



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Vicor Associates, Inc.

File: B-241496

Date: February 6, 1991

Richard C. Spitzer, Esq., for the protester.
M. Moncada, Federal Highway Administration, Department of Transportation, for the agency.
Peter G. Perry for Array Services Corporation, an interested party.
James Vickers, Esq., and John G. Brosnan, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest against agency directive made before submission of best and final offers (BAFO) that all offerors' cost subtasks at a set amount for evaluation purposes filed after award is untimely because matter should have been protested before receipt of BAFOs.
2. Allegation that agency conducted "Best Buy Analysis" not referred to in solicitation, which was actually cost/technical tradeoff, is denied since review shows that analysis conformed to solicitation evaluation factors.

DECISION

Vicor Associates, Inc. protests the award of a contract to the University of New Hampshire by the Federal Highway Administration, Department of Transportation (FHWA), under request for proposals (RFP) No. DTFH61-90-R-00081. Vicor contends that FHWA improperly changed the evaluation criteria in the RFP and used criteria not stated in the RFP in evaluating the proposals.

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

The RFP was for a cost-type contract for a study entitled "National Geotechnical Experimentation Sites: Central Data Repository." Five proposals were received in response to the RFP. Four, including the protester's, were found to be acceptable and placed in the competitive range. Following negotiations and evaluation of best and final offers (BAFO),

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award was made to the University on September 28, 1990, based on its technical score of 90 points--the highest received--and a cost of \$89,591. Vicor's proposal received 67 points; the lowest score received. It proposed a cost of \$72,412.

The record shows that during the evaluation process FHWA required offerors to use a cost estimate of \$30,000 in their BAFOs for performing subtasks B1 and B2. These two subtasks required the contractor to perform geotechnical analysis of existing data to be provided by the government from approximately 80 test sites. Since the agency was uncertain as to the magnitude of the tasks--for example, it did not know the quantity of data at each site or the exact number of sites to be used, etc., the contracting officer decided that all offerors should use a \$30,000 estimate for these tasks. Therefore, following the conclusion of discussions, on September 10, the contracting officer informed all offerors in the competitive range to alter their cost proposals to reflect the \$30,000 cost for the two subtasks. All four offerors, including Vicor, complied with this instruction in their BAFOs.

Vicor contends that the use of a standard cost estimate for subtasks B1 and B2 distorted the evaluation by removing any distinction between offerors with lower hourly wage rates and those offerors with higher wage rates.

Vicor's challenge to the use of the \$30,000 cost estimate is untimely and will not be considered. Under our Bid Protest Regulations, alleged improprieties which do not exist in the initial solicitation but which are subsequently incorporated into the solicitation must be protested not later than the next closing date for receipt of proposals following the incorporation. 4 C.F.R. § 21.2(a)(1) (1990). Here, the agency established the use of the standard \$30,000 cost estimate during discussions prior to the solicitation of BAFOs. Vicor was aware the government was asking all offerors to include the cost estimate on September 10. Vicor's BAFO, dated September 13, makes clear that it understood the September 10 request.

Accordingly, Vicor should have protested the agency's use of the common \$30,000 cost factor prior to the submission of BAFOs, not after the proposals were evaluated and the award made. Hollingsead Int'l, B-227853, Oct. 19, 1987, 87-2 CPD ¶ 372.

Vicor also objects to the agency's conduct of a "Best Buy Analysis" in selecting the awardee because the solicitation did not specifically state that such an analysis would be conducted and there are no written, formal guidelines or procedures in existence for its use.

The term "Best Buy Analysis" was used as a title for a document containing the agency's cost/technical tradeoff conducted in selecting the awardee whose proposal did not contain the lowest estimated cost.

Concerning the award selection, the solicitation stated:

"The Government will accept that offer that is considered the most advantageous to the Government. Of the three factors, (A) technical, (B) cost, and (C) past performance, technical and cost are considered the most important and are considered of equal importance. Past performance is of less importance than technical or cost."

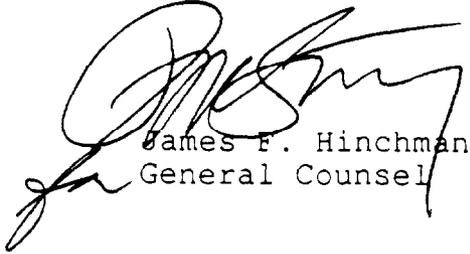
Here, the agency compared the University's proposal, which had the highest technical rating and the highest cost, with the lowest cost proposal, which received a substantively lower technical rating. Based upon this cost/technical tradeoff analysis, the agency found that the University's superior technical proposal would result in a higher chance of success and concluded that this technical superiority justified the additional cost. Eagle Design and Mgmt., Inc., B-239833 et al., Sept. 28, 1990, 90-2 CPD ¶ 259.

We see nothing improper in the type of analysis conducted by the agency. Under a solicitation like the one here that calls for award on the basis of the proposal most advantageous to the government, there is no requirement that award be made on the basis of low cost. See The Scientex Corp., B-238689, June 29, 1990, 90-1 CPD ¶ 597. Agency source selection officials have discretion in determining the manner and extent they will make use of the technical and cost evaluation results. Environmental Health Research & Testing, Inc., B-237208, Feb. 9, 1990, 90-1 CPD ¶ 169. Technical and cost tradeoffs are permitted but the extent to which one may be sacrificed for the other is governed by the test of rationality and consistency with the established evaluation factors. See Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 CPD ¶ 325.

We think that the "Best Buy Analysis" conducted by the agency in this case was a cost/technical tradeoff that was consistent both with the general rules which govern such tradeoffs under negotiated procurements and with the specific evaluation scheme set forth in this solicitation. We are aware of no

legal requirement that the agency have additional written guidelines or procedures concerning the conduct of cost/technical tradeoffs.

The protest is dismissed in part and denied in part.



James F. Hinchman
General Counsel