



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

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Matter of: Environmental Chemical Corporation

File: B-275819

Date: April 1, 1997

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Crowell & Moring, L.L.P., for UXB International, Inc.; and Paul F. Khoury, Esq., and
Mark H. Neblett, Esq., Wiley, Rein & Fielding, for Environmental Hazards Specialists
International, Inc., intervenors.

Steven W. Feldman, Esq., Department of the Army, for the agency.

Andrew T. Pogany, Esq., Office of the General Counsel, GAO, participated in the
preparation of the decision.

DIGEST

1. Selection officials are not bound by recommendations made or price/cost evaluation methodologies used by an agency evaluation panel or other subordinate officials in evaluating price proposals.
2. Source selection officials in negotiated procurements have broad discretion in determining the manner and extent to which they will make use of the technical and cost evaluation results. In exercising that discretion, they are subject only to the tests of rationality and consistency with the established evaluation factors.

DECISION

Environmental Chemical Corporation (ECC) protests the multiple awards of indefinite delivery/indefinite quantity contracts to UXB International, Inc., Environmental Hazards Specialists International, Inc. (EHSI), and EOD Technology, Inc. under request for proposals (RFP) No. DACA87-96-R-0008, issued as a small business set-aside by the Department of the Army, Corps of Engineers, Huntsville, Alabama, to safely locate, identify, and dispose of ordnance and explosives at various Department of Defense (DOD) sites.

We deny the protest.

The RFP, issued on January 10, 1996, contemplated multiple awards and stated that the government would award the contracts to the responsible offerors whose offers

conforming to the solicitation were most advantageous to the government, cost or price and other factors, specified elsewhere in the solicitation, considered. The RFP contemplated a 3-year contract ordering period, with task orders to be issued under the contract in an anticipated combination of firm, fixed-price, time-and-materials (T&M), and cost-plus-fixed-fee (CPFF) bases. The RFP stated that each offeror was required to submit for evaluation a past performance proposal (Volume 1) and stated that a technical oral presentation/interview would also be required. The RFP contained the following subfactors for past performance: (1) questionnaire results; (2) team overview; and (3) terminated contracts. The RFP contained the following subfactors for the oral presentation/interview: (1) technical; (2) management; and (3) safety. Concerning price/cost, the RFP also required offerors to submit a price proposal (Volume 2). The RFP provided that Volume 1 and the oral presentation/interviews would be numerically scored; Volume 2, price, would not be scored but would be evaluated for reasonableness, realism and affordability based upon the labor rates proposed in Schedule B of the RFP and the offerors' estimates proposed in response to the RFP's sample task order.¹

The agency received proposals on March 27, 1996, and held individual oral presentation/interview sessions with offerors during the following months. Initial evaluation by the agency's five technical evaluators was completed pursuant to the source selection plan, with the evaluators recording, in narrative form, strengths and weaknesses for each offeror in support of every subfactor score. After conducting discussions, the agency received best and final offers (BAFO) on October 29, 1996. Evaluation of BAFOs resulted in the following technical and cost rankings:²

¹The sample task order was a "critical element" of the evaluation process. Offerors were required to provide "their technical, management and safety approach to performing the sample task [and to cost] the sample task using both a time and materials and a cost-plus-fixed-fee approach" in the price volume.

²The maximum technical score was 6,000 points.

Offeror	Technical	Evaluated Price/Cost ³ (as adjusted for realism)	
		CPFF	T&M
EHSI	[Deleted]	[Deleted]	[Deleted]
UXB	[Deleted]	[Deleted]	[Deleted]
EOD	[Deleted]	[Deleted]	[Deleted]
ECC	[Deleted]	[Deleted]	[Deleted]

The chairman of the technical evaluation panel issued a memorandum to the source selection authority (SSA) ranking EHSI, UXB, and EOD as first, second, and third, respectively. The agency evaluators did not recommend ECC for consideration to the SSA since they found various irregularities and weaknesses in its proposal that are not relevant here. The SSA followed this recommendation, and awards were made to these firms. This protest followed. In response to the protest, the SSA reevaluated BAFOs, including ECC's BAFO, and determined that even if ECC had been considered, its proposal would not have been selected for award.⁴ The SSA found as follows:

"The closest call is between [EOD] and ECC. [EOD] is superior to ECC on both past performance and oral presentation. While ECC has an advantage over [EOD] on [individual labor rates, EOD] has a significant price advantage (greater than [deleted]) over ECC on the most probable cost evaluation of the sample task order. Due to the magnitude of the most probable cost advantage of [EOD], I consider

³The offerors' price proposals were separately evaluated ("costed") on both a CPFF basis and a T&M basis for evaluation purposes.

⁴In making this determination, the SSA made no changes to ECC's past performance or oral presentation/interview scores or its cost ratings because the Army had not lowered ECC's scores or rankings when it decided not to consider the firm. None of the "deficiencies" that the agency previously identified in its review of ECC's cost proposal, such as weaknesses in ECC's cost estimating system, led to any point score reductions in the technical evaluation; nor were any technical points otherwise reduced for any issue raised by the protester here. Thus, since the SSA tradeoff decision that included ECC's proposal assumed the validity of the protester's assertions and arguments, except as discussed below, we need only resolve the reasonableness of this tradeoff decision by the SSA to decide this protest.

their overall cost proposal more advantageous than ECC. [EOD] has a slight edge over ECC in all [respects, including] past performance, oral presentation and cost [as compared with] the offer of ECC. [UXB and EHSI represented similar substantial cost savings] because of the magnitude of the most probable cost advantages [of UXB and EHSI]."

The protester does not challenge the technical scores or ratings it received from the agency. The protester notes that had its proposal been initially considered it would have "ranked fourth [technically] overall, only [a few] points out of a possible 6,000 behind one of the three awardees," EOD. Since the record shows this assertion to be correct, we turn to the protester's arguments concerning the price/cost evaluation.

The protester's sole argument that it should have received an award as one of the best value offerors is that the SSA was bound to follow the price/cost evaluation methodology initially used by the evaluators and also used by a subordinate contract specialist in reevaluating ECC's price/cost ranking after its protest was filed. The record shows that this initial agency methodology was as follows:

"All comparable labor categories were reviewed to determine which offeror proposed the lowest wage rate, the second lowest wage rate and so on for all six offerors. For this analysis, comparable labor category is defined as any labor category for which two or more offerors proposed. The lowest offer in each comparable labor category was denoted with a '1' and the second lowest a '2' and so on up to number '6.' For all labor categories, a '1' denotes the lowest wage rate offered and a '6' the highest wage rate offered for that category."

According to the protester, these numerical labor hour cost ranking numbers were then added to the sample task order ranking numbers to arrive at the overall price/cost ranking of the offerors, with the lowest total number equaling the highest ranking. The protester states that had the agency followed this methodology in evaluating ECC's price/cost proposal, ECC would have been ranked second in overall cost and thus entitled to award. The protester states that the SSA improperly "overruled" the contract specialist's analysis and instead determined as follows:

"I disagree with [the contract specialist's] analysis and conclusion primarily because the methodology she employed does not give proper consideration to the magnitude of the difference of the most probable cost analysis of the [offerors]."

Thus, the protester essentially argues that the SSA was not permitted to consider the actual magnitude of the difference among offerors' evaluated price/cost proposals but was only permitted to consider rudimentary arithmetic price/cost rankings. We reject the protester's argument. The protester has not cited or referred us to any provision in the RFP which would have precluded the SSA from considering the actual dollar amount difference among offerors. Moreover, selection officials are not bound by recommendations made or price/cost evaluation methodologies used by an agency evaluation panel or other subordinate officials. See Bell Aerospace Co., 55 Comp. Gen. 244 (1975), 75-2 CPD ¶ 168. Rather, source selection officials in negotiated procurements have broad discretion in determining the manner and extent to which they will make use of the technical and cost evaluation results. Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 CPD ¶ 325. In exercising that discretion, they are subject only to the tests of rationality and consistency with the established evaluation factors. Id. We think that the agency's consideration of the actual dollar difference among offerors in its best value selection decision, instead of merely relying on simple arithmetic rankings, was entirely rational and reasonable.⁵

The protest is denied.

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⁵The protester also argues that EHSI's price proposal was unreasonably low and should have been rejected. However, the agency found that EHSI had "provided an extensive discussion on the integrated technical approach to the [sample task order] which tied all technical portions together. It was a very detailed discussion. The offeror's presentation shows that they have all the tools to do the work properly. The relationship between all phases of the sample task order is exceptionally orchestrated and exceedingly logical." The agency further explains that EHSI's price proposal was only low because the firm employed a "best case scenario" in its sample task order which the agency reasonably adjusted upwards for evaluation purposes. The protester has not disputed this explanation, and we therefore need not further consider this matter. Other issues raised by the protester in its initial protest were either withdrawn or have been rendered academic by our finding that the agency properly considered the actual price/cost difference among offerors in making its selection decision.