



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: P.E. Systems, Inc.

File: B-249033.2

Date: December 14, 1992

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Lee Curtis, Esq., Howrey & Simon, for TECHPLAN Corporation, an interested party.
Andrei Kushnir, Esq., and Debra Buck Haworth, Esq., Department of the Navy, for the agency.
Daniel I. Gordon, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency was not required to disclose to offerors the government's staffing model which was used in evaluating offerors' proposed staffing levels.
2. Discussions regarding offeror's proposed staffing mix were adequate where agency questioned offeror's ability to perform work with the proposed staffing levels, thereby leading offeror into the area of agency's concern.
3. Award to higher cost, higher rated proposal was proper where solicitation weighted technical factors more heavily than cost and agency reasonably concluded that higher rated proposal was worth the cost premium.

DECISION

P.E. Systems, Inc. (PES) protests the award of a contract to TECHPLAN Corporation under request for proposals (RFP) No. N00039-91-R-0125(Q), issued by the Department of the Navy's Space and Naval Warfare Systems Command. PES contends that the manner in which the agency used an undisclosed standard labor mix caused the evaluation of proposals to be both unreasonable and inconsistent with the RFP evaluation criteria; that the agency failed to conduct meaningful discussions with PES; and that there was no rational basis for the agency's cost/technical tradeoff between PES' lower cost proposal and TECHPLAN's higher cost one.

We deny the protest.

The Navy issued the RFP on April 8, 1991, for technical and engineering support services for the agency's Advanced Tactical Data Link Systems (ATDLS) program office. The RFP, a 100-percent set-aside for small businesses, contemplated a cost-plus-fixed-fee contract for a base year with 4 option years. TECHPLAN was the incumbent contractor.

Section M of the RFP stated that, in the source selection process, the technical proposal was more important than the cost proposal. The technical proposal was to be evaluated under four criteria, in descending order of importance: technical approach, corporate experience, personnel experience, and management structure. In turn, technical approach was broken down in the RFP into eight subcriteria, which the RFP initially stated were of equal weight; amendment 0004 advised that the eight subcriteria were listed in the RFP in descending order of importance. Personnel experience and management structure were subdivided into two and four subcriteria, respectively, which the RFP listed in descending order of importance.

The RFP provided that proposed cost would be evaluated to determine whether it was reasonable and realistic for the technical approach adopted and to assess whether the offeror had a practical understanding of the effort involved in the procurement. Reasonableness and realism were defined as equally important.

Three proposals were received by the June 4, 1991, closing date. The technical proposals were evaluated by a technical evaluation board (TEB), whose members were not given access to cost information. The TEB members prepared individual evaluation sheets, scores, and comments, which were consolidated by the TEB chairman in a report forwarded to a contract award review panel (CARP).

The TEB chairman's report to the CARP rated PES' initial proposal as fair in most areas and good in several others. A number of strong points, as well as weaknesses, were noted. Among the weaknesses was excessive paraphrasing of the RFP's statement of work, which raised concern about PES' understanding of the contract tasks. Another concern was the significant proportion of junior personnel proposed.

The TEB's evaluation of TECHPLAN's proposal noted that it, too, appeared to rely excessively on junior personnel. Overall, TECHPLAN's initial proposal was rated very good in one area and good in the rest.

After receipt of the TEB's technical evaluation, the CARP began the cost evaluation, which was performed in two stages. The first step addressed the reasonableness of the offeror's proposed labor mix (this review constituted the reasonableness aspect of the cost evaluation). CARP members had prepared a standard labor mix, consisting of set percentages of the various levels of personnel (senior, mid-level, junior, and support) based on the CARP members' experience and judgment regarding the work involved in the procurement. The CARP members then compared each offeror's proposed labor mix with the government standard and assigned each proposal a numerical score for labor mix reasonableness based on the proposal's deviation from the standard. Based on the perceived excessive reliance on junior and support personnel, PES' initial proposal received a score of poor for labor mix reasonableness; TECHPLAN's received a rating of unacceptable.

In the cost realism evaluation, the agency compared each offeror's proposed cost with the agency's calculation of the proposal's probable cost, using the agency's government standard labor mix and the offeror's labor rates as recommended by the Defense Contract Audit Agency. PES' initial proposal received a significantly higher score than TECHPLAN's for cost realism.

After weighting the raw technical and cost scores to reflect the evaluation criteria in Section M, the CARP assigned overall scores to the three initial proposals; TECHPLAN's proposal score was highest, and PES' was next. After reviewing the file, including the CARP report, the source selection authority (SSA) determined that all three proposals were in the competitive range.

The Navy then conducted discussions with the three offerors by sending them written questions. PES was sent 35 questions; TECHPLAN received 19. The questions were based on the weaknesses identified during the evaluation. Two questions reflecting the evaluators' assessment that the two offerors relied excessively on junior personnel were sent to both PES and TECHPLAN, using identical language:

"Justify the basis for performing the tasks required based on the personnel labor category ratios proposed."

"The loading in [the table in your proposal] indicates a high percentage of junior personnel. How will your company be able to perform the complex technical and engineering tasks under this contract with this distribution of personnel?"

Every offeror submitted timely responses to the agency's discussion questions. PES' response to the questions concerning the proposed ratio among personnel labor categories was, essentially, to explain that PES based its proposed ratio on a comparison of the task areas in the RFP statement of work to similar work that PES had performed successfully on another Navy contract. PES did claim to have "fine tuned" its labor mix.

In its response, TECHPLAN informed the Navy that the company had reviewed its labor mix and "determined that a revised manloading should be proposed." Based on analysis, which was presented in both narrative and tabular form, TECHPLAN proposed a labor mix weighted toward more senior personnel than in its initial proposal.

The TEB evaluated offerors' responses to the discussion questions. In its evaluation of PES' responses, the TEB determined that the company had not significantly improved its proposed labor mix. The TEB concluded that TECHPLAN had improved its labor mix by proposing more senior personnel, but that it still proposed a significant number of junior personnel.

The TEB's evaluation of the discussion responses led the CARP to increase each offeror's technical score somewhat; the overall impact was approximately equal on the three offerors' scores.

Best and final offers (BAFOs) were requested from all three offerors by March 12, 1992. No offeror made changes to its technical proposal in its BAFO. PES lowered its proposed cost by a substantial amount; TECHPLAN increased its proposed cost by an even greater amount.

The CARP's cost evaluation of the BAFOs indicated that PES' labor-mix reasonableness score remained the same, since the company had not significantly shifted the labor mix from what the agency viewed as an excessive reliance on junior personnel. PES' cost realism score declined significantly because the company had reduced its price at BAFO.

TECHPLAN's labor-mix reasonableness score for its BAFO was significantly higher than the score for its initial proposal in that area because of the changes to its labor mix. Because of an increase in the proposed direct labor cost, TECHPLAN's cost realism score also improved.

The CARP's final report summarized the technical and cost scores for each offeror. In calculating the technical scores, the CARP mistakenly assigned equal weight to the eight subcriteria within technical approach (apparently disregarding RFP amendment 0004, which provided that the

subcriteria would be weighted in descending order of their appearance in the RFP). The CARP's calculation rated TECHPLAN's proposal somewhat higher than PES' in the technical area as well as in the cost area (which encompassed the labor-mix reasonableness and cost realism analyses). Overall, TECHPLAN's BAFO score was approximately 10 percent higher than PES'.

Based on the scores for technical and cost proposals and the proposed cost, the CARP concluded that the third offeror's proposal no longer had a reasonable chance for award and that the agency would choose between TECHPLAN's and PES' proposals. Because TECHPLAN's proposal was higher rated technically, but more expensive, the CARP was faced with the need to perform a cost/technical tradeoff.

In order to assist in that effort, the CARP requested that the TEB chairman, who has extensive technical background relevant to the contract work, provide an analysis of the differences between the technical proposals of PES and TECHPLAN. The TEB chairman performed that analysis based on a review of the RFP, the two offerors' proposals and responses to discussion questions, and the chairman's own notes and score sheets. The TEB chairman's conclusion, provided in the form of a supplemental memorandum attached to the final CARP report, was that the PES proposal was significantly weaker than the TECHPLAN proposal. The TEB chairman identified a number of weaknesses in PES' proposal, reviewed PES' responses to the discussion questions relevant to each of the weaknesses, and explained the basis for his conclusion that each weakness persisted in PES' proposal.

Specifically, the TEB chairman's supplemental memorandum compared PES' and TECHPLAN's proposals. It concluded that TECHPLAN's proposal was superior in a number of technical approach areas in which PES' proposal was weak. It identified only one area in which it found PES' proposal superior to TECHPLAN's. In the remaining technical approach areas, the TEB chairman's supplemental memorandum found the two proposals essentially equivalent technically. Overall, it concluded that TECHPLAN's technical proposal was significantly superior technically to PES'. The TEB chairman did not know the cost difference between the two proposals.

Consistent with his mandate from the CARP, the TEB chairman's supplemental memorandum did not address areas outside the technical approach, such as corporate experience, personnel management, management structure, and cost. Thus, PES' reliance on junior personnel was not an element in the TEB chairman's conclusion that TECHPLAN's proposal was superior to PES'.

The CARP considered all aspects of the two proposals. Its final report noted TECHPLAN's superiority to PES in terms of labor-mix reasonableness, as well as corporate experience, personnel management, and management structure. In light of this superiority, as well as the technical advantages of TECHPLAN's proposal, which were viewed as more significant than suggested by the point score spread, the CARP concluded that TECHPLAN's proposal was worth the additional cost. Accordingly, the CARP recommended that award be made to TECHPLAN. The SSA concurred with the CARP recommendation, and award was made to TECHPLAN on May 15, 1992.

PES contends that the Navy acted improperly by: (1) not revealing the government standard labor mix to offerors and unreasonably applying that labor mix mechanically, without permitting offerors to justify deviation from it; (2) failing to conduct meaningful discussions by not revealing the nature of the agency's concern regarding PES' proposed labor mix; and (3) conducting an inadequate cost/technical tradeoff, leading to an unreasonable decision to select TECHPLAN's higher priced proposal.

The gravamen of PES' protest is that the Navy should have disclosed the standard labor mix against which it evaluated proposals. That contention is without merit. Agencies are not required to disclose a staffing model used to assess the adequacy of proposed labor mixes or offerors' understanding of the work involved in a procurement. Aerostat Servs. Partnership, B-244939.2, Jan. 15, 1992, 92-1 CPD ¶ 71; Reflectone Training Sys., Inc., B-240951, Dec. 10, 1990, 90-2 CPD ¶ 472. It is not improper for an agency to use an undisclosed government estimate of the appropriate labor mix in evaluating proposals, just as there is nothing improper in an agency's comparing proposed prices with an undisclosed independent government estimate, as frequently occurs.

It is true that where an agency uses such an undisclosed government estimate, the agency should conduct discussions with an offeror whose proposal substantially deviates from the government estimate in order to learn the reasoning behind the offeror's particular approach and to determine whether the offeror's proposed staffing can in fact satisfy the government's requirements. Columbia Research Corp., B-247631, June 22, 1992, 92-1 CPD ¶ 539. As explained below, the Navy did conduct such discussions here.

Regarding the evaluation process itself, PES contends that the Navy evaluated proposals against the government standard labor mix in a rigid fashion, without consideration of the offeror's proposed technical approach and the proffered rationale for the proposed labor mix. PES asserts that when an agency views its requirements as mandating an inflexible labor mix but fails to reveal that mix to offerors, the

agency is effectively imposing an undisclosed evaluation criterion, in violation of Federal Acquisition Regulation (FAR) § 15.608(a).

The Navy states that its standard labor mix was not inflexible and that the agency was open to persuasion concerning deviations from that mix, although that openness was not tested because PES offered little in the way of a rationale for its reliance on junior personnel to perform the contract work. The record does not establish that the agency was unwilling to consider a well-reasoned justification for a labor mix different from the standard one. The real question presented is whether the agency clearly conveyed its concern regarding the PES proposal's reliance on junior personnel. That question turns on the discussions conducted, not on the content of the RFP.

Although discussions with offerors need not be all-encompassing, they must be meaningful, which means that an agency is required to point out weaknesses, excesses, and deficiencies in proposals unless doing so would result in technical transfusion or technical leveling. FAR § 15.610(c), (d); Mikalix & Co., 70 Comp. Gen. 545 (1991), 91-1 CPD ¶ 527. In general, an agency must lead offerors into the areas of their proposals which require amplification or correction, and may not mislead offerors, through the framing of discussion questions, into responding in a manner that does not address the agency's concerns. Son's Quality Food Co., B-244528.2, Nov. 4, 1991, 91-2 CPD ¶ 424.

In this regard, the protester's reliance on our decision in Columbia Research Corp., B-247631, June 22, 1992, 92-1 CPD ¶ 539, is misplaced. In that case, we found that the discussions conducted were not meaningful because the agency's discussion question failed to point out, or even hint at, the principal perceived deficiencies in the proposals. As in the instant protest, the agency in Columbia Research had concluded that the protester's proposal relied excessively on junior personnel. In Columbia Research, however, no questions were asked that related to this concern or other perceived deficiencies. It was for that reason that the protest was sustained.

Here, the discussions conducted by the Navy led PES directly into the perceived area of weakness. Moreover, the questions did more than merely highlight the area of concern; they explicitly disclosed the agency's doubt that the high percentage of junior personnel proposed would be able to perform the complex technical and engineering tasks under the contract. The questions were neither misleading nor obscure. In this regard, we find it telling that the identical language appears to have alerted TECHPLAN to the

agency's view that a higher proportion of senior personnel needed to be proposed. In light of the agency's having explicitly raised its concerns through its unambiguous written questions, we conclude that the Navy conducted adequate discussions with PES. See Reflectone Training Sys., Inc., supra.

The remaining protest issue is PES' challenge to the cost/technical tradeoff. In addition to raising concern that the errors in calculating proposal scores may have prejudiced PES' chances for award, PES alleges that the TEB chairman's supplemental memorandum to the CARP was so fundamentally flawed that it could not be reasonably relied upon by the CARP for purposes of the cost/technical tradeoff. PES views as defects in the supplemental memorandum: (1) the TEB chairman's restricting his document review and analysis to the proposals and his own evaluation papers (thus allegedly conducting a de novo review which ignored other evaluators' opinions and comments); (2) the TEB chairman's allegedly deviating from the RFP evaluation criteria in his comparison of the two competing proposals; (3) the TEB chairman's finding TECHPLAN's proposal superior in areas in which he himself had allegedly previously rated that proposal "barely above 'poor'"; and (4) the TEB chairman's alleged failure to analyze whether the weaknesses his supplemental memorandum discussed would have any impact upon performance.

In addition, PES faults the CARP for accepting the conclusions of the supplemental memorandum without question, and the SSA for adopting the CARP's award recommendation. PES claims that neither the CARP nor the SSA was aware of weaknesses in the proposals beyond those discussed in the supplemental memorandum, and that, had either been aware of those additional weaknesses, further discussion would have been needed before an award selection could be made.

In reviewing an agency's source selection decision, our Office will examine the agency's evaluation to ensure that it was reasonable and consistent with the solicitation's evaluation criteria. Harris Corp.; PRC Inc., B-247440.5; B-247440.6, Aug. 13, 1992, 92-2 CPD ¶ 171. The record here, which includes the transcript of a hearing conducted in conjunction with the protest, indicates that the agency's source selection was both reasonable and consistent with the RFP's evaluation criteria. Faced with a choice between PES' and TECHPLAN's proposals, with PES' having a lower cost but also a lower technical score, the agency needed to determine whether the evaluated technical advantage of TECHPLAN's proposal was worth the cost differential. In light of the RFP source selection criteria, the agency had the discretion to make award to an offeror with a higher technical score and a higher cost if it reasonably determined that the cost

premium was justified by the technical superiority of TECHPLAN's proposal. See Technical Evaluation Research, Inc., B-247200, May 1, 1992, 92-1 CPD ¶ 411.

Rather than make award to TECHPLAN based on the point score advantage of that company's proposal, the agency properly went further and attempted to ascertain whether the difference in point scores actually reflected significant substantive differences. The protester does not allege any impropriety in the Navy's asking its technical evaluators, as part of the effort to determine if TECHPLAN's proposal was worth the additional cost, to compare the two proposals to one another, rather than comparing each to the RFP evaluation criteria.

PES does challenge the mechanics of the comparison that was conducted, but the challenge is without merit. The fact that only the TEB chairman took part in the preparation of the supplemental memorandum does not constitute a valid basis of protest. Unless there is a question of bias, the fact that not all members of a technical evaluation panel participate in a reevaluation is not legally objectionable. Scheduled Airlines Traffic Offices, Inc., B-235134, July 18, 1989, 89-2 CPD ¶ 57. Although PES complains that the TEB chairman "effectively and unreasonably excluded the expertise of the other evaluators," PES does not allege that the TEB chairman was biased against PES, and the record is devoid of evidence of any such bias.

Although PES disagrees with the technical opinion of the TEB chairman's finding that TECHPLAN's proposal was significantly superior technically, its disagreement does not provide a valid basis for protest. The record indicates that the TEB chairman's conclusions have a reasonable foundation and were based on, and consistent with, the RFP evaluation criteria, and that PES simply disputes those conclusions. An offeror's mere disagreement with the agency's judgment is not sufficient to establish that the agency acted unreasonably. United HealthServ Inc., B-232640 et al., Jan. 18, 1989, 89-1 CPD ¶ 43.


PES points to certain areas in which it claims the supplemental memorandum differs from the TEB chairman's earlier evaluation of the two proposals or from other evaluators' ratings of the proposals. The agency's response is, in essence, that the supplemental memorandum differed somewhat from the earlier evaluations because the supplemental memorandum compared the proposals to each other rather than to the RFP evaluation criteria, but that the memorandum is consistent with the earlier evaluations. Our review of the record supports the agency's position. The

protester has failed to demonstrate any significant inconsistency between the earlier evaluations and the TEB chairman's supplemental memorandum.

We also find that the errors made during the course of the scoring were minor and could not have affected the source selection decision. The small errors which occurred involved only the numerical scoring, which was of marginal importance in the award decision. Instead, source selection was based primarily on the narrative analysis comparing PES' and TECHPLAN's proposals, and that analysis was unaffected by the earlier scoring mistakes.

PES has failed to show that either the CARP or the SSA acted improperly in the final source selection. Essentially, PES alleges that the CARP and the SSA simply "rubberstamped" the opinion of the TEB chairman. The record provides no basis for this allegation. The TEB chairman was not privy to the size of the cost differential between the two proposals, and it was thus left to the CARP and the SSA to perform the actual cost/technical tradeoff, that is, to determine whether the technical advantages of TECHPLAN's proposal were worth the associated cost premium. The CARP and the SSA had access to all evaluation documents, and were not limited to the TEB chairman's supplemental memorandum. Our review indicates that the tradeoff analysis and the associated source selection process were performed reasonably and were consistent with the RFP evaluation criteria.

The protest is denied.


for James F. Hinchman
General Counsel