



Comptroller General
of the United States

Washington, D.C. 20548

89-2 CPD 494 PR

Decision

Matter of: Pacific Architects and Engineers Incorporated
File: B-236432
Date: November 22, 1989

DIGEST

1. Allegation that protester is entitled to award on the basis of its low price offer is denied where the agency reasonably determined that the technical superiority of the awardee's proposal justified the cost premium.
2. Allegation that procuring agency failed to comply with its streamlined source selection procedures is denied since these procedures are internal agency instructions which do not provide the protester with any legal rights and, in any event, the protester has not shown that it was prejudiced by the alleged noncompliance.
3. Allegation that awardee misrepresented the availability of a key employee is denied where the record establishes that the awardee did not propose an individual whom it knew would be unavailable.

DECISION

Pacific Architects and Engineers Incorporated protests the Air Force's award of a contract to Federal Electric International, Inc., under request for proposals (RFP) No. F61546-89-R-0007, for the operation and maintenance of a communications system in Greece. Pacific contends that the agency did not properly evaluate its low priced proposal, that the proposals of Federal Electric and Pacific were essentially equivalent, and that Federal Electric misrepresented the availability of a proposed key employee.

We deny the protest.

The RFP contemplated the award of two firm-fixed priced with award fee contracts for the operation and maintenance of the 486L communications system at various sites in Greece and

Turkey.^{1/} The 486L system is a tropospheric scatter and microwave radio relay communications systems supporting government communications traffic within the mediterranean region. This system was designed in the 1950s using electron tube technology which requires intensive maintenance procedures and immediate response to system outages.

Offerors were informed that evaluation of proposals would be conducted under streamlined source selection procedures of Air Force Regulation (AFR) 70-30, and that award would be based on an integrated assessment of information contained in the proposals. The RFP set forth technical, management and cost as the evaluation criteria in descending order of importance. The solicitation also set out subfactors for each of these criteria and informed offerors that these factors would be evaluated to determine the offeror's soundness of approach and understanding of requirements, and that the government would assess the nature and impact of risks inherent in each offeror's approach.

The Air Force received seven proposals in response to the RFP. Six offerors offered to perform the requested work in both Greece and Turkey while Pacific offered to perform only the contract services in Greece.^{2/} The Air Force found five proposals, including those of Pacific and Federal Electric, to be in the competitive range. Discussions were conducted with the five offerors through the issuance of deficiency reports (DRs) and clarification requests (CRs), and best and final offers (BAFOs) were requested.

The evaluation panel rated each of the five proposals using one of the following color coded ratings on the non-cost evaluation factors: blue (exceptional), green (acceptable), yellow (marginal) and red (unacceptable). Also, in accordance with the solicitation evaluation scheme, each proposal was rated for risk. The final evaluation results for Pacific and Federal Electric were as follows:

^{1/} The RFP provided for separate contract awards for Greece and Turkey.

^{2/} Pacific's protest solely concerns the award of services to be performed in Greece and, accordingly, this is the only award discussed here.

	<u>Technical</u>	<u>Management</u>
<u>Federal Electric</u> risk	Blue Low	Green Low
<u>Pacific</u> risk	Green Low	Blue Low

The source selection authority determined that award to Federal Electric would be most advantageous to the government considering technical, management and price factors, and Federal Electric was awarded a contract for \$7,483,307. This protest followed.^{3/}

Pacific contends that award to Federal Electric as the most advantageous offer was improper because, in Pacific's view, the two firms' offers were substantially equal. Pacific argues that while Federal Electric was rated higher in the technical area, the most important evaluation criterion, Pacific was rated higher in the management area and offered a price which was approximately 14 percent lower. Pacific contends that under the terms of the RFP its offer was the most advantageous to the government and, accordingly, it was entitled to award of a contract to perform the services in Greece. The Air Force contends that the record evidences the significant technical superiority of Federal Electric's proposal relative to Pacific's and to all of the other proposals, and therefore establishes the reasonableness of the agency's cost/technical tradeoff determination.

The determination of the relative merits of proposals is the responsibility of the procuring agency, and procurement officials have broad discretion in making that determination. Sigma Information Mgmt. Corp., 08-233155, Feb. 21, 1989, 89-1 CPD ¶ 177. In this regard, we have consistently upheld awards to offerors with higher technical scores and higher costs where it was determined that the cost premium was justified considering the technical superiority of the awardee's proposal and the result is consistent with the evaluation criteria. McShade Gov't Contracting Serv., 08-232977, Feb. 6, 1989, 89-1 CPD ¶ 118.

^{3/} Performance of Federal Electric's contract has not been suspended based upon the agency's determination that urgent and compelling circumstances exist which would not permit awaiting our determination in the matter. 31 U.S.C. § 13553(d)(2) (Supp. IV 1986); 4 C.F.R. § 21.4(b) (1989).

We find that the Air Force had a reasonable basis for award to Federal Electric at the higher price. The RFP provided that the technical factors were more important than either management factors or price, and the record shows that the agency determined that Federal Electric's exceptional technical rating and acceptable management rating outweighed Pacific's 14 percent lower price and exceptional management rating. The source selection evaluation team (SST) found that Federal Electric's proposed technical approach not only met all the solicitation requirements but was exceptional in several key areas. For example, Federal Electric offered detailed procedures for monitoring system performance and responding to and correcting power outages. Also, the SST found that Federal Electric's proposed qualification plans for power production personnel were exceptional.

Regarding the management area, the SST found Pacific's proposal to be superior to the awardee's proposal, but noted that Federal Electric had proposed an acceptable approach which had a high probability of successfully implementing the proposal. In this regard, the SST noted that Federal Electric was successfully performing a 486L services contract in Italy and thus had demonstrated its ability to perform. We find that the source selection authority reasonably concluded that the two proposals were not essentially equal, but that Federal Electric's proposal was sufficiently superior to Pacific's proposal to warrant payment of the higher price.

Pacific also argues that it was informed by an unnamed member of the agency's SST that its initial proposal was initially rated blue/exceptional and that the relatively few DRs/CRs which it received during discussions evidenced this high rating.^{4/} The record, however, does not support this contention. The Air Force states that it has questioned those SST members who could be reached regarding this allegation and each member denied making such a statement to Pacific. Furthermore, we have reviewed the evaluator's scoring sheets and find that Pacific's initial proposal and its BAFO were rated green/acceptable in the technical area. In this regard, the fact that Pacific received fewer DRs/CRs than Federal Electric only demonstrates that Pacific's initial proposal was technically acceptable and contained fewer technical deficiencies. See, e.g., Weinschel Eng'g Co. Inc., 64 Comp. Gen. 524 (1985), 85-1 CPD ¶ 574, in which we held that an agency may properly conduct extensive discussions with offerors whose initial proposals contain

^{4/} Pacific has declined to identify to the Air Force the source of this information.

technical deficiencies while conducting more limited discussions with offerors whose proposals contain fewer weaknesses or deficiencies.

Pacific also argues that the Air Force did not evaluate its proposal in accordance with the streamlined source selection procedures of AFR 70-30, as required by the RFP. Pacific contends that AFR 70-30 provides that the SST would be comprised of a technical team and a designated team chief and that the technical team would evaluate each technical area, item and factor of proposals and BAFOs. Pacific argues that the evaluation of responses to DRs/CRs and BAFOs was performed by the team chief and not the technical team, in violation of AFR 70-30.

The Air Force contends that it complied with AFR 70-30 which requires that summary evaluation reports be prepared by each technical team for the SST chairperson. The agency states that each team chief is a senior member of the evaluation team assigned to a particular evaluation factor and the team chief prepares a narrative evaluation report for the SST chairperson based upon the team member's written comments on the item worksheets.

We have held that allegations that an evaluation panel failed to comply with the procedures of AFR 70-30 do not themselves provide a basis for questioning the validity of an award determination since the Air Force regulation is an internal agency instruction which does not provide outside parties with any legal rights. See Quality Sys., Inc., B-235344 et al., Aug. 31, 1989, 89-2 CPD ¶ 197. Rather, the agency is required to follow the evaluation scheme set forth in the RFP and to conduct its evaluation in a manner so as to reach a rational result. Id. Here, the agency evaluated proposals in accordance with the stated evaluation factors, and we see no basis to question the award decision on the basis of this alleged procedural deficiency.

Furthermore, we fail to see how Pacific was prejudiced even if the agency did not follow the dictates of AFR 70-30. Pacific attempts to show possible prejudice by arguing that on the safety technical subfactor it was rated green/acceptable while on the only two elements of this subfactor it had been rated blue/exceptional. Pacific contends that this demonstrates that the Air Force's technical evaluation was flawed and that this evaluation deficiency somehow resulted from the failure to adhere to AFR 70-30 procedures. We do not agree. First, while we find that Pacific should have been rated blue/exceptional on the safety subfactor, the evaluator's scoring sheets and narratives indicate that this is the only factor of the five subfactors that would

change. The higher rating for this one subfactor would not raise Pacific's overall technical score from green to blue. Moreover, we fail to see how this discrepancy was the result of the particular evaluation procedures followed by the agency. Under these circumstances, we cannot find that Pacific was prejudiced by the Air Force's alleged failure to follow the procedures of AFR 70-30.

Pacific also contends that the awardee intentionally misrepresented the availability of the person it had proposed as an area manager. Pacific states that immediately after award Federal Electric offered the area manager position to an employee of the protester, and that this demonstrates that the awardee never intended to use the person it proposed. The Air Force and Federal Electric both state that the person that Federal Electric originally proposed as area manager declined the offer of employment for financial reasons. Apparently, the awardee's proposed area manager expected that his wife would also be offered employment by Federal Electric, and when Federal Electric determined that they would not offer employment to his wife, the proposed area manager expressed reservations about the job offer. The proposed area manager had previously advised Federal Electric that he was seriously interested in the job, and had given permission to Federal Electric to use his resume in its proposal, and the RFP did not require inclusion of signed commitments for proposed key management personnel. Under these circumstances, we do not find that the awardee made a material misstatement of fact that would warrant cancellation of the contract. See SETAC, Inc., 62 Comp. Gen. 577 (1983), 83-2 CPD ¶ 121. Rather, we conclude that the awardee proposed an individual it reasonably believed would be available as the area manager.

The protest is denied.


James F. Hinchman
General Counsel