



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Frank E. Basil, Inc.

File: B-238354

Date: May 22, 1990

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Donald A. Tobin, Esq., Dempsey, Bastianelli, Brown & Touhey,
for C.F.S. Air Cargo, an interested party.
Peter D. Butt, Esq., and Geoffrey D. Chun, Esq., Department
of the Navy, for the agency.
Stephen J. Gary, Esq., David A. Ashen, Esq., and
John M. Melody, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Agency's use of a rating plan that resulted in the assignment of zero points for a labor category in the evaluation of protester's best and final offer, on the ground that 3 of 11 resumes submitted for the category were unacceptable, was an improper material departure from the evaluation plan set forth in the solicitation; the plan stated there, and used by the agency in evaluating initial proposals provided for a composite score based on the scores of all resumes submitted, regardless of whether any particular resume was found unacceptable.

DECISION

Frank E. Basil, Inc., protests the Department of the Navy's award of a contract to C.F.S. Air Cargo (CFS), under request for proposals (RFP) No. N00600-89-R-2509, for terminal services to support the operation of an expedited shipment system. The protester asserts that the Navy improperly departed from the RFP's stated evaluation plan in evaluating its best and final offer (BAFO), and thereby deprived Basil of the award.

We sustain the protest.

The solicitation requested proposals for a 5-year contract to provide terminal management and cargo handling services at 11 sites. The RFP provided for award to be made to the

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offeror whose proposal offered the greatest value to the government from a technical and cost standpoint; it stated that technical factors would carry a weight 1.5 times than that of cost. The solicitation listed, in descending order of importance, three technical evaluation factors, including management plan (with an undisclosed weight of 27.6 of 60 "greatest value" points available under the technical factors), personnel staffing plan (25.2 points), and business resources (7.2 points). With respect to the factor for personnel staffing, the solicitation required offerors to provide with their technical proposal resumes (and letters of commitment for personnel not yet employed) for 25 key personnel in 5 categories, listed in descending order of importance as (1) one system manager (with an undisclosed weight of 6 points); (2) one special handling/expediting manager (5.4 points); (3) one quality control manager (4.8 points); (4) eleven terminal managers (4.8 points); and (5) eleven terminal hazardous material specialists (THMS) (4.2 points).

Five offerors submitted proposals in response to the solicitation; all were included in the competitive range and, after written and oral discussions, were requested to submit BAFOs. Based upon its evaluation of BAFOs, the Navy determined that the proposal submitted by CFS, the incumbent contractor for most of the services, offered the greatest value to the government. CFS' price of \$65,366,210 and its technical score of 42.9 points resulted in that firm's receiving 79.13 out of 100 available greatest value points, and thus the highest greatest value score. Another offeror, Global Associates, received 77.93 points, the second highest score, while Basil, with a price of \$65,501,224 and a technical score of 40.9 points, received 77.1 points, the third highest score. Upon learning of the resulting award to CFS, Basil filed this protest with our Office.

Basil questions the Navy's evaluation of the resumes for individuals it proposed under the THMS labor category. The RFP specified that the 11 resumes to be submitted for this category must each demonstrate a minimum of 5 years experience in handling hazardous material. In evaluating Basil's initial proposal, the Navy found that 8 of the 11 resumes submitted for THMS were unacceptable, based on their failure to show that the proposed individuals possessed the required minimum hazardous materials experience; as a result, Basil received the equivalent of 1.068 of a possible 4.2 points. After being advised by the Navy of this deficiency in its proposal, Basil submitted new resumes in its BAFO. However, although the Navy now found that 8 of the 11 resumes submitted showed acceptable experience and only 3 were unacceptable, the agency gave

Basil a score of zero for the entire category. The Navy explains that the panel applied a "more effective" scoring technique to the evaluation of BAFOs; if a labor category contained any unacceptable resumes, the entire category was given a score of zero.^{1/}

Basil objects that assigning zero points for the entire category was a departure from the RFP's stated evaluation scheme, which provided that "where multiple resumes are required for a labor category, the rating shall be a composite of resumes submitted for that category." (Emphasis added.) Basil contends that under the stated evaluation plan, even if the Navy were correct that 3 of the 11 individuals lacked the required experience and were therefore unacceptable, it was entitled to partial credit for the category, based on an averaging of the scores for acceptable and unacceptable resumes, just as it received partial credit in its initial proposal, where a much smaller percentage of resumes was found acceptable.

Our review of a technical evaluation is limited to a determination of whether the evaluation was fair and reasonable and consistent with the stated evaluation criteria. See Space Applications Corp., B-233143.3, Sept. 21, 1989, 89-2 CPD ¶ 255. Procuring agencies do not have the discretion to announce in a solicitation that one evaluation plan will be used and then follow another in the actual evaluation; consequently, it is improper for an agency to depart in a material way from the evaluation plan prescribed in the RFP without informing the offerors and giving them an opportunity to structure their proposals with the new evaluation scheme in mind. See National Capital Medical Found., Inc., B-215303.5, June 4, 1985, 85-1 CPD ¶ 637.

We find that the Navy's evaluation of Basil's BAFO materially departed from the solicitation's stated evaluation criteria. The RFP gave no indication that an offeror would receive zero points for an entire labor category if any one of the resumes was rated less than acceptable. On the contrary, the RFP provision regarding composite scoring, in our view, clearly indicated to offerors that a labor category would be scored by taking into account the

^{1/} The record does not include documentation of the final proposal evaluation methodology; according to the agency, "after the final evaluation, the . . . spreadsheets were discarded as a matter of routine."

individual scores of all of the resumes. This interpretation is consistent with the manner in which the Navy itself evaluated initial proposals, that is, by calculating the composite score for the THMS category based on all of the individual resumes submitted. Further, although the Navy advised Basil during discussions that a number of the individuals it initially proposed failed to meet the experience requirements, the agency did not advise it that the failure of any one of the individuals to meet those requirements in the final evaluation would result in a zero score for the entire category. Absent notice of the agency's intended approach, its departure from the stated evaluation criteria rendered the evaluation of the THMS labor category improper. See generally National Capital Medical Found., Inc., B-215303.5, supra (agency improperly departed from evaluation criteria when it awarded zero of 310 possible points if any one of multiple admission/quality control objectives for medical peer review plan was less than acceptable).

The Navy asserts that even if the THMS category had been scored in the manner urged by Basil, the agency still would have made the award to CFS, based on the best value to the government, and that Basil therefore was not prejudiced by the allegedly improper scoring. According to the Navy, if the scores of Basil's acceptable THMS resumes were averaged with the scores of the unacceptable resumes, which each received a score of zero, the revised score for the THMS category would be approximately 2.4 greatest value points out of a possible 4.2 points, instead of zero; as a result, the protester's new technical score (43.3 points) would be higher than CFS' technical score (42.9 points), and Basil's overall revised score (79.5 points) also would be higher than the awardee's (79.1 points). The Navy maintains, however, that Basil's proposal still would be considered technically inferior because the small difference in technical point scores would be more than offset by the significance of the three unacceptable resumes for THMS positions; these positions are so critical, according to the Navy, that the failure to meet minimum experience requirements would have warranted outright rejection of the proposal. At best, according to the agency, the revised technical scores would have been so close as to represent no significant technical difference, and CFS' lower proposed price (\$65,366,210), which was \$135,014, or 0.2 percent,

less than Basil's (\$65,501,224), would have been the determinative factor.^{2/}

We are not persuaded by the Navy's assertion that Basil was not prejudiced by the agency's departure from the evaluation criteria. First, although the agency asserts that the THMS labor category was so important that deficiencies in some of the resumes would have warranted outright rejection of the proposal, we find more credible the agency's characterization elsewhere in its report of the deficiencies as minor in the context of the overall evaluation scheme. Specifically, in explaining its evaluation of Basil's BAFO, the Navy itself states that it gave Basil a score of zero for the THMS category, instead of rejecting the proposal outright, only because it considered the category minor and the deficiency not sufficiently important to warrant rejection of the entire proposal. Further, we note that the RFP listed the THMS labor category as the least important of the five labor categories, with the least number of possible points.

Likewise, in its contemporaneous evaluation of Basil's proposal, the agency evaluation panel concluded that, although the three individuals proposed for THMS positions lacked the minimum required experience, they

"do, however, each have several years [experience] actually packing and certifying [hazardous material]. This hands on experience (while less than 5 full years) could be nearly as valuable as the 5 years of general (handling) experience required. The individuals proposed could be accepted for the following reasons: (a) The positions are not at the critical terminals . . . (c) Redundancy within the system represented by the Special Handling/Expediting Manager and the Terminal Managers all having [hazardous materials] handling and certification experience."

In this regard, we note that 1 of the 3 individuals in question had 53 of the required 60 months of hazardous materials experience and another may have had as much as

^{2/} In this regard, the Navy notes that the RFP reserved to the contracting officer "the discretion to examine the technical point scores to determine whether a point differential between offerors represents any significant difference in technical merit. Award may be made to the lowest cost proposal even though its Greatest Value Score is not the highest."

57 months of relevant experience. In our view, the evaluation panel's conclusions confirm that the deficiencies in the proposals were not critical to the overall contract, and therefore would not have warranted rejection of the proposal.

As for the agency's assertion that award would have been made to CFS in any case, on the basis of its lower priced purportedly technically superior offer, we find the technical scores and proposed prices too close to draw any meaningful conclusions as to what the outcome of the cost/technical tradeoff would have been had Basil's proposal been properly evaluated. In this regard, we consider it significant that technical factors were 1.5 times more important than cost and, although the composite technical scores were close, Basil scored higher than CFS under 8 of the 14 technical subcriteria.

Also casting doubt on the evaluation is the protester's assertion that the Navy improperly downgraded its proposal, based on the three deficient resumes, under factors unrelated to the THMS category. The Navy specifically denies this, but Basil's argument is supported by the final evaluation summary; for example, the summary for the organizational structure and resources subcriterion specifically notes the three proposed individuals' lack of experience. It thus is unclear precisely how much impact these experience deficiencies had on the evaluation as a whole. See generally Falcon Carriers, Inc., 68 Comp. Gen. 206 (1989), 89-1 CPD ¶ 96 (protest sustained where record establishes possibility of competitive prejudice from improper agency action). In these circumstances, the only appropriate remedy is to resubmit Basil's proposal to the evaluation panel for reevaluation in accordance with the evaluation scheme set forth in the solicitation.

By separate letter to the Secretary of the Navy, we are recommending that Basil's proposal be resubmitted to the evaluation panel for evaluation on the basis of the evaluation scheme set forth in the solicitation, with the results of the evaluation properly documented as provided for in Federal Acquisition Regulation § 15.608(a). Following evaluation, the Navy should terminate its contract with CFS if appropriate. In addition, we find that Basil is

entitled to be reimbursed its protest costs. 4 C.F.R.
§ 21.6(d)(1) (1989); see Falcon Carriers, Inc., 68 Comp.
Gen. 206, supra.

The protest is sustained.

Milton J. Acker
for Comptroller General
of the United States