



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

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Matter of: Heimann Systems, Inc.

File: B-272182

Date: September 9, 1996

Sam Zalman Gdanski, Esq., for the protester.

Paul F. Khoury, Esq., Rand L. Allen, Esq., and Mark H. Neblett, Esq., Wiley, Rein & Fielding, for EG&G Astrophysics Research Corporation, an intervenor.

Joni M. Gibson, Esq., Department of Justice, for the agency.

Jeanne W. Isrin, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that evaluation of technical and price proposals was improper is denied where the record shows that the evaluation was reasonable and consistent with the solicitation's evaluation criteria.

2. Use of price scoring formula in the evaluation of proposals is not objectionable merely because the solicitation did not inform offerors that the formula would be used.

DECISION

Heimann Systems, Inc. protests the award of a contract to EG&G Astrophysics Research Corporation under request for proposals (RFP) No. MS-96-R-0006, issued by the United States Marshals Service (USMS), Department of Justice, for the acquisition and installation of x-ray security screening systems.

We deny the protest.

The RFP contemplated award of a fixed-price, indefinite quantity, indefinite delivery contract for 1 base year, with four 1-year options. Offerors were required to submit technical and price proposals, plus a sample x-ray screening unit for testing and evaluation. The technical proposals and samples were to be evaluated under the following criteria: meeting specifications (60 of 100 available points); degree to which system's performance and features exceed specifications, especially "resolution" and "penetration" (20 points); execution plan, resumes, corporate overview, and corporate references (10 points); and past performance (10 points).

The technical evaluation was worth 60 percent of the overall score, and the price evaluation 40 percent, with award to be made on a best value basis.

Of six proposals received by the closing date, two--Heimann's and EG&G's--were included in the competitive range. These proposals were scored as follows¹:

Offeror	Raw Technical Score	Normalized Technical Score	Price Score	Price	Total Score
Heimann	96.6	57.99	31.78	\$8,703,620	89.74
EG&G	76.2	43.80	40.00	\$6,915,850	83.80

Discussions were held with Heimann and EG&G. Heimann was informed that its proposal was technically acceptable, with no deficiencies, but two weaknesses were identified, only one of which is relevant here. The sample units were required to undergo a "power supply interruption" test, the purpose of which was to determine how long it would take for a unit to automatically power-up and resume functioning should power be cut. Heimann was advised that, during the test, black lines (vertical bands) appeared across the monitor of Heimann's unit following the restoration of power. In addition, Heimann was told that its price was considered "somewhat excessive." EG&G, whose proposal was found conditionally technically acceptable, was informed of two deficiencies and two weaknesses in its proposal. Both offerors were advised that they would be given 4 days to make any repairs or changes to their sample units, after which best and final offers (BAFO) were to be submitted.

Based on the BAFOs and retesting, EG&G's unit was found technically acceptable because all cited deficiencies and weaknesses had been corrected. Although Heimann's unit passed the power interruption test, as it had before, the black lines which appeared on the screen following restart still appeared. Heimann corrected the other cited weakness in its proposal and reduced its price. The BAFO scoring was as follows:

¹The raw technical score was "normalized" by multiplying it by 60 percent in order to attain the proper weighted score required under the RFP. The price score was derived by assigning the maximum 40 points to the lowest price and proportionately fewer points to the higher-priced proposal based on the amount of the price difference.

Offeror	Raw Technical Score	Normalized Technical Score	Price Score	Price	Total Score
Heimann	99	59.40	35.36	\$7,824,240	94.76
EG&G	91.6	54.96	40.00	\$6,915,850	94.96

Because EG&G's proposal received a higher total overall score, and offered a significantly lower evaluated price than Heimann's, it was judged the best value to the government, and award was made to EG&G on May 21.

Heimann challenges both the technical and price evaluations. In reviewing protests against allegedly improper evaluations, it is not our role to reevaluate proposals. Rather, our Office examines the record to determine whether the agency's judgment was reasonable and in accord with the RFP's stated evaluation criteria. All Star Maintenance, Inc., B-271119, June 17, 1996, 96-1 CPD ¶ 278.

HEIMANN'S TECHNICAL SCORE

Heimann maintains that since it was told in discussions that its proposal contained no deficiencies, only weaknesses, and Heimann corrected the weaknesses in its BAFO, its proposal, which received 99 raw score points, should have received the maximum possible score of 100 (60 normalized) points. This 1-point raw score increase would raise Heimann's total normalized score to 95.36, higher than EG&G's, and, Heimann asserts, thus would entitle Heimann to award.

This argument is without merit. There is no basis to conclude that Heimann's technical proposal was entitled to a perfect score, since the "black lines" problem with its monitor was not resolved in Heimann's BAFO. In this regard, although Heimann asserts that it corrected all weaknesses in its BAFO, its BAFO letter stated with respect to the "black lines" problem only that:

" . . . our technical personnel have analyzed this problem and have identified the solution. This problem being fairly minor, we have decided not to implement it on the test unit but a viable solution is available should USMS decide this to be mandatory to meet the minimum requirement."

The agency determined that Heimann's proposal was technically acceptable notwithstanding this weakness, but Heimann's failure to correct it reasonably justified a 1-point reduction in Heimann's raw score.

UNDISCLOSED PRICE SCORING FORMULA

The price scores were determined as follows: USMS assigned the maximum 40 points to the lowest-priced proposal in the competitive range (EG&G's), and then divided EG&G's price by Heimann's and multiplied by 40 to arrive at Heimann's score of 35.36. Heimann objects to the use of this scoring method on the basis that it was not disclosed in the solicitation. This argument is without merit. While the Federal Acquisition Regulation (FAR) requires that price and technical evaluation factors, and their relative importance, be set forth in the solicitation, see FAR § 15.605(d)(1) and (2) (FAC 90-31), it does not require agencies to disclose the price evaluation formula that will be applied. The use of the type of price scoring formula that the agency utilized here, without disclosure in the RFP of the agency's intention to use it, is relatively common and is not objectionable. See Centex Constr. Co., Inc., B-238777, June 14, 1990, 90-1 CPD ¶ 566; Didactic Sys., Inc., B-190507, June 7, 1978, 78-1 CPD ¶ 418.

Heimann argues that the final price score computation should have included two proposals that were eliminated from the competitive range; since one was priced lower than EG&G's proposal, Heimann concludes that doing so would have reduced EG&G's price score sufficiently to make Heimann's proposal the highest rated. This argument is specious. It clearly would be irrational to base the scoring of BAFOs on a comparison with initial offers that were rejected before reaching the BAFO stage of the competition.² Utilization of an otherwise acceptable scoring approach that produces an irrational result in a given case is inappropriate. Francis & Jackson, Assocs., 57 Comp. Gen. 244 (1978), 78-1 CPD ¶ 79.

WARRANTY

Heimann maintains that its offered warranty--3 years on the screening unit and 5 years on the x-ray generator--went beyond the required 1-year warranty, but that this was not reflected in the technical and price evaluations. Heimann argues that the value of the additional warranty it offered is \$139,181, based on repair services required on the current incumbent contract; subtracting \$139,181 from Heimann's BAFO price would result in a high overall score of 95.40. This argument is without merit. The technical evaluation report clearly shows that Heimann's warranty was

²Heimann raises additional arguments which are equally without merit, and do not warrant discussion.

considered a strength under the technical evaluation criterion for qualities that exceed specifications. Further, there was no basis for factoring the value of the extended warranty into Heimann's price, since the RFP did not provide for consideration of the value of an extended warranty in the price evaluation. See North Am. Automated Sys. Co., Inc., B-216561, Feb. 15, 1985, 85-1 CPD ¶ 203. Heimann raises other arguments concerning the warranty which are without merit, and do not warrant discussion.

PAST PERFORMANCE INTERPRETATION

The RFP, section L-2 (5), "Corporate References/Past Performance," required that offerors provide "a minimum of five (5) current, or previous clients who are receiving, or have received 'like' supplies/services to the USMS requirement." Heimann argues that this provision should have been construed as requiring client references who have received the exact unit offered, and that, since EG&G's unit is not the precise unit previously furnished, EG&G's proposal should have been downgraded in this area. Heimann's strict reading of the term "like" is unwarranted. USMS states that its intention was to obtain references from previous clients who had purchased the same or similar equipment, and the word "like," as relevant here, is defined as "the same or nearly the same," "having the characteristics of," and "similar to."³ Given that the RFP did not elsewhere require that the references be based on the identical unit, there was no basis for downgrading EG&G's proposal in this area.

Heimann also argues that EG&G's proposal was deficient because its sample unit was a prototype rather than a production model, which Heimann read the RFP as requiring. There was no requirement that the sample be a production model. Section L-21 of the RFP required as a sample "one (1) X-ray System with Dual Energy Color System Option as proposed by the offeror"; it did not state that the sample must currently be in production or commercially available. Where the solicitation does not require that the item to be procured be a production model, there is no basis to object to the offering of a prototype. See generally Agema Infrared Sys., B-222623, June 4, 1986, 86-1 CPD ¶ 524.⁴

³Webster's Ninth New Collegiate Dictionary, 1983.

⁴USMS states that EG&G's sample unit, model 215, is an upgraded model of an earlier version of Linescan X-ray machines produced by EG&G and used by USMS under a prior contract.

ALLEGED IMPROPER MODIFICATION OF EG&G'S SAMPLE UNIT

Heimann maintains that EG&G was improperly permitted to repair or modify its sample unit after the BAFO deadline for doing so. This argument is refuted by the record. EG&G's sample unit initially failed the power supply interruption test. Following discussions, EG&G corrected the problem by installing an uninterruptible power source (UPS) on the unit. When EG&G's unit was subsequently retested after BAFOs, the unit was found to be unplugged, and it would only start after being plugged in for approximately 30 minutes. Once started, the unit passed the power supply interruption test. Four days later, the contracting officer contacted EG&G and requested clarification as to how to start the unit. EG&G informed him of the installation of the UPS and stated that the reason for the 30-minute start-up delay was either that the UPS battery had not been fully charged, or had become discharged when the unit was disconnected from AC power. EG&G stated that this would not happen if the machine were plugged in so the battery could sustain a charge of at least 50 percent; the battery then would remain charged and the unit could easily be started. The unit was subsequently retested and started after being unplugged from AC power for 30 minutes. As EG&G's unit was not defective in any way, and did not require repairing or modifying, Heimann's argument is without merit.⁵

The protest is denied.

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⁵Heimann claims that it could have rectified its unit's "black lines" problem had it been given the same extra time given EG&G to correct its unit's start-up delay problem. However, as we found above, unlike Heimann's unit, the problem with EG&G's unit did not reflect any defect and EG&G's actions did not constitute repair or modification. Moreover, Heimann's BAFO statement that it would correct the problem only if mandatory indicated that it had no intention to fix the problem in its BAFO; there is no indication that the problem would have been addressed had more time been granted.