

Lebowitz



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Heimann Systems Co.

**File:** B-238882

**Date:** June 1, 1990

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Vanessa M. Carpenter, Esq., Blumental, Carpenter & Berkowitz, P.C., for the protester.  
Billy R. Miles, United States Marshals Service, for the agency.  
Linda S. Lebowitz, Esq., Andrew T. Pogany, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

Protest is denied where protester has not shown that the agency's decision, based on the solicitation's stated evaluation criteria, not to award a split contract for a total of 100 x-ray security screening systems between protester and another firm was unreasonable.

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### DECISION

Heimann Systems Co. protests the award of a contract to EG&G Astrophysics Research Corporation, under request for proposals (RFP) No. USM-BM-R-90-204-S-110, issued by the United States Marshals Service for 100 x-ray security screening systems. Heimann essentially argues that the agency should have split the award between it and EG&G rather than awarding a single contract to EG&G.

We deny the protest.

Due to the recent "package bomb killings" of a federal judge and an attorney, and the continued threats against federal officials involved with the federal court system, the agency had an immediate need for x-ray security screening systems. Pursuant to 41 U.S.C. § 253(c)(2) (1988), the agency determined that unusual and compelling urgency justified its use of less than full and open competition. The agency, therefore, issued the solicitation on February 5, 1990, for the emergency requirement of 100 x-ray security screening systems to Heimann and EG&G, both of which were in a position to supply the units and to provide effective maintenance and immediate repair of the units.

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The solicitation provided that proposals initially determined to be technically acceptable (on the bases of meeting the specifications, performing within the proposed delivery schedule, company management, and past related experience) would be evaluated for the purpose of award using only the criteria of price and delivery schedule, with both evaluation criteria being of approximately equal importance. The solicitation specifically stated that the evaluation would be based upon quantities of 50 and 100. With respect to the delivery schedule, the solicitation advised that because of the agency's urgent need for the units, the agency would consider how quickly an offeror's delivery could be made within the required delivery schedule of 90 days from the date of award. The RFP also contained a desired delivery schedule of 60 days after award.

The solicitation further provided that award would be made consistent with the government's best interests, and that award could be made to other than the lowest price offeror. In this regard, the solicitation advised that the agency could pay a higher price, or "premium," to a single offeror or to more than one offeror if an individual or combined delivery schedule results in the government's needs being met significantly more quickly. If no significant advantage results from an individual or combined delivery schedule, the agency could award the contract to an offeror with a significantly lower price.

Both Heimann and EG&G submitted technically acceptable initial proposals by the February 8 closing date. EG&G offered to supply 50 units in 55 days from the date of award and 100 units in 75 days. The evaluators determined that EG&G's delivery for 50 units was within the 60 day preferred delivery schedule, and its delivery for 100 units was well within the 90 day required delivery schedule. Based on EG&G's recent successful on-schedule performance of another contract to supply x-ray security screening systems to the agency, the agency stated it had no reason to doubt the credibility of EG&G's delivery schedule if awarded this contract.

Heimann offered to initially supply 15 units per week, starting 6 weeks (42 days) after award. After supplying a total of 60 units over a 4-week period, Heimann offered to supply another 40 units over a 2-week period (20 units per week). The evaluators determined that although Heimann met the delivery schedule for 100 units (77 days) and promised the preferred delivery schedule of 60 days for 50 units, its delivery was not scheduled to begin until 42 days after award and was therefore not as advantageous as EG&G's

delivery terms. The agency subsequently requested as part of discussions that each offeror clarify particular aspects of its respective proposal and that each offeror specify the number of units it intended to supply on a weekly basis.

The best and final offers (BAFO) submitted by Heimann and EG&G were evaluated for award on the bases of price and delivery schedule, both of which carried a maximum point score of 50 each, under three scenarios: (1) a single award of 100 units to EG&G; (2) a single award of 100 units to Heimann; and (3) a split award for 50 units from each offeror.

With respect to price, Heimann submitted the low offer of \$2,603,500 for 100 units, and received a score of 50. EG&G submitted a price of \$2,667,600 for 100 units, and received a score of 48.8. EG&G's price was \$64,100, or approximately 2.5 percent higher than Heimann's price. The price for a split award was \$2,816,150, and a split award received a score of 46.22 points. A split award would cost the government \$212,650 more than a single award to Heimann and \$148,550 more than a single award to EG&G.

With respect to delivery schedules, for 100 units, EG&G's total delivery time was 75 days and Heimann's total delivery time was 77 days. Because EG&G offered to begin delivery almost immediately after award, it received a score of 50, and because Heimann would not begin delivery until 6 weeks after award, it received a score of 40. The agency determined that during the period of deliveries, it would receive almost twice as many days of use of the machines from a single award to EG&G, as opposed to a single award to Heimann.<sup>1/</sup> The delivery time for a split award of 50 units to each offeror was approximately 60 days, and each offeror received a score of 50. Although a split award resulted in the quickest overall delivery by 15 days, the agency determined that because a single award to EG&G resulted in a few more units being delivered in the first few weeks, the latter approach offered a small advantage.

After reviewing the results of the evaluation, the agency determined that EG&G submitted the best overall proposal,

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<sup>1/</sup> As part of its evaluation, the agency calculated the number of machine days (the number of days of service for each unit until performance of the contract--delivery--was completed.) A single award to EG&G yielded 3,185 machine days, while a single award to Heimann yielded 1,610 machine days.

and therefore made a single award to EG&G for 100 units on March 6. This protest followed.

Heimann essentially argues that the agency erred in evaluating proposals and in awarding a single contract to EG&G for 100 units. Heimann maintains that it would have been in the government's best interest (the fastest delivery at a better price) to have awarded a split contract, specifically placing an order for 49 units from Heimann and 51 units from EG&G.<sup>2/</sup>

In reviewing protests of allegedly improper evaluations, our Office will not substitute its judgment for that of the agency's evaluators, but rather will examine the record to determine whether the evaluators' judgments were reasonable and in accordance with listed evaluation criteria. Spectra Technology, Inc.; Westinghouse Electric Corp., B-232565; B-232565.2, Jan. 10, 1989, 89-1 CPD ¶ 23.

Here, under the terms of the solicitation, the agency could not have split the award as suggested by Heimann, that is 49 units from Heimann and 51 units from EG&G, as the agency was not permitted by the RFP to evaluate prices for quantities less than 50, or for more than 50 but less than 100. The evaluation criteria specifically stated that the agency would evaluate prices only for quantities of 50 and 100.

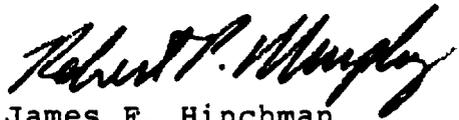
Regarding a split award, the agency considered the possibility of awarding a contract for 50 units from Heimann and 50 units from EG&G since it could evaluate the prices of 50 units in accordance with the solicitation's

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<sup>2/</sup> Initially, Heimann also argued that since it was the low offeror, the agency should have made a single award to it, not EG&G. Heimann also argued that the agency failed to conduct meaningful discussions. The agency rebutted these arguments in its report. In its comments to the agency report, Heimann specifically abandoned these grounds of protest, as evidenced by an attached memorandum from Heimann to its attorney in which Heimann states " . . . there is in essence only one major issue left . . . namely the issue of not awarding the contract to both parties. [W]e think we should make that issue the main issue and neglect all other issues." Therefore, we will not address these issues. See Pan Am World Serv., Inc., B-235976, Sept. 28, 1989, 89-2 CPD ¶ 283.

evaluation criteria. The agency decided that there was a "small" advantage to awarding a single contract to EG&G. This small advantage stemmed from the fact that EG&G's proposed delivery schedule for 100 units provided for even earlier deliveries than its schedule for 50 units (50 units would be delivered by the sixth week when Heimann would begin its deliveries). While the agency had an immediate need for all units, it considered its greatest need to be for early delivery of the first units. Although a split award would provide for somewhat more total machine days by contract completion than a single award to EG&G, the extra machine days would come late in the contract period. A split award would also cost the government \$148,550 more than the single award to EG&G.

In our view, reasonable arguments can be made for both the agency's and the protester's positions. Since the agency did not unreasonably conclude that a single award to EG&G offered some advantage to the government, the protest is denied.



*for*  
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General Counsel