Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Engineering and Computation, Inc.

File: B-275180.2

Date: January 29, 1997

Suresh K. Verma for the protester.
David S. Cohen, Esq., Cohen & White, for IIT Research Institute, an intervenor.
Louis R. Durnya, Esq., and Richard N. Wolf, Esq., National Aeronautics and Space Administration, for the agency.
Linda S. Lebowitz, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Even if the agency's reevaluation of the protester's proposal was flawed and the protester should have been evaluated as the low cost offeror, the protester was not prejudiced since under the solicitation's evaluation methodology where technical evaluation factors were weighted equal to cost, the agency could reasonably make a cost/technical tradeoff and award the contract to the incumbent contractor which was rated "excellent" for the relevant corporate experience and past performance evaluation factor, as opposed to the protester, a new corporate entity rated "neutral" for this evaluation factor because it had no prior corporate experience and past performance and the solicitation did not provide for consideration of the experience of the firm's key personnel in evaluating corporate experience and past performance.

DECISION

Engineering and Computation, Inc. (ECI) protests the reevaluation of its proposal and the selection of IIT Research Institute (IITRI) for the award of a contract under request for proposals (RFP) No. 8-H-5-EH-18305, issued by the National Aeronautics and Space Administration for the operation and maintenance of metallurgy research facilities at the Marshall Space Flight Center in Huntsville, Alabama. In Engineering and Computation, Inc., B-261658, Oct. 16, 1995, 95-2 CPD ¶ 176, we sustained ECI's protest because we could not determine the reasonableness of the agency's selection decision since it was based on unsupported evaluation conclusions and the agency failed to rebut ECI's protest assertions that its proposal was misevaluated. We recommended that the agency reevaluate all proposals, document its reevaluation, and make a new selection decision.[1] ECI maintains that the agency did not properly reevaluate its proposal.

We deny the protest.

The RFP contemplated the award of a cost-plus-fixed-fee contract for a base period and four option periods to the offeror whose proposal was most advantageous to the government. The RFP contained the following essentially equal evaluation factors: (1) mission suitability; (2) cost; (3) relevant experience and past performance; and (4) other considerations (e.g., phase-in; corporate policies, procedures, and practices; labor relations; corporate resources; and small business and small disadvantaged business subcontracting plans). The mission suitability evaluation factor, the only factor that was point-scored, consisted of the following subfactors: (1) understanding the requirement (350 points); (2) management approach (325 points); and (3) staffing plan (325 points). Based on points received, adjectival ratings were assigned (e.g., "excellent"--91 to 100 percent of points received and "very good"--71 to 90 percent of points received). Adjectival ratings were also assigned to the other noncost evaluation factors. An offeror's proposed cost was adjusted to reflect the "probable cost of doing business" with the firm.

The agency reevaluated the best and final offers of the three competitive range offerors, including ECI, a newly formed, small disadvantaged business concern, and IITRI, the incumbent contractor. The reevaluation results, which were supported by narratives of the strengths, weaknesses, and risks in each offeror's proposal, were as follows:

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[1]ECI states that in accordance with our recommendation, it timely filed with the agency a claim for the costs of filing and pursuing its protest. The agency has not adjudicated ECI's claim. Pending such adjudication, we view as premature ECI's current request that we consider its claim.

	Firm A	ECI	IITRI
Mission Suitability	845 points; very good	860 points; very good	950 points; excellent
Relevant Experience & Past Performance	Excellent	Neutral	Excellent
Other Considerations	Excellent	Very Good	Excellent
Proposed Cost; Most Probable Cost	$7,782,311; $9,395,378	$8,121,978; $9,173,068	$7,641,083; $9,171,509

The source selection official (SSO)[2] reviewed the reevaluation results and noted that the relative order of mission suitability scores did not change, although the scores of Firm A and ECI increased slightly (i.e., Firm A by 5 points and ECI by 10 points). While IITRI's score remained the same, the SSO determined that IITRI still had an advantage in each of the mission suitability subfactors. The SSO concluded that IITRI's proposal was "clearly the best proposal" with respect to the mission suitability evaluation factor. For the relevant experience and past performance evaluation factor, Firm A and IITRI again received "excellent" ratings based on references and prior performance. ECI, a new corporate entity with no relevant corporate experience and past performance, received a "neutral" rating (as opposed to the previous "good" rating). Firm A and IITRI continued to receive "excellent" ratings for the other considerations evaluation factor, and ECI again received a "very good" rating. Finally, the SSO noted that IITRI's proposed cost was lower than the proposed costs of Firm A and ECI, and that ECI had the highest proposed cost. The SSO considered the adjusted, most probable costs for ECI and IITRI to be essentially equal. Because of the relatively small differential in the most probable costs for each offeror, particularly ECI and IITRI, the SSO determined that cost would not be a significant discriminator in making the new source selection decision. Based on his review of the reevaluation results and without regard to the cost differential between the offerors' most probable costs, the SSO selected IITRI for award based on its substantially higher mission suitability score and its "excellent" rating for both the relevant experience and past performance and the other considerations evaluation factors.

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[2]In light of our recommendation for corrective action, the agency elevated the new source selection decision from the contracting officer for the procurement to the Marshall Space Flight Center Procurement Officer.

ECI argues that the agency misevaluated its proposal for the mission suitability and cost evaluation factors. More specifically, for each of the mission suitability subfactors, offerors were required to discuss risks and their approaches for minimizing the impact of those risks on the overall success of the program. The agency rated ECI lower than IITRI because it viewed ECI's discussion of risk under each subfactor as incomplete. For each subfactor, the agency specified areas of concern with ECI's risk analysis. In its protest, ECI rebutted each of these reasons, essentially arguing that the agency's concerns were not reasonably based. ECI maintains that it should have received an "excellent" rating for the mission suitability evaluation factor. In addition, ECI objects to the manner in which the agency calculated its most probable cost. ECI believes that if properly calculated, its most probable cost should have been lower than IITRI's.[3]

The agency argues that even if ECI had been rated "excellent" for the mission suitability evaluation factor and its most probable cost had been evaluated lower than IITRI's, ECI, a new corporate entity with no prior corporate experience and past performance, was not prejudiced because the agency would have still awarded the contract to IITRI at a cost premium in light of its "excellent" corporate experience and past performance as the incumbent contractor.

In a procurement where the award will be made to the offeror whose proposal is most advantageous to the government based on the evaluation factors in the RFP, a determination to award to a higher-cost offeror with a good past performance record over a lower-cost offeror with a neutral past performance rating is not

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[3]ECI basically objects to the agency's normalization of each offeror's proposed costs. For example, ECI complains about the application of the same agency headquarter's percentage escalation factor to each offeror's direct labor costs, particularly since the escalation factor it used to calculate its proposed direct labor costs was significantly lower than the factor used by the agency. However, the RFP stated that in adjusting costs to determine the "probable cost of doing business" with each offeror, "common or different cost[s] to more than one proposal [would] be adjusted to a common baseline." By applying the same escalation factor to each offeror's direct labor costs, the agency evaluated such costs "to a common baseline" as required by the RFP. ECI's challenge constitutes a protest of an alleged solicitation impropriety which was not timely raised prior to the appropriate closing time for receipt of proposals. Bid Protest Regulations, section 21.2(a)(1), 61 Fed. Reg. 39039, 39043 (1996) (to be codified at 4 C.F.R. § 21.2(a)(1)).

precluded since such a determination is consistent with making a cost/technical tradeoff to determine if one proposal's technical superiority is worth the higher cost associated with that proposal. Cost/past performance tradeoffs are permitted when such tradeoffs are consistent with the RFP. Excalibur Sys., Inc., B-272017, July 12, 1996, 96-2 CPD ¶ 13.

Here, the RFP stated that the technical and cost evaluation factors were of equal importance in determining the offeror whose proposal was most advantageous to the government. Assuming that ECI and IITRI were each rated "excellent" for the mission suitability evaluation factor and that ECI's most probable cost was lower than IITRI's, the agency nevertheless could reasonably make a cost/technical tradeoff, considering the advantages of awarding the contract to IITRI as the incumbent contractor which was rated "excellent" for relevant corporate experience and past performance against any cost advantage associated with awarding to ECI, a new corporate entity rated "neutral" for this evaluation factor because it had no prior corporate experience or past performance. In other words, the agency could reasonably determine that it was worth the payment of a cost premium to select for award IITRI, a successfully performing incumbent contractor, rather than to select ECI, an offeror whose proposal might result in cost savings to the government, but which did not have any relevant corporate experience or past performance as required by the RFP.

We point out that the RFP stated that in evaluating an offeror's relevant experience and past performance, "[t]he overall corporate or offeror's relevant experience and past performance . . . (as opposed to that of proposed key personnel) with comparable or related procurement/project efforts [would] be considered." (Emphasis added.) Consistent with the RFP, we think the agency reasonably assigned a "neutral" rating to ECI for the relevant experience and past performance evaluation factor since ECI was a new corporate entity with no prior corporate experience or past performance. While ECI's program manager was formerly the program manager for IITRI under the predecessor contract, under the terms of the RFP, the experience of proposed key personnel was not to be considered in evaluating an offeror's relevant corporate experience and past performance. Rather, in accordance with the RFP, the experience of ECI's program manager was evaluated under the mission suitability management approach subfactor. We therefore have no basis to object to the "neutral" rating assigned to ECI for the corporate experience and past performance evaluation factor, and we note that such rating did not penalize ECI, a newly formed corporate entity, for its lack of corporate experience and past performance.

Accordingly, even if ECI were correct that the agency's reevaluation of its proposal was flawed, we conclude that ECI was not prejudiced. Accepting ECI's contentions, we believe the firm reasonably received a "neutral" rating for the relevant corporate experience and past performance evaluation factor, and that IITRI's "excellent" rating for this evaluation factor in light of its favorable performance as the incumbent contractor was properly a basis upon which the agency could reasonably determine that even at a higher cost, IITRI's proposal was most advantageous to the government.

The protest is denied.[4]

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[4]There is no credible evidence in the record to support ECI's position that the agency was biased against ECI, a small disadvantaged business concern, or biased in favor of IITRI, the incumbent contractor. As discussed, even if the agency's reevaluation was flawed, ECI was not prejudiced because the award was otherwise consistent with the terms of the RFP.