



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: John W. Gracey
File: B-228540
Date: February 26, 1988

DIGEST

Where demonstrated understanding is a primary evaluation criteria in a request for proposals for a project for the development of an economic analysis methodology, a proposal which does not address certain fundamental factors in conducting a proper economic analysis, can be excluded from the competitive range for failing to demonstrate in its proposal an understanding of the project.

DECISION

John W. Gracey protests the elimination of his proposal from the competitive range under request for proposals (RFP) No. J0278008, issued by the Bureau of Mines, Department of the Interior, for a study project entitled "Methodology to Measure the Economic Impact of Mining and Mineral Processing Waste Regulations."

We deny the protest.

The stated objectives of the study were: (1) to develop a methodology for estimating the economic effects on the domestic mining and mineral processing industry resulting from given increases in costs of complying with waste regulations, and (2) to apply this methodology to the domestic copper industry. The RFP provided that the technical criteria were considered of greater importance than cost. The technical evaluation criteria in descending order of importance^{1/} are:

"1. Understanding all elements of the Statement of Work and demonstrating that understanding by the thoroughness, soundness, and comprehension of approach contained in the technical proposal.

^{1/} Criteria 1 and 2 are equal in importance.

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"2. Experience of Proposer's committed personnel in conducting economic analysis of the mining and minerals processing.

"3. Experience of proposer's committed personnel in assessing and estimating regulatory economic impacts.

"4. Quantitative comprehension of the work to be accomplished as evidenced by the proposed level of effort and management plan."

Eight proposals were submitted, in separate cost and technical volumes, in accordance with the instructions in the RFP by the closing date of August 17, 1987. The eight technical proposals were evaluated by a Technical Evaluation Committee (TEC), which awarded the following technical scores:

| <u>Offeror</u> | <u>Technical Score</u> |
|---|------------------------|
| Resource Strategies, Inc. | 700 |
| JACA Corp. | 615 |
| Charles River Associates | 555 |
| Jack Faucett Associates | 545 |
| Science Applications International Corp. | 540 |
| Mathtech Inc. | 525 |
| ACR Engineering | 440 |
| John W. Gracey | 375 |

Each member of the TEC, independently and as a group, found Mr. Gracey's proposed methodology to be seriously inadequate and that his experience was not optimum. Consequently, the TEC found that he should not be included in the competitive range, given the qualities of the proposals received. Resource Strategies and JACA Corp. were included in the competitive range as being the only firms considered to have a reasonable chance to receive an award of a contract of this project.

On September 25, 1987, Mr. Gracey protested to the agency the elimination of his proposal from the competitive range. On September 30, the contracting officer issued a decision denying Mr. Gracey's protest and, on that same date, award was made to Resource Strategies. Mr. Gracey then protested to our Office on October 15.

The agency initially argues that Mr. Gracey's protest is untimely, apparently on the theory that more than 10 working days elapsed from the time Mr. Gracey was notified of his

exclusion from the competitive range until he filed his protest with our Office. This argument ignores an interested party's right to first protest directly to the contracting agency. As admitted by the agency, Mr. Gracey did file a protest with the agency within 10 days of being notified that his proposal was outside the competitive range and subsequently filed one with our Office within 10 working days of when he was advised that the agency denied the protest. Consequently, his protest is timely under our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(3) (1987).

Mr. Gracey contends that the agency improperly evaluated his proposal and wrongfully excluded his proposal from the competitive range. The evaluation of proposals and the resulting determination as to whether an offeror is in the competitive range are matters within the discretion of the contracting activity, since it is responsible for defining its needs and for deciding on the best methods of accommodating them. Harbert International, Inc., B-222472, July 15, 1986, 86-2 CPD ¶ 67. Generally, offers that are unacceptable as submitted and would require major revisions to become acceptable are not for inclusion in the competitive range. Essex Electro Engineers, Inc., et al., B-211053.2 et al., Jan. 17, 1984, 84-1 CPD ¶ 74. Further, in reviewing an agency's evaluation, we will not reevaluate the technical proposals, but instead will examine the agency's evaluation to ensure that the evaluation was reasonable. Syscon Corp., B-208882, Mar. 31, 1983, 83-1 CPD ¶ 335.

In this case, the contracting officer adopted the TEC's evaluation. The TEC found Mr. Gracey's proposed methodology did not address certain fundamental factors affecting economic impacts of compliance costs, specifically, the structure of the minerals industry, the extent that production is integrated, the size and financial strength of the producing company, and the extent to which the compliance costs are "sunken costs" or costs for future production. Instead, Mr. Gracey's proposed methodology was simply to estimate production costs of individual plants before and after adding in costs of proposed regulations. The TEC found Mr. Gracey's proposed approach would not enhance the methodology the agency already had in-place.

In addition, the TEC noted that while Mr. Gracey had related economic analysis experience, primarily in financial analysis, he lacked substantial experience in minerals economics and regulatory economic analysis.

In reply, Mr. Gracey argues that while the RFP admittedly required offerors to include a discussion of production costs, the domestic industry's competitive position,

domestic mining production capacity, reserves and industry employment, the RFP, fairly read, did not require discussion of the economic factors referenced by the agency.

The agency disputes Mr. Gracey's position. Specifically, the agency argues that the factors that Mr. Gracey says are not listed in the RFP are fundamental considerations of minerals economics. The agency says that fundamental factors that must be considered in the estimation of regulation compliance cost effects on domestic production capacity are: (1) whether the firm and the industry can pass on compliance costs to consumers, that is, the structure of the industry; (2) whether the producer incurring the compliance costs mines, smelts, refines and fabricates or has some subset of those operations, that is, the production is integrated; and (3) the ability of the producer or parent company to absorb costs associated with the compliance costs, that is, the financial strength of the producing company. Mr. Gracey's proposal did not discuss these matters.

The agency also states that the extent to which compliance costs are "sunken costs" or costs of future production is a fundamental consideration to production cost and domestic production capacity impact estimating. The agency explains that if compliance costs are "sunken costs", that is, costs that have to be paid regardless of a firm's decision to produce, then compliance costs do not affect operation costs--a key variable in a firm's decision to close its facilities as a result of regulation compliance costs. The agency argues that, instead of discussing these considerations, Mr. Gracey's proposed method simply focused on the effect of compliance costs on production costs.

Mr. Gracey now contends that some parts of his proposal did reference the economic factors the agency said he did not address, although he would have provided more details if the RFP had mentioned these factors. However, our review of Mr. Gracey's proposal, the agency's evaluation thereof, and the agency's responses to the protest shows that the agency's evaluation was not unreasonable. In this regard, a primary evaluation criterion under this RFP is an offeror's demonstrated "understanding by the thoroughness, soundness, and comprehension of the approach." The agency need not "spoon feed" offerors as to tell them what economic factors should be addressed in a proper economic study, where it is evaluating the offerors' understanding, and an agency may reasonably downgrade an offeror who did not demonstrate the requisite understanding in its proposal and exclude that offeror from the competitive range. See The Associated Corporation, B-225562, Apr. 24, 1987, 87-1 CPD ¶ 436.

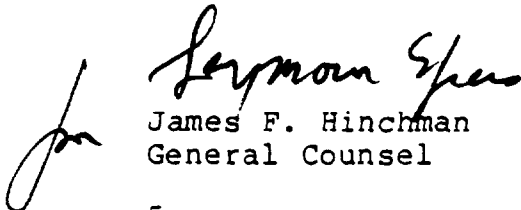
As to his experience, Mr. Gracey argues that he has 8 years of experience conducting economic analyses of the mining and minerals processing industries. Mr. Gracey also notes that his resume showed that he completed a graduate course in mineral economics and that he has conducted multiple studies within the copper and minerals industry. However, the agency found that Mr. Gracey's experience focused on financial analysis and simple trend and measure estimation rather than minerals economic analysis or regulatory impact analysis. Based on our review of the material included in Mr. Gracey's proposal, we cannot find unreasonable the agency's determination that Mr. Gracey's experience was not optimum.

Although Mr. Gracey also notes that his proposal cost was lower than others' proposed costs, since his low cost proposal was unacceptable, the agency was not obligated to consider his lower proposed cost. CD Systems, Inc., B-217067, Apr. 5, 1985, 85-1 CPD ¶ 396.

In his response to the agency report, Mr. Gracey argues that the second-ranked offeror unfairly received more points for proposing fewer labor hours than Mr. Gracey; that it had less experience than Mr. Gracey; and that it was not sufficiently downgraded for omitting a discussion of the agency's "computer modelling system." Not only does the record support the scores awarded this second ranked offeror, we also see no evidence that even if the proposal scores of these two offerors were changed in these areas that Mr. Gracey's eighth-ranked position would have improved enough to have been included in the competitive range, given the reasonable determination by the agency that Mr. Gracey's proposal did not adequately demonstrate his understanding of the project. In any case, the second-rated offeror was not selected for award.

Finally, in his comments on the agency report, Mr. Gracey alleges that Resource Strategies, the awardee, was given "preferential treatment" during the evaluation leading to the award. Since Mr. Gracey was properly eliminated from the competitive range, he no longer is an interested party to contest the award to another concern. See Chesire/Xerox; Miller/Bevco; Automecha, Ltd., B-226939 et al., Aug. 31, 1987, 87-2 CPD ¶ 208.

Protest denied.


James F. Hinchman
General Counsel