall have regularly and presently produced, as one of the bidder's principal products, security systems and components of the types specified herein and as proposed for this project for a period of approximately 2 years or more.

B. The bidder shall be sufficiently experienced in security systems operation and maintenance to provide the necessary training to the Government as required herein. Bidders without these qualifications may contract these services to an independent professional organization that is experienced and qualified in this specialty.

C. Product Qualifications: Manufacturer's product shall have been in satisfactory operation on one installation of similar type, as this project, for approximately 2 years or more unless otherwise required in the specifications.

D. There shall be a permanent service organization maintained by the bidder which can render satisfactory service to this installation as noted and detailed within the bidder's technical proposal.

E. Bidders are directed to section M for information regarding submittals pertaining to evaluation factors."

The RFP listed the following technical evaluation factors in descending order of importance:

1. Intrusion Detection and Video Assessment Plan.
2. Video Surveillance Plan.
3. Security Lighting Plan.
4. IDS Monitoring and Display Console Configuration.
5. Access Control Facility.

6. Radio Communication System Plan.
7. Automatic Gate Operators Suitability.
8. Traffic Control Arm Suitability.
9. Traffic Control Gate Suitability.
10. Spare Parts Requirements and Availability.
11. Maintenance Requirements.
12. Quality Control Procedures.
13. Bidder Organization, Manufacturing Capability, and Experience.

Offerors were advised that a technical evaluation panel would score technical proposals. Thereafter, the proposals' relative value in terms of proposed price would be established by a price-per-quality-point ratio which would be determined by dividing each proposal's price by the total technical points received. This price-per-quality-point ratio was considered a major factor in comparing technical quality with proposed prices, and award would be made considering price and technical factors as determined to be in the best interest of the government. Offerors were also advised that as a part of the process for assigning points for experience, the technical evaluation team might contact each user for all systems and appropriate technical coordinators for government systems to determine the current status and past operational history of the system submitted to demonstrate the proposer's experience.

EG&G and Pacific were the only firms which submitted proposals. After oral and written discussions, EG&G and Pacific submitted best and final offers (BAFOs) which were ranked by a proposal evaluation panel. Pacific received the most favorable price-per-quality-point ratio and was awarded a contract on September 26, 1988. EG&G protested to our Office on October 11. Since the protest was not filed within 10 calendar days of the contract award, the Army did not suspend contract performance.

EG&G contends that Pacific does not meet definitive responsibility criteria contained in clause L.5 above because Pacific has never produced a large security system. EG&G also argues that the Army acted arbitrarily in awarding a contract to Pacific, which EG&G alleges is an unqualified offeror, at an unrealistically low price.

EG&G is questioning the Army's evaluation of Pacific's experience and capability, both of which, as indicated above, were technical evaluation factors rather than definitive responsibility criteria. Where responsibility-type factors are included among the technical evaluation criteria of a negotiated procurement, as they properly may be, we do not regard them as definitive responsibility criteria. Consulting and Program Management, 66 Comp. Gen. 289 (1987), 87-1 CPD ¶ 229. In a protest of the agency's award decision with respect to such factors, we will examine the record to determine whether the evaluation was fair, reasonable, and consistent with the evaluation criteria. L.D. Research Corp., B-230912.3, Sept. 9, 1988, 88-2 CPD ¶ 223.

Here, the contracting officer determined that neither Pacific nor EG&G met the qualification requirements of clause L.5. The contracting officer further determined that in light of the diverse nature of the components which the offerors were to have regularly produced (i.e., a prefabricated building, closed circuit TV, lighting, traffic control arms, radio equipment, gate operators, etc.), it was unlikely that any firm could meet the requirements. The contracting officer concluded that the requirements were overly restrictive of competition and waived the requirements for all offerors. The record shows that after the technical evaluation panel reviewed initial proposals, the Army requested Pacific to provide "key personnel resumes and experience statement as required in the RFP," plant information and experience documentation. The Army also asked EG&G to elaborate on the experience of the manufacturers of equipment that it proposed to use. After the firms supplied additional information, the technical evaluation panel reviewed the BAFOs, considered both firms capable of performing the project requirements, and recommended award to Pacific on the basis of the most favorable price-per-quality-point ratio.

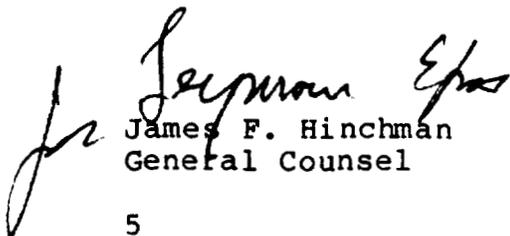
Although, arguably, the Army should have amended the solicitation to express its needs less restrictively, Federal Acquisition Regulation § 15.606 (FAC 84-16), the protester was not prejudiced by the agency's failure to do so. We note that the requirements under clause L.5 are cast in terms of "bidders," and the clause appears to be intended for a formally advertised procurement, not for a negotiated procurement such as this. In our view, the RFP is inartfully worded and the experience requirement was never intended by the agency to constitute definitive criteria, nor did the requirement reflect the agency's minimum needs. Rather, the criteria were intended to be used in conjunction with technical evaluation factor No. 13 and,

in fact, the agency did consider these criteria in assessing the offerors' experience under factor 13. In this respect, the record indicates that EG&G was also included in the competitive range, even though the contracting officer found it did not meet the requirements of clause L.5. Further, EG&G's BAFO was ranked higher than Pacific on the technical evaluation factor of bidder organization, manufacturing capability, and experience, which was the lowest ranked of the 13 technical factors listed under the RFP. Even if Pacific had received no points under this last evaluation factor, its price-per-quality-point ratio would still have been significantly higher than EG&G's.

The only conceivable prejudice to the protester is that in assessing its position in the industry and in arriving at its price, it might have made the assumption that Pacific would not be among its competitors because it did not meet the requirements in clause L.5. "Prejudice" in this sense is so remote and speculative as not to warrant disturbing this procurement. See Ohmeda, a Division of the BOC Group, Inc., B-228607, Nov. 30, 1987, 87-2 CPD ¶ 529. Under these circumstances, EG&G's complaint about the evaluation of Pacific's experience does not form a basis to question the source selection. See Pan Am World Services, Inc., et al., B-231840 et al., Nov. 7, 1988, 88-2 CPD ¶ 446.

Concerning EG&G's protest that the awardee's price is unrealistically low, since this competitive solicitation resulted in a fixed-price contract, there was no requirement that the agency conduct a cost realism study. Supreme Automation Corp., et al., B-224158 et al., Jan. 23, 1987, 87-1 CPD ¶ 83. To the extent that EG&G is contending that Pacific cannot furnish the system at the price offered, there is no legal basis to object to a below-cost award if the offeror is otherwise responsible. Clousing Machine Tools, B-216115, May 13, 1985, 85-1 CPD ¶ 533. Since the contracting officer found Pacific to be a responsible offeror, we deny the protest on this basis.

Since we deny the protest, EG&G's request for the costs of pursuing its protest, including attorneys' fees, and proposal preparation costs is denied. Unison Transformer Services, Inc., B-232434, Nov. 10, 1988, 88-2 CPD ¶ 471.

  
James F. Hinchman  
General Counsel