



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Space Applications Corporation

File: B-233143.3

Date: September 21, 1989

DIGEST

1. Protest against agency's allegedly calling for multiple best and final offers under a revised solicitation and disclosure of protester's costs under original solicitation resulting in an auction is untimely where protester did not file a protest until 5 months after it knew about the revised solicitation and the cost disclosure.

2. Fact that protester received higher score in the evaluation of its proposal under original request for proposals (RFP) and a lower score when its second proposal, submitted in response to a revised RFP was evaluated by different evaluators, does not mean that the second evaluation was incorrect or not in accordance with evaluation criteria since the revised RFP was issued to correct evaluation flaws in the initial RFP.

3. Procuring officials enjoy a reasonable degree of discretion in evaluating proposals and the General Accounting Office will not disturb an evaluation where the record supports the conclusions reached and the evaluation is consistent with the criteria set forth in the solicitation.

4. Protest alleging that contracting agency evaluated offerors on requirements that were not stated as evaluation criteria in the request for proposals is denied where the record shows that the requirements were set forth elsewhere in the solicitation.

5. A contracting agency may properly evaluate a proposal's weaknesses in more than one evaluation area as long as the deficiency reasonably relates to more than one evaluation criteria.

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DECISION

Space Applications Corporation protests the award of a contract to Veda Incorporated under request for proposals (RFP) No. DABT60-88-R-0110, issued by the Army for a cost-plus-fixed-fee contract for technical, analytical and documentation services in support of the agency's Tactical Exploitation of National Capabilities (TENCAP) testing. The protester contends that the Army improperly requested multiple best and final offers (BAFOs), that it conducted an impermissible auction and incorrectly evaluated the protester's proposal.

We deny the protest in part and dismiss it in part.

An RFP for this requirement was first issued on June 1, 1988. In response, the Army received five proposals, all of which were determined to be in the competitive range. After discussions and evaluation of BAFOs, the evaluators recommended that award be made to Veda. The contracting officer reviewed the evaluators' findings and notwithstanding their decision, concluded that Space Applications was entitled to award. Award was made to Space Applications on September 30. Veda then protested the award to our Office. After considering Veda's protest, the Army decided to issue a revised RFP because the evaluators had used factors to review the proposals that were not consistent with those listed in the RFP and because the agency concluded that there were deficiencies in several sections of the RFP. As a result, Veda withdrew its protest and the agency issued a revised RFP on November 22, which called for proposals by December 30. After discussions, both the protester and Veda submitted BAFOs by the March 3, 1989 closing. This time Veda's proposal was determined by the source selection authority to be most advantageous to the government. The Army then terminated Space Applications' contract and made award to Veda on May 12.

The protester objects to the award to Veda on several grounds. The first of these concern the methods used by the agency to conduct the second competition. In this regard, Space Applications complains about the alleged solicitation of multiple best and final offers (BAFOs) caused by the recompetition and about the disclosure of its first year cost estimate under the initial solicitation of the requirement. The second portion of the protest rests on the protester's view that it is simply unreasonable that its proposal could be considered deficient under the second solicitation of this requirement when both the solicitation as amended and its second proposal were substantially the

same as those involved in the initial competition. In this regard, the protester objects to several specific aspects of the evaluation.

Regarding the method used by the Army for the recompetition, the protester contends that the agency improperly requested multiple BAFOs without obtaining the required authorization. The protester views the solicitation of two rounds of proposals under the second competition as additional rounds of BAFOs. This argument is based on the fact that the RFP number has been the same throughout the procurement and the protester's view that the RFP was not substantially changed by the November 22 revision. The protester additionally asserts that the Army placed it at a competitive disadvantage by disclosing to the other offerors its estimated first year cost. The protester asserts that this created an impermissible auction.

The agency responds that the revised RFP was in fact a new solicitation and argues that the submissions from the offerors received in response to that new RFP were initial proposals while the BAFOs submitted on March 3 were the first and only BAFOs requested under that solicitation. Concerning the alleged auction the agency states that it released only the protester's first year cost pursuant to its notification of the award to the unsuccessful offerors required by Federal Acquisition Regulation (FAR) § 15.1001(c). The agency points out that it did not reveal the protester's estimated hours, unit prices, or fixed fee. According to the agency, since evaluation of cost was based on the proposed total estimated cost and fixed fee for the entire requirement including the 4 option years, and since cost was the least important evaluation factor, an auction did not occur.

We consider Space Applications' protest on these matters to be untimely. The protester's first argument is that the request for additional proposal submissions was itself improper. Our Bid Protest Regulations provide that in negotiated procurements, alleged improprieties which do not exist in the initial solicitation but which are subsequently incorporated into the solicitation must be protested before the next closing date for receipt of proposals. 4 C.F.R. § 21.2(a)(1) (1989). Here, although the first of the additional submissions complained of was due on December 30, 1988, and the second on March 3, 1989, Space Applications did not file a protest challenging this until September 13. Accordingly, this ground of protest is untimely and will not be considered. Sublette Elec. Inc., B-232586, Nov. 30, 1988, 88-2 CPD ¶ 540.

Space Applications' protest concerning the alleged auction created by the disclosure of its cost and the requests for additional submissions is also untimely. The protester was informed on November 29, 1988, that the agency had issued the standard award notice and had disclosed its first year cost to the other offerors. It also knew at the latest on December 8, when it received a copy of the revised RFP, that the agency was requesting additional proposal submissions. Our Bid Protest Regulations require that protests based on other than apparent solicitation improprieties be filed not later than 10 working days after the basis of protest is known or should have been known, whichever is earlier. 4 C.F.R. § 21.2(a)(1) and (2). Space Applications did not protest, however, until May 19, 1989, more than 5 months after it knew its cost had been disclosed and after the revised RFP had been issued. Thus, these matters will not be considered. Jay-Em Corp., B-226386, Mar. 16, 1987, 87-1 CPD ¶ 291.1/

Space Applications next ground of protest is that award to Veda is inconsistent with the solicitation's evaluation scheme. The protester essentially argues that since its proposal was more highly rated than Veda's under the first RFP and since the award criteria were not substantially changed when the amended RFP was issued, the agency's subsequent lower rating of its proposal was flawed. In particular, the protester challenges the agency's determination that the education and experience of its proposed

1/ Space Applications also contends that the agency did not obtain approval for multiple BAFOs as required by the Department of Defense Supplement to the Federal Acquisition Regulation (DFARS), § 215.611. Although the protester did not in fact know until it received the agency's report that the approval was not obtained, a protester has an affirmative obligation to diligently pursue the information that forms the basis of its protest. Horizon Trading Co., Inc., et al., B-231177 et al., July 26, 1988, 88-2 CPD ¶ 86. The protester knew on December 8 that the agency was requesting additional proposal submissions which it believed to be a second request for BAFOs. It did not, however, raise the issue of compliance with DFARS § 215.611 until after it filed its comments with our Office on July 19, 1989. The protester's actions in waiting more than 5 months before pursuing this matter is not, in our view, consistent with its obligation of diligence. Consequently, we find this matter untimely and will not consider it. Valentec Kisco, Inc., B-234421, Mar. 9, 1989, 89-1 CPD ¶ 261.

personnel was marginal when the agency under the first competition concluded that the qualified personnel available within the company was a strength.

The Army responds that Space Applications' evaluation under the first competition was irrelevant. According to the agency, the primary reason for the issuance of the new solicitation was inconsistencies between the evaluation criteria in the source selection plan used by the evaluators under the first RFP and the stated evaluation factors in that RFP. Consequently, the agency argues, a change in proposal scores could easily occur, even through the evaluation criteria set forth in both RFPs remained the same, since the source selection plan used by the evaluators was substantially different and since the evaluation panel was composed of different individuals. Finally, the agency notes that it found that the initial selection was flawed.

The revised RFP listed six technical evaluation areas, all of which were to be point scored. The first four areas were of equal importance and the most important. The next two were of lesser importance but equal to each other. Cost was not point scored and was subordinate to technical factors. The evaluation areas were:

Overall Quality	20
Background and Experience	20
Personnel Technical Skill Qualifications	20
Plan for Providing and Sensitive Compartmented Information Facility	20
Organizational and Management Support Structure	10
Capability to Meet Personnel Requirements	10

The record shows that Veda received an overall final technical score of 96 with proposed costs, including option years, of \$3,689,207 while the protester received a score of 84 with total proposed costs of \$3,515,130.

In reviewing protests like the one here against allegedly improper evaluations, our Office will not substitute its judgment for that of the contracting agency, but will examine the record to determine whether the agency's judgment was reasonable and in accord the evaluation criteria listed in the solicitation. ESCO, Inc., 66 Comp. Gen. 404 (1987), 87-1 CPD ¶ 450. The fact that the scoring of the protester's proposal by different evaluators resulted in different conclusions as to the quality of its proposal does not automatically indicate an improper application of the evaluation criteria, given the subjective nature of the proposal evaluation process. See tg Bauer Assocs., Inc., B-229831.6, Dec. 2, 1988, 88-2 CPD ¶ 549. We think that is

particularly true here where the very reason for the second competition was an improper evaluation of proposals under the original RFP.

The protester primarily challenges its rating in the area of Personnel Technical Skill Qualifications where it received 10 out of 20 possible points. This accounted for more than half of the point difference between its proposal and the awardee's. The protester asserts that the Army used undisclosed evaluation subcriteria in this area. In this regard, the protester points out that in order to receive a high rating (more than 10 points) in this area, the evaluators required that 70 to 80 percent of the offeror's proposed personnel have operations research and system analysis capability. The protester asserts that these percentages were not included in the evaluation criteria listed in the solicitation. Space Applications also disputes the agency's conclusion that the personnel resumes it submitted did not reflect the operations research and system analysis capability required. The protester states that the one person specifically identified by the agency as deficient in this area was clearly eliminated from its BAFO.

We think the evaluators' conclusion was reasonable and consistent with the RFP's evaluation criteria. First, although the evaluation criteria did not specifically state that a certain percentage of the offeror's personnel had to possess the required skills, in the instructions to offerors, section L15 of the solicitation, offerors were informed that 70 to 80 percent of the total contract performance would require persons experienced in operations research and system analysis and that 20 to 30 percent would require persons having semi-technical skills and experience. We believe Space Applications should have understood, based on section L15, that these percentages represented what the Army believed to be the optimal personnel ratios and that a high score in this area would require that those percentages be met. Consequently, we find the agency's use of these percentages in evaluating each offeror's personnel experience proper and consistent with the RFP's evaluation scheme. See ORI, Inc., 67 Comp. Gen. 600 (1988), 88-2 CPD ¶ 192.

The agency determined that based on the resumes submitted by Space Applications, at most only 65 percent of its personnel had operations research and system analysis experience and that the qualifications of those with that experience was not well-documented in the resumes.

We see no reason to disturb the agency's conclusion. First, although the protester did delete from its proposal a key

person the Army specifically noted as deficient, in its BAFO the firm indicated that the same person had provided operations research and system analysis training to other key personnel. Further, our review of the resumes showed that very few of the proposed personnel had formal research and system analysis training. Additionally, although some of the proposed personnel had performed similar work in the past, their qualifications for doing so were not listed in the resumes. In any event, the protester does not dispute the fact that the proposal did not meet the optimum percentages of personnel qualifications stated in the RFP. Despite the criticisms of the protester's proposed research and systems analysis personnel, the evaluators gave the full credit for those proposed. Its relatively low score was due to the low percentage, 65 percent, of such individuals offered.

In the remaining categories, Space Applications received 19 out of 20 possible points in the areas of overall quality and background and experience, 20 out of 20 for its plan for providing a sensitive compartmented information facility and 8 out of 10 in the areas of organizational and management support structure and capability to meet personnel requirements.

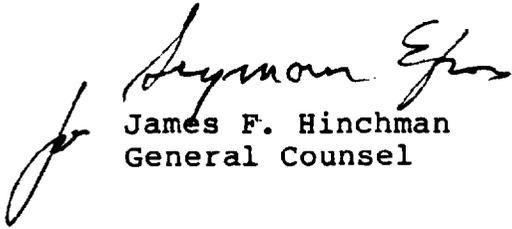
The protester challenges in each area the one and two point difference between its score and the maximum possible score. In addition to disputing each of the negative comments concerning its proposal, the protester's arguments essentially center around personnel concerns and its belief that the agency repeatedly deducted points for what were essentially the same personnel deficiencies the agency noted under the personnel qualifications factor. The protester argues that the other evaluation factors do not include personnel considerations and that repeated deductions for the same deficiency are improper.

An agency may properly penalize an offeror more than once for a single deficiency so long as the deficiency reasonably relates to more than one evaluation criterion. Recon Optical, Inc., B-232125, Dec. 1, 1988, 88-2 CPD ¶ 544. For instance, in a solicitation for services such as this one, a proposal which has been found to be deficient in the area of personnel qualifications might also be downgraded under the evaluation areas of overall quality and background and experience. See Iroquois Research Inst., 55 Comp. Gen. 787 (1976), 76-1 CPD ¶ 123.

In any event, we note that even if we found the deductions incorrect, and Space Applications received the maximum possible points in these remaining categories, its score

would still be six points lower than the awardee's. In view of the relatively small difference in cost between the two offerors and considering that the source selection authority concluded that the personnel factor was "the greatest discriminator among the proposals," we see no basis in the record for our Office to question the agency's decision to award to Veda.

The protest is denied.

A handwritten signature in cursive script, appearing to read "James F. Hinchman".

James F. Hinchman
General Counsel