

# DECISION



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

FILE: B-219406 DATE: October 31, 1985  
MATTER OF: Bendix Field Engineering Corporation

## DIGEST:

1. Protest is sustained where the source selection official failed to properly apply the evaluation factors established by the solicitation.
2. Where corrective action consists of a recommendation that the source selection be independently reconsidered consistent with the RFP's established award criteria, the protester's request for allowance of its proposal preparation costs and the costs of filing and pursuing the protest is denied.

Bendix Field Engineering Corporation (Bendix) protests the proposed award of a contract to the RCA Service Company by the Department of Commerce (Commerce), National Oceanic and Atmospheric Administration (NOAA), under request for proposals (RFP) No. WASC-84-00054. For the reasons set forth below, we sustain the protest.

## BACKGROUND

This solicitation was for the operation, maintenance and technical support of the NOAA Satellite Command and Data Acquisition Station in Fairbanks, Alaska. The station's primary mission is to meet the command, telemetry, data acquisition, data transmission and data distribution requirements of certain polar-orbiting meteorological satellites.

The solicitation contemplated the award of a cost-plus-award-fee contract for 1 year, with four 1-year options. Section "M" of the RFP set forth the factors that the Source Evaluation Board (SEB) would use to evaluate the proposals and the relative weight each factor would be

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given. Technical/Management proposals were to be evaluated on the basis of seven factors:

|                               |     |
|-------------------------------|-----|
| Overall Responsiveness        | 5%  |
| Understanding of Requirements | 20% |
| Corporate Background          | 20% |
| Personnel                     | 25% |
| Transition Plan               | 5%  |
| Flexibility                   | 10% |
| Unpriced Cost Elements        | 15% |

The RFP also provided that technical factors were weighted at 70 percent and cost factors at 30 percent of the total possible point score of 600 points.

Commerce received proposals from four offerors. The agency reports that after two rounds of evaluations and negotiations, only RCA and Bendix remained in the competitive range and a final choice had to be made between the best and final offers of the two firms. The SEB evaluated the proposals and recommended that award be made to Bendix, the incumbent contractor. The award recommendation was based on the total (cost plus technical) best and final scores, which were 530 (386 Technical, 144 Cost) for Bendix and 468 (288 Technical, 180 Cost) for RCA.

The Source Selection Official (SSO), however, independently reviewed the best and final offers and concluded that award to RCA would be in the best interest of the government. The contracting officer requested reconsideration of the SSO's decision. The SSO reviewed his choice, but again decided that the award should be made to RCA, and issued a memorandum setting forth his findings to support this determination. The contracting officer then proposed to make award to RCA, based on her conclusion that the SSO considered the two proposals technically equal and the fact that RCA proposed the lower cost.

Bendix protests that the SSO abused his discretion by disregarding the evaluation criteria established in the RFP and selecting RCA for award. Bendix readily agrees that the SSO is not bound by the recommendations of the SEB, and that the SSO has broad discretion in making the source selection. See BDM Corp., B-211129, Aug. 23, 1983, 83-2 CPD ¶ 234. However, Bendix argues that the SSO's discretion is not unlimited and that his source selection must be supported by reason. Here, Bendix contends that the SSO abused his discretion by basing his award decision

primarily on estimated cost and by changing the announced evaluation criteria when he evaluated the technical proposals.

### ANALYSIS

In considering protests against an agency's evaluation of proposals, we will not evaluate the proposals anew and make our own determinations as to their acceptability or relative merits. See Technical Services Corp., B-216408.2, June 5, 1985, 85-1 CPD ¶ 640. However, we will examine the record to determine whether the evaluation was fair and reasonable and consistent with the evaluation criteria. See Deuel and Associates, Inc., B-212962, Apr. 25, 1984, 84-1 CPD ¶ 477.

In this case, the SSO's memorandum supporting his decision to select RCA for award cited as one of his primary reasons for disagreeing with the SEB his own dissatisfaction with the evaluation criteria. He stated that he believed only three of the seven criteria were really significant--"Understanding of Requirements," "Personnel," and "Flexibility"--and that he would weight them 40 percent, 40 percent, and 20 percent, respectively. The remaining four subfactors, in his view, were "not particularly significant for this procurement."

The SSO further explained that he considered "Overall Responsiveness" to rate, in general terms, factors which were already rated individually. Similarly, he felt that "Corporate Background" should not be rated separately, but should instead be included in the score for "Personnel." He rejected "Transition Plan" as a subfactor because he believed that any score in this area would favor the incumbent. Finally, he felt that "Unpriced Cost Elements" was not a legitimate technical factor, but should instead be taken into account during the cost evaluation.

A comparison of the relative weights assigned by the RFP and those applied by the SSO reveals the following differences:

| <u>Technical Subfactors</u>      | <u>Relative Weights</u> |            |
|----------------------------------|-------------------------|------------|
|                                  | <u>RFP</u>              | <u>SSO</u> |
| 1. Understanding of Requirements | 20%                     | 40%        |
| 2. Personnel                     | 25%                     | 40%        |
| 3. Flexibility                   | 10%                     | 20%        |

|                           |             |             |
|---------------------------|-------------|-------------|
| 4. Overall Responsiveness | 5%          | 0           |
| 5. Corporate Background   | 20%         | 0           |
| 6. Transition Plan        | 5%          | 0           |
| 7. Unpriced Cost Elements | 15%         | 0           |
|                           | <u>100%</u> | <u>100%</u> |

The SSO acknowledged in his memorandum that "[s]ince all seven [evaluation criteria] were the criteria stated in the RFP for purposes of proposal evaluation . . . [he could not] change them now without requesting revised proposals." However, he also concluded that "the evaluation criteria are not the award criteria and . . . [the SSO] has wide discretion in determining which proposal would be in the best interest of the government." He then stated that he had "chosen to be guided" by the three technical factors he considered significant, plus cost.

We do not agree that the evaluation criteria established by the RFP are only for the SEB's use in evaluating proposals and are not the criteria for award. The Federal Acquisition Regulation (FAR), section 15.406-5(c), requires that solicitations specify the evaluation factors that will be considered in awarding the contract and state the relative importance the government places on those factors. 48 C.F.R. § 15.406-5(c) (1984). Moreover, our Office has long held that once offerors are informed of the criteria against which proposals will be evaluated, the agency will be required to adhere to them. Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 CPD ¶ 325. Thus, while source selection officials are not bound by the recommendations and conclusions of evaluators and may reevaluate and rescore proposals, the source selection nonetheless must be consistent with the solicitation's stated evaluation criteria and must have a rational basis. See Boone, Young & Associates, B-199540.3, Nov. 16, 1982, 82-2 CPD ¶ 443.

Under the facts presented here, we find that the SSO's technical evaluation was not consistent with the evaluation criteria announced in the RFP. We believe that the SSO's memorandum in support of his award decision, written at the time the source selection was being made, most accurately described the SSO's actions in evaluating the proposals. While the SSO submitted a memorandum prepared in connection with the protest some two months after his selection was made, stating that he did consider all of the evaluation criteria, we find that his contemporaneous statement--revealing that he in fact chose to discount more than half

of the established technical evaluation factors, which together were worth 45 percent of the total score--should be given more weight. In these circumstances, we conclude that the evaluation criteria established in the RFP were not properly applied.

Initially, the agency in response to this protest had relied on the argument that award need not be based on the evaluation criteria in the RFP. It argued later that the SSO's method of evaluation, whether proper or improper, resulted in no prejudice to Bendix. In support of this contention, the agency has provided a conversion chart quantifying the SSO's scores for the three factors he did consider and retaining the SEB's scores for the remaining four factors. The chart in theory indicates that RCA would have received a total score of 509.4 while Bendix would have 501.8.

However, we find this hypothesis unpersuasive. The record that the agency has submitted to our Office includes only a narrative discussion by the SSO of how he considered some of the evaluation factors, rather than any numerical scoring of proposals. For example, he stated that in the category of "Corporate Background," he considered RCA to be "moderately superior" to Bendix; he did not actually rescore either proposal, however. In the category of "Understanding of Requirements," he assigned a range of 275-300 points to RCA and stated only that the SEB overscored Bendix by giving it a score of 336. We do not consider these comments necessarily to be equivalent to the numerical scores later extrapolated by the agency. Furthermore, we do not consider the combination of these hypothetical scores in three categories with the SEB's scores in the remaining four categories to be the equivalent of applying the exact evaluation scheme set forth in the RFP.

We find, therefore, that the SSO's approach to proposal evaluation and source selection was improper, and that award to RCA would be improper on this basis.

While arguments have been presented to us that even if the SSO could show that he had taken all of the evaluation criteria into account, his selection decision was improper because it was arbitrary and without any reasonable basis, we need not discuss these arguments in light of our determination, above, that the selection was improperly made.

We conclude that the evaluation criteria were not applied properly and that the record therefore does not support the source selection determination. Accordingly, by

separate letter of today, we are recommending to the Secretary of Commerce that the source selection be independently reconsidered consistent with the established evaluation criteria.

The protest is sustained.

Bendix also requests that it be allowed its proposal preparation costs and its costs of filing and pursuing the protest, including attorney's fees. We will allow a protester to recover its proposal preparation costs only where (1) the protester had a substantial chance of receiving the award but was unreasonably excluded from the competition, and (2) the remedy recommended is not one delineated in 4 C.F.R. § 21.6(a)(2-5) (1985). See EHE National Health Services, Inc., B-219361.2, Oct. 1, 1985, 85-2 CPD ¶ \_\_\_\_\_. One of the enumerated remedies is where we recommend that an award be made consistent with statute and regulation, 4 C.F.R. § 21.6(a)(5), which we in effect are doing here since we are recommending that the source selection be reconsidered consistent with the established criteria. Accordingly, the recovery of proposal preparation costs is not appropriate. See Federal Properties of R.I., Inc., B-218192.2, May 7, 1985, 85-1 CPD ¶ 508.

Our regulations limit the recovery of the costs of filing and pursuing a protest to situations where the protester unreasonably is excluded from the procurement, except where we recommend that the contract be awarded to the protester and the protester receives the award. 4 C.F.R. § 21.6(e). The thrust of our regulations, therefore, is that the recovery of the costs of filing and pursuing a protest should be allowed only where the protester did not receive a fair opportunity to compete for the award, and that in cases where the protester obtains an award as the result of our recommendations, the award is a sufficient remedy in itself. See Federal Properties of R.I., Inc., B-218192.2, supra, 85-1 CPD ¶ 508. Where, as here, the procurement deficiency concerns the use of improper source selection procedures and we are unable to determine that the protester would have been entitled to the award had the proper procedures been followed, but we are able to recommend that the source selection be reconsidered, we also think that our recommendation is a sufficient remedy in itself as it is intended to insure that the protester

receives a full and fair opportunity to compete for the award. Under these circumstances, we consider the recovery of the costs of filing and pursuing the protest inappropriate, and we deny Bendix request for reimbursement of those costs.

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