



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Techniarts Engineering

**File:** B-238520.5; B-238520.6

**Date:** December 31, 1991

Ronald K. Henry, Esq., and Sue Ann Dilts, Esq., Baker & Botts, for the protester.

John W. Fowler, Jr., Esq., Saul, Ewing, Remick & Saul, for Peirce-Phelps, Inc., an interested party.

David Ashen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

1. Where General Accounting Office sustained protest on basis that protester should have received award due to low price of alternate proposal, GAO will not consider awardee's subsequent protest that it also had submitted an alternate proposal that was not properly evaluated by the agency; protesters and other parties to a protest may not present information in a piecemeal fashion, either over the course of a single protest, or through the filing of a separate protest after resolution of the first protest.

2. Where General Accounting Office (GAO) determined that agency failed to evaluate protester's proposal and recommended award to protester, subsequent protest by initial awardee that resulting award to protester was improper because protester's alternate proposal was technically unacceptable will not be considered; GAO will not consider new arguments raised by interested party that could have been raised during consideration of initial protest.

3. Where solicitation schedule included stepladder option quantities and solicitation provided for evaluation based upon the total price for all options, agency reasonably evaluated option prices based upon extending the unit price for the maximum stepladder quantity (rather than upon adding the extended price for the first stepladder quantity to the extended price for the second stepladder quantity).

### DECISION

Techniarts Engineering protests the award of a contract to Peirce-Phelps, Inc. under request for proposals (RFP) No. N00024-89-R-4263(Q), issued by the Naval Sea Systems

Command, Department of the Navy, for shipboard information, training, and entertainment systems.

We dismiss the protests in part and deny them in part.

The solicitation requested proposals on a "brand name or equal" basis, and provided for award to the low, responsible offeror whose proposal was technically acceptable. When the Navy initially made award under the solicitation to Techniarts, Peirce-Phelps protested the award on the basis that the Navy had failed to evaluate Peirce-Phelps's alternate proposal of lower-priced "equal" items, the acceptance of which would render it the low offeror in line for award. Although Techniarts and the Navy disputed whether the equal items were incorporated into an alternate proposal, in our decision Peirce-Phelps, Inc., B-238520.2, Apr. 19, 1991, 91-1 CPD ¶ 385, we agreed with the protester that its low-priced offer of equal items was sufficiently definite to constitute an alternate proposal. We therefore sustained Peirce-Phelps's protest and recommended that Techniarts's contract be terminated and award made to Peirce-Phelps on the basis of its low alternate proposal, if otherwise appropriate.

Techniarts and the Navy requested reconsideration of our decision. While the Navy merely questioned our award of attorneys' fees to Peirce-Phelps, Techniarts argued that it, not Peirce-Phelps, was entitled to award. According to Techniarts, it also had submitted an alternate proposal that was lower-priced than Peirce-Phelps's alternate proposal and that would have entitled Techniarts to award as the low, technically acceptable offeror. We affirmed our prior holding in our decision Techniarts Eng'g; Dept. of the Navy--Recon., B-238520.3; B-238520.4, June 27, 1991, 91-1 CPD ¶ 608. We noted that the requirement for the evaluation of alternate proposals and, consequently, the overall evaluation of proposals, was directly at issue in the initial protest. Nevertheless, Techniarts did not avail itself of the opportunity to argue that its own alternate proposal also was improperly evaluated and that, when properly evaluated, the alternate proposal entitled it to award (at a lower price than under the contract Techniarts was awarded based on its primary proposal). Since this argument could have been but was not raised during our consideration of the initial protest, it did not provide a basis for reconsideration. See Department of the Army--Recon., B-237742.2, June 11, 1990, 90-1 CPD ¶ 546. Pursuant to our original recommendation, the Navy, on August 12, made award to Peirce-Phelps. Techniarts's protest here is in response to this award.

Techniarts first protests the award to Peirce-Phelps on the basis that the agency, in determining the low, technically acceptable offeror, failed to evaluate alternate, allegedly lower-priced proposals that had been submitted by Techniarts. Techniarts maintains that its protest is timely because it was filed on August 20, within 10 days of the award to Peirce-Phelps.

Techniarts cannot now raise this issue. As related above, we declined to consider Techniart's request for reconsideration of our original decision because it could have raised this matter during our consideration of the initial protest but failed to do so. Although Techniarts seeks to relate this issue to the award made on August 12, in fact it is the very same issue it sought to raise in its reconsideration request. Just as Techniart's failure to present its position on this issue during the initial protest proceedings precluded our consideration of its request for reconsideration, so must it preclude our consideration of the issue now. Protesters and other parties to a protest are expected to exercise due diligence in presenting their respective positions; they may not present available information in a piecemeal fashion, either over the course of a single protest, American President Lines Ltd., B-236834.8; B-236834.9, May 15, 1991, 91-1 CPD ¶ 470, or through the filing of a separate protest after resolution of the first protest. See Source AV Inc., B-244755.2, B-244755.3, Sept. 10, 1991, 91-2 CPD ¶ 237; see generally, J&J Maintenance, Inc.--Recon., B-240799.4; B-240802.4, Apr. 10, 1991, 91-1 CPD ¶ 364.

Techniarts also protests that Peirce-Phelps's alternate proposal was technically unacceptable. Techniarts notes that the alternate proposal included, as one option, the offer of "enhanced commercial manuals"; Techniarts argues that this fails to satisfy the solicitation requirement for "validated commercial manuals."

We also will not consider this argument. The evaluation of Peirce-Phelps's alternate proposal, including its offer of enhanced commercial manuals, was directly at issue in the initial protest. Techniarts knew or should have been aware of the basis for this argument at that time. In our view, Techniarts was obligated to raise this and any other arguments concerning the acceptability of Peirce-Phelps's alternate proposal during the initial protest. Failure to make all arguments or submit all information available during the course of the initial protest undermines the goals of our bid protest forum to produce fair and equitable decisions based on consideration of both parties' arguments on a fully developed record. Accordingly, such subsequently raised arguments will not be considered by our Office, whether they

are raised in a request for reconsideration, Ricoh Corp.--Recon., B-242052.3; B-242052.4, July 10, 1991, 91-2 CPD ¶ 38; Techniarts Eng'g; Dept. of the Navy--Recon., supra, or in a new protest. 4 C.F.R. § 21.2(a)(2).<sup>1</sup>

Shortly after the agency made award to Peirce-Phelps, Techniarts obtained a copy of the resulting contract. Based upon this document, which incorporated a September 1990 best and final offer (BAFO), Techniarts filed an additional protest questioning the agency's calculation of Peirce-Phelps's prices.

The solicitation schedule provided for stepladder quantities for many of the option items. For example, as set forth below, item No. 0029 requested unit prices for a quantity of one to four systems and a quantity of five to eight systems:

<u>Item No.</u>	<u>Supplies/Services</u>	<u>Quantity</u>	<u>Unit</u>	<u>Unit Price</u>	<u>Amount</u>
0029	Site System 200	1 - 4	ea.	\$_____	\$_____.
		5 - 8	ea.	\$_____	\$_____

The solicitation included Standard Form clause 52.215-16, "Contract Award," Federal Acquisition Regulation § 52.215-16, which provides that the government reserves the right to make award on any item for a quantity less than the quantity offered, but also specifically provided that the government "may, at any time require the Contractor to furnish all but not part of" the option items.

In its July 1990 proposal, wherein it first proposed lower-priced alternate products, Peirce-Phelps offered identical unit prices for the various stepladder quantities under each item. In addition, Peirce-Phelps included for each option item a one-time, additional charge, which it described as an "NSP" (not separately priced) amount, and which it stated in its cover letter "reflects, in part, the scheduled duration of the option, not the quantity purchased; therefore it is subject to negotiation based on schedules." After the Navy advised Peirce-Phelps during negotiations that all charges must be included in its unit prices, Peirce-Phelps, in its

---

<sup>1</sup>In any case, Techniarts was not prejudiced by the evaluation of Peirce-Phelps's alternate proposal. Even if the option for enhanced commercial manuals had been found technically unacceptable, Peirce-Phelps's alternate proposal, based on the savings offered by the other options in the proposal, offered a lower overall price than the price for the Techniarts proposal found acceptable by the agency.

August BAFO, eliminated the additional "NSP" charges and revised its unit price for each initial stepladder quantity to apportion the "NSP" amount over the quantity. It did not calculate any extended prices--unit price times quantity--for the items.

The solicitation provided in section M, "Evaluation Factors for Award," that the government "will evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement." Likewise, the solicitation schedule stated that, "For Award Evaluation purposes the grand total amount (exclusive of items 0017 and 0021, but including all option items) shall be the basis for award." In both its original evaluation and when it reevaluated proposals after our decision sustaining Peirce-Phelps's protest, the Navy evaluated based upon the unit prices for the maximum quantity. For example, where Peirce-Phelps offered 1-4 of one option item at a price of \$37,971 and 5-8 at \$31,433, the agency multiplied 8 times \$31,433 to determine the total option price for evaluation. Upon reevaluation, the agency determined that, when proposed acceptable alternates were considered, Peirce-Phelps had offered a price of \$31,373,630.15, or \$131,677.36 lower than Techniarts's price of \$31,505,307.51. Had the agency evaluated proposals by adding the extended price for the first stepladder quantity (4 times \$37,971 in the example above) to the extended price for the additional units under the second stepladder quantity (4 times \$31,433 in the example), thereby increasing the total of Peirce-Phelps's price by \$310,648, Techniarts's proposal would have been low. While Peirce-Phelps proposed higher unit prices for the lower stepladder quantities than for the higher quantities, Techniarts proposed the same unit prices for all stepladder quantities.


Techniarts contends that in providing for the evaluation of "the total price for all options," the solicitation required the Navy to calculate the price for each item in a cumulative manner, that is, by adding the extended price for any initial stepladder quantity to the extended price for each additional stepladder quantity. For example, for item No. 0029, Techniarts argues that the solicitation required the agency to multiply four times the unit price for the one-to-four stepladder quantity, multiply four times the unit price for the five-to-eight stepladder quantity, and then add the resulting extended sums together to arrive at the total price for eight systems. Indeed, Techniarts believes that by amortizing its "NSP" additional charges over the initial stepladder quantities, Peirce-Phelps clearly intended that its prices be calculated according to the above interpretation of the solicitation so as to recover the "NSP" charges by means of the unit prices for the initial stepladder quantities.

In its response, Peirce-Phelps maintains that when it eliminated the "NSP" charge as a separate item, it added the "NSP" amount only to the initial stepladder quantities, and not to the higher stepladder quantities, as a result of "a business decision that for competitive reasons and because of economies of scale" it would "absorb the costs previously marked NSP if the Navy exercised the higher volume options."

We find the Navy's evaluation of prices to be reasonable. Although Techniarts contends that the solicitation required a cumulative evaluation, and speculates, based on Peirce-Phelps's incorporation of the fixed, "NSP" additional charges into the initial stepladder quantities, that Peirce-Phelps intended its option pricing to be cumulative, we conclude that neither the solicitation nor Peirce-Phelps's proposal supports Techniarts's position. First, the solicitation provided for evaluating "the total price for all options" (plus the price for the basic requirement); it also indicated that the government could only require the contractor "to furnish all but not part of the option items." This language clearly indicates that the Navy intended to evaluate and ultimately order on the basis of the maximum quantities specified. Second, while Peirce-Phelps furnished extended prices based upon the unit prices it offered for the basic requirement, it did not furnish extended prices for the stepladder option quantities. Had Peirce-Phelps intended to offer cumulative pricing for the option quantities, it logically would have included an extended price for the initial stepladder quantity and another extended price for the additional units represented by the next stepladder quantity. For example, with respect to the option item discussed above, Peirce-Phelps could have furnished an extended price calculated as four times the unit price for the 1-4 stepladder quantity and another extended price calculated as four times the unit price for the 5-8 stepladder quantity. Peirce-Phelps did not do so; it left the extended price column blank for those option items with stepladder quantities. Under the circumstances, we believe the Navy reasonably evaluated Peirce-Phelps's

revised proposal as offering the lower unit prices under the maximum stepladder quantity for a maximum quantity order, as claimed by Peirce-Phelps.<sup>2</sup>

The protests are dismissed in part and denied in part.

  
for James F. Hinchman  
General Counsel

---

<sup>2</sup>The Navy reports that not only did it anticipate ordering the maximum option quantity, it has in fact exercised the initial option for the maximum stepladder quantity.