



Comptroller General
of the United States

Washington, D.C. 20548

1003188

Decision

Matter of: Jefferson Associates, Inc.

File: B-253196

Date: August 24, 1993

Sterling C. Scott, Esq., and Leslie H. Lepow, Esq., Jenner & Block, for the protester,
Thomas J. Madden, Esq., John J. Pavlick, Jr., Esq., and
Carla Draluck, Esq., Venable, Baetjer, Howard & Civiletti,
for Eagle Technical Services, Inc., an interested party.
Paul Brundage, Esq., National Aeronautics and Space
Administration, 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. Protester's contention that agency unreasonably failed to downgrade awardee's proposal for including a newly-formed firm as a subcontractor is denied where the record shows that the agency did, in fact, consider the relative strengths and weaknesses of the proposed subcontractor, and appropriately considered the agency's past experience with the new firm's president as part of its review of the offeror's (and subcontractor's) past performance.

2. Contention that awardee engaged in improper "bait and switch" tactics because the agency recognized the experience of the subcontractor's president, when, in fact, the proposal indicated that the president would spend little time on the effort, is denied because the proposal, on its face, disclosed the president's level of effort, and the agency evaluators were in no way misled by the proposal.

DECISION

Jefferson Associates, Inc. protests the proposed award of a contract to Eagle Technical Services, Inc. under request for proposals (RFP) No. 9-BC28-99-1-12P, issued by the National Aeronautics and Space Administration (NASA) for the Program Office Support Services Effort (POSSE) in support of the Space Shuttle Program Control Office at the Lyndon B. Johnson Space Center in Houston, Texas. Jefferson, the incumbent contractor, argues that NASA failed to properly

evaluate Eagle's proposal because it did not downgrade the proposal for its reliance on a subcontractor that Jefferson claims is inexperienced.

We deny the protest.

BACKGROUND

The solicitation, issued July 24, 1992, as a small business set-aside, seeks offers for a cost-plus-award-fee contract for the Johnson Space Center's POSSE services, deemed essential for maintaining the Space Shuttle Program. These services include configuration and change management support, schedule management, application development, computer programming, resources evaluation and data base management and records management. The solicitation anticipates award of a 1-year contract, followed by four 1-year option periods.

The RFP identifies four evaluation factors: (1) mission suitability; (2) cost; (3) relevant experience and past performance; and (4) other considerations. Mission suitability and cost are described as the most important of the factors, and are weighted approximately equal in importance. The last two factors--relevant experience and past performance, and other considerations--are described as having "somewhat less importance" and "considerably less importance," respectively, than the first two factors. In addition, the RFP advised that only the mission suitability factor would be weighted and scored, according to the scheme set forth below:

MISSION SUITABILITY -- 1,000 POINTS

Subfactor:	Management		500
Element:	Operations Plan	250	
Element:	Organization	50	
Element:	Recruiting and Staffing	200	
Subfactor:	Key Personnel		200
Element:	Suitability of Functional Managers	150	
Element:	Suitability of POSSE Manager	50	
Subfactor:	Understanding the Requirement		300

By September 8, 1992, NASA received initial proposals from 13 companies in response to the RFP. After the initial evaluation by the Source Evaluation Committee (SEC), the

contracting officer established a competitive range of two offerors--Jefferson and Eagle. After the contracting officer held written and oral discussions with Jefferson and Eagle, both firms submitted best and final offers (BAFO) by December 1.

Upon receipt of BAFOs, the SEC completed a final evaluation of the two proposals and presented the results to the Source Selection Official (SSO). In the final evaluation, the Jefferson and Eagle proposals were considered essentially equal while Eagle was considered the offeror with the lower probable costs. Based on Eagle's lower costs, the SSO selected Eagle for final negotiations leading to award of a contract.

After NASA announced Eagle's selection, Jefferson protested Eagle's eligibility for award of a small business set-aside contract to the Small Business Administration (SBA). Eagle's eligibility was affirmed by both the SBA Regional Office and the SBA's Office of Hearings and Appeals. Jefferson next filed an agency-level protest with the contracting officer, which was denied on April 9, 1993. This protest followed.

DISCUSSION

Jefferson argues that NASA improperly concluded that the Jefferson and Eagle proposals were essentially equal in technical merit because the agency failed to evaluate the impact of Eagle's proposed subcontractor, Muniz Engineering.¹ Essentially, since Muniz is a newly-formed business, Jefferson contends that Eagle's proposal should have been evaluated as having a significant weakness because of its partial reliance on Muniz. According to Jefferson, NASA should not have concluded that the proposals were equal, and thus, should not have selected Eagle as the offeror with the lowest probable cost. Instead, Jefferson argues that NASA should have performed a cost/technical tradeoff. In addition, Jefferson argues that the Eagle proposal contained an impermissible "bait and switch" arrangement, whereby Eagle was credited with the experience of Muniz's president, when, in fact, Eagle's proposal indicated that the president would spend very little time on this effort.

¹In its initial pleadings, Jefferson argues that NASA failed to evaluate the role of Muniz at all. In its comments on the agency report, Jefferson argues that NASA failed to evaluate the role of Muniz reasonably.

In considering protests against an agency's evaluation of proposals, we will examine the record to determine whether the agency's judgment was reasonable and consistent with stated evaluation criteria and applicable statutes and regulations, ESCO, Inc., 66 Comp. Gen. 404 (1987), 87-1 CPD ¶ 450. A protester's disagreement with the agency's judgment, without more, does not show that the agency's judgment was unreasonable. Id.

As an initial matter, our review of NASA's evaluation materials shows that there is no merit to Jefferson's contention that NASA overlooked Eagle's use of Muniz Engineering as a subcontractor. Likewise, to the extent Jefferson argues that NASA's evaluation was superficial or failed to reasonably consider Eagle's use of Muniz as a subcontractor, the record clearly shows otherwise.

NASA's evaluation of Eagle's initial proposal runs more than 23 single-spaced typewritten pages of text discussing the strengths and weaknesses of the proposal. Similarly, the evaluation of Eagle's BAFO extends to 25 pages of textual discussion. Within these discussions, the evaluators expressly weigh the impact of Muniz Engineering as a subcontractor on the Eagle proposal, and expressly note that Muniz is a newly-formed concern. In fact, the evaluation materials reflect express consideration of Eagle's subcontractor under three of the four stated evaluation factors: mission suitability; cost; and relevant experience and past performance. In addition, the Muniz firm is expressly considered under two of the five elements of the mission suitability evaluation factor.

In its comments, Jefferson shifts its focus from a general claim that the agency failed to consider Muniz to a claim that the agency unreasonably failed to downgrade Eagle for its use of Muniz under the operations plan element of the mission suitability subfactor and under the relevant experience and past performance subfactor. With respect to the operations plan element, Jefferson argues that the evaluation of Eagle was flawed because Eagle's proposal, in essence, hid the involvement of Muniz from the evaluators. According to Jefferson, since the Eagle proposal does not mention Muniz in those portions of the proposal addressed to the operations plan--worth 250 of the 1,000 points available for the mission suitability evaluation factor--Eagle was able to garner a higher score for the operations plan element than it would have received had it discussed a role for Muniz.

The record shows that Jefferson is simply wrong in its suggestion that the evaluators were somehow deceived by Eagle's proposal. The role of Muniz as a subcontractor is prominent in Eagle's proposal. Muniz is mentioned in not one, but two cover letters appended to the Eagle proposal, and is mentioned throughout the proposal itself. Nothing in the evaluation materials supports a conclusion that NASA's evaluators were prone to forget the role of Muniz in their scoring of individual evaluation elements and subfactors because the role of Muniz was not reiterated in every section of the technical proposal. Not only did the evaluators frequently focus on the relative strengths and weaknesses of Muniz throughout the extensive evaluation materials, but they expressly discussed the role of Muniz in scoring Eagle on the operations plan element of the mission suitability evaluation factor. Specifically, in their 25-page textual evaluation of Eagle's BAFO, the evaluators concluded that Eagle's operations plan was a "major strength" of the proposal. In discussing Eagle's operations plan, the evaluators expressly included Muniz's decision to propose a ceiling on its indirect rates--which, in NASA's view, demonstrated Muniz's and Eagle's confidence in Muniz's cost control procedures--as part of the basis for the favorable evaluation. This express consideration of Muniz refutes Jefferson's claim that the evaluators were misled by the structure of the proposal.

Jefferson also complains that NASA failed to reasonably evaluate Muniz's experience under the relevant experience and past performance subfactor. In Jefferson's view, since Muniz is a new firm, Eagle should have been downgraded under this evaluation subfactor.

Our review shows first that NASA clearly evaluated Eagle and Muniz on this unscored evaluation factor. In the text of the evaluation, NASA concluded that Eagle's proposal contained a minor strength in this area. In support of this conclusion, the evaluation sets forth two paragraphs. The first paragraph discusses Eagle's past performance on a related contract, and notes that Eagle had experienced initial phase-in problems that were quickly corrected and were followed by exceptional performance evaluations. The second paragraph notes that Muniz is a newly-formed company with limited experience, but that the company's president, Mr. Muniz, has 22 years of space-related engineering and management experience in the NASA community. Despite Jefferson's assertions to the contrary, we find nothing unreasonable or improper about allowing Mr. Muniz's reputation to contribute to a conclusion that the Eagle

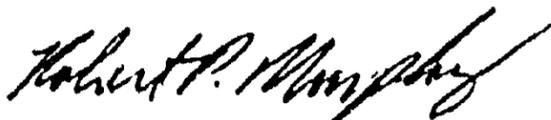
proposal has a minor strength in the area of past performance. See General Offshore Corp., B-246824, Apr. 1, 1992, 92-1 CPD ¶ 335; Homequity, Inc., B-223997, Dec. 19, 1986, 86-2 CPD ¶ 685.

Jefferson's final contention is that Eagle benefitted from what Jefferson terms an impermissible "bait and switch" in its use of Muniz. According to Jefferson, Eagle improperly benefitted because instead of downgrading Eagle for Muniz's lack of experience, the evaluation recognized the experience of Muniz's president. Jefferson argues that this was unreasonable because the proposal indicated that the president would have very limited involvement with this effort.

Our review shows that Jefferson's claims that the agency was misled by Eagle have no basis in fact. Jefferson's novel "bait and switch" theory fails to account for the fact that the Eagle proposal, on its face, sets forth the role of Mr. Muniz in performing the contract. Since NASA was apprised in the proposal that Mr. Muniz's new company, but not Mr. Muniz exclusively, would assist Eagle in providing these services, there is no basis for describing the Eagle proposal as misleading.

In our view, nothing in Jefferson's pleadings has provided any reason for our Office to conclude that NASA's evaluation was flawed, or in any way lacked a reasonable basis. Rather, we find that NASA's evaluation was extremely thorough and well-reasoned.

The protest is denied.



for James F. Hinchman
General Counsel