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DECISION



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

[Protest Alleging that Awardee Received Unfair Competitive Advantage]

FILE: B-200142

DATE: April 16, 1981

MATTER OF: TRW Inc. *CNG01124*

DIGEST:

1. RFP requirement that offerors design exploratory wells to flow up to 40,000 and 30,000 barrels per day and that offerors perform downhole testing, when reasonably interpreted, only requires offerors to design wells having capacity to flow at those rates but does not also require testing at those rates.
2. Although agency must point out deficiency in offeror's proposal which relates to reasonable, albeit erroneous, interpretation of the RFP, agency need only do so when it knows or should know from proposal that offeror misinterpreted RFP.
3. Agency is not required to reopen negotiations to permit offeror to correct deficiency in best and final offer.
4. Protest that source selection official (SSO) improperly assessed awardee's technical proposal in light of contradictory information in technical evaluation board report is without merit where SSO analysis conforms to and can be reconciled with information in report.

TRW Inc. protests the award of a research and development, cost reimbursement contract to the joint venture of Technadril/Fenix & Scisson (T/F&S) under request for proposals (RFP) No. DE-RF08-80 ET 27217 issued by the Department of Energy (DOE). The RFP solicited proposals from qualified oil and gas industry organizations for drilling and testing of exploratory wells in the Texas and Louisiana Gulf Coast area to

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assess the engineering feasibility and related economics of recovery of associated hydrocarbons (methane gas) and thermal and hydraulic energy.

The major issue of the protest is whether the RFP required testing in the wells (downhole or in situ) at the maximum flow rates for which the wells were to be designed. TRW contends that the RFP did so require and that DOE conferred an unfair competitive advantage on T/F&S by allowing that firm to deviate from the requirements. Alternatively, TRW argues that if its reading of the RFP was incorrect, this should have been evident to DOE from its proposal and the "deficiency" should have been pointed out during discussions with the firm. In addition, TRW complains that the award to T/F&S was not rationally founded because the Source Selection Official (SSO) improperly assessed the T/F&S proposal in the areas of management structure, well-drilling experience and resource assessment. We deny the protest.

TRW's conclusion that the RFP required downhole testing at maximum flow rates is based on the following provisions of the RFP's Statement of Work:

"IV. PROGRAM OBJECTIVES

"The principal objectives of the * * * program are to obtain data related to the following:

* * * * *

B. "Ability of a geopressured well to flow at the high rates (i.e., 40,000 bbls/day) expected to achieve the resource recovery required * * *.

* * * * *

"V. ACTIVITIES

E. Develop, coordinate, and execute Project Plans for the drilling, completion, testing, analysis of each of the selected geopressured-geothermal reservoir prospects.

Activities under this category will include, but not be limited to, the following:

1. Drill and complete two exploratory test wells (approximately 17,000 feet) to test high-pressure, high-temperature (i.e., 250 deg. F.) geopressured reservoirs. The exploratory wells shall be designed to flow up to 40,000 barrels per day of saline fluids * * * for a period of approximately two years, during which time flow testing and evaluations will be made for methane production and recovery of thermal and hydraulic energy.

2. Drill and complete two exploratory test wells (approximately 12,000 feet) to test high-pressure, lower-temperature geopressured reservoirs. The exploratory wells shall be designed to flow up to 30,000 barrels per day of saline water * * * for a period of approximately six months, during which time flow testing and evaluations will be made for methane production and recovery of thermal and hydraulic energy.

* * * * *

11. Collection and analysis of geopressured aquifer fluid samples taken as near to in situ reservoir conditions as possible. Suitable instrumentation will be used to obtain samples while the well is shut in prior to flow tests and during the testing period * * *."

TRW argues that the requirements: (1) to determine the ability of a geopressured well to flow at high rates; (2) to design wells to flow up to 30,000 and 40,000 barrels per day and (3) to use suitable instrumentation to collect and analyze fluid samples at in situ conditions, meant that contractors also had to perform in situ fluid measurements at maximum flow rates of 40,000 barrels per day for the deep

wells and 30,000 barrels per day for the shallow wells. TRW states that it proposed the use of 7 inch diameter tubulars for its well design to comply with this in situ measurement requirement, while T/F&S proposed the use of smaller, less costly tubulars which, TRW asserts, will not permit full flow downhole testing.

DOE's position is that the RFP did not impose a requirement for downhole testing at maximum flow rates and that there would be little reason to impose such a requirement. In this regard, both T/F&S and DOE state that in situ measurements usually are taken at a lower flow rate. According to T/F&S:

"The minimum acceptable flow rate for downhole pressure measurements to determine reservoir size is a flow rate which (1) can be maintained stable by "choking the flow" and (2) causes a downhole pressure change sufficiently large to be accurately measured. This flow rate must not be the maximum possible flow, since such a flow rate cannot be maintained stable during the flow. It is therefore desirable to perform the reservoir limit test at a flow rate well below the maximum possible flow rate * * * ." (Emphasis in the original.)

DOE agrees with this assessment and states that the maximum flow rates are not required in order to perform the downhole measurements to yield the data necessary for reservoir assessment. The essential factor in evaluating reservoir size and performance parameters, DOE explains, is "maintaining a uniform flow rate through use of a choke valve while recording its downhole pressure decline characteristics * * *." TRW has not rebutted this explanation. Moreover, DOE states that a flow rate of 40,000-30,000 barrels per day can be achieved with the proposed 5 1/2 inch tubulars.

On this record, we agree with DOE.

It appears that TRW mistakenly believed that because the RFP required the well designs to accommodate 40,000 and 30,000 barrels per day, it also required that downhole testing, necessarily, must, at some time, be performed at maximum flow rates. There is nothing in the RFP, however, which explicitly imposes a requirement that downhole testing be performed at maximum flow rates. The RFP

only requires that the wells themselves be designed to flow "up to" the maximum specified rate; it does not specify the test conditions for downhole testing. Moreover, DOE and T/F&S have explained why testing at maximum flow rates is not normally expected. In addition, DOE states that natural geological conditions and the rate at which the natural downhole pressures decline with fluid production dictate the actual flow rate for any well design, so that the design flow rates of 40,000 or 30,000 barrels per day may or may not be achieved. Consequently, a requirement for testing at those rates would appear to be unnecessary and unduly expensive. Therefore, we conclude that DOE did not waive the requirements of the RFP for in situ testing and that T/F&S' proposal did not deviate from such requirements.

The next issue involves DOE's obligation to inform TRW during competitive range discussions that the RFP did not require downhole measurements at maximum flow rates. TRW maintains that DOE's obligation to conduct meaningful discussions required that it do so; TRW further states that it would have restructured its well design to utilize smaller diameter tubulars had such meaningful discussions taken place.

When an agency conducts competitive range discussions, it must make those discussions meaningful. Raytheon Company, 54 Comp. Gen. 169 (1974), 74-2 CPD 137; 51 Comp. Gen. 621 (1972). In most cases meaningful discussions require that the agency point out proposal deficiencies or weaknesses, Dynalectron Corporation, 55 Comp. Gen. 859 (1976), 76-1 CPD 167, although the context and extent of "meaningful" discussions may vary with the circumstances of particular cases. Food Science Associates, Inc., B-183054, April 30, 1975, 75-1 CPD 269. In this regard, we have recognized that when a research and development contract is to be awarded, discussions may be limited so that, in the words of the DOE Procurement Regulations Handbook:

* * * * *

" * * * where the meaning of a proposal is clear and the proposal contains a weakness which is inherent in an offeror's management, engineering

or scientific judgment, or is the result of its own lack of competence or inventiveness in preparing its proposal, the [SEB] shall not point out that weakness * * *."

See, e.g., 51 Comp. Gen. 621 supra; Roy F. Weston, Inc., B-197886, B-197949, May 14, 1980, 80-1 CPD 340.

Nevertheless, even where, as here, the agency's procedures provide for limited competitive range discussions, the agency still must point out a weakness or deficiency which relates to an offeror's reasonable, albeit erroneous, interpretation of the RFP. See 51 Comp. Gen. 621, supra; AiResearch Manufacturing Company of Arizona, 56 Comp. Gen. 989 (1977), 77-2 CPD 229. In this connection, therefore, the Handbook cautions that discussions must be used to convey "the meanings and points of emphasis of RFP provisions * * * so that all [offerors are competing on the same basis]."

The record does not support the conclusion that DOE knew that TRW had misinterpreted the RFP to require in situ testing at full flow rates so as to require discussion of that point. TRW's initial proposal does not indicate that the firm chose the large diameter tubulars so that it could perform downhole measurements at maximum flow rates. TRW's initial proposal indicates the opposite: it selected these tubulars to meet the production requirements of the well themselves of 40,000 and 30,000 barrels per day.

TRW, however, maintains that DOE knew that the firm was proceeding on the assumption that the RFP required in situ measurements at maximum flow rates because during oral discussions and in its best and final offer TRW extensively discussed the impossibility of taking measurements at maximum flow rates with the smaller tubulars.

The record shows that after reviewing TRW's initial proposal, the SEB found that "TRW developed conservative well designs [which] provided a negative impact on both price and schedule without necessarily increasing the assurance of a successful drilling operation." As a result, DOE sent TRW a list of written questions, one of which asked TRW to * * * "clarify how the use of large diameter tubulars, considering the increase in cost and the problems inherent

in large hole sizes, would be advantageous to the Government." DOE asserts that during subsequent oral discussions TRW did not indicate that the firm assumed that large diameter tubulars were required by the RFP in order to take in situ measurements at 40,000 and 30,000 barrels per day. Instead, DOE's minutes of the oral discussions show that TRW indicated that it selected large diameter tubulars so that it could use gravel packs to control sand movement around the well holes.

The only evidence in the record which indicates that TRW may have misconstrued the RFP are statements in TRW's best and final offer where the firm discusses the advantages and disadvantages of large and small diameter tubulars. In response to DOE's concern regarding large diameter tubulars, TRW explains that "with kill string protection for downhole instruments, measurements can be made at full production. Without protection for instruments, production will be limited to keep instruments in the hole." (Emphasis added.) In addition, TRW summarized its answer to the question DOE posed at oral discussions by stating "Our casing size selection was based upon the following technical considerations: * * * Make downhole measurements * * * while maintaining maximum production." (Emphasis supplied.)

Because of other conflicting statements in TRW's best and final offer, we do not think TRW's explanations reasonably conveyed to DOE that TRW had misconstrued the RFP. TRW's best and final offer states that "at the orals * * * an exhaustive treatment and discussion were conducted on the advantages and enhanced level of success that can be expected with the use of large diameter tubulars," and concludes:

"As stated in the orals and shown above, it is our opinion that the technical and operational flexibility for the large-diameter tubulars provides a higher degree of success to offset the cost differential in a program of this magnitude."

In our view, TRW only conveyed to DOE that its use of large diameter tubulars represented a technical judgment on its part. Moreover, as previously discussed, DOE explains that design flow rates of 40,000 or 30,000 barrels may or may not be achieved. Therefore, we think that DOE reasonably could have construed the words "full production" and "maximum production" to mean the greatest production obtainable under the circumstances and nothing more.

Since we see no basis for believing that DOE knew or should have known that TRW had misinterpreted the RFP, we cannot conclude that DOE was required to specifically alert TRW to its misinterpretation. In any event, even if the language in TRW's best and final offer was sufficient to alert DOE to TRW's misinterpretation, DOE was under no obligation at that point to inform TRW of its error and allow it to revise its proposal. Although agencies may reopen negotiations after receipt of best and final offers, there is no legal requirement that they do so. Electronic Communications Inc., 55 Comp. Gen. 636 (1976), 76-1 CPD 15. Moreover, we point out that DOE's request for clarification reflected some concern on the part of DOE over the proposed use of large diameter tubulars and should have placed TRW on notice that the agency did not view such tubulars as necessary for contract performance. See Houston Films, Inc., B-184402, December 22, 1975, 75-2 CPD 404.

TRW's final complaint is that the award to T/F&S was not rationally founded because the SSO improperly viewed the T/F&S proposal in the areas of management structure, well drilling experience and resource assessment. TRW bases its conclusions on alleged "inconsistencies and clear contradictions" in the SSO selection statement and SEB report.

We find that alleged "inconsistencies" can be explained and reconciled. For example, TRW points to an alleged conflict between the SSO's statement that T/F&S' strength was its experience in the key area of well drilling and her "opposite" conclusion that the awardee's proposal was weak because it offered the use of consultants, rather than joint venture employees, for directing on-site drilling operations.

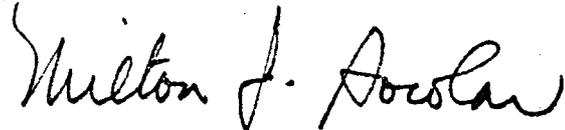
The technical evaluation criteria included three major categories: (1) qualifications of personnel; (2) quality of proposed plans to accomplish program objectives and (3) organization's technical capability. The record shows that the well drilling experience referred to by the SSO relates to both the well drilling experience of key personnel and of the organization T/F&S itself. With respect to personnel, the Board, whose findings the SSO reviewed, found that all personnel including the Program Manager, had extensive industry experience in well drilling and other relevant program disciplines, that the drilling Manager had geopressure experience in managing drilling operations in the Gulf Coast area, and that Technadril (one of the joint venture companies) had

experience in deep hole drilling in the Texas and Louisiana Gulf Coast geopressure zones. The Board also pointed out, however, that a weakness of T/F&S' proposal was its proposed use of consultants to direct on-site drilling operations instead of its own staff.

In light of this SEB evaluation, we do not think that the SSO's statements are contradictory. The well drilling experience singled out by the SSO concerns in-house personnel, particularly the experience of key managerial and supervisory personnel, as well as the organizations' capability and experience. On the other hand, the weakness referred to concerns other individuals, those who were required to be at the site directing the drilling operations. Thus, the SSO statement merely recognized both strong and weak points of the proposal which were not inconsistent with each other.

Similarly, we find that the alleged inconsistencies in the management structure and resource assessment areas can be explained and that the SSO's statements are supported by the record.

The protest is denied.



Acting Comptroller General
of the United States