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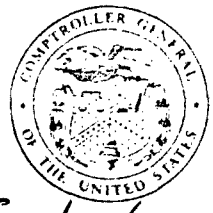
DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

[Protest Alleging Evaluation Criteria Were Indefinite and Arbitrary]

FILE: B-199014 DATE: April 3, 1981

MATTER OF: Umpqua Research Company

DIGEST:

1. Contentions that evaluation factors and specifications are improper are untimely because not raised before date for receipt of initial proposals.

2. Unless procurement has been set aside for small business concerns or for those whose performance will be in labor surplus areas, there is no legal basis on which agency may give special consideration to such businesses.

3. Once offerors are informed of the criteria against which proposals will be evaluated, agency must adhere to such criteria or inform all offerors of any changes made thereto. However, agency's decision to ignore subcriteria providing for evaluation of fixed-price proposals in terms of cost realism without first informing offerors does not warrant sustaining protest when it does not appear the protester's competitive position was prejudiced by such action.

4. Although agency's numerical scoring scheme for evaluation of price appears to have been inappropriate, use of more appropriate scheme would not have changed relative standing of offerors. Consequently, rationality of selection decision is not affected by scoring system used.

Umpqua Research Company protests an award to Brigham Young University by the Department of the Interior under request for proposals No. 40-S1127. This RFP solicited proposals for a fixed-price indefinite quantity contract to provide statistical analysis and written interpretations of existing and future microinvertebrate

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samples collected from streams in Utah. The protester complains that the evaluation criteria were indefinite and arbitrary as they did not provide for award to the lowest qualified offeror. Umpqua also states that the specifications were overly restrictive of competition and that the agency ignored Umpqua's status as a small business concern in a labor surplus area. Umpqua finally maintains that the evaluation process did not conform to the scheme set forth in the solicitation. For the reasons set forth below the protest is dismissed in part and denied in part.

Umpqua's protest was received in this Office long after the date initial proposals were received. Therefore, its objections to the evaluation criteria and specifications set forth in the solicitation are untimely under our Bid Protest Procedures, 4 C.F.R. § 20.2(b)(1) (1980), and will not be considered on their merits. These procedures require that protests based on alleged improprieties in a request for proposals be filed prior to receipt of initial proposals. Umpqua Research Company, B-191331, June 2, 1978, 78-1 CPD 411.

Umpqua's contention that its status as a small business concern located in a labor surplus area should have been considered in the award of the contract is without merit. Since the procurement was not set aside for small business, there was no legal basis on which the agency could have given special consideration to the small business status of Umpqua. H.G. Fischer, Inc., B-193278, January 14, 1980, 80-1 CPD 38. For the same reason, it would have been improper for the agency to have given Umpqua special consideration for its location in a labor surplus area. Piasecki Aircraft Corporation, B-190178, July 6, 1978, 78-2 CPD 10.

Umpqua also contends it would have received the highest score and the award if the agency had given weight to technical merit and cost in accordance with the RFP. The RFP stated that "the following criteria shall be evaluated by the Technical Proposal Evaluation Committee" (TPEC) set forth the criteria and weights as follows:

STAFF	20%
STUDY MANAGEMENT	10%
EXPERIENCE	20%
EQUIPMENT AND LIBRARY RESOURCES	10%
COSTS	40%

Umpqua contends, and the agency concedes, that the TPEC considered only the first four criteria and did not evaluate costs. The agency also concedes that the contracting officer, who did evaluate costs, ignored the evaluation subcriteria under costs, which were specified in the RFP as realism of manpower requirements, appropriateness of skills, efficiency of skill mix, realism of material estimates and degree to which proposed costs can be tracked to proposed work.

The agency contends that the general instructions in the RFP stating that the TPEC would evaluate costs were incorrect and that the evaluation of costs by the contracting officer rather than by the TPEC was a deviation of little significance. On this point we agree. Such a separation of the cost and technical evaluations is a generally accepted procedure. We cannot see where the interests of any competitor, including Umpqua, were prejudiced by this deviation from the procedure specified in the RFP.

In its initial protest report to this Office, the agency indicated that the cost scores were determined by awarding Umpqua 40 points because its price was the lowest and then distributing cost points among the 12 other offers in proportion from the next lowest to the highest. These cost points were then added to the technical points to arrive at the total score for each proposal. No consideration was given to any of the cost evaluation subcriteria specified in the solicitation. The agency's supplemental report concedes the cost evaluation scheme announced in the solicitation was discarded because it was unrealistic and that the agency used the cost evaluation plan described in its initial report which it felt was more reasonable.

Procuring agencies have broad discretion in determining which among the many acceptable price evaluation plans they will use in evaluating proposals. See Francis & Jackson, Associates, 57 Comp. Gen. 244 (1978), 78-1 CPD 79. They do not, however, have the discretion to announce in the solicitation that one plan will be used and then follow another in the actual evaluation. Once offerors are informed of the criteria against which their proposals will be evaluated, the agency must adhere to those criteria or inform all offerors of any changes made in the evaluation scheme. Telecommunications Management Corporation, 57 Comp. Gen. 251 (1978), 78-1 CPD 80; Eastman Kodak Company, B-194584, August 9, 1979, 79-2 CPD 105. Therefore, it is improper for an agency to

depart in any material way from the evaluation plan described in the solicitation without informing the offerors and giving them an opportunity to structure their proposals with the new evaluation scheme in mind.

Of course, Interior should have amended the RFP prior to the call for best and final offers to inform offerors of the deletion of the cost evaluation subcriteria. However, we fail to see any prejudice to Umpqua as a result of the Department's failure to do so. It is clear that the various listed subcriteria, while appropriate when a cost reimbursement contract is to be awarded, bear little relationship to price evaluation when, as here, a fixed-price contract is to result and the primary concern is with cost quantum rather than with cost realism. Although in rare instances an agency may seek to evaluate fixed-price proposals in terms of cost realism in order to measure offeror understanding, see H.G. Peters & Company, Inc., B-189552, December 8, 1977, 77-2 CPD 443, here the agency realized that it would be unrealistic to attempt to measure the cost aspect of proposals against the RFP subcriteria and ultimately evaluated cost on the basis of low price, as it is normally evaluated when fixed-price proposals are received. Umpqua received the maximum point score of 40 under this approach, while its competitors received less. Umpqua has not specified any particular prejudice to its competitive position because of this evaluation approach. Consequently, we are not inclined to sustain the protest on the basis of what appears to be a procedural deficiency.

Umpqua does, however, object to another aspect of the cost evaluation. It contends that it would have received the award if the agency had properly applied the cost evaluation method actually used with respect to the initial proposals to the evaluation of best and final offers. Umpqua argues in this respect that it was improper for the agency to include the prices proposed by the original 13 offerors in the final cost evaluation of the four offers within the competitive range and that, by doing do, the agency gave less than the 40 percent weight to cost the solicitation required.

In evaluating the best and final offers submitted by the four firms within the competitive range, the agency made the following analysis:

	ORIGINAL TECH. POINTS	ADDITIONAL BEST & FINAL TECH. POINTS	B&F COST POINTS	AGGREGATE TOTAL
Bio West	47	4.91	37.38	89.29
BYU	53	1.66	37.49	92.15
Umpqua	37[1]	4.5	40.	81.58
Eco-Analysts	38	8.33	37.50	83.83

The best and final cost points were calculated using the same formula used during the initial evaluation of all 13 offerors. Umpqua argues that the evaluation of the best and final offers should have been accomplished by one of two alternative methods. First, it contends that best and final cost points should have been calculated using the same basic formula used in the evaluation of the initial offers but applying that formula to only a base of the four remaining offers. This, according to Umpqua, produces the following results:

	B&F Amount	Rounded	B&F Cost Points (Out of 40)
Bio-West	$37,478	37	8
BYU	39,149[2]	39	0
Umpqua	29,042	29	40
Eco-Analysts	37,107	37	8

	Adjusted Aggregate Total (including technical points)
Bio-West	59.91
BYU	54.66
Umpqua	82.5
Eco-Analysts	53.33

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[1] The technical points for Umpqua and Eco-Analysts are in error; Umpqua's score should be 38 and Eco-Analysts' 37. The errors do not affect the outcome.

[2] BYU's actual price was $37,149. The error does not affect the result.

Second, the protester suggests that the following method could have been used:

	Aggregate[3] Total	Normalized Score	60% of Normalized Score	B&F Price	Normalized Inverse Score	40% of Normalized Inverse Score	Total Normalized Score
Bio-West	89.29	.969	.581	37,478	.775	.310	.891
BYU	92.15	1.000	.600	39,149	.742	.297	.897
Umpqua	81.58	.885	.531	29,042	1.000	.400	.931
Eco-Analysts	83.83	.910	.546	37,107	.783	.313	.859

We do not believe that Umpqua's first alternative is reasonable, as it results in a 40 point gap between Umpqua and BYU in the cost evaluation. Although there is nearly a $10,000 difference between BYU and Umpqua, the 40 point differential which results from awarding maximum points to the low offeror and zero points to the high offeror clearly places a greater emphasis on cost than the RFP evaluation scheme provides and would have the effect of making cost paramount over technical considerations, which were not evaluated in that way.

We also find the second alternative lacks validity as the "aggregate total" actually used to represent the offerors' technical rating is the total score for both price and technical awarded by the agency in its final evaluation. This results in Umpqua's receiving double points for cost (once in the "aggregate total" and once in the additional price scoring) under this evaluation method. The agency shows in its supplemental report that if Umpqua's second method is used with an "aggregate total" which consists of only the technical points awarded each offeror by the agency, BYU receives the highest combined score.

In evaluating price we have held that the agency may use a variety of methods including numerically scoring proposed prices and totaling points awarded for both price and other evaluation factors. See AEL Service Corporation, et al., 53 Comp. Gen. 800 (1974), 74-1 CPD 217. They must take care, however, to avoid using a scoring approach that

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[3] These figures are the total scores awarded the best and final proposals by the agency.

could produce a misleading result. Francis & Jackson, Associates, supra. In this connection, we have pointed out that it is inappropriate to point-score proposals on price when those proposals have no reasonable chance of being selected for award when those proposals also are significantly lower priced than those in the competitive range, since that could indeed distort the evaluation result. See First Ann Arbor Corp., B-194519, March 4, 1980, 80-1 CPD 170. We have also pointed out that the encompassing in an evaluation of a very high price can result in a "bunching" of scores for other, more realistic prices, which would improperly reduce the weight of price as an evaluation factor. See Francis & Jackson, Associates, supra and cases cited therein.

Here it appears that the inclusion in the final cost evaluation of firms outside the competitive range could have produced such a "bunching" since most of their proposals contained prices ranging from $70,000 to $158,000, well in excess of the prices of competitive range proposals. Thus, under the agency's computation, BYU, with a 27 percent higher price than the protester's, received only 6.2 percent fewer points for price. We think a more appropriate computation under the circumstances would have been one in which Umpqua's low price was assigned the maximum of 40 points and the others divided into that price and then multipled by 40. See, e.g., Design Concepts, Inc., B-186880, December 22, 1976, 76-2 CPD 522. Using BYU's correct price of $37,149, this would result in a price score for BYU of 31.36 rather than the 37.49 it received, and would, in our view, more accurately reflect the point value of the approximately $8,000 difference between the Umpqua and BYU proposals. Since, however, it is apparent that such a computation would not have changed the relative standing of offerors, we cannot find that the selection decision based on the scoring scheme used was without a rational basis or not consistent with the establish evaluation criteria and weights. The evaluation scheme used therefore provides no basis for our disturbing the award.

The protest is dismissed in part and denied in part.

Acting Comptroller General
of the United States