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DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

P.L. II
M. E. ENTON

FILE: B-190178

DATE: July 6, 1978

MATTER OF: Piasecki Aircraft Corporation

DIGEST:

1. While statutes and regulations which apply to direct procurement by Federal agencies may not apply per se to prime operating contractor of Department of Energy, contractor's procurements must be consistent with them and achieve same policy objectives.
2. In protest of procurement by prime operating contractor of Department of Energy, as in direct Federal procurement, GAO will not disturb judgment as to acceptability or relative merits of technical proposals unless that judgment is clearly without reasonable basis.
3. Prime operating contractor must hold meaningful discussions with offerors in competitive range, so that competition is maximized and Government obtains most favorable contract. After offeror has been given opportunity to submit additional information and to revise proposal, however, further negotiation is not required.
4. When solicitation encourages offerors to present innovative technical approaches, there may be great variation among cost proposals, and realism cannot be established simply by comparison.
5. Proposed costs may be used as indication of offerors' understanding of scope of work required by solicitation.
6. In cost-type contract, price need not be controlling factor, and award may be made to higher-priced, higher technically rated offeror.

7. Offeror need not be given credit for low cost proposal where realism of cost proposal is not established and other proposals are rated significantly higher technically.
8. Proposals may not be evaluated on basis other than that specified in RFP, so offeror may not be given "plus" factor for performing as small business in labor surplus area when these were not listed as evaluation factors.
9. When one technical evaluation criterion was assigned 62.5 percent of total weight, and remaining two were assigned 37.5 percent (or 18.75 percent each), offerors were not fully informed by solicitation which stated that factor (a) was most important, and factors (b) and (c) were of equal but less importance in evaluation scheme. However, protester has not shown what effect, if any, advance knowledge of specific weight would have had on proposal. GAO therefore cannot conclude that protester was prejudiced.

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I. INTRODUCTION

Piasecki Aircraft Corporation (Piasecki) has protested the proposed award of two cost-reimbursement contracts for the design, fabrication, and testing of 40-kilowatt wind turbine generators under a solicitation issued by Rockwell International (Rockwell).

Rockwell is a cost-type, prime operating contractor for the Department of Energy (DOE), formerly the Energy Research and Development Administration (ERDA), for the operation of its Rocky Flats Plant, Golden, Colorado. Among Rockwell's responsibilities are the development, procurement, and testing of wind energy conversion systems of up to 100 kilowatts under a Federal Wind Energy Program sponsored by the Solar Energy Division of ERDA entitled "Technical and Management Support for the Development of Wind Systems for Farm and Rural Use."

II. Rockwell International's Solicitation

As part of this program, the protested request for proposals (RFP), No. 2F64100F, was issued on March 28, 1977, by Rockwell's Atomics International Division. It listed potential applications for 40 kilowatt wind turbine generators--operating deep-well irrigation pumps, providing power for small, isolated communities in mountains, on islands, or in coastal regions such as Alaska, and processing timber and fish in remote locales--and stated:

"As no such machines are currently available, it is necessary to design and test this size WTG [wind turbine generator] in order to determine and demonstrate technical practicality. To develop wind machines of this size and assess their value as an energy source, the long range plan calls for a design and test of a prototype system, followed by procurement of a number of pre-production units sufficient to determine firm cost data under conditions correlatable with high-volume fabrication methods. * * *

* * * The project covered by this RFP is concerned solely with the design and prototype test aspects of this plan. * * *

The major point of contention between Piasecki and DOE is Piasecki's proposed use of helicopter components for the prototype wind turbine generator to be produced under Phase II of the solicitation. DOE contends that while proposed use of these off-the-shelf items enabled Piasecki to estimate substantially lower costs than other offerors for this procurement, helicopter components are too expensive and too complex for eventual use in production of 1,000 wind turbine generators based on the design developed under this solicitation.

The statement of work for the protested solicitation read as follows:

"The Contractor shall provide personnel, facilities, equipment, materials, supplies, and services to design and develop a 40 KW Wind Turbine Generator (WTG), either as an electrical or mechanical output system, or both, as specified in this Work Statement. The objectives of this development, as part of the ERDA Wind Energy Program, are as follows:

To develop a technology capable of designing, building and selling (at a cost competitive with alternative energy costs) WTGs in this size range for use in a number of rural and remote applications.

To provide fabrication cost data which may be utilized in determining the economic viability of WTGs in the 40 KW size range.

To demonstrate wind energy systems of the 40 KW size range which are technically practical.

"The intent of this program is to develop, build and test a practical prototype for machines which could be economically manufactured and sold at prices competitive with alternative energy sources."

Only technical proposals were to be point-scored. Evaluation criteria for this purpose were listed as follows:

- "a. A design approach for achieving the program objectives which recognizes the problems and provides for their probable resolution. Important subfactors include:
 - (1) Supportive evidence as to the feasibility of the preliminary design approach for meeting technical and cost goals and leading to the development of an optimized WTG system.
 - (2) Simplicity and aesthetics of the design approach.
 - (3) Analysis of potential problem areas.
 - (4) Unique ideas and approaches that increase the probability of achieving or bettering the program's technical, system cost and schedule goals.
 - (5) The probability of the design approach achieving the manufacturing cost objectives as shown by a substantiated estimate of direct manufacturing costs for producing 1000 units per year of a system based on the design approach.

- "b. The offeror's understanding of the scope and program objectives as evidenced by a plan which gives full consideration to such subfactors as:
 - (1) A realistic schedule that shows all major milestones.
 - (2) Identification and description

of all required efforts including support by other organizations, if any, with participation shown on the master schedule.

"c. Ability of the offeror to carry out the project plan. Important subfactors include:

- (1) Contractor, and subcontractor if applicable, experience and qualifications of key personnel, both technical and management, which would be utilized on this program.
- (2) Adequacy in terms of personnel, facilities and equipment required to accomplish the proposed contract goals on schedule."

With regard to the relative importance of these criteria, the RFP stated that factor a. was most important and that factors b. and c. were of equal importance, but less important than factor a.

Cost proposals, although not point-scored, were to be evaluated on the following basis:

- "a. The realism of the proposed cost of the contract.
- "b. The probable contract cost to the Buyer, including any changes or improvements to be required by the Buyer, as appropriate.
- "c. The projected maximum cost to the Buyer for the proposed effort."

The solicitation further stated:

Although the technical evaluation will be predominant in the selection of a contractor, the cost to the Buyer will be considered in the final selection. The validity of the

proposed cost of each proposal will be evaluated and the probable cost differences among the offerors will be determined as appropriate. * * *

No "Other" evaluation factors were listed; however, the RFP stated that if some were subsequently identified as bearing upon an offeror's ability to meet the requirements of the procurement, they would be considered, although not point-scored. Finally, the RFP stated:

"Offerors are cautioned not to minimize the importance of adequate response in any area because it carries less weight than other areas or no weight. In fact, cost or other factors, although not weighted, could be the determining factors in source selection. It should be reiterated that offerors should make their best offer in the proposal."
(Emphasis added.)

Closing date for receipt of initial proposals was May 23, 1977; 10 proposals were received by Rockwell, of which four, including Piasecki's, were determined to be in the competitive range. Discussions were held during June and July 1977, following which Piasecki submitted revised cost and technical proposals. After requesting best and final offers in early August 1977, Rockwell selected Kaman Aerospace Corporation (Kaman) because it was the highest-rated offeror, and McDonnell Aircraft Corporation (McDonnell) because it was the highest-rated offeror proposing both a mechanical and an electrical system, for final negotiation of contracts. Rockwell has completed negotiations with Kaman and submitted its proposed contract for approval by DOE, but actual award has been delayed pending our decision on this protest.

III. Piasecki's Basis of Protest

Piasecki's protest, as developed through submissions by counsel and during a conference at our Office, is based on four grounds: (1) that its technical proposal was miscalculated, due to bias against its proposed double rotor design and use of off-the-shelf helicopter components; (2) that its proposed costs were found unrealistic because they were compared with those of other offerors,

rather than evaluated in terms of the research and development effort proposed by Piasecki; (3) that the solicitation failed to adequately disclose the heavy emphasis placed on one technical evaluation criterion; and (4) that no credit was given for Piasecki's status as a small business operating in a labor surplus area.

IV. Standard of Review for Prime Operating Contractor Procurements

Before reaching these specific grounds of protest, we must consider the standard of review which should be applied to determine the propriety of the proposed awards. DOE contends that in its procurement functions, Rockwell is governed by the provisions of its operating contract and by its approved Purchasing Policies and Procedures Manual, rather than by the regulations which apply to direct procurement by Federal agencies.

Article XV of Rockwell's contract, which deals with contractor procurement, reserves the Government's right to approve any or all procurements under the contract. It also requires the contractor to use procurement methods, practices, and procedures which are acceptable to the Government. Rockwell's purchasing manual specifically requires ERDA approval of cost-type contracts in excess of \$500. In addition, the manual states:

"Rockwell procurement will comply with applicable Federal laws, executive orders, and regulations, including ERDA and Federal Procurement Regulations [FPR] which pertain to procurement by cost-type contractors as cited in ERDA-PR 9-59."

Echoing the language of that section (which has since been superseded by ERDA Procurement Regulations (ERDA-PR) 9-50), the manual requires procurement to be effected in the manner most advantageous to the Government, "price, quality, and other factors considered." It states that procurement shall be by methods calculated to assure such full and free competition as is consistent with securing the required supplies and services. "Fair and equal" treatment of all prospective suppliers is required.

As for negotiation, the manual states:

"Where required, negotiation will be conducted with all offerors within a competitive range consistent with FPR 1-3.805 * * *."

Piasecki argues that where an operating contractor's subcontracts are subject to the approval of the procuring agency, that agency has a duty not to approve contracts which would be prejudicial to the Government. The determination of whether a contract is prejudicial must be made according to the "Federal norm," Piasecki argues, meaning the substantive principles and standards embodied in Federal statutes and regulations. Piasecki contends that although this need not result in the application of every detail of the statutes and regulations, they should be applied wherever feasible and practicable.

It is our view that while Federal statutes and regulations which apply to direct procurement by Federal agencies may not apply per se to procurement by prime operating contractors, Tennecomp Systems, Inc., B-180907, April 22, 1975, 75-1 CPD 244, the prime contractor's procurements must be consistent with and achieve the same policy objectives as the Federal statutes and regulations. This, we believe, is what is meant by the "Federal norm." See Optimum Systems, Inc., 54 Comp. Gen. 767 (1975), 75-1 CPD 166, and cases cited therein; B-172959(2), September 10, 1971; B-170202, September 1, 1970; B-169942, July 27, 1970.

As Piasecki has pointed out, this is a cost-type contract in which cost of performance ultimately will be paid by the Government. For these reasons, we will continue to use the principles embodied in the Federal norm as well the precise language of the Rockwell contract, approved purchasing manual and the Federal regulations referred to in those documents, in considering this protest.

V. Issues Relating to Evaluation of Piasecki's Proposal

A. Technical Evaluation

The first issue regarding the nonselection of Piasecki's proposal is whether, as Piasecki alleges, its technical proposal was misevaluated. DOE argues that all procedures in connection with the procurement were proper; that Rockwell, following ERDA-PK 9-56.001, used a Source Selection Board and a Source Evaluation Committee to determine relative technical and managerial capabilities of offerors; and that the

Committee's review was in accord with the evaluation criteria of the RFP and with the "fair and equal" standard of Rockwell's purchasing manual.

Piasecki states that it is not questioning Rockwell's procedures, but is alleging that Rockwell failed to follow them. Piasecki argues that its technical proposal was faulted for lack of information not requested and for failure to provide information which actually was provided, and its technical competence was questioned without reasonable basis. Thus, Piasecki argues, the evaluation was arbitrary, unreasonable, and in contravention of the established principles of competitive procurement. Where the contractor can deliver what the solicitation calls for and is capable of performing; where technical substantiation has been provided; and where estimated costs are credible and lower than those of other offerors, Piasecki contends that the burden is on the contracting entity to justify its failure to select that contractor. The firm seeks reevaluation of its proposal by Rockwell and DOE on these grounds.

DOE replies that its discretion regarding technical evaluation of proposals should be upheld; Piasecki, DOE contends, is not challenging its standards, but the judgment and opinions of its evaluators. As for alleged preexisting bias against Piasecki's dual rotor design, DOE argues that the following is evidence to the contrary: weights for evaluation criteria were established before proposals were received; seven non-Rockwell members served on the Technical Evaluation Committee, and Piasecki was found to be in the competitive range. DOE argues that it did not state that Piasecki's design would not work, but viewed it as less promising than others and, on the basis of backup data and analysis provided, determined that the proposed approach was not justified. DOE concludes that Piasecki has shown the existence of a difference of opinion, but not a violation of the "fair and equal" standard.

The primary points of disagreement with regard to evaluation of Piasecki's technical proposal, as developed in DOE reports and Piasecki's replies to our Office, may be summarized as follows:

DOE

(1) Unestablished design for loading on horizontal beam and yaw bearing. Information in original proposal was incomplete; revised proposal did not include calculations of applied loading on cross beam, so sizing of yaw bearing was not credible.

Insufficient analysis of areas of concern such as loading yaw control, vibration, blade loading, main beam and yaw bearing with regard to potential problems. Technical Committee felt Piasecki did not fully appreciate differences between helicopter and windmill analysis requirements.

(2) Helicopter components proposed for use overdesigned, too expensive in long run; helicopter rotor hub probably more complex than necessary.

Substantial similarity of prototype and production model required by RFP. Piasecki did not adequately justify use of helicopter parts in prototype, use of other parts in production model.

Statement re 30-year life cycle extreme, not necessarily true. Other statements made for first time in protest, not in Piasecki proposal.

Piasecki

(1) Effect of gravity and wind loads on the horizontal beam and yaw pivot bearing (the point at which the cross beam is attached to the tower structure and turns around) were in design proposal; Rockwell never asked for calculations.

Piasecki has had 40 years of experience dealing with these problems and, as outlined in the proposal, has developed 18 different rotor systems. Helicopters and windmills have obvious design similarities, and expertise in former should apply to research and development for latter.

(2) Helicopter component (rotor blades and hubs) proposed because:

(a) many different configurations available;

(b) only they will meet 30-year life-cycle requirement of RFP:

(c) Substantial cost and time savings.

Revised proposal reduced use of helicopter parts even though RFP did not clearly require prototype and production model to be identical. Components retained will be similar to production model's in shape,

DOE

(3) Double rotor design more complex than single, probably less cost effective; not adequately justified in revised proposal.

(a) RFP called for 75-foot tower; Piasecki proposed 40 foot tower but did not justify it. Tower height selected less by cost than according to technical trade-offs, including productivity;

(b) Elimination of external yaw not unique to two-rotor design;

(c) No substantiation of reduced vibratory loads-- depends on tower height used for comparison.

No comparison of basic component costs to show cost effectiveness of two rotor v. single rotor design.

Piasecki's strong views re advantages of double rotor might preclude objective trade-off analysis required by RFP.

DOE also has listed a number of secondary factors which it considered deficiencies or weaknesses in

Piasecki

function, and stress distribution, although different as to material and finishing. Therefore all tests of prototype will apply to production model.

(3) RFP did not require single rotor design, but rather WTG which met certain performance, cost goals. Example of preconceived design bias.

Two rotor design is most efficient, cost effective:

(a) Would reduce tower height;

(b) Would eliminate external yaw control devices;

(c) Would neutralize skewed wind loading on blades and reduce vibratory loads caused by tower shadow.

RFP did not require and Rockwell did not ask for analysis of basic component costs.

Piasecki's technical proposal; in each case, Piasecki disagrees with the agency's findings.

In direct Federal procurements, we have stated that it is not the function of our Office to make determinations as to the acceptability or relative merits of technical proposals. Rather, we will examine the record and determine whether the judgment of the contracting agency was clearly without a reasonable basis. Unless such a finding is made, or there is an abuse of discretion, or a violation of procurement statutes or regulations, that judgment will not be disturbed. See Joseph Legat Architects, B-187160, December 13, 1977, 77-2 CPD 458 and cases cited therein; Struthers Electronics Corporation, B-186002, September 10, 1976, 76-2 CPD 231. We believe the same standard of review should apply in this instance. B-154716, October 16, 1964.

Here, although Piasecki has provided detailed technical arguments in support of its proposal, we are unable to conclude that Rockwell abused its discretion or was arbitrary and capricious. In a Rockwell document entitled Instructions for Evaluation Score Sheets, included in the record, evaluators were given the following guidelines:

"This program calls for development of a Design during Phase I. Therefore, the design, if any, presented in a proposal may or may not be close to the final one. What is of prime interest to Rocky Flats is selecting a contractor (or contractors) capable of performing well on this program. Thus, emphasis is placed, during proposal evaluation, on their approach to WTG design, rather than specific design details. The question to ask is: 'In general, does the approach presented indicate that the proposer is sufficiently aware of the problem, and methods for solving it, that he would be able to design a satisfactory WTG and provide the requisite analyses to verify and justify the final chosen configuration.'

"Specific designs presented in the proposal should not be judged per se, but rather used as supporting evidence as to the ability of

the proposer to undertake the program. A feature in a design which you don't like doesn't necessarily imply that the proposer could not come up with a good alternative during Phase I."

Rockwell appears to have evaluated proposals according to these guidelines and the evaluation criteria stated in the RFP and to have found Piasecki's proposed design to be less desirable than those of Kaman and McDonnell. While Piasecki does not agree, there is no evidence that its nonselection was based on anything other than the reasoned judgment of the evaluators. See generally TGI Construction Corporation et al., 54 Comp. Gen. 775 at 779 (1975), 75-1 CPD 167; Honeywell, Inc., B-181170, August 8, 1974, 74-2 CPD 87.

We find, for example, that implicit in the RFP is the requirement that production units will be the same as or similar to the prototype to be delivered during Phase II of this contract. Section 2.3 of the Statement of Work advises prospective offerors that upon completion of Phase II, the contractor will provide a detailed summary report which includes performance data for the prototype and an analysis and estimate of projected direct manufacturing costs of producing 1,000 units of the final design per year.

In other words, although this procurement was limited to the design and construction of a prototype, its stated purpose was to develop a wind turbine generator capable of being produced in quantity and being sold competitively. If Piasecki proposed using off-the-shelf helicopter components to even a limited degree in the prototype, but recognized that different components would be more practical for quantity production, we believe it reasonable to require that this be discussed in its proposal, not in the context of the protest.

As for the choice between single and dual rotor designs, we believe this is the type of judgment which a Technical Evaluation Committee is uniquely equipped to make, after carefully weighing advantages, disadvantages, and inherent risks. Thus, Piasecki's proposal was credited for innovation--use of double rotors, all existing helicopter components, and a collapsible tower--but the evaluators were uncertain whether these approaches would be cost effective or optimum for wind turbine generators.

It is well settled that an offeror must demonstrate affirmatively the merits of its proposal, and runs the risk of rejection if it fails to do so clearly. Electronic Communications, Inc., 55 Comp. Gen. 636 (1976), 76-1 CPD 15. We do not believe this burden can be shifted to the procuring agency or, in this case, to the prime operating contractor. It appears that in its revised proposal and submissions, Piasecki did not meet the burden of affirmatively demonstrating the merits of its approach, and we see no reason to question the technical judgment of the evaluators.

B. Scope of Discussions

A closely related question is whether the discussions which Rockwell conducted with Piasecki were meaningful. DOE argues that Piasecki's protest on this ground is untimely, since it was not specifically made in the initial protest to our Office or in comments on the agency report. We believe, however, that the issue is within the general scope of the question of whether Piasecki's proposal was properly evaluated, and therefore we will consider it.

We have consistently held that meaningful discussions are a requirement in direct Federal procurement, and to this end, that the Government must usually furnish information to offerors as to areas in which their proposals are deficient, so that offerors are given an opportunity to satisfy the requirements of the solicitation. Joseph Legat Architects, supra. However, the content and extent of discussions needed to satisfy the requirement for meaningful discussions is a matter primarily for determination by the contracting entity, whose judgment will not be disturbed unless clearly without a reasonable basis. Austin Electronics, 54 Comp. Gen. 60 (1974), 74-2 CPD 61. In view of the fact that Rockwell's purchasing manual specifies that negotiations are to be conducted in a manner consistent with FPR 1-3.805 (1975 ed.) which governs the scope of discussion in direct Federal civilian procurements, we believe that discussion standards applicable to direct procurements apply here.

Piasecki contends that Rockwell's discussions were neither meaningful nor effective. For example, according to Piasecki, the RFP permitted exceptions as to tower height; Piasecki argues that had Rockwell indicated that a 75-foot tower was mandatory, its proposal could have been modified accordingly.

Also at issue is the amount of substantiation required. Piasecki states that Rockwell did not request calculations of applied loading on the horizontal beam and yaw bearing, substantiation of claims for reduction of vibratory loads, or an analysis of basic component costs. Piasecki argues that Rockwell failed to consider its proposal in its entirety and that if, after discussions and submittal of additional information, Rockwell still considered Piasecki's responses inadequate, Rockwell had an obligation to seek clarification.

DOE, on the other hand, states that Rockwell's discussions were consistent with FPR 1-3.805, supra, in that uncertainties as to pricing and technical aspects were explored with all offerors, who were given an equal opportunity to submit price, technical, or other revisions. The extent of discussions is for a procuring agency's judgment, DOE states, and it would be unfair, through successive rounds, to help one offeror bring an inadequate proposal up to the level of other adequate ones. Rather, DOE concludes, once discussions have been conducted and proposals revised, no further discussions are required.

We have reviewed the summary of topics covered by Rockwell during its June 1977 discussions with Piasecki. The record indicates that more than 12 different aspects of Piasecki's proposal were considered. These included dual rotor design, blade size, yaw bearing sizing, power output measurement, control system, lightning protection, pitch control, tower height, subcontractors, percent of Piasecki effort to be devoted to wind turbine generators, location of assembly and manufacture, location of calculation facilities for the various analyses, and electronics for use in the control system.

Following discussions, Piasecki agreed to provide additional information on its dual rotor design, yaw bearing sizing, control system, anticipated production costs, weight of the system and forces required to erect it, wind required to yaw the cross beam against bearing friction, potential problems and possible solutions or contingency plans, and major components, other than the blade, which would be covered by Piasecki's detailed analysis.

We find this summary, on its face, sufficient to establish that Rockwell met the standard for meaningful

discussions. If an offeror is given the opportunity to submit additional information in areas considered deficient and that does not change the offeror's initial ranking with regard to other offerors in the competitive range, we do not believe further negotiations are required. Austin Electronics, supra; Century Brass Products, Inc., B-190313, April 17, 1978, 78-1 CPD 291 and cases cited therein.

C. Cost Realism

Piasecki's next ground of protest is that its cost proposal, which was considerably lower than those of the other three offerors in the competitive range, was improperly evaluated. Piasecki cites FPR 1-3.101 (1975 ed.) and 10 U.S.C. 2304(g) (1976 ed.) as requiring selection of the contractor whose offer is most advantageous to the Government, "price and other factors considered," and argues that if its proposal was adequate to attain the objectives of the RFP, its lower costs mandated its selection.

Piasecki alleges that the estimates of its competitors were used to set a cost standard, and argues that the question for evaluators is not how offerors' costs compare with one another, but whether a particular offeror has substantiated its own costs in terms of what it proposes to do. Moreover, Piasecki argues, evaluators cannot downgrade a cost proposal because it reflects a technical approach which they do not like. Piasecki seeks a recommendation that Rockwell reevaluate its cost proposal.

DOE states that while the FPR cited by Piasecki applies to negotiated, direct Federal procurements, it is not for application here. Rather, DOE argues, FPR 1-3.805.2 (1964 ed.), which provides that in cost-reimbursement type contracts, cost will not be controlling, should be followed. Since Rockwell's approved purchasing manual specifically states that negotiation will be consistent with FPR 1-3.805, supra, we believe DOE is correct on this score. The regulation states in part:

"1-3.805-2 Cost-reimbursement type contracts.

"In selecting the contractor for a cost-reimbursement type contract, estimated

costs of contract performance and proposed fees should not be considered as controlling, since in this type of contract advance estimates of cost may not provide valid indicators of final actual costs. * * * The award of cost-reimbursement type contracts primarily on the basis of estimated costs may encourage the submission of unrealistically low estimates and increase the likelihood of cost overruns. The cost estimate is important to determine the prospective contractor's understanding of the project and ability to organize and perform the contract. * * * [T]he primary consideration in determining to whom the award shall be made is: which contractor can perform the contract in a manner most advantageous to the Government."

DOE states that in analyzing the proposed costs of the four offerors in the competitive range, Rockwell examined total hours, material costs, travel costs, and proposed fees of each, and compared these costs with the known requirements of the program and the statement of work in the RFP. Kaman, McDonnell, and Grumman Aerospace Corporation were found to share a common understanding of the nature and scope of work, but Piasecki, according to DOE, appeared to lack such understanding.

DOE indicates that Piasecki's low costs were believed due to low manufacturing hours, made possible by use of off-the-shelf helicopter components for the prototype wind turbine generator. The Technical Evaluation Committee found this contrary to the intent of the RFP since these components would not be used in the production version. In addition, DOE lists a number of specific questions which evaluators raised with regard to Piasecki's cost proposal: parts, raw materials, and subcontracts, for which no detailed bills of material, estimating rationale, manufacturers' part numbers, or written quotations were provided; engineering effort, which evaluators believed was underestimated; fabrication and assembly, for which no details were provided; direct labor, overhead, and G&A rates, unsubstantiated; and travel and subsistence, unjustified.

In Piasecki's revised proposal, DOE states, costs for purchased parts were reduced and costs of raw materials increased, but no detailed information or substantiation was given; engineering manhours were unchanged, despite the fact that Piasecki quoted on a modified system requiring additional engineering; and estimated manhours for assembly and test of known components were increased approximately 65 percent, but no details were given. On the basis of these and other specific findings, DOE states, the Management/Cost Evaluation Committee questioned the realism of Piasecki's proposal.

DOE's report indicates that probable contract costs and projected maximum costs also were reviewed, as required by the RFP. Finally, DOE reiterates, since Piasecki was rated fourth overall in the point-rated technical evaluation factors, "the cost/ price evaluation of its proposal played no part in its nonselection by Rockwell."

Responding, Piasecki takes issue with DOE's statements regarding lack of detail or substantiation. Piasecki also states that it cannot reconcile the requirement that cost, although not controlling, is an element to be considered in the procurement with DOE's assertion that cost was not a factor in its nonselection by Rockwell. Finally, Piasecki argues that some form of merit, i.e. a "plus" factor, should be given an offeror whose proposal contains the lowest estimated contract price.

In considering whether Piasecki's cost proposal was properly evaluated, we note that the RFP stated that the validity of proposed costs of each proposal would be evaluated and that the probable cost differences among offerors would be determined "as appropriate." Offerors were told that cost and other factors, although not weighted, could be the determining factors in source selection.

We agree with Piasecki that in a procurement such as this, where offerors are encouraged to present innovative approaches, there may be great variations among cost proposals, and realism cannot be established simply by comparing offerors' proposed cost estimates. See Dynalectron Corporation et al., 54 Comp. Gen. 562, (1975), 75-1 CPD 17. However, on the basis of DOE's submissions, we do not believe it can be said that Rockwell merely compared Piasecki's cost proposal with those of the other three offerors and determined, on this basis, that it was unrealistic.

Rockwell also appears to have properly used proposed costs as an indication of offerors' understanding of the scope of work required by the solicitation. See Electronic Communications, Inc., supra.

We have consistently held that in the negotiation of both fixed-price and cost-type contracts, price need not be the controlling factor, and award may be made to a higher-priced, higher technically rated offeror. General Exhibits, Inc., 56 Comp. Gen. 882 at 887 (1977), 77-2 CPD 101. Price could have been the deciding factor only if two or more offerors were essentially equal with regard to their technical proposals and Piasecki's costs were considered reasonable. Where, as here, one or more is found significantly superior, then price will not be the deciding factor. See Applied Management Sciences, Inc., B-184654, February 18, 1976, 76-1 CPD 111.

In this case, Kaman and McDonnell appear to have been selected primarily because of their superior technical proposals, rather than because of negative findings as to Piasecki's cost proposal, and we have no objection to an award on this basis. See Riggins & Williamson Machine Company, Inc., et al., 54 Comp. Gen. 783, 788 (1975), 75-1 CPD 160.

D. Additional Evaluation Credit

As for Piasecki's argument that its proposed costs should have been accorded a "plus" factor because they were lower than those of other offerors, it is clear that any "plus" factor awarded Piasecki's low cost proposal is conditional upon that proposal being determined reasonable. In view of the doubt expressed as to the reasonableness of Piasecki's cost proposal and the technical superiority of the two proposals selected for award, we see no reason why "credit" should have been given Piasecki for its low cost proposal and, in any event, doubt that any such "credit" would have influenced the award selection. Regarding Piasecki's assertions that, as a matter of policy, credit should have been given for its status as a small business performing in a labor surplus area, if Piasecki believed the solicitation should have provided evaluation credit for such small businesses, the argument should have been made before closing date for receipt of initial proposals, and is now untimely. 4 C.F.R. 20.2(b)(1) (1977 ed.). It would, of course, be improper to otherwise give such credit, since proposals may not properly be evaluated on a basis

which is not specified in the RFP. Francis & Jackson, Associates, 57 Comp. Gen. 244 (1978), 78-1 CPD 79. In an unrestricted procurement, a proposal submitted by a small business may not be evaluated differently than one submitted by a large business. Id.

E. Relative Importance of Evaluation Criteria

Piasecki's remaining basis of protest involves the weights assigned to technical evaluation criteria. The RFP indicated that (a) an offeror's proposed design approach was considered most important, while (b) understanding and scope of program objectives and (c) an offeror's ability to carry out the work, were of equal but less importance. In evaluating proposals, Rockwell assigned 1250 points to design approach and 750 points, or 375 each, to the remaining two criteria.

Piasecki argues that the solicitation was misleading and unfair, in that it failed to give notice that the first factor was three times more important than either of the other two. DOE argues that the RFP was reasonably definite and that, since this was not a direct Federal procurement, Rockwell need only have applied the stated factors fairly and equally.

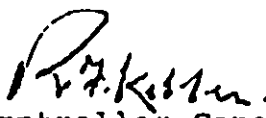
In direct Federal procurement, we have held that while numerical weights need not be disclosed, offerors should know the broad scheme of scoring and the relative importance of evaluation factors. See 50 Comp. Gen. 59 (1970). Listing factors in descending order of importance has been held to be not sufficient where weights are grossly out of proportion. See BDM Services Company, B-180245, May 9, 1974, 74-1 CPD 237, in which the first of five evaluation factors constituted 72 percent of the total weight. That case is distinguished in Aydin Corporation, B-188871, October 25, 1977, 77-2 CPD 322, in which listing factors in decreasing order of importance was held sufficient, when undisclosed weights were 40, 33.3, 16.7, and 10 percent.

In this case, we believe, the assigned weights resemble those in BDM Services Company, supra, since 62.5 percent of the total weight is given to criterion (a), design approach, while only 37.5 percent, or 18.75 each, is given to the two remaining evaluation criteria.

We note, however, that the "important subfactors" listed in the RFP under (a) are more numerous and require considerably more analysis and substantiation by offerors than the subfactors under (b) and (c). An offeror's design approach was to be evaluated for evidence of meeting technical and cost goals, simplicity and aesthetics, analysis of potential problems, unique ideas, and probability of achieving cost objectives, as shown by a substantiated estimate of direct manufacturing costs for 1,000 wind turbine generators a year. On the other hand, understanding and scope of program objectives and ability to carry out the project were to be evaluated according to subfactors including proposed schedules, contractor and subcontractor experience, and adequacy of personnel, facilities, and equipment. In view of these differences, we believe offerors should have been aware that design approach would have been heavily weighted. We do not believe it was unreasonable for Rockwell to have assigned 62.5 percent of the weight to design approach.

Rockwell could have specifically advised offerors of the relatively greater importance of design approach. But even if Piasecki had been aware of this before submitting its proposal, there is no evidence that its design would have been changed. The firm appears to have been committed to the dual rotor design and use of off-the-shelf helicopter components for the prototype. Piasecki has not indicated what effect, if any, advance knowledge of the precise weights of the evaluation criteria would have had on its proposal. We therefore cannot conclude that Piasecki was prejudiced by lack of such knowledge.

Accordingly, the protest is denied.


Deputy Comptroller General
of the United States