



Comptroller General
of the United States

Washington, D.C. 20548

144517 Perry

Decision

Matter of: Eagle Systems

File: B-243395

Date: July 26, 1991

Linda A. Halliday for the protester,
Anthony Martoccia, Department of Transportation, Federal
Highway Administration, for the agency.
Anne B. Perry, Esq., and Paul I. Lieberman, Esq., Office of
the General Counsel, GAO, participated in the preparation of
the decision.

DIGEST

1. Contracting agency reasonably downgraded protester's proposal for including personnel who did not possess sufficient experience with the Federal Acquisition Regulation and contract reviews that was required in the solicitation.
2. Award to higher-priced offeror which had a higher-rated technical proposal is proper where contracting agency's selection was consistent with solicitation evaluation scheme and reflected a reasonable price/technical tradeoff.

DECISION

Eagle Systems protests the award of a contract to Tichenor & Eiche under request for proposals (RFP) No. DTFH61-91-R-00024 issued by the Department of Transportation, Federal Highway Administration (FHWA) for financial advisory assistance. Eagle alleges that the agency used undisclosed criteria in evaluating proposals and failed to consider price.

We deny the protest.

The solicitation, a total small business set-aside, called for desk reviews of contract proposals, interim contract cost reviews, and final contract cost reviews. The purpose of these reviews is to provide factual information relative to the degree to which offerors' cost proposals and final contract costs adhere to the tests of applicability, allocability, allowability, and reasonableness as prescribed by the Federal Acquisition Regulation (FAR) and applicable laws.

Proposals were to be evaluated on the following technical criteria, listed in descending order of importance:

- "1. Offeror's Demonstrated Ability to Satisfactorily Complete Financial Surveys as Required in the Contract Schedule.
- "2. Offeror's Demonstration of Technical Competence and Understanding of the Contract Objective as Evidenced in the Proposal.
- "3. Offeror's Ability to Write a Comprehensive Analysis of Findings of Fact and Opinion."

The RFP stated that cost would be considered and analyzed to assess realism and probable cost to the government and that past performance would be reviewed "to assure that offerors have relevant and successful experience." Finally, the solicitation provided that "Of the three factors: (1) technical, (2) cost, and (3) 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."

Fourteen proposals were received in response to the solicitation, five of which, including the protester's, were considered technically acceptable and included in the competitive range. Negotiations were conducted with each of these offerors and best and final offers (BAFOs) were requested and received. Eagle's proposal received the lowest technical score of the offerors in the competitive range, 64.8 points out of a possible 100 points, but offered the lowest price of \$460,558. Tichenor & Eiche received the highest technical score of 84 points, and offered the second lowest price of \$580,459. As a result of its "best buy analysis," the agency awarded the contract to Tichenor & Eiche and so notified the other offerors.

Eagle asserts that its proposal was downgraded primarily due to its staffing, which the RFP did not disclose as an important criterion. The protester also alleges that FHWA's conclusion that Eagle's staff lacked sufficient experience in contract reviews is incorrect, as Eagle's staff has significant experience in grant management. Further, Eagle argues that the agency failed to consider proposed costs in its award determination, despite the fact that the solicitation clearly stated cost was an important criterion. Finally, while Eagle disagrees with the agency's conclusion that Tichenor & Eiche offered superior personnel, Eagle argues that

even if this were the case, the technical superiority of Tichenor & Eiche's proposal does not outweigh the cost savings associated with Eagle's proposal, especially since the cost and technical factors were equally weighted.

We will review Eagle's challenge to the technical evaluation of its proposal to determine whether the agency's evaluation was fair and reasonable and consistent with the evaluation criteria. Delaney, Siegel, Zorn & Assoc., B-224587.2, Feb. 10, 1987, 87-1 CPD ¶ 144. Eagle's proposal received a relatively low technical score largely because the agency concluded that Eagle's proposed staff lacked sufficient direct experience with the FAR and contract reviews. In the agency's view, the first evaluation factor noted above encompassed the importance of personnel who possessed a good understanding of the FAR, and this requirement was discussed at length with the protester during discussions. The contracting officer noted that, at best, two of the seven persons proposed have approximately 1 year each of working experience with the FAR, and that experience is 5 years old. Another proposed individual has approximately 3 years of experience with the FAR, but that experience is about 3 years old. Further, the FAR-related work experience of two of the proposed individuals was managerial, as opposed to working with the FAR directly.

Despite the agency's emphasis in discussions with Eagle concerning the experience of its staff, Eagle did not enhance its proposal by offering more experienced personnel in its BAFO. Rather, Eagle's BAFO indicated that it planned to transition in less experienced, "secondary" personnel later in the review process. As a result, the agency reduced Eagle's technical score from 66 points to 64.8 points.

Eagle argues that it was improper for the agency to downgrade its proposal on this ground since its staff has a significant amount of grant management experience which is comparable to the work which is to be performed under this contract. The contracting officer, however, disputes Eagle's contentions in this regard, explaining that experience and knowledge gained through working with grants is distinguishable from that needed to review contracts because different cost principles apply.

The cost principles and procedures contained in part 31 of the FAR provide a single set of rules which generally govern recovery of costs under cost-reimbursement government contracts. In contrast, recovery of grant costs is primarily governed by Office of Management and Budget (OMB) circulars. Because different classes of grantees have different types of costs, organization structures, and management, at least four different sets of cost recovery standards apply to government

grants.^{1/} Accordingly, an auditor or analyst well versed in cost principles governing grants will not necessarily transition easily to the cost principles applicable to government contracts. Eagle has not shown that the agency's position in this regard is unreasonable.

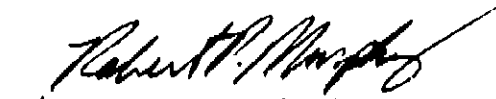
Eagle's final argument is that the agency failed to adequately consider the potential cost savings associated with an award to Eagle. The record shows otherwise. The RFP provided for an award to be made to the firm submitting the best proposal, with technical and cost considered equal. Under a solicitation like this, which calls for award on the basis of best overall value to the government, there is no requirement that award be made on the basis of low price. Agency source selection officials have discretion in determining the manner and extent to which they will make use of the technical and cost evaluation results. Litton Sys., Inc., B-239123, Aug. 7, 1990, 90-2 CPD ¶ 114. Technical and cost tradeoffs are permitted, and 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. Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 CPD ¶ 325. We will accord due weight to the judgment of selecting officials concerning the significance of the technical merit of offers and whether that difference is sufficiently significant to outweigh the price difference. Id.

The award to Tichenor & Eiche was based on the fact that the firm submitted a technical proposal which demonstrated a very strong background in cost and price analysis work on federal contracts, and a good understanding of the federal procurement regulations. This strength was primarily due to its highly qualified and experienced staff. As a result of the agency's findings in this regard, Tichenor & Eiche received the highest technical score, 84 out of 100 points. The agency's best buy analysis compared Eagle's technical proposal, as the apparent low offeror, to Tichenor & Eiche's on a criterion-by-criterion basis and found that on each criterion, Tichenor & Eiche was superior. Based on this review, the agency reasonably determined that the technical superiority of Tichenor & Eiche's proposal outweighed its higher cost. Eagle's mere disagreement with the agency's technical conclusions is insufficient to demonstrate that the award determination was

^{1/} OMB Circular A-21 applies for grants made to colleges and universities; OMB Circular A-87 applies for grants made to state and local governments; OMB Circular A-122 applies for grants made to other non-profit organizations; and grants to hospitals are covered by the cost recovery rules of the funding agencies.

unreasonable. See Bridge St. Acquisition Corp., B-239121.3,
Nov. 13, 1990, 90-2 CPD ¶ 388.

The protest is denied.


for James F. Hinchman
General Counsel