

*S. Kiback*



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** EER Systems Corporation

**File:** B-237054

**Date:** January 29, 1990

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### DIGEST

Procuring agency made a proper cost/technical analysis in determining to make award to a higher technically rated, higher cost offeror over protester's significantly lower rated, lower cost proposal where the record shows that the agency reasonably found that the protester's low cost approach may not allow for the quality of work and personnel contemplated by the solicitation as indicated by the protester's entry level labor rates and excessive hours proposed to accomplish the sample task.

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### DECISION

EER Systems Corporation protests the award of a contract to SFA, Inc., Frederick Manufacturing Division, under request for proposals (RFP) No. DAAD05-88-R-5227, issued by the U.S. Army Aberdeen Proving Ground Support Activity, Department of the Army. The RFP contemplated award of a cost-plus-fixed-fee contract to provide engineering and technical supporting tasks for instrumentation development for a base year plus 2 option years. EER protests that the award was not consistent with the RFP evaluation criteria. EER contends that cost and technical factors have equal weight under the RFP, and that EER should have been selected for award as the low acceptable offeror.

We deny the protest.

The RFP provides that "the government will select for award that proposal offering the best value for the Government with equal consideration given to each evaluation factor and

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subfactor." The evaluation factors listed in the RFP are: (1) qualification of personnel (2) adequacy of facilities and equipment (3) offeror's response to the sample task, and (4) geographic locations. The evaluation subfactors are listed as: (1) experience (2) staffing (3) facilities (4) management/organizational approach, and (5) quality of services. The RFP also states that to receive consideration for award an offer must be rated acceptable for each factor and subfactor, and that in order to determine whether each factor or subfactor is acceptable the proposals must demonstrate: (1) understanding of the technical requirements and the means required to fulfill the technical requirements; (2) completeness of the offeror's analysis of each factor and subfactor; and (3) feasibility of performance to all the terms and conditions of the offer within the total cost proposed by the offeror. Finally, the RFP states that proposals will be evaluated on a cost realism basis to evaluate the prospective contractor's understanding of the scope of work and his ability to organize and perform the proposed contract. Cost is not otherwise mentioned in the evaluation criteria.

The Army received eight proposals and five were included in the competitive range with EER's proposal having the lowest rating of the five. Discussions were held with the technically acceptable offerors, and best and final offers (BAFOs) were received. The record shows that a cost and quantitative/qualitative analysis, and a best value analysis were performed on the BAFOs. SFA received a final technical score of 96 compared to EER's score of 74.<sup>1/</sup> EER's final evaluated cost proposal for the base year and 2 option years was the lowest at \$7,175,830, as compared with SFA's proposal of \$8,364,401.<sup>2/</sup> SFA was selected for award on September 13, 1989.

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<sup>1/</sup> The other three offerors received technical scores of 98, 96, and 82.

<sup>2/</sup> The protestor contends that the Army improperly evaluated the cost of this RFP work only upon the base year costs and not upon the base year and option year costs as provided in the solicitation. However, the record establishes that proposals were evaluated based on the cost of the base year plus the option years.

Our Office has consistently held that agency officials have broad discretion in determining the manner and extent to which they will make use of the technical and cost evaluation results and, therefore, agency decisions regarding cost/technical tradeoffs are subject only to the tests of rationality and consistency with the established evaluation factors. Encon Management Inc., B-234679, June 23, 1989, 89-1 CPD ¶ 595.

Here, as shown in the source selection documentation, the Army specifically found that while EER proposed significantly lower costs, these possible cost savings were outweighed by SFA's 22 point technical advantage. The Army determined that SFA's technical advantage was in the areas of qualified personnel--where EER's less qualified personnel could have detrimental impact on contract performance--and the sample task, where EER proposed significantly more labor hours than the government estimate.<sup>3/</sup>

The Army also concluded that even though EER proposed the lowest cost, it may not provide the lowest cost to the government due to its inefficiency and less qualified personnel. In this regard, we have consistently found that where a cost reimbursement contract is to be awarded, the offerors' proposed estimated costs of performance should not be considered as controlling, since they may not provide valid indications of the actual costs which the government is, within certain limits, required to pay. Bendix Field Eng'g Corp., B-230076, May 4, 1988, 88-1 CPD ¶ 437.

The record confirms that the proposal evaluation board, from the submission of initial proposals, was concerned about the low cost of EER's offer because it contained "entry level"

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<sup>3/</sup> To the extent that EER contests the details of the technical evaluation of its proposal in its comments to the agency report, these objections are untimely under our Bid Protest Regulations. In this regard, a protest must be filed within 10 working days after the basis of the protest is known or should have been known. 4 C.F.R. § 21.2(a)(2) (1989). Where a protester initially files a timely protest and later supplements it with new and independent grounds of protest, the latter raised allegations must independently satisfy the timeliness requirements, since our Regulations do not contemplate the unwarranted piecemeal presentation or development of protest issues. Id.; Joseph L. De Clerk & Assoc., Inc., B-233166.3, Apr. 6, 1989, 89-1 CPD ¶ 357.

labor rates, which made the agency question whether EER could deliver quality personnel and work as demanded by the contract. This concern about the possible high cost and lack of efficiency of EER was reinforced by EER's response to the sample task which included 36 percent more labor than the government estimate.<sup>4/</sup> During discussions, these concerns were expressly brought to EER's attention. However, EER only made minor adjustments in the hours in the sample task proposal. Additionally, EER included the following paragraph in response to the agency's concerns, which EER stated applied to its overall proposal and specifically to the labor assignment and the sample task:

"The persons identified by name in our sample task are presently at EER Systems. These individuals are available and are intended to provide an overview and review function for the work being performed under this sample task. The labor rates identified in the cost proposal reflect the rates of the individual who will be performing the day-to-day work."

The Army reasonably interpreted EER's response to mean that EER's proposal contained no commitment of actual personnel who would be performing the day-to-day tasks of the contract. This statement reinforced the agency's concern that EER could not deliver that quality of work and personnel required to successfully accomplish the contract work. Consequently, the Army reasonably concluded that EER's proposed costs were unrealistically low. The Army determined that any cost savings alleged by EER were speculative at best, and that there was a significant risk that EER would not be able to provide uninterrupted high quality work and remain cost effective.

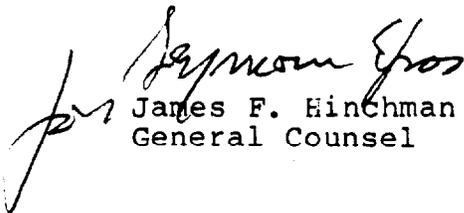
Moreover, contrary to EER's contentions, this evaluation gave the consideration to cost that was contemplated by the RFP. In this regard, the concern for cost realism was pervasive in all aspects of the RFP evaluation criteria and subcriteria. Notwithstanding the Army's concern about EER's low costs expressed during discussions, EER persisted with its low cost approach. Under the circumstances, and given the agency's well documented cost/technical tradeoff analysis, we conclude that the Army gave appropriate weight to cost in accordance with the RFP evaluation criteria.

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<sup>4/</sup> This should be compared with awardee's 4 percent variance from government estimate.

We also do not agree with EER's "alternative" argument that award was required to be made to the low cost technically acceptable offeror under this RFP. While it is true that the RFP stated that proposals would be rated acceptable or unacceptable under each evaluation criteria and subcriteria, this does not mean the award selection must be based on low proposed cost, particularly in view of the fact that the RFP does not state this to be the award selection basis. We think the listing of the criteria's relative weight and the statement that the award would be based on the best value to the government indicates that the RFP contemplated a relative rating of the technical proposals based on the stated evaluation criteria, and the record indicates that the award selection was made in accordance with the RFP evaluation scheme.

The protest is denied.

 James F. Hinchman  
General Counsel