Glass

Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Chadwick-Helmuth Company, Inc.

File: B-238645.2

Date: November 19, 1990

David A. Ringnell, Esq., Smith & Smith, for the protester.
Paul Shnitzer, Esq., Crowell & Moring, for Scientific Atlanta Company, Inc., an interested party.
Craig E. Hodge, Esq., and Stephanie A. Kreis, Esq., Department of the Army, for the agency.
Linda C. Glass, Esq., Andrew T. Pogany, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. A protest against agency's allegedly improper evaluation of proposals is without merit where review of the evaluation provides no basis to question the reasonableness of the determination that based on the solicitation evaluation formula, the awardee's proposal offered the combination of technical and price most advantageous to the government.

2. Where an agency advised offerors in the competitive range of all technical and cost concerns and gave the offerors an opportunity to revise their proposals based on these concerns, agency has satisfied the requirement that meaningful discussions be conducted. Even if an offeror's price is higher than the other offeror's price, the agency is not required to advise the high offeror of this fact if there is no indication that the agency found the high offeror's price to be unreasonable.

3. Protest that agency failed to follow stated evaluation methodology by using penalty points and bonus points in its actual scoring is denied since the solicitation advised offerors of the broad method of scoring to be employed and gave reasonably definite information concerning the relative importance of evaluation factors. The precise numerical weights in an evaluation need not be disclosed.

4. Protest that agency relaxed certain solicitation requirements for the awardee is denied where record shows that the agency allowed both the protester and the awardee to make

certain minor software and hardware changes to their products and nothing in the solicitation precluded such changes.

DECISION

Chadwick-Helmuth Company, Inc. (CHC) protests the award of a contract to Scientific Atlanta Company, Inc. under request for proposals (RFP). No. DAAJ09-89-R-1150, issued by the Army Aviation Systems Command for a 3-year requirements contract for the Army Vibration Analyzer (AVA). CHC contends that the Army relaxed its technical requirements for Scientific Atlanta without notifying CHC, improperly evaluated the proposals, and failed to conduct meaningful discussions with CHC.1/

We deny the protest.

The AVA equipment is used in performing vibration analysis and rotor track and balance maintenance functions for the entire Army helicopter fleet, except for the CH-47 helicopter. Under the RFP, the AVA was to include components/equipment necessary to acquire, transmit, process, display and record vibration data.

The RFP advised that award would be made to the offeror whose product was evaluated as superior with respect to the attainment of the program objectives and goals. The Army also reserved the right to select the AVA that it determined would provide the government the best overall value. Proposals were to be evaluated in two phases. Phase I was to be a complete

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1/ We note that shortly after the receipt of proposals in January 1990, the government inadvertently released two complete copies of CHC's proposal to representatives of Scientific Atlanta. The proposals were retrieved by the government less than 3 hours after their release. CHC filed a protest with our Office objecting to the disclosure and arguing that it created an auction and organizational conflict of interest. We dismissed the protest without prejudice on May 3, pending the results of an investigation by the Army Criminal Investigation Division (CID). See Chadwick-Helmuth Co., Inc., B-238645, May 3, 1990, 90-1 CPD ¶ 445. The CID conducted an investigation which concluded that there was no evidence to indicate that CHC's proposal was compromised as a result of the release. In this current protest, CHC initially contended that the disclosure of its proposal along with alleged relaxation of the requirements for Scientific Atlanta tainted the integrity of the procurement. In its written comments on the agency report, CHC abandoned this protest ground. See generally The Big Picture Co., Inc., B-220859.2, Mar. 4, 1986, 86-1 CPD ¶ 218.

evaluation and scoring of the written proposals. Phase II was a "fly-off" in which the product's performance was to be evaluated on Army aircraft. A competitive range was to be established at the conclusion of Phase I, and those offerors determined to be within the competitive range were to be invited to compete in Phase II.

The evaluation was divided into four areas: (1) qualification; (2) technical; (3) integrated logistical support (ILS); and (4) cost. The qualification area consisted of elements considered to be mandatory and were to be scored on a pass/fail basis. The RFP also provided for the performance of a qualification validation of those AVAs within the competitive range to verify compliance with the qualification requirements. (This was to be done prior to the Phase II evaluation.) Under Phase I, ILS and cost were of equal importance and when combined were as important as the technical area. Under Phase II, technical was approximately three times as important as cost, and cost was approximately three times as important as ILS. The RFP further stated that some elements would be evaluated more than once, i.e., under Phase I and Phase II, and their resultant scores would be evaluated on a cumulative basis.

The Army received five proposals by the closing date of January 22, 1990. The technical proposals were then evaluated. As previously stated, the elements within the qualification area were deemed mandatory and scored on a pass/fail basis. Each element of the technical and ILS areas were evaluated and quantitatively scored. In some instances, penalty/bonus points were awarded. Each cost was evaluated to determine that it was reasonable, complete and affordable. After the Phase I evaluation, three offerors, CHC, Scientific Atlanta, and Dynamic Instruments, Inc. were determined to be within the competitive range.

The qualification validation was then performed on the equipment of the three competitive range offerors. Under this evaluation, the equipment was put on test helicopters to determine if they worked without problems and met the pass/fail criteria. During the course of the qualification validation, both CHC and Scientific Atlanta were allowed to make minor hardware changes determined to be necessary to complete the qualification validation. As a result of the qualification validation, Dynamic Instruments was excluded from the competitive range.

Phase II, the product evaluation, resulted in a 7-point differential (out of 100) between the two remaining offerors, favoring CHC. After the conclusion of Phase II, each offeror was given a list of deficiencies and asked to address them in updated technical volumes. The updated technical volumes were

reviewed, and discussions were held with both offerors. Best and final offers (BAFO) were submitted by both CHC and Scientific Atlanta on June 8. The proposal and product evaluations were combined to yield a 3-point difference (out of 100) favoring Scientific Atlanta. A 3-year requirements contract for a total estimated quantity of 1250 AVA units, as well as adapter kits, training, technical publications, data and interim contractor support was awarded to Scientific Atlanta on June 22. This protest followed.

CHC argues that a number of requirements were relaxed to the advantage of Scientific Atlanta and maintains that Scientific Atlanta failed to meet certain RFP requirements. Specifically, CHC contends the RFP's requirement that data produced by the AVA be capable of reduction to hard copy required the mandatory inclusion of a printer, which Scientific Atlanta's equipment did not have. CHC maintains that the inclusion of the printing capability in its AVA added considerable cost to CHC's proposal and elimination of this requirement would have had a major impact on the final price. CHC also argues that Scientific Atlanta's user manuals were not specific to the make and model of the particular helicopter involved, which required the agency to impose a training requirement. CHC further argues that Scientific Atlanta's equipment failed to pass the necessary qualification on two-bladed aircraft.

Our review of the record demonstrates that there was not a requirement that a printer be included with the equipment. The solicitation provided at paragraph C.2.2.2.5 that:

> "The AVA should be capable of presenting maintenance actions derived from the acquired data in aircraft specific units (i.e. clicks of pitch link, etc.) as well as any and all acquired data . . . . Any and all maintenance actions/data should be available on hardcopy as required by the user."

In addition, at a bidders conference held in December 1989, the following question was asked: "Does an AVA that is fully functional without external power and can easily be interfaced to IBM compatible printers meet the requirements of C.2.2.2.5.?" The Army's response was yes. The RFP did not state that a printer was required or mandatory but merely stated that the data "should" be available on hardcopy. Further, the Army's response to a specific question concerning this requirement clearly indicated that a printer was not required. We conclude that CHC made a business judgment on its own to include a printer with its equipment.

With respect to the training manuals, the solicitation did not require the user manuals to be aircraft specific. The Army

reports that, during the technical flight evaluation, it became concerned that the manuals would not be clear to Army personnel, and that it decided to give each offeror the opportunity to update its manuals. The Army states that during the user flight evaluation it became clear that even the updated manuals of both offerors were insufficient. Consequently, the Army requested the offerors to present a 4-hour training course. We see nothing improper in the Army's action here, since the requirement for user manuals was not relaxed, and both offerors were given an equal opportunity to both update their manuals and present a training course.

The record further demonstrates that CHC and Scientific Atlanta passed all qualification tests except one. Both offerors failed a portion of the electromagnetic interference/electromagnetic compatibility requirement conducted by the Army during the qualification phase. Since the failure of the offerors to meet this requirement had no adverse affect during testing, the Army decided to modify this requirement and neither offeror was penalized. The record further shows that Scientific Atlanta also passed the qualification tests on two-bladed aircraft.

CHC also maintains that, contrary to the evaluation criteria, Scientific Atlanta was allowed to make certain hardware changes to its equipment during the product testing phase. The record indicates that both offerors were allowed to make what the Army considers to be minor hardware changes. For example, Scientific Atlanta was allowed to drill universal holes in its mounting bracket to allow for proper fit, and also was allowed to change from a 40-foot cable to a 50-foot cable. CHC was allowed to add an interrupter to its adapter kit and to also add an extra tie-down strap to secure its equipment to the aircraft. CHC argues that the changes it was allowed to make were not material and that the changes Scientific Atlanta made were significant. The Army maintains, however, that without the allowable changes, CHC's equipment would not have passed the qualification validation. The Army further states that the changes Scientific Atlanta made were minor in nature and enabled it to pass the qualification validation. Our review of the record supports the Army's position.

There is nothing in the record to indicate that any requirements were relaxed or that Scientific Atlanta's proposal/product received a higher technical rating than was reasonable and consistent with the stated evaluation criteria. In view of the fact that CHC's proposal was only rated 7 points higher during the product evaluation than Scientific Atlanta's proposal, that both offerors passed all qualification tests (except the one that was waived), and that the combined proposal and product evaluations resulted in a

3-point advantage for Scientific Atlanta, we cannot find unreasonable the Army's determination that Scientific Atlanta's proposal offered the combination of technical and price most advantageous to the government. See generally Lembke Constr. Co., Inc., B-228139, Nov. 23, 1987, 87-2 CPD ¶ 507.

Next, the protester objects to the fact that the evaluation team used a system of rating which included the assessment of penalty points. CHC contends that this was improper because the use of penalty points or how these points were to be calculated or even their relative importance was not disclosed in the evaluation approach set forth in the RFP. CHC maintains that it possibly could have structured its proposal differently had it known which areas would have been susceptible to penalty points.

Although not disclosed in the solicitation, under certain subfactors in the technical area a system whereby penalty or bonus points would be given was used by the evaluators in rating proposals. Under the actual scoring used for certain subfactors, a zero would be given for completely meeting the requirement, while penalty points (positive numbers) were given if proposal did not conform to all factors of the subfactor and bonus points (negative numbers) were given for exceeding the requirement. For example, the evaluation of the element, power, under the factor battery power would be as follows:

> "The offeror's proposal shall be evaluated to determine if the AVA utilizes battery power. The factor evaluation shall be a summary of the subfactor evaluations for Rechargeable, Replaceable, Durable and Low Power. If the answer to all four (4) subfactors is yes the offeror receives a score of 0. For each no answer the offeror receives +10 penalty points with a maximum of +40 penalty points. If the answer to all subfactors is yes and A/C power provisions are not utilized, the offeror receives a -5 bonus point."

Although a solicitation must advise offerors of the broad method of scoring to be employed and give reasonably definite information concerning the relative importance of the evaluation factors, the precise numerical weight to be used in evaluation need not be disclosed. See Technical Servs. Corp., 64 Comp. Gen. 245 (1985), 85-1 CPD ¶ 152. Here, the RFP was very specific, and CHC was provided sufficient information to know what the evaluation factors and subfactors were and how its proposal would be evaluated. The relative importance of the evaluation factors and subfactors were also specifically

identified. Notwithstanding the use of bonus and penalty points, it is clear from the record that the actual weight given each factor in scoring the proposals was as stated in the evaluation criteria contained in the RFP. Thus, CHC had sufficient information to enable it to submit a proposal that fully satisfied the requirements of the RFP.

Further, offerors are on notice that qualitative distinctions will be made among proposals where technical factors are part of the competitive evaluation. See generally Mutual of Omaha Ins. Co., B-203338.2, Sept. 24, 1982, 82-2 CPD ¶ 268. We do not think that it was improper for the Army to rate the proposals using a system of penalty and bonus points or that the Army was required to inform the offerors of its specific rating methodology. This aspect of CHC's protest is denied.

Finally, CHC argues that the Army failed to conduct meaningful discussions in that it was never informed that its proposal was overpriced. CHC states that the discussions centered exclusively on technical and functional requirements, and the issue of price was raised only once by CHC when it offered to include a discount formula.

In order for discussions in a negotiated procurement to be meaningful, contracting agencies must furnish information to all offerors in the competitive range as to areas in which their proposals are believed to be deficient so that offerors may have an opportunity to revise their proposals to fully satisfy the agency's requirements. See Federal Acquisition Regulation (FAR) § 15.610(c) (FAC 84-16); Individual Dev. Assos., Inc., B-225595, Mar. 16, 1987, 87-1 CPD ¶ 290. However, the actual content and extent of discussions are matters of judgment primarily for determination by the agency involved, and we will review the agency's judgments to determine if they are reasonable. See Northwest Regional Educ. Laboratory, B-222591.3, Jan. 21, 1987, 87-1 CPD ¶ 74.

We find no duty owed by the Army in this case to advise CHC that its price was higher than Scientific Atlanta's price. The record shows that CHC's initial offer was not the highest received and that it was lower than the government's estimate. CHC's BAFO price was also lower than the government's estimate. Further, the Army reviewed CHC's price and determined it to be reasonable. See Proprietary Software Sys., B-228395, Feb. 12, 1988, 88-1 CPD ¶ 143. Although CHC argues that the elimination of the printer from its system would have resulted in considerable cost savings, the inclusion of the printer, as we have found, was a business decision made by CHC and not a requirement. Otherwise, CHC has not stated that it would have or how it would have lowered its price to any substantial degree. CHC did lower its price in its BAFO submission but it was still higher than the

awardee's. Consequently, we find that the Army did not fail to conduct meaningful discussions.

The protest is denied.

for James F. Hinchman
General Counsel