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Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Tracor, Inc.
File: B-250716.2
Date: February 23, 1993

Paul Shnitzer, Esq., Robert P. Davis, Esq., and Devorah S. Mayman, Esq., Crowell & Moring, for the protester.
William H. Butterfield, Esq., and Charlotte F. Rothenberg, Esq., McGuire, Woods, Battle & Boothe, for Corporate Jets, Inc., an interested party.
Charles A. Walden, Esq., Drug Enforcement Administration, for the agency.
Andrew T. Pogany, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. In procurements where proposals are requested, alleged improprieties which do not exist in the initial solicitation but which are subsequently incorporated into the solicitation must be protested not later than the next closing date for receipt of proposals following the incorporation.
2. Technical evaluation criteria in a request for proposals (RFP) is not intended to be a detailed reiteration of RFP's statement of work and substantive technical requirements. Rather, the evaluation criteria are used to measure the offerors' experience and understanding of the unique work described in the statement of work and how well the proposals satisfy the agency's technical requirements.
3. In reviewing protests concerning the evaluation of proposals, the General Accounting Office will examine the agency's evaluation to ensure that it had a reasonable basis. The fact that a protester does not agree with the agency's evaluation does not render the evaluation unreasonable.

DECISION

Tracor, Inc. protests the award of a contract to Corporate Jets, Inc. under request for proposals No. DEA-92-R-0027, issued by the Drug Enforcement Administration (DEA), Department of Justice, for aviation support services. Tracor contends that the agency improperly "normalized"

certain cost elements to such an extent that meaningful cost evaluation could not be performed, that the agency's technical evaluation regarding aviation training services was inconsistent with the RFP's stated evaluation criteria, and that the agency otherwise misevaluated its best and final offer (BAFO).¹ We dismiss the protest in part and deny it in part.

BACKGROUND

DEA is engaged in law enforcement operations that employ a large number of fixed and rotary wing aircraft. Missions flown by DEA include: (1) aerial surveillance of known or suspected illegal drug agricultural operations; (2) aerial surveillance of known or suspected illegal drug processing facilities and drug distribution centers; (3) aerial pursuit of known or suspected illegal drug transporters; (4) emergency medical evacuation of government personnel; and (5) supply missions in support of geographically remote DEA operations. DEA's aircraft are positioned throughout the hemisphere and include diverse types from various manufacturers.

The RFP, issued on May 5, 1992, sought proposals for aviation maintenance, management, training, and administrative support services for DEA's aviation assets. The RFP, which was amended four times, contemplated a cost-plus-fixed-fee contract for a 1-year base period and four 1-year options. The RFP contained a detailed statement of work (SOW), including, as relevant here, requirements for flight instructors, pilot training, course materials, training equipment and aircraft, flight simulator training, and specialized training. The RFP stated that the government would award a contract on the basis of the proposal providing the best value to the government, all factors considered. The technical evaluation factors and subfactors (worth a total of 100 points) were listed in the RFP in descending order of importance and are summarized as follows:

¹Tracor's initial letter of protest also included several additional contentions--that the agency improperly considered performance risk as an evaluation criteria, that the agency failed to evaluate its alternate proposal, and that the agency failed to consider Corporate Jets's past performance. Although these issues were addressed in detail in the agency report, Tracor's comments did not respond to them. As a result, we consider these issues abandoned, and will not discuss them further. See Atmospheric Research Sys., Inc., B-240187, Oct. 26, 1990, 90-2 CPD ¶ 338.

1. Experience (40 points)

Experience of offeror in maintaining and supporting aircraft, including "[b]ackground of personnel performing the maintenance and support requirements [and] suitability of individuals . . . to perform and manage maintenance and support activities."

A. Management (20 points)

"The degree to which the offeror's proposed management resources can manage the . . . aircraft systems maintenance and support activities, schedule and technical requirements of the SOW."

B. Key Workers (10 points)

"The degree to which . . . 'key worker' resources can execute and manage the . . . aircraft systems maintenance and support programs, activities, technical requirements of the SOW and schedule."

C. Company/Corporate (10 points)

2. Understanding of work requirements (30 points)

Sixteen subfactors listed, including "(D) Maintenance Training Plan" and "(O) Subcontracting for Training Program."

3. Maintenance expertise and plan (20 points)

The government will evaluate maintenance ability "to accomplish the required aircraft maintenance and support activities and requirements in accordance with the SOW."

4. Schedule (10 points)

Cost was worth 50 points. In addition, as discussed below, six of the seven contract line item numbers (CLINS) and the corresponding option CLINS were "normalized" by an RFP amendment which inserted "not-to-exceed" (NTE) prices established by the agency for evaluation purposes. The maximum number of points available during evaluation was thus 150 points.

The training requirements in the RFP were a new addition to DEA's aviation support contract. They were the subject of several written pre-proposal questions submitted by offerors. In addition to answering these questions, DEA provided offerors with a list of companies with which it previously contracted for unique training services, such as

simulator training, which would typically be provided by subcontractors at locations other than DEA's main facility.²

Initial proposals were received from five firms on July 2, 1992. DEA's technical evaluation committee evaluated the proposals as follows (maximum of 100 technical points):

Offeror	Consensus Technical Score
Tracor	74
Corporate Jets	72
Offeror C	71
Offeror D	69
Offeror E	56

Subsequently, on June 30, 1992, DEA issued a list of written questions and requests for clarification. The list sent to Tracor contained 28 items, including "pronounced weaknesses" in flight training, as well as weaknesses in training program management experience, operational and instructor pilots, and experience in management and operation of aircraft similar to those currently in the DEA fleet. On August 17, offerors submitted their BAFOs and included their written answers to DEA's discussion questions. The agency scored the BAFOs as follows:

Offeror	Consensus Technical Score	Technical and Cost Score
Tracor	74	122.49
Corporate Jets	82	130.27
Offeror C	87	130.22
Offeror D	68	116.51
Offeror E	61	111

Thus, Tracor received the same total final technical score that it had received for its initial proposal. The cost evaluation differential was limited to the few items for which no NTE values had been provided. On September 28, 1992, DEA awarded the contract to Corporate Jets. This protest followed.

²A distinction was made by DEA in these pre-proposal exchanges between instructor pilots provided directly by the prime contractor and other unique training services which would typically be subcontracted. Each offeror's subcontracting plan would vary depending on the degree to which it subcontracted for various services, including unique services such as survival training and flight simulator training.

NORMALIZATION OF COSTS

Tracor alleges that the agency improperly "leveled" certain cost elements to the extent that cost evaluation could not be meaningfully performed. Specifically, Tracor argues that, by means of an amendment, the agency limited consideration of cost to only approximately 2.4 percent of the total projected cost of performance, and that the agency "straitjacketed" each offeror into NTE figures which minimized cost as an evaluation factor. Citing various portions of the unamended RFP, Tracor argues that the agency should have evaluated to a much greater extent the different cost of performance for each offeror. We think this ground of protest is untimely.

In the original RFP, none of the CLINS contained NTE amounts. After the RFP was distributed, the agency received pre-proposal questions from offerors concerning the difficulty of estimating costs for the spare parts CLINS. Tracor itself asked the following question:

"(2) Ref. B, page 2, B.1 - CLIN 0005, 0006, 0007 and 0008 are impossible to accurately forecast without some consumption data. Please provide consumption information or baseline the requirements as a NTE amount. Not providing either gives the incumbent an unfair cost advantage." (Emphasis added.)

In response to these questions, DEA then issued amendment No. 0002 to the RFP on June 2, 1992, which added NTE amounts not only for the spare parts CLINS, but also for CLINS 0002 - 0004. On July 30, Tracor was sent a letter containing discussion questions which included the following:

"3. Amendment 002 provided 'not-to-exceed' values . . . for several contract line items. Your firm's proposal appears to be utilizing the stated estimated total costs. Please confirm."

Tracor then responded that it was "utilizing the 'not-to-exceed' values provided in Amendment 0002." Finally, amendment No. 004 to the RFP, issued on August 10, requested BAFOs and reminded the offerors as follows:

"L-15 iii. Amendment 0002 included not-to-exceed values. These values as restated below shall be used for proposal purposes for the [specified] contract line items." (Emphasis added.)

Tracor never objected to this cost methodology until after award.

Protests based upon alleged improprieties in a solicitation which are apparent prior to the time set for receipt of initial proposals must be filed prior to that time. See 4 C.F.R. § 21.2(a)(1) (1992). In procurements where proposals are requested, alleged improprieties which do not exist in the initial solicitation but which are subsequently incorporated into the solicitation must be protested not later than the next closing date for receipt of proposals following the incorporation. Id. Here, the protester was fully aware of the stated cost evaluation methodology (i.e., the normalization of several CLINS) not later than its receipt of amendment No. 0004 which requested BAFOS and specifically stated that the NTE values would be used for "proposal purposes." Indeed, the record shows that the protester submitted its cost proposal on this basis. Therefore, this protest ground concerning an alleged impropriety in the solicitation should have been filed no later than the closing date for receipt of BAFOS. Since Tracor waited until after evaluation of BAFOS and after award to complain, we dismiss this protest contention as untimely.

EVALUATION WEIGHT OF TRAINING

Pilot training requirements were included in the evaluation of all technical evaluation areas (experience, understanding, maintenance expertise, and schedule). Tracor, whose proposal was downgraded for training deficiencies, argues that the "broad area of training" under the terms of Section M of the RFP should have been properly accorded a total of 3.8 points, consisting of two subfactors--Maintenance Training Plan and Subcontracting for Training Program under the "Understanding of work requirements" factor, which contained 14 other subfactors and was worth a total of 30 points. According to the protester, it "defies all logic" to assert that training should have had a greater role in the evaluation process than as specified under these two subfactors because Section M of the RFP did not mention or include training as a subset of the other evaluation criteria (such as experience and management).

We do not think that the protester's interpretation of Section M is reasonable. As stated above, a substantial portion of the RFP's SOW specified the proposed contractual requirements for training, including course material, aircraft (the government reserved the right to require the contractor to provide aircraft for training), ground school, training facilities, and training instructors, as well as numerous other technical requirements relating to training. The major evaluation criteria of Section M advised offerors that proposals would be evaluated to determine conformance

to the "technical requirements of the SOW" or ability to perform and manage "support activities."

Section M of the RFP was not intended to be a detailed reiteration of SOW technical requirements, nor was it required to be. Rather, the evaluation criteria of Section M were to be used to measure the extent of the offerors' experience and understanding of the unique work described in the SOW, and how well their proposals satisfied the agency's technical requirements. See generally Dick Young Prods. Ltd., B-246837, Apr. 1, 1992, 92-1 CPD ¶ 336. Thus, for example, the experience of training instructors was an obvious and reasonable subject of evaluation under the experience factor contained in Section M. The record shows that the agency evaluated the SOW consistent with the criteria established by the RFP, and we deny this protest ground.

EVALUATION OF TRACOR'S BAFO

During the course of the debriefing, Tracor was furnished with the narrative evaluation findings (consensus rating) of its BAFO by the agency's evaluation team. Specific technical strengths and weaknesses of Tracor's BAFO were listed under all but one evaluation factor. In its protest, Tracor chose to dispute only the following three listed weaknesses of which it was advised during the debriefing: (1) the role of its Chief Instructor Pilot in hiring and supervising operational pilots; (2) the absence of a plan for hiring operations pilots; and (3) an inadequate phase-in plan for instructor and operations pilots. We will discuss each of these in turn.³

In reviewing protests concerning the evaluation of proposals, we will examine the agency's evaluation to ensure that it had a reasonable basis. RCA Serv. Co., et al., B-218191 et al., May 22, 1985, 85-1 CPD ¶ 585. The fact that a protester does not agree with the agency's evaluation does not render the evaluation unreasonable. Logistic Servs. Int'l, Inc., B-218570, Aug. 15, 1985, 85-2 CPD ¶ 173.

³To the extent that the protester, in its comments on the agency report, disputes additional areas of alleged weaknesses identified in the evaluation documents, the matters are untimely. At the latest, the protester knew, or should have known, of these weaknesses upon its receipt of the agency report; yet, it did not file its comments until more than 10 working days later. The protester was therefore untimely in asserting these additional alleged errors in the evaluation. See 4 C.F.R. § 21.2(a)(2) (1992).

The initial evaluation of proposals identified as a weakness Tracor's plan to have its Chief Instructor Pilot do the hiring of operational pilots. The agency did not want the Chief Instructor Pilot involved in the hiring of operational pilots. Discussion questions by the agency identified this area of weakness. In response, Tracor states that it modified its proposal in its BAFO to clarify that the responsibility of the Chief Instructor Pilot "was limited to an advisory role only." The agency's final evaluation of BAFOs noted as a deficiency that "Chief Instructor Pilot does hiring for operational pilots."

We have reviewed the discussion questions and Tracor's written BAFO responses. Despite Tracor's assertion that it adequately answered this perceived weakness, Tracor's response was simply to provide block organizational flow charts which purport to show that operational flight support and flight training are in two different departments, but Tracor never offered any narrative explanation responding to the agency's concerns. This flow chart merely contains an abbreviated summary notation that "Program Mgr Senior IP Coord selects most qualified candidates." This answer simply does not say, as Tracor alleges, that the program manager independently selects the most qualified candidates. We think the agency reasonably downgraded Tracor's BAFO because Tracor failed to clearly address this matter, and Tracor must bear responsibility for failing to do so.

Next, Tracor states in its protest that in response to discussion questions relating to a plan and hiring schedule for operations pilots, its BAFO discusses the hiring process for operations pilots. This was also noted as a weakness by the agency during the final evaluation of BAFOs. Our review of Tracor's BAFO shows that the protester stated as follows concerning the plan and hiring schedule:

"Upon contract award, Tracor, in coordination with the DEA, and in accordance with DEA operating procedures will begin modifying the attached Mojave FAR part 135 Air Taxi Commercial Procedures Manual for use on this program. The manual will be used as a guideline to ensure compliance (and) additional operating procedures will be developed as necessary."

We think that Tracor's BAFO, instead of presenting a plan and hiring schedule, simply promised to develop such a plan in the future. Tracor submitted nothing concrete for the agency to evaluate. Accordingly, we think its proposal was reasonably downgraded for this weakness.

Finally, Tracor argues that the agency in its final evaluation improperly found that the Tracor's BAFO failed to

address a phase-in plan for instructor pilots and operations pilots. Tracor states that its answer to discussion question 4 set forth its phase-in plan. Our review of Tracor's response to discussion question 4 shows that Tracor merely submitted a series of resumes of instructional and operations pilots who "will be available upon contract award." Missing from the BAFO is any reasonable explanation or narrative setting forth a viable phase-in plan which the agency could have evaluated. We think it was incumbent on the protester to do more than furnish resumes; its failure to do so, in our view, properly resulted in a downgrade of its BAFO. We deny this protest ground.

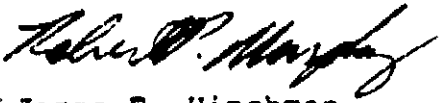
ADEQUACY OF EVALUATION DOCUMENTATION

In its initial protest, Tracor stated that "the comments at the de-brief indicate that the DEA did not evaluate the technical content of Tracor's BAFO." Tracor did not identify any comments or any other information by the agency which led the firm to make this assertion. The protester does not challenge the adequacy of the documentation for the initial evaluation of proposals; rather, the protester, in its comments, states that "there is hardly any evidence that the evaluation committee took the Tracor BAFO into consideration at all [because] the meager narratives in the evaluations demonstrate that the evaluators did not read the Tracor BAFO." For example, Tracor states that it received precisely the same score in the experience portion of the evaluation before and after discussions, despite the fact that it responded to each of the evaluation committee's concerns regarding its proposal.

The record clearly shows that Tracor's responses to discussion questions were evaluated. For example, under the experience evaluation factor, the agency found a weakness which specifically references the protester's response to discussion question number 10. Under the understanding of work requirements factor, three weaknesses found by the agency in its final evaluation expressly reference the protester's responses to various discussion questions. While the protester's score under the experience evaluation factor did not change, its score under the understanding of work requirements decreased, and its score under the maintenance expertise factor increased. We also have examined the protester's responses to the discussion questions and find that often the narrative explanation contained in these responses was less than one page long. We do not share the protester's view that the agency has to prepare extensive technical evaluation support documentation

irrespective of the extent or materiality of responses by an offeror to discussion questions.

The protest is dismissed in part and denied in part.


for James F. Hinchman
General Counsel