

Arsenoff



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: PRC Kentron, Inc.

File: B-230212

Date: June 7, 1988

DIGEST

1. In determining that two proposals are technically equal, contracting officer satisfies obligation to consider views of technical evaluators by reviewing their scores and narratives relating to the proposals; contracting officer is not required to ascertain specifically whether evaluators agree with determination of technical equality.
2. Contracting officer's determination that competing proposals were technically equal was proper where contracting officer reasonably considered the protester's slight technical point scoring advantage to be the result of incumbency rather than technical superiority.
3. Evaluation of best and final offers (BAFOs) was proper where contracting officer examined BAFOs and reasonably concluded that they did not affect initial determination that proposals were technically equal; contracting officer was not required to have the proposals formally rescored by the technical evaluation panel after submission of BAFOs.
4. Contracting agency may communicate changed requirements to offerors through a letter requesting best and final offers even though the letter is not in the form of a formal solicitation amendment.
5. Letter requesting best and final offers which communicated changed staffing requirements to the protester constituted meaningful discussion of the agency's concerns regarding the protester's staffing proposal because it led the protester into an area of its proposal which required amplification.
6. Contracting agency's cost realism analysis based on conforming offerors' proposals to agency's staffing estimate was proper where the estimate was disclosed to offerors in letter requesting best and final offers and offerors were instructed to use it in developing their cost proposals.

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DECISION

PRC Kentron, Inc., protests the proposed award of a cost-plus-fixed-fee contract to Dynalectron Corporation (DynCorp) under request for proposals (RFP) No. N66001-86-R-0270, issued by the Navy for the operation and maintenance of weapon testing facilities at San Diego, San Clemente Island and Morris Dam, California, for a 3-year base period with two 1-year options. The protester alleges that its offer was improperly evaluated.

We deny the protest.

BACKGROUND

The RFP was issued on June 10, 1986. It set forth 46 different labor categories covering the types of personnel needed during contract performance. Offerors were advised of government staffing estimates for 27 of these labor categories at two test facilities, San Diego and Morris Dam; for the remaining 19 labor categories offerors were instructed to develop their own staffing estimates.

The RFP listed evaluation criteria in descending order of importance; these are set forth below with their relative weights:

Staffing/Personnel Qualifications	35
Cost	30
Technical Approach	20
Management Capabilities/Company Experience	15

Offerors were advised by the RFP that the importance of cost would increase as the difference among the proposals in other evaluation areas decreased. Additionally, the RFP stated that a cost realism analysis would be performed.

PRC and DynCorp submitted offers on the February 25, 1987, closing date. Technical proposals were scored by the source evaluation board (SEB) which reported the following results to the contracting officer on June 23:

	PRC	DynCorp
Staffing (35 points)	26.05	26.11
Technical Approach (20 points)	17.62	16.57
Management (15 points)	14.22	12.50
<hr/> TOTALS	<hr/> 57.89	<hr/> 55.18

PRC's total technical score was 2.71 points higher than that received by DynCorp. According to the SEB, both proposals were qualified and found to be technically acceptable. The SEB also prepared a list of items which would have to be clarified by each offeror. DynCorp proposed a total cost of \$21,389,182, while PRC proposed a cost of \$23,374,036.

At this juncture, DynCorp was suspended from government contracting by the Army based on prior activities of an affiliate. The Navy then requested PRC to submit a revised cost proposal by July 29 for sole-source negotiations. In its response, PRC proposed a lower cost plan which totaled \$21,096,332, based on reduced staffing. PRC maintained that, based on its experience as the incumbent, it could reasonably expect that actual staff hours needed to perform the contract would fall 25 percent below government estimates for the 1st year, 17 percent below for the 2nd year and 6 percent below for the remaining years. This expectation was premised on what PRC called the "Vacancy/Transition Factor" (VTF). Basically, the VTF recognized that the RFP included a wider scope of agency activities than PRC presently had under contract, and reasoned that full staffing to meet these new demands would not be achieved at the beginning of contract performance, but as the result of phasing-in through time. The VTF was also based on the premise that the magnitude of the testing work was speculative, in part because it was dependent on user agency demands which had been subject to recent decreases for budgetary reasons, and several other factors, including an expectation of a decrease in overall staff hours due to periodic vacancies occurring while replacement employees were recruited.

DynCorp's suspension from government contracting subsequently was lifted, after which the Navy gave the firm an opportunity to submit a revised proposal.^{1/} The revised proposal contained a revised cost estimate of \$21,041,374. The Navy evaluators indicated that additional information would be required before a full cost analysis of the two offerors' revised proposals could be performed because of the wide variation between the levels-of-effort offered by the two firms and their use of staff-years comprised of differing numbers of hours. It recommended the resubmission of cost proposals under new guidelines.

^{1/} After the suspension was lifted, the Navy had the discretion to include DynCorp in the competition. See Hayes International Corp., B-224567, Feb. 4, 1987, 87-1 CPD ¶ 112, aff'd on reconsideration, B-224567.2, Mar. 6, 1987, 87-1 CPD ¶ 256.

By letters dated January 12, 1988, the offerors were requested to submit technical best and final offers (BAFOs) by January 22 and cost BAFOs by January 26. Technical clarifications included a request that PRC elaborate on the qualifications of six of its key personnel; DynCorp was asked about five of its key personnel. Cost clarifications, among other things, alerted the offerors to an additional labor category for security guards, three of whom were required at the San Diego site. Additionally, offerors were warned that "cost may control in the award decision." Finally, with respect to cost clarifications, both BAFO letters stated:

"Provided as part of Enclosure 1, is a matrix of labor categories specifying levels of effort in Man-hours, and differentiating between the 3 work areas: San Diego, San Clemente Island, and Morris Dam. In developing the Best and Final Offer for Enclosure 2, use the hours as stated.*"

"*Note: Offerors when developing labor costs should use the matrix of labor hours as provided in Enclosure 1, using the labor categories and government provided man-hours per labor categories, as stated. To develop cost backup to support total labor dollars, use the matrix format showing labor dollars for each year of the base period, a total for the base period, for each option year, and a total labor summary for all years."

The detailed matrix, which was attached to the BAFO requests, contained specific staffhour estimates and overtime requirements for each of the labor categories listed in the RFP for all three major testing sites.

The technical BAFOs received an abbreviated review by two members of the SEB who reported their results to the contracting officer on January 25; no formal rescoring was performed. Among other things, the evaluators noted that both offerors had proposed staffing positions that were not called for in the RFP. All six of PRC's newly-proposed key personnel were found to be qualified; one of DynCorp's key personnel was not found to be qualified. The evaluators also concluded that PRC failed to include the new security guard positions in its proposal.

In its cost BAFO, PRC included a slightly modified version of its VTF concept; the proposal did not conform to the staffing matrix provided by the Navy in the BAFO letter. Both offerors' cost BAFOs were subjected to a cost realism analysis with the following results:

	BAFO Proposed Cost	Adjusted Cost
PRC	\$22,706,991	\$24,593,597
DynCorp	\$22,286,135	\$23,900,285
DIFFERENCE	\$ 420,856	\$ 693,312

On February 5, the Navy announced a proposed award to DynCorp.

ANALYSIS

The protester raises three principal objections: (1) the record does not support the contracting officer's determination that the two proposals were technically equal; (2) its technical BAFO should have been rescored; and (3) the treatment of cost BAFOs was improper. As discussed in detail below, we find these arguments to be without merit.

Determination of Technical Equality

The protester contends that the record does not support the contracting officer's conclusion that its and DynCorp's proposals were technically equal. Further, while conceding that the contracting officer has discretion to weigh the relative technical merits as found by the technical evaluators and, in an appropriate case, to declare technical equality, PRC argues that, at a minimum, such a declaration must be done through coordination and consultation with the technical evaluators. Here, PRC argues that there is no evidence in the record that the point difference between its and DynCorp's proposals (2.71 out of 70 points) was regarded as inconsequential by the technical evaluators, and notes that the SEB's evaluation report states only that both proposals were qualified and found to be technically acceptable. In addition, PRC contends that the record does not show that the SEB members advised the contracting officer regarding the technical equality of the proposals. According to PRC, the contracting officer's improper determination that the two proposals were technically equal elevated the importance of cost in contravention of the RFP's stated evaluation criteria.

In response, the Navy states that, in determining the 2.71 point difference between PRC and DynCorp to be insignificant, the contracting officer consulted with SEB members and conducted an independent analysis in reaching his conclusion of technical equality. That analysis included a review of the SEB's scores and accompanying narratives, previous contract history, and the respective technical proposals themselves; the Navy also reports that the contracting

officer discussed the matter with non-SEB technical personnel.

The contracting officer's determination that the proposals were technically equal clearly included consideration of the SEB's views. Contrary to PRC's argument, we see no basis on which the contracting officer was required in effect to poll the SEB members to ascertain specifically whether they agreed with the contracting officer's determination of technical equality; rather, the contracting officer satisfied any obligation to consult with the SEB and consider its views by reviewing the SEB's scores and narratives.

Further, we see no basis to question the contracting officer's determination with regard to technical equality. Although technical point ratings are useful as guidelines for intelligent decision-making in the procurement process, we have long recognized that too much reliance on them should be avoided. Whether a given point spread indicates that one proposal is significantly superior to another depends on the facts and circumstances of each procurement. Even when point scores are indicative of the technical superiority of one proposal over another, contracting officers are not bound by the recommendations made by a technical evaluation panel. Wheeler Industries, Inc., B-193883, July 20, 1979, 79-2 CPD ¶ 41.

Recognizing this, we have upheld a contracting officer's determination that technical proposals were essentially equal despite an evaluation point differential of as much as 15.8 percent and an evaluation panel's recommendation that award be made to the offeror with the highest technical rating. Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 CPD ¶ 325. In determining which proposal should be accepted for award, a contracting officer may attach weight to the fact that the incumbent's technical score reflects advantages inherent in its incumbency, rather than technical merit. Award should not be based on the difference in technical scores per se, but should reflect the contracting officer's considered judgment of the significance of that difference. Wheeler Industries, Inc., B-193883, supra. Moreover, in challenging such decisions, a protester's mere disagreement with the contracting officer's judgment does not show that the evaluation was unreasonable. SETAC, Inc., 62 Comp. Gen. 577 (1983), 83-2 CPD ¶ 121.

Here, the contracting officer states that in concluding that the 2.71 point differential between PRC's and DynCorp's proposals did not represent a significant difference in the merits of the technical proposals, he considered the previous contract history, the SEB's numerical scores for the

competing proposals and a narrative discussion of the technical proposals from the SEB. With respect to the point scoring, DynCorp received a slightly higher score (26.11 points) than PRC (26.05 points) for the most important evaluation factor, staffing, while PRC received higher scores in the other two technical areas (technical approach, 17.62 for PRC and 16.57 for DynCorp; management, 14.22 for PRC and 12.50 for DynCorp). The contracting officer states that he attributed PRC's slight point advantage to its status as incumbent contractor. In this regard, our in camera review of the individual scoring sheets of the technical evaluators shows that each evaluator also commented concerning PRC's scoring advantage as the result of incumbency. In view of the relatively small point difference between the proposals and the contracting officer's assessment of the effect of PRC's incumbency on its ratings, we believe the record contains a rational basis for the contracting officer's conclusion that the proposals were technically equal. Accordingly, the contracting officer's decision to award on the basis of low adjusted cost was proper and consistent with the award procedures set forth in the RFP.

Failure to Rescore Based on Technical BAFOs

PRC maintains that it was improper for the agency to fail to rescore the BAFOs. PRC notes that, in its BAFO, it replaced all six of the individuals identified as scoring low in the initial evaluation of staffing--the most important evaluation criterion. The technical evaluators concluded that all six were qualified. Thus, the protester argues that a full evaluation of the technical BAFOs would have had a positive impact on its score. By failing to do so, the protester argues, the agency perpetuated its erroneous conclusion that the proposals were technically equal and violated the requirement that all proposals be evaluated in accordance with the criteria announced in the RFP. We find this argument to be without merit.

There generally is no requirement that an agency formally rescore BAFOs; rather, all that is required is that the contracting officer consider the effect on proposals of any changes contained in the BAFOs. See Gould, Inc., Ocean Systems Division, B-229965, May 16, 1988, 88-1 CPD ¶ ____. Here, the Navy maintains that the BAFO responses contained only minor clarifications and reports that the SEB chairman concluded that the responses did not change the relative technical standing of either offeror. The contracting officer states that, after an independent review, he concurred that the relative technical standing remained unchanged.

Further, while all of PRC's replacement personnel were found to be qualified, we do not agree that it is clear, as the protester contends, that a full rescoring would have had a significantly positive impact on its rating in the staffing evaluation criterion. Rather, the SEB members who reviewed the technical BAFOs found that PRC had proposed at least one position that was not called for in the RFP and that, unlike DynCorp, PRC had failed to include any consideration for the three new security guard positions called for in the BAFO request. Thus, in our view, the protester's speculation that it may have been significantly prejudiced by the contracting officer's decision not to rescore the BAFOs is not supported by the record.

PRC also contends that the failure to rescore the BAFOs reflects an improper determination by the contracting officer, made before BAFOs even were requested, that the offeror's technical ratings would not be affected by the BAFOs. As a result, PRC argues, the contracting officer in effect improperly converted the cost-plus solicitation into a two-step sealed bidding process under which award would be made based solely on cost without regard to differences in technical merit. We disagree.

Although the Navy's January 7 Business Clearance Memorandum which sought approval to issue the letters requesting BAFOs does state that, after receipt of BAFOs, "offerors will remain technically equal" and the Navy will "[a]ward a contract to the low, cost realistic offeror," these statements were made in the context of describing a proposed course of action. In drafting the BAFO request, the contracting officer specifically took into account the possibility that technical equality might be affected by the BAFOs, and, thus merely indicated in his January 12 letter that "cost may control in the award decision." (Emphasis supplied). In addition, contrary to PRC's contention that the award decision was made based on cost alone, the contracting officer decided to select DynCorp's lower cost proposal only after he affirmed his initial determination that the two proposals were technically equal, as discussed above. Under these circumstances, we find no merit to the protester's contention that the contracting officer improperly converted the cost-plus procurement into a two-step sealed bidding process where cost would control without regard to technical merit.

Cost Issues

PRC raises a number of issues with respect to the treatment of its cost proposal. Initially, the protester notes that the Navy said repeatedly throughout the RFP that it could not give an accurate estimate of the scope of certain

portions of the work involved in the procurement, and offerors were required to develop their own estimates. PRC maintains that its VTF concept conformed to the RFP directions in this regard. PRC also maintains that the Navy never conducted discussions regarding the VTF concept, and that the BAFO request did not operate as a formal amendment to the RFP so as to firmly require offerors to use the government staffing estimates contained in the matrix. As a result, the protester complains that the cost realism analysis, which added approximately \$1.8 million in direct and subcontracted labor costs and approximately \$90,000 in fees to compensate for the VTF reduced staffing concept, was improper.

According to the Navy, because the RFP did not define the staffing requirements for 19 out of the 46 specified labor categories, the two offerors submitted widely divergent initial staffing proposals which were difficult to compare. The Navy states that since it was in a better position than the offerors to estimate the level of effort required in each labor category during contract performance, it developed its own staffing matrix of estimated staff hours, included it in the BAFO request, and used it in analyzing the cost BAFOs of the two offerors.

We see no basis to object to the Navy's cost analysis since the staffing matrix was disclosed in the letters requesting BAFOs and the offerors were instructed to use it in developing their cost BAFOs.^{2/} Contrary to PRC's contention, the BAFO letters clearly constituted meaningful discussions in that they led the offerors into areas of their proposals, such as staffing levels, needing amplification. SelectTech Services Corp., B-229851, Apr. 18, 1988, 88-1 CPD ¶ 375. Further, the fact that the staffing matrix was disclosed in the BAFO letter rather than through a formal RFP amendment is not significant. Realty Ventures/Idaho, B-226167, May 18, 1987, 87-1 CPD ¶ 523 (the government can change its requirements through a BAFO letter which is not in the form of a formal amendment).

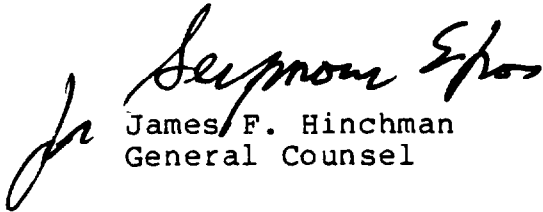
Moreover, it is clear from the language of PRC's own cost BAFO in response to the request for BAFOs that the Navy's changed requirements had been communicated to and understood

^{2/} Because the staffing matrix was disclosed, this case is distinguishable from Kinton, Inc., B-228260.2, Feb. 5, 1988, 67 Comp. Gen. _____, 88-1 CPD ¶ 112, the principal case on which PRC relies. In Kinton, unlike here, award was made on the basis of initial proposals without discussions after the agency conformed the proposals to an undisclosed staffing estimate.

by the protester: "[t]he Best & Final Offer request calls for a sharp staffing increase from 50 to 94 or 88% over the current contract level." In proposing a staffing plan which did not conform to the Navy's staffing estimate as set out in the matrix, PRC ran the risk that the Navy would conform costs associated with that plan to those estimated requirements. See Bendix Field Engineering Corp., B-230076, May 4, 1988, 88-1 CPD ¶ ____.

Finally, we find no merit to the protester's suggestion that the use of a matrix of estimated staffing hours in a cost realism analysis is necessarily improper in the context of a cost-plus procurement which is in part predicated on the contracting agency's inability to develop estimates sufficient to support fixed-price contracting. On the contrary, with regard to cost evaluations, Federal Acquisition Regulation § 15.805-3(c)(4) specifically authorizes the comparison of an offeror's proposed costs with an independent government cost estimate.

The protest is denied.


James F. Hinchman
General Counsel