

(Timmerman)



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Scientific Management Associates, Inc.

File: B-238913

Date: July 12, 1990

James A. Noone, Esq., Karalekas & McCahill, for the protester.
Gregory H. Sears, Department of the Navy, for the agency.
Barbara Timmerman, Esq., and John Brosnan, Esq., Office of the General Counsel, GAO, participated in preparation of the decision.

DIGEST

1. Determination that offeror's proposal was no longer within the competitive range was proper where agency determined that offeror had no reasonable chance of being selected for award, and the record shows that the agency's relatively low technical rating of the offeror's proposal was reasonable, and that offeror's proposed cost was substantially higher than that of offerors in the competitive range.
2. Discussions were meaningful where agency imparted sufficient information to protester to afford it a fair and reasonable opportunity to identify and correct any deficiencies in its proposal.
3. Where solicitation listed evaluation factors in descending order of importance, listing cost as the last factor should not have caused offerors to misinterpret the importance of cost since the solicitation disclosed the specific formula used by the agency to determine the tradeoff between cost and technical factors.

DECISION

Scientific Management Associates, Inc. protests the exclusion of its proposal from the competitive range under request for proposals (RFP) No. N00024-88-R-6246(Q), issued by the Department of the Navy, for management support services for its Combatant Craft, Service Craft, and

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Amphibian Acquisition Program Office. Scientific Management essentially argues that the agency improperly evaluated the proposals.

We deny the protest.

The RFP was issued on September 21, 1988, as a small business set-aside. It contemplated the award of a cost-plus-fixed-fee contract for a 1-year base period with four 1-year options. Proposals were to be evaluated based on six major evaluation factors, which according to the RFP, were listed in descending order of importance: (1) personnel, (2) approach, (3) facilities, (4) management capability, (5) proposal presentation, and (6) cost. The RFP provided that personnel and approach combined were significantly more important than the next three factors combined. It further provided that:

"[t]he Government will compare the projected cost scores of technically acceptable offerors with the lowest projected cost, technically acceptable offeror. The government is willing to pay a premium in total cost for a proposal which scores higher in the technical category such that the movement of one (1) point in technical score equates to a movement of 7.5 percent in cost. This relationship permits a payment of a 30% premium for a proposal with the highest achievable technical score when compared to the lowest possible acceptable technical score."

On the December 14 closing date, the agency received ten proposals. After the evaluation of initial proposals, the evaluators rated four of the offers acceptable, four marginal including that submitted by the protester, and two unacceptable. The protester proposed the highest estimated cost of all ten of the offerors at \$20,595,293 and its technical proposal was eighth out of ten. The contracting officer nevertheless made an initial competitive range determination which included all but one offeror because he determined that during the lengthy time period--9 months because of various delays--it had taken for proposal evaluation, changes in the offerors' costs and personnel might have occurred. Written discussions were then conducted with the nine remaining offerors with revised proposals due October 27, 1989. After the evaluators scored the revised technical proposals and evaluated the proposed costs, the contracting officer concluded that six proposals, including the protester's, were no longer within the competitive range since in the agency's view they did not

have a reasonable chance of being selected for award. The three proposals which were included in the competitive range received technical scores ranging from 7.7 to 8.2 and proposed costs ranging from \$13,146,593 to \$15,040,975. In contrast, Scientific Management's revised proposal received a technical score of 7.1 and proposed cost of \$18,343,448.

According to the evaluators, Scientific Management was removed from the competitive range because its technical proposal was considered marginal and because its proposed costs were significantly higher than that of offerors remaining in the competitive range. The low technical score was due primarily to the evaluators' conclusion that Scientific Management's plan to have group leaders devote only a portion of their time to the project was unrealistic, that several of its key personnel were unqualified, and that its facilities were marginally acceptable. It was the evaluators' judgment that Scientific Management could not both increase the technical score and lower its costs so as to have a realistic chance for selection.

Scientific Management disagrees with the agency's evaluation of its proposal and contends that the conclusions reached were highly subjective and unsubstantiated. The protester argues further that it was misled by the agency's erroneous listing in the RFP of cost as the least important evaluation factor and maintains that its proposed costs, while relatively high, were still reasonably close to the cost proposed by the lowest technically acceptable offeror. It thus concludes that it was improperly eliminated from the competitive range.

Our Office will not disturb an agency's decision to exclude a firm from the competitive range unless this determination was unreasonable. Intraspace Corp., 69 Comp. Gen. 310 (1990), 90-1 CPD ¶ 327. In determining the competitive range, it is an acceptable practice to compare the evaluation scores and an offeror's relative standing among its competitors and to exclude a proposal that is technically acceptable or capable of being made so when, relative to other acceptable offers, it has no reasonable chance of being selected for award. Information Sys. & Networks Corp., 69 Comp. Gen. 239 (1990), 90-1 CPD ¶ 203. In addition, the fact that a proposal was initially included within the competitive range does not preclude the agency from later excluding it. Space Communications Co., 66 Comp. Gen. 2, (1986), 86-2 CPD ¶ 377. We have examined the evaluation record here which shows that the firm received marginal ratings in personnel, the most heavily weighted area, and in facilities. For the reasons set forth in

detail below, we think the agency exercised its judgment in a reasonable manner in reaching those conclusions and therefore find that the protester's proposal was properly eliminated from the competitive range.

PERSONNEL

In the area of personnel the agency concluded that several of Scientific Management's senior personnel were insufficiently dedicated to the contract. In particular, the agency determined that having two group leaders devote only ten percent of their time to the effort would be inadequate. The agency determined that this, combined with the protester's plan to use a subcontractor employee as the project director 50 percent of the time, would cause coordination, control, and communication difficulties. It also found that several of the key personnel proposed by Scientific Management were not qualified and that all nine of the hiring agreements submitted for individuals not currently employed by the firm, including two group leaders, were conditional.

With respect to the partial dedication of group leaders, the protester contends that its plan to have a senior engineer or principal program manager dedicated full time to act as the point of contact for the absent group leaders should have alleviated any concerns about communication and control. It also argues that the Navy's evaluation was not in accordance with the statement in the RFP that "Emphasis placed on personnel in performing roles will be equal to or greater than that placed on personnel in supervisor or reviewing jobs." It also asserts that since the percentage of dedication required is a judgmental matter and is easily adjusted to fit changing program needs, the agency's determination that this was a major weakness is inaccurate.

We note initially that the evaluation of proposals is inherently a subjective process and consequently our Office will not substitute its judgment for that of the agency's evaluators. In order for us to disagree with the agency the record must show that the agency's evaluation was unreasonable; the protester's mere disagreement with its judgment is insufficient. Contracting Programmers & Analysts, Inc., B-233377.2, Feb. 22, 1989, 89-1 CPD ¶ 190.

We do not share the protester's view that it was unreasonable for the agency to downgrade its offer for having key personnel, such as group leaders, only partially dedicated to the contract effort. We think the agency's concern that having key personnel devote only a small portion of their time to the project, only ten percent in the case of two of

the group leaders, could result in management difficulties is legitimate. See Biological Research Faculty & Facility, Inc., B-234568, Apr. 28, 1989, 89-1 CPD ¶ 409. Moreover, we do not think that this is contrary to the RFP provision that emphasis on performance personnel will be equal to or greater than that of supervisory personnel. We do not see how the protester could logically interpret this statement to mean that the agency would rank highly a supervisor dedication of as little as ten percent.

In response to the agency's concern about a subcontract employee acting as project director 50 percent of the time, the protester asserts that both its employee and the subcontractor employees are highly qualified. Even if the individuals are in fact highly qualified, we do not think this shows that the agency's determination that this management structure might cause communication and control problems was unreasonable. In our view, it is legitimate for the agency to be concerned about potential problems that might arise from having someone other than a direct employee of the awardee act as project director half of the time.

The protester also asserts that the agency failed to advise it of these specific deficiencies and that discussions, thus, were inadequate. The Competition in Contracting Act of 1984, 10 U.S.C. § 2305(b)(4)(B) (1988), as implemented in Federal Acquisition Regulation § 15.610(b), requires that written or oral discussions be held with all responsible offers whose proposals are in the competitive range. There is not a requirement that agencies conduct all-encompassing discussions; rather, agencies need only lead offerors into areas of their proposals considered deficient. Honeywell Regelsysteme GmbH, B-237248, Feb. 2, 1990, 90-1 CPD ¶ 149. Here, the record shows the agency asked Scientific Management to discuss in detail how it planned to maintain control with part-time group leaders. It also asked the protester several questions which in general concerned its procedures for ensuring management control. While we recognize that the Navy did not specifically state that Scientific Management's plan of part-time group leaders and subcontractor management was inadequate, we believe that the agency imparted enough information to the offeror regarding concerns that it had in this general area so as to afford it a fair and reasonable opportunity to identify and correct these deficiencies in its proposal while avoiding "coaching" the firm to a particular approach to the solicitation that it did not propose. Development Alternatives, Inc., B-235633, Sept. 29, 1989, 89-2 CPD ¶ 296. Moreover, it is evident from the position taken by Scientific Management in the protest that it views both the use of part-time group leaders and the concept of a shared project directorship as

valid approaches and there is nothing in the protester's submissions that suggests that it would have changed its proposed arrangements even if specifically directed to review them during discussions.

Scientific Management's technical proposal was also downgraded because of the evaluators' assessment of the qualifications of its key personnel. The RFP required senior engineers to have 10 years of professional experience, 5 as a program manager of a project of similar size and complexity, and 5 of similar specialized technical experience at the principal engineer level. The project director was required to have 15 years of professional experience, 8 years as a program manager of a project of similar size and complexity, and 7 years of similar specialized technical experience at the senior engineer level. The record shows that in general, the agency believed that Scientific Management was overstating its proposed employees' experience. The evaluators determined that certain individuals proposed by the protester failed to meet the minimum requirements for their respective personnel categories. They concluded that three of the senior engineers proposed by Scientific Management did not have the requisite 5 years of program management experience and also determined that the proposed project director had only 3 years of senior engineering level experience instead of the required 7 years.

We have reviewed the Navy's personnel evaluation and find no basis in the record for concluding that it was unreasonable. Our review of the resumes of the three senior engineers in question substantiates the agency's evaluation in each instance. For example, the evaluators thought that one engineer's 9 years of experience as a naval combat systems officer was in areas which were not fully related to the program management experience requirement. While the protester disagrees with the assessment, it has not shown it to be unreasonable. The evaluators also found that the resume of another engineer did not show the required program management experience. Our review confirms the agency's determination since the resume stated that the engineer had 5 years of such experience but the narrative account of that person's experience was devoid of any indication that the 5 year requirement had been met. Further, the project director's resume indicates extensive management experience but does not show the 7 years of the senior engineer experience. Although the protester contends that the omission of 4 years of experience as a senior engineer is not relevant given this person's 34 years of naval service which included significant technical positions, the fact remains that the RFP required 7 years of documented

experience and the resume of the protester's proposed project director did not show this experience.

In our view, the protester has merely disagreed with the agency's evaluation of its proposed personnel. The record does not show the evaluation to be unreasonable.

The record also shows that the agency determined that Scientific Management's proposal was weak under the personnel evaluation factor because of its submission of conditional hiring agreements for nine individuals, including two group leaders. The RFP provided that personnel with non-binding hiring agreements would not be valued as highly. In the hiring agreements submitted by the protester, the prospective employees agreed that if the protester received the award, they would, based on successful salary and benefit negotiations, accept employment. The protester argues that these agreements are binding and that it consequently should not have been downgraded for this. The Navy views the agreements as merely promises to negotiate for employment and not as binding commitments.

Since the agreements are contingent upon successful future negotiations of salary and benefits, we agree with the Navy that the hiring agreements Scientific Management submitted did not constitute a binding commitment to accept employment. Salary and benefits are generally major considerations in accepting employment and an agreement contingent upon these factors is not, we think, the equivalent of a firm commitment to accept the position offered. Thus, we believe that the evaluator's concern regarding these contingent agreements was reasonably based.

FACILITIES

Under the evaluation factor of facilities, the record shows that the agency considered the protester's plan to have the major production of reports and presentations at its Landover, Maryland facility as a major weakness. The agency determined the travel time between Landover and the Navy's offices in Crystal City, Virginia, would increase turnaround time on any project or report that required revision or correction. It also noted that while the protester had committed to establishing an office in Crystal City to help support the project, it had not provided any details about the facility. The agency also noted as a minor weakness that the proposed conference room space might prove inadequate.

While the protester disputes the Navy's travel time estimates, we do not think that it is unreasonable for the agency to determine that having major production occur in Landover is a weakness as compared to a production center in Crystal City, as proposed by offerors receiving a high rating in this area. Moreover, our review of the protester's proposal substantiates the agency's observation that the firm provided few details other than approximate square footage about the office it proposed to establish in Crystal City to help support the project. As a minor weakness the agency noted that Scientific Management's Crystal City facility had only one ten-person conference room, and, therefore, the firm would have to rely on its subcontractors for conference rooms. Although Scientific Management argues that its conference facilities were adequate because one of its subcontractors has 20 conference rooms ranging in capacity from 5 to 125 people, the record shows the agency was concerned that since the use of these facilities needed to be coordinated with other contracts that the subcontractor supports, the conference space might not be available when needed. Nothing in the record indicates that this concern was unreasonable.

The protester has also contested all major and minor weakness noted by the agency in the remaining areas where it received ratings of acceptable. For example, in the area of management capability, Scientific Management disputes the agency's determination that its overall corporate experience was weak in the area of boat/craft acquisition. The protester maintains that two of its proposed subcontractors have supported numerous boat/craft contracts and that consequently, it should not that have been downgraded in this area. The record shows that the evaluators determined that the experience of the protester's subcontractors made this a minor instead of a major weakness. The firm's experience in this area was still determined to be a minor weakness, however, because the evaluators considered the prime contractor's corporate experience to be a key indicator of its ability to properly manage the contract effort. We think the agency's judgment was reasonably based.

We have reviewed the evaluation record under each of the contested areas and find no basis to conclude that the agency's evaluation was unreasonable under any of the factors. In any event, considering Scientific Management's low overall technical score which include two ratings of marginal under the factors we have reviewed in detail, even if we were to find some discrepancy under the remaining

factors it is highly unlikely that the firm's composite technical score would equal that of the lowest rated offer within the competitive range.

COST

The RFP indicated that the evaluation factors were in descending order of importance. Cost was listed as the sixth, and therefore least important, evaluation factor. The RFP also provided with respect to cost that the agency would pay a premium of 30 percent for a proposal with the highest achievable technical score. The formula for calculating cost technical tradeoffs disclosed in the RFP was that one point in technical score equals a movement of 7.5 percent in cost. The Navy states that listing cost as the sixth evaluation factor was an error and that cost should not have been included in the descending order sequence. It argues, however, that this could not have caused the protester, or any other offeror, to misinterpret the importance of cost since the exact formula used to determine the cost/technical tradeoff was clearly set forth in the solicitation.

Scientific Management asserts that it was misled by cost being listed as the least important evaluation factor. The protester argues that the 30 percent premium language did not clarify the relationship between cost and technical factors. Instead, it argues that it is reasonable to conclude that based on the 30 percent premium concept the agency was still placing a relatively higher value on technical considerations than on cost. Scientific Management also asserts that the incorrect listing of cost as the least important evaluation factor is itself sufficient to sustain the protest, since its proposal was not evaluated solely on the basis of the evaluation factors as listed in the solicitation.

Agencies are required to include proposal evaluation factors and their relative weights in all RFPs, and to make award on the basis of those factors. 10 U.S.C. § 2305(a)(2)(A) (1988). The precise numerical weights, however, need not be disclosed. Technical Servs. Corp., 64 Comp. Gen. 245 (1985), 85-1 CPD ¶ 152. While the agency listed cost as the least important evaluation factor generally, it also disclosed the precise weight accorded to cost in relation to the technical factors. Since the exact weight to be given cost relative to the technical factors was made known to the offerors, we do not think they could have reasonably been misled as to the importance of cost. Whether or not the protester believed cost to be the least important factor, it knew that in the cost/technical

tradeoff the agency was willing to pay up to a 30 percent premium for a technically superior proposal. Under the circumstances, we think the relationship between cost and the other technical factors was clear. Moreover, while the protester insists in general that it was misled it fails to offer any explanation whatsoever as to how the RFP evaluation scheme resulted in its high estimated costs.

We also note that the agency specifically told Scientific Management during discussions that its cost was considered too high and that even after the firm responded by lowering its cost, it was still more than \$5 million above the lowest cost offeror in the competitive range.

Finally, the protester suggests that the lengthy evaluation process adversely affected the fairness of the procurement. The agency responds that the delay of 14 months from the time proposals were received until the revised competitive range was established was primarily due to the fact that it had only anticipated getting about half as many proposals as it actually received, and that members of the technical review panel were frequently not available due to other job commitments. The record also shows that when the findings of the technical panel were reviewed by a contract review board, the board noted discrepancies between narrative ratings and technical scores and questioned some of the technical panel's statements. After revised proposals were received the technical panel was sequestered until the re-evaluation was complete in order to avoid the delays that had occurred in the initial evaluation. The contract award panel again disagreed with some specific items in the technical panel's re-evaluation and made adjustments to several scores. None of the items noted by the panel concerned the protester's proposal and did not affect either Scientific Management's score or the competitive range determination.

There is no evidence of any procurement irregularity in the record before us. Our review indicates that the evaluation was fair and thoroughly documented. Further, while we agree that the Navy might have acted more expeditiously in this case in evaluating proposals, this is not in itself evidence of a flawed procurement.

The protest is denied.


James F. Hinchman
General Counsel