



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Spectrum Sciences & Software, Inc.

**File:** B-243792

**Date:** August 14, 1991

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Donald L. Garrison for the protester,  
Gilbert M. Chong, Esq., and Paul M. Fisher, Esq., Department  
of the Navy, for the agency,  
Steven W. DeGeorge, Esq., and John Brosnan, Esq., Office of  
the General Counsel, GAO, participated in the preparation of  
the decision.

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### DIGEST

1. Protest against price realism determination by procuring agency is denied where protester fails to show that such determination, necessarily a judgmental one, was clearly unreasonable.
2. Bias or prejudicial motives will not be attributed to contracting officials on the basis of unsupported allegations, inference or supposition.

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### DECISION

Spectrum Sciences & Software, Inc. protests the award of a contract to UXB International, Inc. for range maintenance at the Naval Air Station, Fallon, Nevada, under request for proposals (RFP) No. N62474-90-R-1376, issued by the Department of the Navy, Naval Facilities Engineering Command. Spectrum makes two alternative contentions: (1) that UXB's price is unrealistically low; or (2) that UXB was permitted to propose to different requirements than were stated in the solicitation. Regarding the latter contention, Spectrum also complains that UXB was improperly vested with information about the agency's actual requirements which was not known to Spectrum, and that the agency had improper motives for making the award to UXB.

For the reasons discussed, we find no basis to question the award and thus deny the protest.

The solicitation was issued on November 7, 1990, with a closing date of January 31, 1991. The RFP provided for the award of a combination firm-fixed price and indefinite quantity contract for range maintenance services. The procurement was set aside in its entirety for small business participation.

Section C of the RFP set forth the performance requirements, divided into five "annexes": (1) management and administrative requirements; (2) targets and target area requirements; (3) facilities support; (4) range clean-up; and (5) salvage operations. Annex 1 represented the firm-fixed price portion of the scope of work. The remaining annexes were to be performed on an indefinite quantity basis. For these annexes, offerors were required to propose unit prices based upon certain estimated minimum quantities of work identified in the solicitation. For example, under Annex 4, "range clean-up," offerors were required to propose a unit price per acre for each of five categories of debris clean-up. Estimated minimum quantities were stated in the RFP relative to each category.

The solicitation provided that award would be made to the offeror whose proposal was determined to be the most advantageous to the government, price and other factors considered. The RFP further provided that price and technical merit would be considered approximately equal in importance. A formal source selection plan was adopted for the procurement.

Two proposals were received by the RFP closing date; the offerors were UXB and Spectrum. Following an initial technical and price evaluation, the two offerors were ranked as follows:

Offeror	Tech. Points (100 max.)	Tech. Ranking	Price	Price Ranking
UXB	80.3	1	\$44,944,646	1
Spectrum	63.5	2	\$84,653,310	2

Overall, Spectrum was rated by the Technical Evaluation Board (TEB) as having submitted an "average" technical proposal with a reasonable likelihood of success. UXB's technical proposal was given a higher overall rating of "good" with a good probability of success. As part of the price evaluation, both proposals were compared to the government estimate which had been prepared on a line-item basis. While Spectrum's proposal varied from the government's estimate for six line items, UXB's total proposed price was approximately 51 percent below the government estimate.

The contracting officer was concerned over the large disparity between the two price proposals and between the proposals and the government estimate. Therefore, an analysis of the RFP was conducted in order to confirm that it was not ambiguous and subject to different interpretations. This analysis, which was conducted by members of the TEB, resulted in a conclusion that the RFP was in fact clearly written. The TEB also concluded that the RFP was consistently understood by the two offerors. It was further concluded that Spectrum and UXB had selected different methods of meeting the RFP requirements, and that this difference in approaches explained the disparate price proposals.

Following discussions, both offerors were requested to submit best and final offers (BAFO). BAFO's were received on April 9, and the final ranking was as follows:

Offeror	Tech. Points (100 max.)	Tech. Ranking	Price	Price Ranking
UXB	83.00	1	\$44,898,476	1
Spectrum	67.38	2	\$85,547,128	2

The price analyst reported to the contracting officer that based upon his analysis of the BAFOs, each offeror proposed a realistic price considering the particular approach taken by that offeror to meeting the requirements.

On April 15, the Source Selection Board (SSB) recommended to the Source Selection Authority (SSA) that award be made to UXB based upon its higher technical ranking and lower cost. This recommendation was approved by the SSA and award was made to UXB on May 1.

Spectrum essentially contends that the award to UXB was improper because either UXB's price is unrealistically low or, if realistic, is based upon knowledge and information concerning the agency's requirements which was neither reflected in the RFP nor otherwise made known to all offerors. Regarding the latter point, Spectrum also speculates that the agency may have been biased in favor of UXB for reasons relating to that firm's performance under an incumbent contract for the same range maintenance services.

Spectrum's first contention centers upon the UXB pricing for Annex 4 requirements. According to Spectrum, Annex 4, which involves five categories of range clean-up, was the principal cost-driver for the procurement. Spectrum maintains that the UXB pricing under Annex 4 was unacceptably low.

Price realism determinations are necessarily judgmental, and unless shown to be clearly unreasonable, will not be subject to objection by our Office. Waukesha Alaska Corp., et al., B-229918; B-229918.2, Apr. 27, 1988, 88-1 CPD ¶ 412. Having examined the record here, we have no basis to find the agency's price realism analysis of UXB's proposal unreasonable. The agency reports that following receipt of initial proposals, it was concerned over the relatively large disparity between the offerors' proposed prices and the government estimate. As a result, an analysis was undertaken in which the RFP and the proposals were reexamined in an effort to determine an explanation for these disparities. Based upon this analysis, the agency concluded that the difference in prices was attributable to the widely differing technical approaches taken by the two offerors. In particular, the agency found that UXB's proposed approach to satisfying the range clean-up requirements under Annex 4 of the RFP was premised upon a unique and innovative use of specialized equipment, whereas Spectrum chose to rely much more heavily on manual labor. Thus, the agency concluded that UXB's lower pricing, especially for Annex 4, reflected much lower labor costs than were included in either Spectrum's proposal or in the government estimate. Additionally, the TEB determined that both offerors' technical proposals demonstrated a consistent understanding of the RFP requirements, but that UXB's proposal simply reflected an innovative technical approach to meeting those requirements.

Spectrum has failed to substantiate its assertion that UXB's proposed price was unrealistically low. To the contrary, the agency closely examined UXB's proposal and was reasonably satisfied that it realistically reflected a compliant, albeit innovative, approach to meeting the solicitation requirements. Having closely examined the record before us, we have no basis to disagree with the conclusions reached by the agency. The record demonstrates that the offerors did in fact base their proposals on differing technical approaches. We find it reasonable to attribute UXB's lower costs to the particular technical approach reflected in its proposal. We accordingly have no basis to question the price realism analysis conducted in this case.

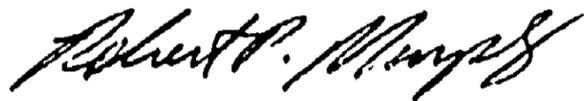
Spectrum contends in the alternative, that UXB must have possessed knowledge and information concerning the agency's actual requirements which was not available to all offerors. Spectrum points out in this regard that UXB is the incumbent contractor and alleges that it must therefore have derived an improper advantage in this procurement. The fact that an offeror may obtain some advantage over other offerors as a result of its incumbency is not improper in itself. A firm may in fact gain an advantage over other firms by virtue of its prior experience, and such an advantage, so long as it is

not the result of preferential treatment or other unfair action by the government, need not be discounted or equalized. Vicor Assocs., Inc., B-241496.2, Mar. 13, 1991, 91-1 CPD ¶ 278. The agency denies that UXB was accorded any special treatment as the incumbent contractor or that the firm was provided any unique or additional information. Finding no substantiation in the record for Spectrum's allegations in this regard, we are persuaded by the agency's response.

Spectrum also generally complains that the RFP did not accurately reflect what must have been the agency's true requirements and that the evaluation of proposals was not properly conducted. The only support presented for this complaint is speculation based upon the disparity in proposed prices. We have, however, examined the total record in this case and find that the evaluation was entirely reasonable and consistent with the criteria set forth in the solicitation. The analysis and results of both the technical and price evaluations are well-documented and reflect a reasoned consideration of the offerors' responses to the requirements stated in the RFP based upon the identified evaluation criteria. In view of this record, we will not question the evaluation and award decision. See ACM Envtl. Servs., Inc., B-242064, Mar. 7, 1991, 91-1 CPD ¶ 255.

Finally, Spectrum recites a number of "rumors" purporting to suggest that the award to UXB was a quid pro quo for that firm's agreement to waive certain pending claims against the agency relative to its incumbent contract. Spectrum has offered no substantiation for these "rumors" and the Navy has categorically denied them. There must be very strong proof before we will find that an agency has acted in bad faith or with improper motives in a procurement. G.K.S., Inc., 68 Comp. Gen. 589 (1989), 89-2 CPD ¶ 117. Here, there is no proof of improper conduct on the part of the agency whatsoever.

We deny the protest.

  
James F. Hinchman  
General Counsel