



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Irwin & Leighton, Inc.

File: B-241734

Date: February 25, 1991

James F. Brecker, Jr., for the protester.
Bruce J. Moldow, Esq., for The George Hyman Construction Company, an interested party.
Paul M. Fisher, Esq., Vicki O'Keefe, Esq., and Penny Rabincoff, Esq., Department of the Navy, for the agency.
Ralph O. White, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Contention that evaluation was improper because proposals were reviewed for compliance with requirements in the specification section of the solicitation, rather than in accordance with the guidance provided to offerors within the evaluation section, is denied, since evaluation factors, and explanations of those factors, are merely guidelines for determining the extent to which a proposal meets the requirements of the specification and other requirements included within the solicitation.
2. Protest that agency improperly evaluated proposal is denied where record indicates that the agency evaluation was reasonable and consistent with the solicitation's evaluation criteria.
3. Protester's argument that it should receive award because it submitted the lowest-priced acceptable offer is denied where solicitation provided for award to the offeror whose proposal was most advantageous to the government, price and other factors considered, and the agency reasonably concluded that the awardee's substantially superior proposal warranted its slightly higher cost.

DECISION

Irwin & Leighton, Inc. protests the award of a contract to The George Hyman Construction Company under request for proposals (RFP) No. N62477-90-R-0131, issued by the Department of the Navy for a follow-on construction project to continue construction of the Naval Intelligence Center in Suitland,

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Maryland. Irwin & Leighton challenges award to Hyman on the basis that Irwin & Leighton submitted the lowest priced offer and should have been selected for award. Irwin & Leighton also questions the Navy's evaluation conclusions regarding its proposal.

We deny the protest.

BACKGROUND

The RFP, issued on June 5, 1990, contemplated the award of a fixed-price contract for the third of three construction stages involved in building a new Naval Intelligence Center. This third stage of the project required construction of curtain walls--i.e., non-bearing exterior walls between bearing columns or piers--and other associated construction work to protect and enclose work performed under a previous contract. The scope of work includes installation of approximately 150,000 square feet of wall panels, and 6,000 square feet of glass block.

The solicitation advised that award would be made to the responsible offeror whose proposal was found to be the most advantageous to the government, price and technical factors considered. The solicitation also advised that price and technical evaluation would be given equal weight, and that the technical evaluation would consider four major technical factors: (1) construction plan and capability; (2) corporate resources and experience; (3) quality control program; and (4) government contracting experience. Offerors were advised that of these technical factors, the first and second factors were equal in weight, and both were more important than the third and fourth factors, which were also equal in weight. In addition, the construction plan and capability technical factor included five subfactors. These were: (1) construction schedule; (2) technical proposals; (3) site layout; (4) warranty transfer and turnover plan; and (5) constructibility comments. The RFP stated that the first two subfactors were of equal importance, with the remaining three listed in descending order of importance.

Four offerors submitted proposals in response to the RFP by the August 2 closing date. After reviewing the initial proposals, the Navy established a competitive range consisting of three of the offerors, including Irwin & Leighton and

Hyman.^{1/} After conducting two rounds of written discussions, the Navy received best and final offers (BAFO) on September 12.

After evaluation, Irwin and Leighton's technical proposal was found unacceptable in one of the two most important subfactors of one of the two most heavily-weighted technical factors, and poor or marginal in two of the other three major factors; however, the proposal remained the lowest-priced offer. Specifically, Irwin & Leighton's proposal was considered unacceptable in the construction schedule subfactor under the construction plan and capability technical factor, poor in the quality control plan technical factor, and poor in the government contracting experience technical factor.

On the other hand, the Navy noted that although Hyman's proposal was the most expensive of the three proposals in the competitive range, the difference between the lowest and highest priced offer was only 5.7 percent, or \$331,787. Due to Hyman's superior technical evaluation and the relatively small difference between its price and the price of the other two offerors, the Source Selection Advisory Board concluded that the Hyman proposal was most advantageous to the government.^{2/} Therefore, on October 4, the Navy awarded the contract to Hyman, and this protest followed.

DISCUSSION

Irwin & Leighton challenges each of the Navy's conclusions regarding the results of the technical evaluation of its proposal. Under the construction schedule subfactor of the

^{1/} Because Irwin & Leighton's initial offer was rated far below the other two proposals subsequently included in the competitive range, the record reflects that the agency considered excluding Irwin & Leighton from further negotiations. However, after determining that the proposal had a reasonable chance of being made acceptable with discussions, and after considering its low price, the Navy appropriately included Irwin & Leighton in the competitive range. See Federal Serv., Inc., B-231372, Sept. 8, 1988, 88-2 CPD ¶ 215.

^{2/} Hyman's proposal was not only evaluated substantially higher than Irwin & Leighton's proposal, it was also rated higher than the other offeror's proposal in three of the four technical factors, and tied with the other offeror on the fourth technical factor.

construction plan and capability technical factor, Irwin & Leighton contests the Navy's claim that the proposal lacked detail, and the Navy's assertion that the format of the time-scaled explanation of the construction schedule was improper. Under the quality control plan technical factor, Irwin & Leighton asserts that its proposal met the requirements for a quality control plan included in the evaluation factors that were part of the RFP; however, Irwin & Leighton argues that the Navy unreasonably downgraded its proposal for failure to address information found in the specification section of the solicitation, not in the evaluation factor section.^{3/} Under the government contract experience technical factor, Irwin & Leighton also argues that its score was unreasonable, although it offers little other than its bare assertion in this regard.

In considering protests against an agency's evaluation of proposals, we will examine the record to determine whether the evaluation was reasonable and consistent with the evaluation criteria. Mine Safety Appliances Co., B-238597.2, July 5, 1990, 69 Comp. Gen. ____, 90-2 CPD ¶ 11. Here, we have considered Irwin & Leighton's proposal, the evaluation materials, and the specific arguments of both the Navy and the protester. As a result of our review, we find no basis for concluding that the evaluation was unreasonable.

As an initial matter, we note that most of the protester's challenges to its evaluation reflect a lack of understanding of the interaction between an RFP's stated evaluation factors, and the contract specifications incorporated into the RFP. For example, Irwin & Leighton argues that the Navy's evaluation of its quality control plan is unreasonable because the Navy's criticisms--that the quality control plan lacked detail, that it failed to include certain required forms, that it did not link specific individuals with specific quality control positions, and that it did not provide a specific organizational chart--are based on requirements in the specification, but not in the evaluation factor. According to Irwin & Leighton, since the guidance for this evaluation factor permits submission of a draft plan, and since the specification does not require that a final quality control plan be submitted until 30 days after award, it is unreasonable to downgrade its proposal for failure to meet all the requirements of the solicitation.

^{3/} According to Irwin & Leighton, the evaluation factor guidelines only require offerors to submit a draft quality control plan, and additional information discussed in the specification can be provided after contract award.

The guidance given offerors under the quality control plan evaluation factor, as set forth in amendment 0005 to the solicitation, explains as follows:

"Provide a first draft of the CQC plan identified in the specification. Provide a list of recent project experience utilizing the Government CQC system or a similar contractor quality control program. Provide at least three references with customer contact, address, and telephone numbers. Provide resumes of proposed quality control representatives. Special emphasis should be placed on maintaining quality as-built drawings that will be submitted on a regularly scheduled basis for incorporation of as-built conditions into the package B contract documents. Identify your plan for familiarizing prospective offerors for package B of the as-built conditions of the project."

Irwin & Leighton argues that these requirements, not additional requirements found in the specifications, must control the evaluation.

In our view, the draft nature of the quality control plan did not relieve offerors of the obligation to fashion a plan that addressed as many of the requirements of the specification as possible. In fact, the evaluation guidance quoted above, on its face, directs offerors to submit a draft of the plan identified in the specification. The more detailed the draft plan submitted, and the more closely the draft plan reflects the requirements of the solicitation, the higher the score. We will not find the agency's evaluation of the plan unreasonable simply because it gave a low score to a plan that did not meet many of the specified requirements for such a plan. Any assertion that the Navy erred in comparing draft quality control plans to the requirements in the specification simply is without merit.

Further, Irwin & Leighton's contention that a specification is somehow secondary to the information provided in a solicitation's guidance on the evaluation factors is also incorrect. A solicitation is to be read as a whole, giving meaning to every section, including the specification. See generally Snyder Corp., B-233939, Mar. 19, 1989, 89-1 CPD ¶ 282.

Likewise, a specification, or statement of work, is a critical element of any solicitation, see Federal Acquisition Regulation (FAR) § 10.002(a), without which an offeror would not know whether the agency sought an electric toaster or a space shuttle. Evaluation factors, on the other hand, are the guidelines, or the scoring rules, by which offers submitted in response to solicitations are evaluated. These guidelines do not establish a set of different requirements than the

specification, rather they are included to guide offerors on how to prepare an objectively reviewable response to the solicitation's requirements--including the requirements in the specification.

Turning to the specifics of Irwin & Leighton's challenge, we look first at the reasonableness of the evaluation with regard to the construction schedule subfactor of the construction plan and capability technical factor. As described above, the protester here claims that the Navy improperly required more detail about the construction schedule than specified in the evaluation factors. For the reasons stated above, we do not consider the Navy's evaluation unreasonable simply because the evaluators downgraded proposals that lacked a detailed response to the requirements in the specification--even if those requirements were not repeated in the guidance related to the evaluation factors.

The protester also argues that the Navy unreasonably downgraded its proposal under the construction schedule subfactor because the proposal included a bar chart time schedule rather than the network logic diagram format required by the specification. The Navy responds that although the RFP required a network logic diagram format, it was not the format per se of Irwin & Leighton's analysis that resulted in a low score in this area, but the lack of information provided in the analysis on the interrelationship of construction activities. According to the Navy, this lack of information stemmed from Irwin & Leighton's choice of the bar chart format, which is inherently limited in its "ability to show the interrelationships and interdependencies of the activities which comprise the project, and in determining the critical path." In addition, the Navy found that Irwin & Leighton's analysis generally lacked the detail and clarity it was looking for in a preliminary schedule, in order to get a clear picture of how the protester intended to construct the project. In response, Irwin & Leighton simply repeats its claim that its analysis was sufficiently detailed, and that the Navy's evaluation was unreasonable.

Our review of the evaluation materials, and the discussion questions, reveals consistent agency concern throughout the negotiations with the level of detail provided in Irwin & Leighton's construction schedule. The protester submitted three schedules during the course of these negotiations: the first two were found too confusing to evaluate, and the third, while understandable, was found to reflect a poor understanding of the contract requirements. Although Irwin & Leighton's third submission was still in a format other than the schedule required by the solicitation, the Navy, nonetheless, attempted to evaluate the schedule and found it would require complete resubmission to become acceptable because the

information provided was inadequate. We do not find the Navy's actions or conclusions here to be unreasonable, especially since Irwin & Leighton had three opportunities to submit a construction schedule detailing all the information required in the solicitation; the inadequacies in its schedule were tied to its unreasonable insistence, discussed above, that it need not offer a schedule complying with the specification until after award; and, in response to the agency's findings, the protester merely disagrees with the agency's position without elaborating on its claim that its analysis in fact was sufficiently detailed.

Turning to the Irwin & Leighton's evaluation under the quality control technical factor, we likewise find the agency's conclusions reasonable. In every instance, Irwin & Leighton's challenges to its evaluation here hinge on an argument that the agency is improperly imposing specification requirements on the draft quality control plan. As explained above, Irwin & Leighton's misunderstanding of the relationship between a specification and an evaluation factor does not render the agency's evaluation unreasonable.

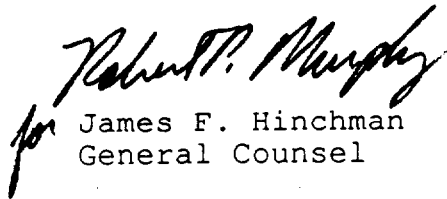
Finally, with respect to its poor showing under the government contract experience technical factor, Irwin & Leighton criticizes the Navy's conclusions but offers no evidence that the conclusions are unreasonable. The Navy states that Irwin & Leighton received a low score in this area because it could only identify two government contracts of comparable value to the instant procurement, and because the most recent of those contracts was completed nearly 14 years ago. The Navy also explained that Irwin & Leighton did not provide names of customer contacts so that the agency might verify government satisfaction with Irwin & Leighton's previous efforts. In addition, the Navy explained that while Irwin & Leighton could list several relatively small projects dating to the 1950's, it had not performed any government contract within the last 3 years.

Irwin & Leighton admits that it has limited recent experience with government contracts but contests the Navy's description of its previous contracts as "relatively small." Irwin & Leighton also complains that it provided all available information regarding contract experience including the names of two previous customers; however, it admitted that phone numbers and addresses were not available for these contacts. In our view, Irwin & Leighton's arguments here, on their face, fail to establish that the Navy's evaluation of its proposal in this regard was unreasonable.

Irwin & Leighton also challenges the Navy's decision to award this contract to any offeror other than the offeror submitting the lowest price. In a negotiated procurement, an agency is

not required to make award to the firm offering the lowest price unless the RFP specifies that price will be the determinative factor. Antenna Products Corp., B-228289, Jan. 19, 1988, 88-1 CPD ¶ 43. Here, the RFP clearly stated that award would be made to the offeror whose proposal is most advantageous to the government, price and other factors considered, and the Navy determined that Hyman's proposal--with its substantially higher technical rating and slightly higher price--offered the best value to the government. Since Irwin & Leighton has made no challenge to the agency's evaluation of the Hyman proposal, and there is no evidence in the record to cause us to question the agency's evaluation of Hyman (or of the other offeror rated above Irwin & Leighton), and since we find the agency's evaluation of Irwin & Leighton's proposal reasonable, we conclude that the agency acted reasonably in selecting the Hyman proposal. Id.

The protest is denied.


for James F. Hinchman
General Counsel