

Goddard



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Jack Faucett Associates
File: B-236396
Date: November 9, 1989

DIGEST

Solicitation which provides for point scoring of technical proposals and the establishment of a competitive range based on the technical evaluation scores for each qualified proposal indicates that award will be based on a cost/technical tradeoff, rather than made to the lowest cost technically acceptable offeror.

DECISION

Jack Faucett Associates protests the award of a contract to the Greeley-Polhumus Group, Inc., under request for proposals (RFP) No. DACW31-89-R-0002, a 100 percent small business set-aside, issued by the Corps of Engineers, United States Army Engineer District, Baltimore, for nonprofessional services for socioeconomic studies of the civil and military boundaries of the Baltimore District, Corps of Engineers.

We sustain the protest.

Faucett alleges that no adjustment was made to the cost offers to reflect differences in the technical scores. Therefore, the Corps improperly awarded to the low-cost offeror without factoring in the technical evaluation. In this regard, Faucett's proposed cost and fee was \$1,322,153 and its technical score was 91, whereas Greeley-Polhumus's proposed cost and fee was \$1,302,912, and its technical score was 77. Thus, Faucett's cost was only 1.48 percent greater than Greeley-Polhumus's cost while its technical score was 18.18 percent greater than Greeley-Polhumus's.

Initially, the Corps argues that Faucett's protest is untimely because Faucett was notified on June 13, 1989, by telegram that Greeley-Polhumus was the apparent successful offeror but Faucett did not then request a debriefing to discover its basis of protest. The Corps contends that

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Faucett's protest filed August 2 is untimely because Faucett should have requested a debriefing prior to contract award to determine the basis for its protest.

Our Bid Protest Regulations state that protests shall be filed not later than 10 working days after the basis of protest is known or should have been known, whichever is earlier. 4 C.F.R. § 21.2(a)(2) (1989). We have held, however, that even though an agency has made known the apparent successful offeror pursuant to Federal Acquisition Regulation (FAR) § 15.1001(b)(2) (FAC 84-13), unsuccessful offerors have no entitlement to a debriefing prior to award under FAR § 15.1003 (FAC 84-38), when a contract is awarded on a basis other than price alone. H.J. Osterfeld Co., B-234992, Aug. 1, 1989, 89-2 CPD ¶ 93. Since Faucett could not have received a debriefing prior to award, its protest, filed within 10 working days of the date it was subsequently notified of the basis for award, is timely.

Turning to the merits of the protest, the solicitation described three phases of the evaluation process in section M.1. Initially, technical proposals would be evaluated for technical acceptability by an evaluation team of Corps personnel. Section M.1 further stated that a technical evaluation score, measured in technical quality points, would be derived for each qualified proposal; that a separate evaluation team would evaluate cost or price for the purpose of determining price reasonableness; and that, in the second phase, a source selection team would determine the competitive range. In the final phase, a team of technical, contracting and legal representatives would, if necessary, conduct negotiations with offerors in the competitive range and/or request best and final offers (BAFOs).

Section M.2 provided that the competitive range would be determined on the basis of cost or price and other factors that were stated in the solicitation, including the technical evaluation criteria, and would include only those proposals that have a reasonable chance of selection for award. Section M.3 entitled "BASIS OF AWARD" stated that award would be on the basis of the lowest priced acceptable offer as evaluated with the addition or subtraction of applicable evaluation factors. Finally, section M.4 gave a listing of the technical evaluation criteria and subcriteria to be used in evaluating proposals.

The Corps states that section M.3 is taken directly from the Army Federal Acquisition Regulation Supplement (AFARS) § 15.605(d)(1) (March 1989). AFARS § 15.605(d), "Evaluation Factors" reads as follows:

"(d) The role and importance of cost or price of the proposed contract, and priced options if evaluated, in making the selection decision may take one of the following two bases of award:

"(1) Lowest price acceptable offer as evaluated with the addition or subtraction of applicable evaluation factors.

"(2) An acceptable offer, the price or cost of which is not the lowest, but which is sufficiently more advantageous than the lowest offer so as to justify the payment of a higher price or cost."

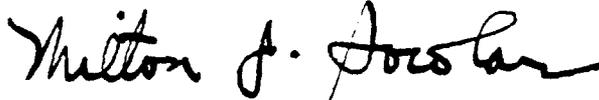
Apparently § 15.605(d)(1) is meant to be the provision applicable to procurements when the low cost technically acceptable offeror is to be chosen, while § 15.605(d)(2) is meant to be used when a cost/technical tradeoff will be made. Nevertheless, we think that the M.3 provision, in conjunction with the section M.1 provision for point scoring of technical proposals, reasonably would have been interpreted by an offeror to mean that technical evaluation factors would be weighted along with cost. Otherwise, no purpose would be served by point scoring the technical proposals. Thus, Faucett reasonably interpreted reference to the addition or subtraction of applicable evaluation factors to mean technical evaluation factors rather than other cost factors. If the Corps intended to make award based on the lowest technically acceptable offeror, the technical evaluation team would merely have needed to determine whether a proposal was technically acceptable for each of the listed technical criteria.

Accordingly, we find that the Corps' use of the clause in conjunction with the solicitation provision relating to point scoring of technical proposals, indicated that award would be based on a cost/technical tradeoff. In this regard, we note that where an RFP does not state the relative weight for cost, but states it will be considered, it may be assumed by offerors that cost and technical considerations will be accorded approximately equal weight and importance in the evaluation. Johns Hopkins Univ., B-233384, Mar. 6, 1989, 89-1 CPD ¶ 240. Under this method of evaluation, Faucett's proposal would clearly have won the competition.

The Corps has advised us that it has not issued any delivery orders under its contract with Greeley-Polhumus, so performance has not yet begun. If the Corps' actual needs will be satisfied by an award based on a cost/technical

tradeoff, then we recommend termination of the contract with Greeley-Polhumus and award to Faucett. If the Corps intends an award to the lowest technically acceptable offeror, we recommend that it revise the RFP to make this intention clear, request another round of BAFOs from Faucett and Greeley-Polhumus, and terminate Greeley-Polhumus's contract if Faucett submits the lowest technically acceptable offer. With regard to the Corps' argument that even if the RFP's language is ambiguous, reopening negotiations would likely generate an auction atmosphere, we have held that the risk of an auction is secondary to the need to preserve the integrity of the competitive procurement system through the taking of appropriate corrective actions. Roy F. Weston, Inc.--Request for Reconsideration, B-221863.3, Sept. 29, 1986, 86-2 CPD ¶ 364. We also find that Faucett is entitled to the costs of filing and pursuing the protest. Bid Protest Regulations, 4 C.F.R. § 21.6(d)(1).

The protest is sustained.



Acting Comptroller General
of the United States