



**Comptroller General
of the United States**

**United States General Accounting Office
Washington, DC 20548**

Decision

Matter of: Crescent Helicopters

File: B-283469.2

Date: November 30, 1999

Dean H. Shealy for the protester.

Sherry Kinland Kaswell, Esq., Department of the Interior, for the agency.

Wm. David Hasfurther, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency selection of offeror whose helicopter provided significantly greater payload capacity than the protester's slightly lower priced helicopter was reasonable and consistent with solicitation.

DECISION

Crescent Helicopters protests the award made to Biscayne Helicopters by the Office of Aircraft Services (OAS), Department of the Interior, under request for proposals (RFP) No. 8099-20. The awardee will provide helicopter services to the National Park Service, Everglades National Park. Crescent contends that as the firm offering the lowest-priced proposal, it should have received the award.

We deny the protest.

The RFP, issued pursuant to Federal Acquisition Regulation (FAR) Part 12--Acquisition of Commercial Items, and FAR Subpart 13.5--Test Program for Certain Commercial Items, required offerors to submit hourly prices for 400 guaranteed hours per year of flight services (one light helicopter and a pilot and a relief pilot) for purposes of transporting personnel and/or cargo in support of natural resource missions. A contract was to be awarded for a base year and 2 option years. The RFP required the offered helicopter to meet enumerated minimum requirements, and section A of the RFP set out a target requirement that the helicopter be able to carry an internal payload of 800 pounds under defined circumstances. The RFP stated that "[a] BH 206BIII [helicopter] should typically fulfill the above requirements"; however, offerors were to submit sufficient information with their proposals to demonstrate that the helicopter they offered would comply with these requirements. RFP Cover

Letter; RFP at 4-5. This information was to be included in the RFP's "Aircraft Questionnaire." The information used to determine the payload on the "Questionnaire" was to be included on the "Standard Interagency Load Calculation Method and Form." RFP at 19. Based on the questionnaire response, the agency would evaluate the proposed aircraft to determine to what extent the aircraft would meet or exceed the target payload requirement and would meet the mandatory requirements. This aircraft information, including the payload, was to be part of the proposal and the awardee would be bound to provide an aircraft that met the proposed performance requirements. RFP Cover Letter; RFP at 41, 45. Offerors were also required to submit an organizational experience and past performance statement with references to cover the previous 3-year period. RFP at 40-46.

An offeror's proposal was to be evaluated on the basis of the merits of the proposal (whether it promised to comply with all RFP requirements and the extent to which it met or exceeded the target payload requirement), the offeror's capability (organizational experience and past performance), and the offered 3-year total price. Evaluation of past performance included assessing, among other things, whether the firm's performance conformed to contract terms, whether the firm was "reasonable" and cooperative during performance, and whether the firm was "committed to customer satisfaction." RFP at 41. The RFP stated that offerors would be ranked by comparing the differences in nonprice factors and the total price between offerors. The RFP also provided that award could be made to a firm with a proposal that did not offer the low price if the firm was rated so much higher than the low-priced proposal on the nonprice factors as to be determined to offer the government better value than the low-priced proposal. RFP at 40-41.

Twelve proposals were received by the July 29 closing time. Crescent and Biscayne proposed to furnish a Bell 206B3 helicopter. Crescent's 3-year total price was \$636,000; Biscayne's price was \$660,000. Agency Report, Tab F, Abstract of Offers. Crescent offered a payload of 579.4 pounds; Biscayne offered a payload of 844 pounds. Agency Report, Tab G, Crescent Bid, at 45, and Tab H, Biscayne Bid, at 45. The agency advises that a variance in payloads for the same make and model of aircraft is not unusual, since the payload depends on how the aircraft is equipped. Agency Report at 3. Further, a larger payload is useful because it allows the government to carry that "much additional cargo, passengers, and or fuel in performing helicopter missions." Contracting Officer's Statement, at 2.

Based upon the questionnaire and information submitted by the offerors, the agency adjusted the proposed payloads for purposes of the evaluation. This led to Crescent's payload being increased to 702 pounds and Biscayne's being decreased to 810 pounds. Agency Report, Tab I, Technical Evaluation of Offerors' Aircraft. The agency determined that because Biscayne offered a greater payload, which met the target requirement, and Biscayne's contract performance for the previous 3 years had been rated highly satisfactory or very satisfactory, the government would receive the best value by making award to Biscayne even at its slightly higher price (3.7 percent higher). The agency noted that in addition to offering less payload,

Crescent, although it had received satisfactory ratings on some prior contracts, had had some performance problems on another contract. Agency Report, Tab L, Award Decision Memorandum, at 1-3. Subsequent to this determination, the agency advised Biscayne that it had calculated a revised payload of 810 pounds for Biscayne's helicopter, and requested that Biscayne review this revision and provide a firm payload figure for the purposes of a contract. Agency Report at 3. Biscayne provided a firm payload figure of 823 pounds. Agency Report, Tab K, Letter from Awardee to Contracting Officer (Aug. 12, 1999).

Crescent challenges several aspects of the agency's comparison of payloads, as well as the price/technical tradeoff that the agency performed; the protester also alleges bias on the agency's part.

As a threshold matter, Crescent argues that it was "bogus" for the agency to find significant difference among offerors' payloads for the same make and model helicopter. Protester's Comments at 2-3. Here, the record shows that the offerors' payloads for the same model Bell helicopter in this competition ranged, as adjusted by the agency, from 652 to 920 pounds. Agency Report, Tab I, Technical Evaluation of Offeror's Aircraft. Since the protester has provided no substantive response to the agency's explanation that such variance is not unusual, we reject as unsupported the argument that finding a significant difference here was "bogus" or otherwise improper.

With respect to the specific difference between the protester's and the awardee's payload, we note that Crescent's proposed payload figure of 579.4 pounds was significantly lower than Biscayne's payload of 844 pounds. Even after the agency adjusted Crescent's payload upward (to 702 pounds) and Biscayne's downward (to 810 pounds), the protester's payload was still significantly below both the target payload and Biscayne's evaluated payload. Crescent does not dispute that neither its proposed nor its evaluated payload met the target payload, and it has not provided evidence or argument to call into question the agency's conclusion that Crescent's payload would be significantly less than Biscayne's.

Crescent does appear to question the reliability of the agency's calculation of Biscayne's payload, although the basis of its challenge in this regard is not clear. Apparently, Crescent believes that it was not possible to accurately compute Biscayne's payload because the helicopter and required equipment were weighed at different times. Crescent notes that the record shows that Biscayne's helicopter was weighed at the end of January, but the equipment required for this contract was not weighed until April, suggesting that this somehow invalidates the agency's payload calculation. Protest at 1. This argument does not explain why the January weight of the empty plane, when added to the results of the April weighing of the equipment to be included on the aircraft for purposes of performing this contract, does not result

in a valid total weight for calculating the payload.¹ Further, the evaluated payload has been confirmed by Biscayne and, as contemplated under the RFP, is an enforceable part of the contract with Biscayne. Agency Report, Tab J, Letter from Contracting Officer to Awardee (Aug. 16, 1999); RFQ at 41. Based on this record, we have no basis to question the agency's conclusion that Biscayne offered a significantly greater payload than did Crescent.

Regarding the agency's decision not to select Crescent's low-priced proposal, we note that in a best value procurement, price is not necessarily controlling in determining the proposal that represents the best value to the government. Rather, that determination is made on the basis of whatever evaluation factors are set forth in the RFP, with the source selection official often required to make a price/technical tradeoff to determine if one proposal's technical superiority is worth the higher cost that may be associated with that proposal. USA Elecs., B-275389, Feb. 14, 1997, 97-1 CPD ¶ 75 at 3. We will uphold an award to an offeror with a higher-priced proposal where the agency reasonably determines that the price premium was justified considering the technical superiority of the selected offeror's proposal. See Doss Aviation, Inc.; Dominion Aviation, Inc., B-275419 et al., Feb. 20, 1997, 97-1 CPD ¶ 117 at 9. Since the agency was receiving a significantly greater payload by accepting Biscayne's offer for only a slight increase in price, we believe that the source selection official reasonably concluded that an award based upon Biscayne's proposal constituted the best value.² The evaluation method set out in the RFP permitted this type of tradeoff.

¹ We note that the record indicates that Crescent's evaluated payload also was based on weighing the aircraft and equipment at two different times, so that the offerors were treated similarly in this regard.

² The agency also found that Biscayne's past performance and organization experience were more favorable, specifically with regard to relevant experience and commitment to customer satisfaction. Crescent, while not disputing Biscayne's higher ratings under past performance and organizational experience, argues that it was improperly downgraded under past performance, and that any performance problems under a current OAS contract were the fault of OAS. Protest at 2; Protester's Comments at 4-5. We note that at least in regard to customer satisfaction and cooperativeness, which were identified as criteria under past performance, the record shows that, in addition to OAS, which noted that "the company president can be difficult to work with," another reference from another agency also expressed the concern that "the company president at times can be difficult to work with." Agency Report, Tab L, Award Decision Memorandum, at 3. The protester acknowledges that the president had a disagreement with OAS inspectors, but argues that "[a] disagreement . . . no matter how vocal should not find itself intertwined into a contract award process disguised as a lack of customer satisfaction." Protester's Comments at 5. Contrary to the protester's argument that the disagreement with OAS inspectors should not have been considered, the past performance criteria

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With respect to Crescent's allegation that the agency was biased against it, we note that, because government officials are presumed to act in good faith, we do not attribute unfair or prejudicial motives to them on the basis of inference or supposition. Ameriko Maintenance Co., B-253274, B-253274.2, Aug. 25, 1993, 93-2 CPD ¶ 121 at 5. Thus, where a protester alleges bias on the part of government officials, the protester must provide credible evidence demonstrating a bias against the protester or for the awardee and that the agency's bias translated into action that unfairly affected the protester's competitive position. Advanced Sciences, Inc., B-259569.3, July 3, 1995, 95-2 CPD ¶ 52 at 17; E.J. Richardson Assocs., Inc., B-250951, Mar. 1, 1993, 93-1 CPD ¶ 185 at 6.

Here, as explained above, the agency's finding that Biscayne offered significantly greater payload at a price that was only slightly higher than Crescent's was fully consistent with the record and the solicitation's evaluation criteria. We find that the selection decision was not tainted by bias, and we therefore deny this protest ground.

The protest is denied.

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identified cooperation and customer satisfaction as criteria to be evaluated. In our view, the agency could downgrade Crescent based on these negative comments, and this information also reasonably was a basis to distinguish between the two competitors. See Young Enters., Inc., B-256851.2, Aug. 11, 1994, 94-2 CPD ¶ 159 at 6-7.