

**DECISION**

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

**FILE:**

B-221349

**DATE:** April 23, 1986**MATTER OF:**

Eyring Research Institute, Inc.

**DIGEST:**

Decision to award cost-reimbursement contract to a higher cost, technically superior offeror is not objectionable. Award is consistent with the RFP's evaluation criteria, source selection official found that awardee's proposal was most advantageous to the government, and the protester's proposal, even after submission of its best and final offer, is outside the competitive range.

Eyring Research Institute, Inc. (Eyring), protests the proposed award of a contract to Geodynamics Corporation (Geodynamics) under request for proposals (RFP) No. F04704-85-R-0040, a small business set-aside, issued by the Headquarters, Ballistic Missile Office, Norton Air Force Base, California. The RFP called for engineering services supporting the development of geodetic and geophysical (G&G) products for the Small Intercontinental Ballistic Missile (SICBM). Eyring contends that the proposed award to Geodynamics is improper since Eyring is the "lowest responsible bidder." In addition, Eyring contends that Geodynamics' technical approach is not most advantageous to the government. Finally, Eyring argues that the Air Force's Proposal Evaluation Board (PEB) was not sufficiently qualified to properly evaluate its new and innovative approach.

We deny the protest.

The RFP for a cost-plus-award-fee contract was issued on September 11, 1985. Proposals were received from Eyring, Geodynamics, and one other offeror. All offers were included in the competitive range and the three offerors submitted best and final offers (BAFO's). Eyring was notified by letter dated December 19, 1985, that the Air Force planned to award the contract to Geodynamics on December 30 because the Geodynamics proposal was determined to be most advantageous to the government. However, since Eyring filed its protest prior to award, the Air Force is delaying any award until the protest is resolved.

035232

Essentially, the contractor is to design a land navigation and a trajectory gravity model for use by the SICBM system; data to support the models is to be collected by the Defense Mapping Agency (DMA). The SICBM is being designed to be deployed on mobile transporters capable of operating both on and off of roads; to find a target accurately, the SICBM systems must take account of the precise location of the missile at the time it is launched and of gravitational variations both at the launch site and along its trajectory.

The RFP at section "M" provided that:

"award will be made to the offeror the Government determines can best accomplish the necessary work to satisfy the objectives and requirements set forth in the solicitation in a manner most advantageous to the Government."

The RFP further stated that equal emphasis in the proposal evaluation process would be placed on the technical and program plan and management areas and that the cost factor was third in importance. Cost was not to be scored or rated, but was examined for completeness, realism, and credibility and compatibility with the technical and program plan and management proposals. Finally, section "M" provided that, after evaluations of the technical and program plan and management proposals were completed and rankings were established, cost to the government would be compared to the rankings to determine the combination most advantageous to the government.

Offerors were required to submit technical, program plan and management, and cost proposals. The elements of the technical and program plan and management proposals were evaluated by a PEB and rated as either exceptional, acceptable, marginal, or unacceptable. The three offerors were included in the competitive range, were given clarification and deficiency notices, responded to these notices, participated in oral discussions, and then submitted BAFO's. The Air Force proposes to make award to Geodynamics, whose offer was evaluated as meeting or exceeding all of the technical and management requirements and whose proposed approach is considered to offer the best overall value to the government.

Eyring's first contention is that the proposed award to Geodynamics would be improper since Eyring is the "lowest responsible bidder," at an estimated price of approximately \$1 million (40 percent) less than the price offered by Geodynamics.

Eyring argues that the Air Force failed to comply with the solicitation's evaluation clause which states that, after evaluations of the technical and program plan and management proposals are completed and rankings are established, cost to the government would be compared to the rankings to determine the combination most advantageous to the government. Eyring raises this issue because the contracting officer reported that he found Eyring's proposal to be technically unacceptable and therefore found no need to conduct a further cost analysis on Eyring's BAFO.

The procuring agency is responsible for evaluating an offeror's proposal and ascertaining whether the equipment or services proposed meets the agency's requirements. Fil-Coil Co., Inc., B-213078, Feb. 22, 1984, 84-1 C.P.D. ¶ 219. Once an agency properly determines that a proposal is technically unacceptable, the agency need not conduct further cost analysis or consider the cost of the unacceptable proposal since the proposal cannot be considered for award. Westinghouse Electric Corp., B-215554, Sept. 26, 1985, 85-2 C.P.D. ¶ 341; Fil-Coil Co., Inc., B-213078, supra.

We note that Eyring has not been provided with the Air Force's documents dealing with the evaluation of proposals; the documents were, however, provided to us for our in camera review. We then reviewed the documents supplied in light of protest issues raised, but our discussion of the documents is necessarily limited. See Raytheon Support Services Co., B-219389.2, B-216484.2, Mar. 12, 1985, 85-1 C.P.D. ¶ 303.

The record shows that offers were evaluated on the basis of these criteria: compliance with statement of work (SOW) requirements, soundness of approach, and past performance and risk assessment. Four technical areas were considered: land navigation requirements, gravity model development, error analysis, and engineering analysis, as well as two program plan and management areas: program plan and management plan. Although Eyring's proposal was initially evaluated by the PEB to be technically deficient under a number of areas, the contracting officer included Eyring in the competitive range because the contracting officer had some doubt as to whether to exclude Eyring from the competitive range. See the Federal Acquisition

Regulation, 48 C.F.R. § 15.609(a) (1984). However, after discussions were conducted with Eyring and its BAFO was evaluated, its technical proposal was still viewed as having significant deficiencies. According to the contracting officer, Eyring demonstrated a lack of knowledge or understanding in critical areas during oral discussions and then did not adequately revise its technical proposal when it submitted its BAFO so that a number of technical deficiencies found initially were not eliminated. The contracting officer therefore regarded Eyring's proposal as technically unacceptable and no longer in the competitive range.

Our in camera review of the proposals and evaluation documents indicates that Eyring's proposal was reasonably found to be unacceptable in the technical and program plan and management areas. Eyring characterizes its proposal as innovative, but our review supports the Air Force's finding that, unlike the Geodynamics proposal, which evidences a detailed, well-written proposal that recognizes potential problems and sets out detailed solutions, Eyring's proposal was too general and failed to provide detailed information.

This is indicated, for example, by Eyring's treatment of its launch region gravity model. The record indicates that Eyring's proposed model raised doubts concerning Eyring's ability to meet the statement of work requirements. The contracting officer found, and our review confirms, that Eyring did not satisfactorily explain how launch site data needed to compute accurate targeting information at launching points which were not specifically surveyed would be determined. The need for this information was important because the SICBM is to be mobile and launching points would constantly change. Also, Eyring did not adequately relate its approach to the ability of DMA to provide the data necessary to implement Eyring's approach and failed to provide a timetable for clearly establishing how Eyring would implement its model. Based on these findings, the Air Force believed, reasonably in our view, that Eyring's offer presented greater performance risk than the proposal submitted by Geodynamics.

In the circumstances, we find that there was a substantial basis for the low rating given Eyring's proposal in the technical and management areas. Since the RFP stated

that these areas were to be given more weight than cost, we find that, given the deficiencies in the proposal and the risks associated with Eyring's proposal, the contracting officer acted properly in finding Eyring's proposal outside the competitive range and in not considering Eyring's cost proposal.

Eyring argues that the PEB did not have the technical expertise to understand the innovative and modern approach presented in the Eyring proposal. In addition, Eyring contends that the solicitation stated that another contractor's personnel (TRW) may participate in technical proposal evaluation, but did not.

We have held that the composition of technical evaluation panels is within the discretion of the contracting agency and that we will not review the qualifications of panel members absent a showing of possible fraud, bad faith, or conflict of interest. Martin Marietta Data Systems, et al., B-216310, et al., Aug. 26, 1985, 85-2 C.P.D. ¶ 228. None of these is even alleged here.

Moreover, with regard to Eyring's complaint that TRW personnel did not participate in the technical evaluations as Eyring states, the RFP merely provides that TRW personnel may participate. Therefore, Eyring was placed on notice of the possibility that TRW personnel would not participate in the evaluations. We deny this aspect of Eyring's protest.

The protest is denied.

The protester has requested that it be paid its costs associated with proposal preparation and filing and pursuing this protest. However, since we find the protest to be without merit, we deny the claim for costs. R. S. Data Systems, B-220961, Nov. 21, 1985, 65 Comp. Gen. \_\_\_\_\_, 85-2 C.P.D. ¶ 588.

*for Seymour Efron*  
Harry R. Van Cleve  
General Counsel