



Comptroller General  
of the United States

Washington, D.C. 20548

Perry  
145636

## Decision

**Matter of:** Creative Management Technology

**File:** B-245589

**Date:** January 13, 1992

Jacob Dixon, Jr. for the protester,  
J. Michael Slocum, Esq., Slocum, Boddie, Murry & Kirk, for  
Hernandez Engineering, Inc., an interested party,  
Darleen A. Druyun, National Aeronautics and Space  
Administration, for the agency.  
Anne B. Perry, Esq., and Paul Lieberman, Esq., Office of the  
General Counsel, GAO, participated in the preparation of the  
decision.

### DIGEST

1. Protest that agency improperly added estimated cost of additional personnel for sufficient work force without downgrading proposal for lack of understanding of solicitation requirements is denied where agency reasonably concluded that awardee's proposal demonstrated a thorough and comprehensive understanding of the requirements. An agency's evaluation of an offeror's proposed costs in a cost-type contract is intended to provide a more reliable estimate for cost evaluation and comparison purposes and agency's increase in estimated overall costs does not establish proposal's technical unacceptability.

2. Protest that agency failed to properly evaluate awardee's professional employee compensation plan and awardee's ability to recruit and retain employees is denied where agency properly considered total benefit package proposed by awardee and reasonably concluded that awardee proposed excellent policies and benefits.

### DECISION

Creative Management Technology (CMT) protests the award of a contract to Hernandez Engineering, Inc. (HEI) under request for proposals (RFP) No. 10-0-0003-1, issued by the National Aeronautics and Space Administration (NASA) for support services for Kennedy Space Center's Safety, Reliability and Quality Assurance Directorate. CMT asserts that award was made to HEI based solely on its low proposed cost, without

consideration of the fact that the cost savings reflect the proposal's understaffing and lack of understanding of and compliance with the contract requirements.

We deny the protest.

The solicitation, issued on February 27, 1991, to 198 firms, sought a cost-plus-award-fee contract for a 5-year period of performance--an initial 3-year contract and two 1-year options. The primary tasks relate to flight and ground hardware processing and involve independent safety assessments and analyses associated with current and future NASA programs and activities. These programs involve both manned and unmanned launch systems, space station, spacecraft, payloads, ground support equipment, ground support facilities, and government or contractor-furnished equipment.

The RFP states that proposals will be evaluated in accordance with the following factors: Mission Suitability; Cost; Relevant Experience and Past Performance; and Other Considerations. The solicitation further provides that only the Mission Suitability factor will be numerically weighted and scored, but that the other factors may become determinative of award. Section M states that:

"Of the four evaluation factors, the Mission Suitability Factor and the Cost Factor are most important, and, as related to each other, are of essentially the same relative importance. The Relevant Experience and Past Performance Factor and Other Considerations Factor are of essentially the same relative importance, and together are of less importance than the Mission Suitability Factor and the Cost Factor together."

Four proposals were received by the May 6, 1991, closing date for receipt of proposals. Proposals were not scored during the initial evaluation, but rather were reviewed to determine acceptability, and to develop questions for discussions.<sup>1</sup> All offerors were included in the competitive range, and oral discussions were conducted between June 13 and 14. During these discussions, offerors were provided with a list of questions/clarifications that were to be addressed during oral discussions or in their best and final offers (BAFOs). BAFOs were received on July 1, and were evaluated and scored and then ranked with respect to the Mission Suitability Factor. CMT's proposal received the highest score and was characterized overall as

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<sup>1</sup>In accordance with NASA's streamlined procedures, as outlined in the RFP, the agency may make a determination to eliminate initial scoring.

"very good," CMT's proposal was rated "excellent" in four evaluation areas, and "good" in the three remaining areas. The evaluation panel perceived no major weaknesses in CMT's proposal. HEI's proposal received the second highest score and was characterized overall as "very good." HEI's proposal was rated "excellent" in three evaluation areas and "good" in the remaining four. No major weaknesses were perceived in HEI's proposal.

Cost proposals were evaluated for realism and probable cost. HEI submitted the lowest proposed cost, and CMT submitted the second highest proposed cost. Probable cost adjustments made by the evaluation panel increased HEI's cost to reflect an additional three staff members, and to enhance HEI's pension plan. No adjustments to CMT's proposed cost were required.<sup>2</sup>

In its evaluation of Relevant Experience and Past Performance, the evaluation panel assessed HEI's proposal as "highly satisfactory," and CMT's as "marginally satisfactory." In the category of Other Considerations, both proposals were assessed as satisfactory/acceptable.

The Source Selection Official (SSO) reviewed the findings of the evaluation panel and determined that although CMT's proposal received a slightly higher score under the Mission Suitability Factor than did HEI's, the point difference was not significant. The SSO then reviewed the findings of the cost analysis, and determined that HEI's probable cost was substantially lower than CMT's probable cost. Based on these findings, the SSO determined that the HEI proposal was the most advantageous to the government. He found that:

"The significantly lower proposed cost plus proposed fee, substantially lower probable cost plus proposed fee and highly satisfactory relevant experience and past performance rating of HEI's proposal more than offsets the difference in Mission Suitability score between the HEI and CMT proposals, which I determined to be not significant. . . ."

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<sup>2</sup>The probable cost adjustment also encompassed the difference between an offeror's proposed G&A rate and its offered ceiling rate so that the government's financial risk in indirect allocation of costs would be limited. CMT was the only competitor which offered the same proposed and ceiling rate, and so no adjustment was made to its estimated cost.

Accordingly, the SSO selected HEI for final negotiations leading to an award, and HEI was awarded the contract on September 27.

CMT objects that NASA improperly made award on the basis of HEI's low proposed cost, without considering that the cost savings were the result of HEI's inadequate level of staffing, lower level of employee benefits, and failure to include all of the required tasks in its cost. The protester argues that the fact that the agency needed to substantially increase HEI's proposed costs to account for additional staff members and improved benefits in the agency's probable cost assessment demonstrates that HEI was technically unacceptable. CMT also alleges generally that NASA was biased towards HEI.<sup>3</sup>

CMT initially argued that the agency improperly raised the staffing proposed by HEI from 33 to 38 individuals in the agency's probable cost assessment, but failed to recognize that HEI's understaffing represented a general lack of understanding of the scope of work required under this solicitation. Specifically, CMT contends that the current contractor uses 44 individuals, CMT proposed to use 43, the government estimate was for 41+, but HEI proposed only 33--to which the government added five individuals in its probable cost assessment. CMT argues that HEI's failure to propose an adequate work force demonstrates that HEI does not understand the solicitation requirements, and NASA should have rejected HEI's proposal as technically unacceptable.

The evaluation of proposals and the determination of their relative desirability is primarily the function of the procuring agency, since it is the agency that is responsible for defining its needs and the best method of accommodating them, and must bear the burden of any difficulties resulting from a defective evaluation. S-Cubed, A Division of Maxwell Laboratories, Inc., B-242871, June 17, 1991, 91-1 CPD ¶ 571. In reviewing protests against allegedly improper evaluations, we examine the record to determine whether the agency's judgment was reasonable and in accord with the evaluation criteria listed in the RFP. Taft Broadcasting Corp., B-222818, July 29, 1986, 86-2 CPD ¶ 125. A protester's mere disagreement with an agency's conclusions does not render them unreasonable. ESCO, Inc., 66 Comp. Gen. 404 (1987), 87-1 CPD ¶ 450.

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<sup>3</sup>CMT also alleged that HEI's proposal failed to include the tasks required under the RFP for Mishap Reporting and Corrective Action. However, the record clearly demonstrates otherwise.

In fact, HEI did not propose a work force of 33--it proposed 38 members. HEI's proposal was evaluated as having a minor weakness in the Mission Suitability Factor, based upon its proposed staffing profile of 38 persons. However, while the agency noted this as a weakness, it also stated that the "HEI technical proposal exhibits a highly responsive and competent approach to the RFP requirements," and that the difference in staffing estimates between offerors was due to the individually proposed organizational and operational approaches. The record demonstrates that the evaluators reviewed each subfactor of HEI's proposal under the Mission Suitability Factor and found that HEI's proposal was "very good." The evaluators found that HEI's proposals demonstrated "a thorough and comprehensive understanding to the Understanding the Requirement subfactor elements." In view of the agency's specific assessment of HEI's technical proposal, the record does not support CMT's contention that the addition of the probable costs of three additional staff members to HEI's proposed costs establishes that HEI lacked understanding of the solicitation requirements and that its proposal should have been determined technically unacceptable.

Where a cost-reimbursement contract is being contemplated under an RFP, the offerors' proposed estimated costs should not be considered controlling, since they may not provide an accurate assessment of the actual costs which the government is, within certain limits, required to pay. All Bann Enters., Inc., B-242751, June 3, 1991, 70 Comp. Gen. \_\_\_\_, 91-1 CPD ¶ 521. In this regard, a cost realism analysis is a government determination as to what the probable cost of acceptance of a particular proposal will be, and must consequently take cognizance of differing technical approaches, which may impact upon, for example, a firm's requirement for labor. Taft Broadcasting Corp., supra.

Here, in order to be able to fairly evaluate the relative merits of the different proposals, the agency conducted a probable cost analysis to arrive at a more realistic assessment of the government's financial liability under each proposal. To do so, NASA adjusted HEI's proposed cost to include the potential costs of 3 more employees in addition to the 38 proposed. We do not agree with CMT that this is a substantial deviation from what HEI proposed. See Taft Broadcasting Corp., supra. The proposed adjustment certainly does not require a finding that HEI's proposal was technically unacceptable.

CMT next alleges that the HEI proposal fails to comply with the RFP requirement for an adequate compensation plan, which means that HEI will experience difficulty in attracting and maintaining a qualified staff. Specifically, CMT argues that HEI's compensation plan is not as good as

the incumbent's plan with respect to sick leave, holidays, medical coverage, vacation time, and pension plan, and that therefore, HEI's proposal should have been rejected as technically unacceptable.

The RFP did not provide that offerors were required to provide the compensation plan utilized by the incumbent; rather, it provided that such packages would be evaluated to ensure that they reflect a sound management approach and understanding of the requirements so that the agency will be assured of the contractor's ability to attract and retain a qualified work force. The evaluation panel reviewed HEI's proposed compensation plan and determined that it was "basically sound." The panel considered that HEI's proposal demonstrates an exceptional award/bonus program and recognizes seniority for leave accrual rates. The agency found that the differences in the medical coverage (employee cost-sharing versus full company coverage) was marginal. The one aspect of HEI's benefit package which was rated as weak was its pension plan. Overall, however, the agency concluded that:

"The pension contribution issue is correctable and, when corrected and combined with the other excellent features of HEI's compensation plan, will present a sufficient attraction for the hiring and retention of qualified personnel."


This determination is reasonable and in accord with the RFP requirements. See RGI, Inc., B-243387, July 23, 1991, 91-2 CPD ¶ 86.

CMT next argues that the agency's evaluation of the offeror's past performance was biased because HEI's proposal as "highly satisfactory" and CMT's as only "marginally acceptable." The protester contends that it proposed highly qualified and experienced personnel and it should have received a much higher score. With respect to its past performance, CMT was rated as "marginally acceptable" since it is a newly formed corporation without sufficient corporate experience. Apparently, CMT assumed that the experience of some of its employees would be attributed to the corporation, despite the fact that it is newly formed. However, it is not improper for an agency to separately evaluate corporate and personnel experience. Bardes Servs., Inc., B-242581, Apr. 29, 1991, 91-1 CPD ¶ 419.

CMT's allegation that this narrative evaluation reflects agency bias towards HEI and against CMT is without merit since it is based entirely on CMT's supposition and speculation, without any substantiating evidence. Protesters must submit convincing evidence that the contracting official had a specific and malicious intent to

harm the protester in order for us to question an award on this basis, since contracting officials are presumed to act in good faith. Indian Affiliates, Inc., B-243420, Aug. 1, 1991, 91-2 CPD ¶ 109.

The protest is denied.

  
for James F. Hinchman  
General Counsel