



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Spectra Technology, Inc.; Westinghouse Electric
Corporation
File: B-232565; B-232565.2
Date: January 10, 1989

DIGEST

1. Award to highest cost, highest technically rated offeror is proper where solicitation provides that technical considerations are more important than probable cost, and the agency reasonably determined that the technical advantages outweighed the possible cost savings.
2. Proposals were not improperly eliminated from consideration because of an unstated agency predisposition against the use of ignitrons where the proposals lost only one point on a total point scale of 100 as the result of proposing ignitrons, and the point deduction was directly related to a question raised during discussions regarding how efficiently the ignitrons could satisfy a specific solicitation requirement.
3. Proposal was reasonably credited for providing a waveform model based on actual experimental data, rather than using the illustrative model provided in the solicitation, where the solicitation permitted the use of a deviating model if it was justified by the offeror.
4. Proposal was reasonably downgraded for lack of flexibility in reconfiguration where the solicitation called for simplicity and flexibility in tailoring the proposed power supply for different gun systems.

DECISION

Spectra Technology, Inc. and Westinghouse Electric Corporation protest the award of a cost-plus-fixed-fee contract to Maxwell Laboratories, Inc., under request for proposals (RFP) No. DAAA21-88-R-0086, issued by the United States Army Armament Research, Development and Engineering Center, for the design, fabrication, testing and installation of a rechargeable capacitor power supply system to deliver large amounts of energy to fire experimental electrothermal gun

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systems. Both protesters assert that their proposals were improperly evaluated and that there was no reasonable basis for the Army's determination to award to Maxwell at a \$1.5 million price premium. We find the protests without merit.

The RFP, issued on March 21, 1988, with a May 5 closing date for initial proposals, provided that merit rating was significantly more important than probable cost. The merit rating consisted of a combination of technical and management scores, with technical being more important than management. The technical evaluation was to be based on technical credibility and quality for six factors which were listed in descending order of importance. Under management, five factors were listed, also in descending order of importance. The RFP provided that cost proposals would be evaluated using cost realism to determine the magnitude of the most probable cost to the government. The RFP advised that award would be based on an integrated assessment of the results of the evaluation. The RFP also advised that the source selection decision would take into account the offeror's capability to meet the solicitation requirements on a timely and cost effective basis, and that award might be made to other than the lowest priced offeror.

The Army received three offers which, after technical evaluation, were all determined to be in the competitive range. Technical discussions were conducted on July 18, at which time deficiencies and weaknesses were identified, and confirming letters were sent to each offeror on July 19. The Army prepared audit reports and conducted cost and price analyses, after which cost discussions were conducted by telephone on August 9. Audit findings were identified and confirmed in letters to each offeror sent on August 17. Best and final offers were received from all three offerors by August 24. All three of the offers were determined to be substantially accurate and realistic with respect to proposed cost, except for approximately \$200,000 in labor costs under Westinghouse's proposal which the Army considered excessive. After technical evaluation of the best and final offers, the Army awarded the contract to Maxwell on September 2. Notice of the award was published on September 6 and these protests followed.

The estimated cost under Maxwell's best and final offer was \$11,720,100, Westinghouse's cost was \$10,280,830, and Spectra's cost was \$10,208,910. Maxwell's final proposal received a merit score of 94 compared to Westinghouse's score of 73 and Spectra's score of 70. The contracting officer awarded the contract to Maxwell on the basis that Maxwell's merit (technical and management) superiority

outweighed the \$1.5 million difference in probable cost.^{1/} The contracting officer considered that Maxwell's proposal was consistently and significantly higher scored than the other two proposals and noted specifically that Maxwell's major advantages included greater flexibility in changeover from experiment to experiment, safer operation, and a greater certainty that the high risk effort would be completed within cost and on schedule.

Both Westinghouse and Spectra contend that Maxwell's higher merit rating results from an improper application of the evaluation criteria and, in any event, that the technical superiority represented by Maxwell's higher point score does not justify the higher cost of its proposal.

In reviewing protests of allegedly improper evaluations, our Office will not substitute its judgment for that of the agency's evaluators, who have wide discretion, but rather will examine the record to determine whether the evaluators' judgments were reasonable and in accord with listed criteria and whether there were any violations of procurement statutes and regulations. Dalfi, Inc., B-224248, Jan. 7, 1987, 87-1 CPD ¶ 24.

Further, in a negotiated procurement, there is no requirement that award be made on the basis of lowest cost unless the RFP so specifies. Sal Esparza, Inc., B-231097, Aug. 22, 1988, 88-2 CPD ¶ 168. Agency officials have broad discretion in determining the manner and extent to which they will make use of the technical and cost evaluation results. Cost/technical tradeoffs may be made, and the extent to which one may be sacrificed for the other is governed only by the test of rationality and consistency with the established evaluation factors. Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 CPD ¶ 325. The judgment of the procuring agency concerning the significance of the difference in the technical merit of offers is accorded great weight. Asset, Inc., B-207045, Feb. 14, 1983, 83-1

^{1/}After this protest was filed, a mathematical error was discovered in Spectra's initial evaluation which was carried forward and also resulted in an error in calculating Spectra's final technical score. The contracting officer reconsidered the merits of Spectra's proposal using the corrected final score of 77 and concluded that the higher score did not provide a basis to change her determination to award to Maxwell. The contracting officer determined that even with the narrowed difference in point scores, Maxwell's technical superiority was still sufficiently significant to make award to Maxwell most advantageous to the government.

CPD ¶ 150. We have consistently upheld awards to offerors with higher technical scores and higher costs so long as the result is consistent with the evaluation criteria and the procuring agency has determined that the technical difference is sufficiently significant to outweigh the cost difference. University of Dayton Research Institute, B-227115, Aug. 19, 1987, 87-2 CPD ¶ 178; Battelle Memorial Institute, B-218538, June 26, 1985, 85-1 CPD ¶ 726.

Here, we find that the Army had a reasonable basis justifying the award to Maxwell at the higher probable cost. The RFP provided that merit rating was significantly more important than probable cost.^{2/} The record shows that the Army judged Maxwell's proposal as technically superior with respect to pulse shaping, which was the most important technical evaluation factor identified in the RFP. The Army also found Maxwell's proposal superior with respect to the management factor concerning engineering personnel, the most important management factor under the RFP. In addition, Maxwell's proposal was superior with respect to the technical factor concerning test and evaluation approach (including system safety features), and the management factor concerning previous experience. In sum, the Army determined that Maxwell's higher merit score accurately reflected Maxwell's overall and consistent technical and management superiority. Accordingly, the Army determined that Maxwell's merit superiority as reflected in its score of 94, which was more than 15 percent higher than either of the other proposals, outweighed a possible cost savings of \$1.5 million, or approximately 13 percent, particularly since the Army reasonably considered the difference in technical merit to be of great significance. See Tracor Marine, Inc., B-226995, July 27, 1987, 87-2 CPD ¶ 92.

Both Westinghouse and Spectra contend that their proposals were actually eliminated from consideration because they proposed to use ignitrons (a type of switching mechanism). They point out that the RFP did not proscribe or address the use of ignitrons, and assert that they were not advised during discussions that the use of ignitrons was considered a weakness or a deficiency. In support of their position that the Army's predisposition against ignitron use was actually controlling, the protesters assert that, at its debriefing, Westinghouse was advised by the Army technical

^{2/} We note that while Spectra questions the Army's decision to consider merit more important than cost, this issue is untimely raised since it concerns an alleged solicitation impropriety, but the protest was not filed until after award. See 4 C.F.R. § 21.2(a)(1) (1988).

evaluator that the Army did not like ignitrons, and never has liked them. The Army denies that it has a bias against ignitrons or that it was averse to ignitron use, and points out that because this was an experimental project, it did not know what kind of systems would be proposed. The Army also asserts that if ignitrons were considered unacceptable, both Westinghouse's and Spectra's initial proposals specifying ignitrons would have been evaluated as technically unacceptable.

The record supports the Army's position. Both Westinghouse and Spectra received 3 out of 4 possible points during both initial and final technical proposal evaluation for "capability of supplying power for a gun firing at least once per hour," the technical area relating to ignitrons. Moreover, both were advised in writing during discussions that: "the use of ignitrons require[s] considerable reconditioning, especially when operating at full rated capacity. If there are no cathode heaters as mentioned above, it makes a once per hour firing rate even more manpower intensive to achieve." Maxwell received 4 points in this technical area because it proposed RAG switches which the Army determined would "allow rapid turnaround when operating at full rated capacity." However, this one point differential was not the primary reason for Maxwell's consistently higher technical score; rather, the largest single point differentiating factor was Maxwell's higher score for its engineering personnel. Thus, the record shows that the Army's evaluation personnel and the contracting officer did not rely solely or even in substantial part on the competing offerors' use of ignitrons, in determining the technical superiority of Maxwell's proposal. Both Spectra and Westinghouse only lost one technical point out of a possible 4 points because of ignitron use, and both were specifically notified during discussions that the Army found that their use of ignitrons presented a delineated problem.

Both Spectra and Westinghouse also assert that they were unfairly penalized for utilizing a waveform model which was provided in the solicitation, while Maxwell received additional points for presenting a different waveform model, which the protesters assert was not permitted under the RFP. First, both Spectra and Westinghouse received 14 out of 15 possible points in the technical area relating to waveforms, while Maxwell received 15 points in this area. This one point difference is not significant in view of the fact that Maxwell's proposal was consistently rated at least 17 points higher than either of the other proposals. Further, while the RFP does provide the waveform model utilized by Spectra and Westinghouse, its use is not mandated. Rather, the RFP requires that deviations of more than 10 percent

from the model curve shown be justified, as was done by Maxwell. Both Spectra and Westinghouse were highly rated in the area concerning waveforms and each lost one point only because the information which they used to support their waveforms was theoretical rather than based on actual experimental data, while Maxwell received the maximum possible score because its model was based on actual experimental data. In our view, the Army's evaluation in this regard was reasonable, and was consistent with the RFP requirements.

Westinghouse argues that its proposal was unfairly downgraded for lack of flexibility and simplicity in a manner which misapplies the RFP evaluation criteria. The RFP requires the capability to supply a pulse rate which will support three different gun systems, and the evaluation criteria call out flexibility and simplicity of tailoring the pulse rate to the requirements of three gun systems. Westinghouse's system requires a substantial manpower effort to reconfigure for the different gun systems and, as a result, was downgraded. We find that this is entirely consistent with the above-mentioned RFP requirement for flexibility and simplicity. Further, Westinghouse was specifically advised during discussions of: "pulse shaping lack of flexibility. Considerable amount of work and materials would be required for reconfiguration of rail or coilgun loads." Thus, Westinghouse was appropriately advised during discussions of this weakness in its proposal, which related to a specified requirement under the RFP.

Spectra speculates that it may have been eliminated for lack of comparable experience based on an internal Army technical memorandum which states that Spectra does not have the experience necessary to ensure a reasonable level of technical risk in a large, complex, risky project. Spectra also alleges that it was not advised of any deficiency in experience during discussions. As to the latter, the record discloses that in its July 19 letter to Spectra, the Army states: "Previous experience: For government work only, one contract for the LSX power supply seemed to be the basis for experience." In our view, this sufficiently indicates that the Army questioned the extent of Spectra's experience. Spectra concedes that this one contract involved a system which required only 1/24th the capacity of the system called for under the RFP. Spectra alleges that it is common knowledge that Maxwell's largest project experience is also for a substantially smaller system which required only 1/12th of the capacity called for under the RFP. However, Maxwell, which received 3 out of 6 possible points for experience compared to the one point received by Spectra, was reasonably rated higher. It had

extensive experience in various capacitor pulse power supply contracts for government agencies, including the design, fabrication, and operation of a similarly designed power supply at the Miramer Naval Air Station, which is actually one-half the size required under the RFP. Spectra, on the other hand, had experience in only one relevant project, which was much smaller in size. Accordingly, we find that the Army had a reasonable basis for rating Maxwell higher in this area, and there is no evidence that Spectra was eliminated from consideration because of lack of experience.

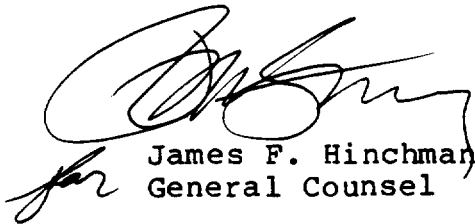
Spectra also contends that the mathematical error which resulted in its initial proposal receiving 10 out of a possible 27 points in pulse shaping, the most important technical category, rather than the 20 points to which it was entitled, may have caused the Army to view its proposal in an unfair negative light throughout the evaluation. As noted above, Spectra received consistently lower scores than Maxwell in several significant technical and management areas, and nothing in the record suggests that the Army's consideration of Spectra was "tainted" by this mathematical error. On the contrary, after discovering the error, the contracting officer reevaluated Spectra's proposal on the basis of the corrected score and again determined that Maxwell's technical superiority outweighed any possible cost savings. Accordingly, we find no basis to conclude that Spectra's proposal received less than the consideration due it because of the mathematical error. See Hydrosience, Inc., B-227984, Nov. 23, 1987, 87-2 CPD ¶ 501.

Finally, Spectra contends that the Army failed to carefully evaluate its proposal as evidenced by the fact that during discussions, Spectra's proposal was criticized for failing to provide information concerning its control panel when, in fact, its initial proposal contained a section concerning the control panel. We note that all three initial proposals were similarly criticized, and all initially received 0 points in this area out of a possible 2 points. However, after best and final offers, Spectra's control panel was deemed acceptable and its score was increased to the full 2 points; therefore, any oversight which might have been reflected in the initial score was cured in the final evaluation, and Spectra was not prejudiced as a result. Similarly, Spectra points out that the measurements of its pulse forming network modules are misstated in an Army technical evaluation memorandum which indicates that the 4 inches of clearance provided between modules is inadequate. However, the module sizes are termed approximate, and Spectra does not question the relevant aspect of the criticism which is that the 4 inches of clearance would make

it difficult if not impossible to gain access to the interior of the modules without striking and possibly damaging adjacent modules. The inaccurate reference to module dimensions does not establish that Spectra's proposal was not fairly evaluated since the relevant shortcoming, the lack of adequate clearance between modules, is undisputed by Spectra.

The protests are denied.

Since we deny the protests, both protesters' requests for the costs of pursuing their protests, including attorneys' fees, and proposal preparation costs are also denied. Fairchild Weston Systems, Inc., B-229843.2 et al., June 3, 1988, 88-1 CPD ¶ 525.



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