



Comptroller General  
of the United States

Washington, D.C. 20548

# Decision

**Matter of:** The Scientex Corporation

**File:** B-238689

**Date:** June 29, 1990

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## DIGEST

1. In a negotiated procurement, the requirement to conduct discussions with offerors in the competitive range does not obligate the agency to identify every aspect of a technically acceptable proposal that receives less than a maximum score.
2. Protest against award to higher cost, higher technically-rated offeror is denied where the solicitation evaluation scheme gave greater weight to technical merit than to cost, and the contracting officer reasonably concluded that protester's lower proposed cost did not outweigh the technical advantages demonstrated in the awardee's higher-cost proposal.

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## DECISION

The Scientex Corporation protests the award of a cost-plus-fixed-fee contract to Jack Faucett Associates under request for proposals (RFP) No. DTFH61-90-R-00013, issued by the Federal Highway Administration (FHWA), to study State roadside inspection procedures. Scientex argues that the agency did not conduct meaningful discussions and failed to properly evaluate its proposal.

We deny the protest.

The RFP solicited proposals to furnish all necessary facilities, materials, and personnel for: (1) performance of a study of the adequacy of State programs for roadside inspection of commercial motor vehicles to identify safety defects, driver deficiencies, and unsafe driver practices

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and (2) to develop a State guide outlining a model approach for planning and operating a successful roadside inspection program as specified in 10 tasks. The RFP placed primary emphasis on technical considerations and contained the following evaluation factors, listed in descending order of importance:

"1. Offeror's Technical Competence, Experience and Understanding of the Subject Material. [50 percent]

"2. Offeror's Indication of Sufficient Resources and Capabilities to Complete the Contract Requirements Satisfactorily and on Schedule. [20 percent]

"3. Offeror's Responsiveness to the Technical Requirements of the RFP. [30 percent]."

Relative cost was also to be considered in the ultimate award decision. Award was to be made to the responsible offeror whose conforming offer would be most advantageous to the government, cost and other factors considered, and the RFP provided that award to other than the lowest offer was authorized.

Ten offerors submitted proposals, five of which, including Faucett and Scientex, were evaluated as technically acceptable and within the competitive range. Faucett received an initial technical score of 90 while Scientex received a score of 79.67. During negotiations, technical issues, including proposed staffing, were discussed with both offerors and each submitted a best and final offer (BAFO) reflecting changes arising from those discussions. The agency then re-evaluated both proposals, which resulted in increased scores of 94.3 for Faucett (the highest of any offeror) and 80.3 for Scientex. Faucett's BAFO cost, excluding travel, was \$287,241 while Scientex's cost, excluding travel was \$253,597.1/ Based on Faucett's high technical score and the relative strengths and weaknesses of Faucett's and Scientex's proposals, the agency determined that Faucett's 11.7 percent higher cost proposal represented the best value to the government. After receiving notice of the award to Faucett and a debriefing, Scientex protested to our Office.

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1/ When travel costs are included Faucett's proposed cost is \$314,279 while Scientex's cost is \$299,997 a difference of \$14,282 or 4.7 percent.

Scientex first contends that the agency failed to conduct meaningful negotiations. Scientex argues that although the award decision was based on "technical considerations," very little technical discussions were conducted; rather, the bulk of the discussions centered on staffing issues.

The requirement for discussions with offerors is satisfied by advising them of deficiencies in their proposals and affording them the opportunity to satisfy the government's requirements through the submission of revised proposals. Federal Acquisition Regulation (FAR) § 15.610(c)(2), (5) (FAC 84-16); Furuno U.S.A., Inc., B-221814, Apr. 24, 1986, 86-1 CPD ¶ 400. Agencies are not, however, obligated to afford offerors all-encompassing discussions, Training and Mgmt. Resources, Inc., B-234710, June 29, 1989, 89-2 CPD ¶ 12, or to discuss every element of a technically acceptable, competitive range, proposal that has received less than the maximum possible score. See Associated Chem. and Envtl. Servs., et al., 67 Comp. Gen. 314 (1988), 88-1 CPD ¶ 248; Federal Data Corp., B-236265.4, May 29, 1990, 90-1 CPD ¶ \_\_\_\_.

The record reflects that the agency conducted appropriate and meaningful discussions with Scientex. While finding Scientex's proposal to be technically acceptable, the agency advised Scientex of the technical concerns, including staffing matters, which were identified by the evaluators. For example, Scientex was advised of a need to narrow the scope of review in one task and the lack of availability of an accident module for another. It also was advised of labor hour concerns for proposed staff and concerns about project oversight. Scientex responded to all of these in its BAFO. While the evaluators perceived other weaknesses in Scientex's proposal, we do not find that they erred in failing to make them part of discussions. For example, under the first evaluation criterion, "Technical Competence, Experience, and Understanding of the Subject Material," the evaluators recognized Scientex's program evaluation experience as a strength. One of the three evaluators found that Scientex lacked experience in working with the Motor Carrier Safety Assistance Program (MCSAP) and lacked knowledge and a demonstrated clear understanding of the Federal Motor Carrier Safety Regulations (FMCSR), both of which were identified in the RFP as subcriteria of the first evaluation criterion. Where experience is being evaluated, informational matters, not subject to change, need not be discussed with offerors. See Saturn Constr. Co., Inc., B-236209, Nov. 16, 1989, 89-2 CPD ¶ 467. Here, the protester's understanding of the MCSAP and FMCSRs was directly related to its experience in these matters, which was not subject to change. Further, the protester has not

identified any possible changes or additional information which it could have provided to improve its score had it been advised of this weakness.

The only other "technical area" not discussed with Scientex concerned the third factor, "Responsiveness to the Technical Requirements of the RFP." The evaluators found that Scientex's proposal adequately addressed all tasks, but did not show any creative or innovative thoughts and at times, simply paraphrased the RFP. FMWA did not specifically tell this to Scientex. We believe the firm should have been sufficiently familiar with its own proposal that it did not need to be advised that it paraphrased parts of the RFP. Also, discussion by the agency of Scientex's lack of creativity and innovativeness may not have been appropriate. In this regard, we note that agencies are prohibited by the FAR from "technical leveling," that is "helping an offeror to bring its proposal up to the level of other proposals through successive rounds of discussion, such as by pointing out weaknesses resulting from the offeror's lack of diligence, competence, or inventiveness in preparing the proposal." FAR 15.610(d)(1). (Emphasis added.) Moreover, while Scientex's proposal received a lower score than Faucett's proposal, the agency was under no obligation to discuss every aspect of Scientex's proposal since its proposal was evaluated as technically acceptable. See Associated Chem. and Env'tl. Servs., et al., supra, 67 Comp. Gen. at 324, 88-1 CPD ¶ 248 at 13.

Scientex next protests the agency's re-evaluation and rescoring of the proposals after submission of BAFOs. Scientex originally protested, without any elaboration, that the rescoring of proposals after BAFOs were received was an "unusual procedure." In response, FMWA explained that since several offerors made changes affecting their technical approach, rescoring after BAFOs was considered necessary to select the most advantageous offer. In its comments to the agency report, submitted after the opportunity for a conference and further comment by the agency had passed, Scientex for the first time alleged that it was told during discussions that the evaluation panel would review the BAFOs, but the proposals would not be reevaluated. Scientex contends that it thus was not afforded the opportunity to revise its technical proposal.

Assuming, for the sake of argument, that Scientex was told that proposals would not be "reevaluated," it also was told that BAFOs would be "reviewed." Advice that proposals would not be reevaluated is not inconsistent with the common agency practice of rescoring proposals on the basis of changes made in BAFOs. The record reflects that the

agency's "reevaluation" was limited to taking into consideration the BAFO changes and, therefore, we do not find that Scientex could have been misled during discussions. Further, an offeror is free to make changes to its technical proposal, absent express instructions to the contrary. Indian Community Health Serv., Inc., B-217481, May 15, 1985, 85-1 CPD ¶ 547. Here, in fact, Scientex did make changes in its BAFO, proposing an additional staff member which increased its score.

Scientex next argues that the agency's "best buy" analysis (cost/technical trade-off) is flawed, asserting that it contains no specific information on Scientex's technical aspects, that some of the staffing issues noted are "questionable," and that the agency failed to consider Scientex's offer of 544 cost-shared hours.

In reviewing an agency's selection decision, we will examine an agency's evaluation to ensure that it was reasonable and consistent with the stated evaluation criteria. Unisys Corp., B-232634, Jan. 25, 1989, 89-1 CPD ¶ 75. The determination of the relative desirability and technical adequacy of the proposals is primarily a function of the procuring agency, which enjoys a reasonable range of discretion in proposal evaluation. Biological Research Faculty & Facility, Inc., B-234568, Apr. 28, 1989, 89-1 CPD ¶ 409. Award can be made to a higher-rated, higher-cost offeror where the decision is rationally based and consistent with the evaluation criteria set forth in the solicitation. Systems & Processes Eng'g Corp., B-234142, May 10, 1989, 89-1 CPD ¶ 441.

As discussed above, in assessing Scientex's proposal the agency noted that Scientex had a lot of experience in program evaluation, but noted that it lacked prior experience working with the MCSAP or FMCSRs and lacked a clear understanding of either. The agency also found that Scientex's proposal adequately addressed all tasks, but did not show any creative or innovative thoughts. Scientex's proposed staff was evaluated as adequate, but lacking in experience. In particular, one of the staff, a safety specialist, was identified as having expertise in the areas of highway safety, transportation planning, and design, but not commercial motor vehicles. In addition, though not discussed in the best buy analysis, the agency reviewed Scientex's BAFO which offered an additional safety specialist for 544 hours at no cost to the government. The evaluators found this specialist also lacked relevant expertise and determined that her addition did not enhance the proposal.

Scientex disagrees with the agency's evaluation, especially with regard to FHWA's assessment of its safety specialists. According to Scientex, its original specialist has "extensive experience in commercial vehicle safety" and its added specialist has over 15 years of experience at FHWA involving motor carrier safety and operations. Scientex also questions why its no-cost offer was not considered by the agency.

The majority of experience listed in the specialists' resumes deals with areas other than commercial motor vehicles. For example, while the original specialist has substantial expertise in the areas of transportation and traffic engineering and highway safety, among others, his experience with commercial motor vehicle issues appears limited to three studies over the last ten years. Similarly, the added specialist lists her areas of expertise as highway safety and technical program management, but not commercial motor vehicles. While she was an official at FHWA for 24 years, her experience with commercial vehicles appears limited to responsibility for two studies, and to authorship of three 1976 publications on large truck accidents and safety research. Further, as noted by the evaluators, though identified as a safety specialist, her addition to the contract was in the area of oversight of the contract's management. Although Scientex now asserts that these specialists have ample expertise, the evaluators were limited to information presented in the proposal. Southeastern Center for Elec. Eng'g Educ., B-230692, July 6, 1988, 88-2 CPD ¶ 13. It is the protester's responsibility to ensure that its proposal adequately sets forth the expertise of its proposed staff. We find that the agency reasonably concluded that the specialists' relevant experience was limited.

Contrary to Scientex's contention that the 544 hours of the added specialist's time, offered at no cost and "worth \$50,445," was not considered by the agency in its best buy analysis, we find that the evaluators considered the addition of the specialist and determined that her participation, at no cost, only marginally improved Scientex's proposal. In view of this evaluation, we find it was reasonable not to include a discussion of the specialist's addition and no-cost hours in the best-buy analysis. Further, while the protester now identifies the value of the no-cost hours, no such value was identified in its BAFO. In any case, regardless of the value of this addition, the fact remains that Scientex's proposed cost to the government was \$299,997 including the no-cost hours. Thus, the agency reasonably compared the actual proposed costs in determining the best value to the government.

In evaluating Faucett, the agency found it had wide experience in the areas of analyses, research, and evaluation and demonstrated a fairly high degree of understanding of the MCSAP because of its work under a previous FHWA contract. It found Faucett's proposal to be well organized and thought-out with a logical combination of different tasks including brief outlines of methodology. It also found Faucett's principal investigator to be highly qualified to conduct the research especially in the area of statistical analysis. Faucett's support staff was evaluated as having excellent qualifications.

In its best-buy analysis, the agency concluded that Faucett's superior experience and qualifications of key personnel in motor carrier safety, its innovative approach including statistical methodologies, and a better overall understanding of the study, made it technically superior to Scientex, as was accurately reflected in the 14 point difference in technical scores. The agency determined that the 11.7 percent proposed cost difference under this cost-reimbursable contract did not outweigh the technical advantages of Faucett's proposal, and concluded that Faucett's proposal represented the best value to the government. See Spectra Technology, Inc.; Westinghouse Elec. Corp., B-232565; B-232565.2, Jan. 10, 1989, 89-1 CPD ¶ 23. Since technical issues were of primary importance and Faucett's proposal was reasonably viewed as significantly technically superior, Scientex's 11.7 percent lower cost was reasonably viewed as insufficient to outweigh the technical difference.

Accordingly, the protest is denied.

  
for James F. Hinchman  
General Counsel