



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

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Matter of: Criterion Corporation

File: B-266050

Date: January 23, 1996

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party.

Col. Nicholas P. Retson and Capt. Bryant S. Banes, Department of the Army, for the
agency.

Behn Miller, Esq., and Christine S. Melody, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging agency's determination that awardee's proposal was technically superior is denied where, even though protester's proposal received a higher technical score than the awardee's under the past performance technical evaluation factor, the awardee's proposal received significantly higher scores for three of the remaining four technical evaluation factors—which were ranked equally with the past performance technical evaluation factor—resulting in an overall higher technical score for the awardee.

2. Award to higher priced offeror was proper where agency reasonably determined that superior technical merit of the awardee's proposal warranted paying the associated price premium and the solicitation emphasized that technical merit was more important than price.

DECISION

Criterion Corporation protests the award of a contract to Phoenix Systems & Technology (PS&T) under request for proposals (RFP) No. DAHA30-95-R-0005, issued by Department of the Army for operation and maintenance of the airfield located at Griffiss Air Force Base, Rome, New York. Criterion contends that the agency's determination that PS&T's proposal was technically superior to the protester's is improper since the awardee's past performance is not as strong as the protester's. Criterion also contends that the agency improperly based the contract award solely on technical merit, without regard to price.

We deny the protest.

The RFP was issued on June 9, 1995, and contemplated the award of a firm, fixed-price indefinite quantity contract for a base year period with 4 option years. Offerors were required to submit both technical and price proposals. The RFP provided that technical proposals would be evaluated under the following five evaluation criteria, which were rated of equal importance: past performance; quality assurance; organizational structure; orientation period; and demonstrated understanding of the statement of work requirements. The RFP further provided that technical merit was more important than price, and that the "most advantageous" offer would be selected for award.

By the August 18 closing date, three proposals were received, including offers from PS&T and the protester. Criterion's proposal was priced at \$17,129,444 and PS&T's proposal was priced at \$19,337,600. By August 23, the technical evaluation panel (TEP) had completed its evaluation of offerors' technical proposals. While Criterion's proposal received a higher technical rating than PS&T's under the past performance technical evaluation factor, it was ranked second behind PS&T's in overall technical merit. Shortly thereafter, the TEP advised the contracting officer that because PS&T's "proposal outlined the best plan to accomplish" the contract, the team had determined PS&T's proposal was "the technically superior proposal"; by memorandum dated August 23, the TEP unanimously concluded that because of the superior technical merit of PS&T's proposal, it provided the "best value to the [g]overnment."

After comparing the TEP's evaluation results and recommendation with the results of the agency's price proposal evaluation, the contracting officer—who was the source selection official for this procurement—determined that PS&T's technical superiority warranted paying an approximately \$2 million price premium. Consequently, on August 29, the Army awarded this contract to PS&T. On September 8, PS&T filed this protest.

Criterion first asserts that its proposal should have been considered technically superior to PS&T's proposal because of its superior past performance.

We will examine an agency's technical evaluation to ensure that it was reasonable and consistent with the evaluation criteria and applicable statutes and regulations. Information Sys. & Networks Corp., 69 Comp. Gen. 284 (1990), 90-1 CPD ¶ 203.

In this case, the agency credited Criterion's proposal for its superior past performance with 260 points as compared to PS&T's 238 points. However, our review of the record shows that even considering this technical superiority, PS&T's proposal was reasonably found to be technically superior because of its higher ratings under three of the four remaining technical evaluation factors—which were

ranked of equal importance with the past performance factor. Specifically, PS&T's and Criterion's scores for these 4 factors were as follows:

<u>Evaluation Factor</u>	<u>PS&T</u>	<u>Criterion</u>
Quality Assurance	354	339
Organizational Structure	356	317
Orientation Period	388	327
Demonstrated Understanding	358	378

In total, PS&T received 1,694 points for its technical proposal while Criterion received 1,621.

The reasons for PS&T's higher point score were memorialized in a contemporaneous, summary evaluation statement executed by each member of the TEP. Specifically, the TEP determined that PS&T submitted the "[b]est [quality control] plan of the three [proposals] with numerous total quality management (TQM) parts that would be verifiable and lead to good quality involvement," as well as "the best organizational plan in terms of manpower and duties for cross-utilizations." The TEP report documented the reasons why PST's proposed plans were considered the best and why Criterion's were not. Additionally, the TEP reported that because PS&T "has so many local personnel on line and has an extremely specific plan for the orientation period, the team felt that [PS&T's] orientation plan was the best." Criterion has not shown the agency's determinations that PS&T's proposal was superior under these factors was unreasonable.

Thus, the evaluation documentation shows that even considering Criterion's higher past performance rating, the TEP reasonably concluded that given PS&T's documented strengths under the quality assurance, organizational structure, and orientation period factors, PS&T's technical proposal was significantly stronger than Criterion's as indicated by the point scores. As noted above, past performance was only one of five equally ranked technical factors; moreover, the record shows that although PS&T did not have as strong a performance background as Criterion, PS&T nonetheless had a clearly applicable history of similar experience since the firm "was involved in a number of recent and on-going contracts related to . . . essential airfield type of operations." Although Criterion disagrees with the agency's technical conclusions, such disagreement does not render the evaluation unreasonable. Litton Sys., Inc., B-237596.3, Aug. 8, 1990, 90-2 CPD ¶ 115.

Criterion also argues that the Army improperly failed to consider price in its selection decision. Alternatively, Criterion argues that if price was considered, the

record does not contain sufficient documentation of a contemporaneous price analysis, and consequently its protest should be sustained on this basis.

Where, as here, the RFP provides that technical considerations will be more important than price, agency selection officials have broad discretion in determining the manner and extent to which they will make use of the technical and price evaluation results in making price/technical tradeoffs. Red River Serv. Corp.; Mark Dunning Indus., Inc., B-253671 et al., Apr. 22, 1994, 94-1 CPD ¶ 385.

A source selection official's judgment must be documented in sufficient detail to show it is not arbitrary. KMS Fusion, Inc., B-242529, May 8, 1991, 91-1 CPD ¶ 447. The official's failure to specifically discuss the price/technical tradeoff in the selection decision does not affect the validity of the decision, if the record shows that the agency reasonably made its determination. McShade Gov't Contracting Servs., B-232977, Feb. 6, 1989, 89-1 CPD ¶ 118. The fact that the explanation was not contained in the contemporaneous evaluation record does not provide a basis to disregard it in our review. Allied-Signal Aerospace Co.; Bendix Communications, Div., B-249214.4, Jan. 29, 1993, 93-1 CPD ¶ 109.

In this case, the record shows that the contracting officer carefully weighed the superior technical merit of PS&T's proposal and its higher price against the price savings provided by Criterion's offer. Although the record does not contain a contemporaneous document memorializing this price/technical tradeoff analysis, the details of this analysis are nonetheless clearly spelled out in a memorandum prepared for our Office's review, responding to the protester's contentions.

Specifically, the contracting officer found that Criterion's lower price resulted in part from its technical strategy, which relied on a cross-utilization of personnel--resulting in the rotation of full-time personnel to perform other functions during peak work loads and shared job responsibilities among part-time personnel. The contracting officer determined that although this staffing strategy was feasible, it represented a performance risk not present in PS&T's proposal which offered [deleted] than Criterion and [deleted]. Based on the technical superiority of PS&T's offer, as well as the noted performance risks inherent in Criterion's staffing approach, the contracting officer determined that PS&T's technical strengths warranted paying the associated price premium of approximately \$2 million and that PS&T's proposal offered the "best value" to the Army. From our review of the record, which as indicated shows that PS&T's proposal was technically superior, and given that the solicitation emphasized technical merit was more important to price, we find that the agency's price/technical tradeoff analysis reasonably justified

the agency's award selection decision. Sociometrics, Inc., B-261367.2; B-261367.3, Nov. 1, 1995, 95-2 CPD ¶ 201; General Research Corp., B-253866.2, Dec. 17, 1993, 93-2 CPD ¶ 325.¹

The protest is denied.

Comptroller General
of the United States

¹Criterion also contends that the agency failed to timely notify it of the PS&T award, resulting in the protester's failure to obtain a stay of contract performance when it filed a protest at our Office. It appears from the record that although the agency timely mailed the award notice to a local New York corporate location listed in the protester's proposal, the protester apparently expected to receive this notice at its Texas headquarters. In any event, since we deny the protester's challenges to the selection decision and find the award to be proper, we will not consider this contention further since the protester was not prejudiced by any delay in notification. See Main Elec. Ltd., B-224026, Nov. 3, 1986, 86-2 CPD ¶ 511.