



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

DOCUMENT FOR PUBLIC RELEASE

A protected decision was issued on the date below and was subject to a GAO Protective Order. This version has been redacted or approved by the parties involved for public release.

Matter of: AAC Associates, Inc.

File: B-274928

Date: January 13, 1997

Craig S. King, Esq., and Tenley A. Carp, Esq., Arent Fox Kinter Plotkin & Kahn, for the protester.

Matthew S. Simchak, Esq., David Vogel, Esq., and Christopher R. Yukins, Esq., Wiley, Rein & Fielding, for The MIL Corporation, the intervenor.

Terrence J. Tychan, Department of Health & Human Services, for the agency.

John L. Formica, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that the agency unreasonably evaluated proposals, submitted in response to a solicitation for technical services in support of a local area network and data communications systems, is denied where the protester's contentions are unsupported by the evaluation record, and the record demonstrates that the agency reasonably evaluated proposals.

DECISION

AAC Associates, Inc., protests the award of a contract to The MIL Corp., under request for proposals (RFP) No. NLM 96-107/RMC, issued by the National Library of Medicine (NLM), Department of Health and Human Services, for technical services in support of a local area network (LAN) and data communication systems. AAC, the incumbent contractor, argues that the agency improperly evaluated MIL's technical proposal.

We deny the protest.

The RFP, issued as a total set-aside for small businesses, provided for the award of a fixed-price, indefinite delivery, indefinite quantity contract, for a base period of 1 year with four 1-year options. The contractor will be required to support the NLM's LAN and related data communications systems by providing installation, configuration, monitoring, troubleshooting, operation, evaluation, test and documentation of communications hardware and software systems services. The contractor will also be required to provide direct support to the end users of the

LAN and communications systems, and to analyze, evaluate, and test new hardware and software products, and occasionally develop custom software interfaces.

The RFP stated that award would be made to the offeror submitting the proposal representing the best overall value to the government, price and other factors considered, and that technical merit was more important than price. The RFP listed the following technical evaluation criteria and their relative weights:

- | | |
|---|-----|
| A. Qualifications and Availability of Proposed Personnel | 50% |
| B. Understanding the Statement of Work and Method of Accomplishing Objectives | 20% |
| C. Management Plan | 20% |
| D. Past Performance | 10% |

The RFP provided detailed instructions for the preparation of proposals and requested that offerors submit separate technical and business proposals. Offerors were informed that they were to provide resumes for all proposed personnel, and that their technical proposals were to address "their ability to provide technically competent staff starting on the effective date of the contract." The RFP added here that "[i]t is required that two-thirds (2/3) of the offeror's staff, to include key personnel, be available on-site at NLM on the effective date of the contract," and specified that the ability to comply with this requirement would be evaluated under the management plan evaluation criterion.

The agency received eight proposals by the RFP's closing date. The technical proposals were evaluated by a technical evaluation group (TEG), and four proposals, including AAC's and MIL's, were included in the competitive range. Discussions were held, and best and final offers (BAFO) received and evaluated as follows:

<u>Firm</u>	<u>BAFO Score</u>	<u>Total Proposed Price</u>
AAC	92	\$10,493,445
MIL	89.5	\$ 7,799,065
Offeror #3	84.5	\$ 8,446,020
Offeror #4	81.75	\$ 7,621,550

The agency determined that MIL's and AAC's proposals were "approximately equal" in technical merit, and that because MIL's price was "significantly lower" than AAC's, MIL's proposal offered the best value to the government. NLM made award to MIL, and this protest followed.

AAC protests that the agency's evaluation of MIL's proposal under the qualifications and availability of proposed personnel and the management plan evaluation criteria, as well as under the past performance criterion, was unreasonable.

The evaluation of technical proposals is a matter within the discretion of the contracting agency because the agency is responsible for defining its needs and the best method of accommodating them. Marine Animal Prods. Int'l, Inc., B-247150.2, July 13, 1992, 92-2 CPD ¶ 16. In reviewing an agency's evaluation, we will not reevaluate proposals, but instead will examine the agency's evaluation to ensure that it was reasonable and consistent with the solicitation's stated evaluation criteria. Decision Sys. Technologies, Inc.; NCI Information Sys., Inc., B-257186 et al., Sept. 7, 1994, 94-2 CPD ¶ 167. An offeror's mere disagreement with the agency does not render the evaluation unreasonable. McDonnell Douglas Corp., B-259694.2; B-259694.3, June 16, 1995, 95-2 CPD ¶ 51.

In its initial proposal, MIL provided detailed resumes for each of its proposed personnel, and a matrix identifying its proposed personnel by name, education, various technical certifications, and years of relevant experience. MIL also provided, as required by the RFP, a matrix identifying each of these individuals and their proposed positions and skills, and the elements of the required work to which their respective skills were applicable. MIL also stated the following in its initial proposal:

"Although we are fully prepared to staff the project with our own personnel on day one of the contract, we appreciate that there may be current members of the incumbent contractor's staff who may elect to accept positions offered by MIL. We will make every effort to retain qualified and experienced incumbent staff by hiring through MIL or our subcontractors. Of course, all actions in this area will be carefully coordinated with the [agency] before making any offers of employment."

The technical section of MIL's BAFO included updated resumes, additional resumes, certain proposal modifications, and MIL's specific responses to the agency's discussion questions. In response to one of these questions, MIL stated that it would "provide NLM with the best qualified staff," and stated that it would recruit "[k]ey personnel . . . from the incumbent's staff only after discussion and agreement with [the agency]." This response further described the procedures by which MIL would recruit such staff if appropriate.

The protester points to the aforementioned statements in MIL's initial proposal and BAFO concerning the possible recruitment of AAC's personnel, and argues that MIL "said everything possible . . . to convey to the [g]overnment that notwithstanding its proposed personnel the contract would be performed by the incumbent's employees." The protester claims that "[t]he [a]gency accepted MIL's invitation to pretend in the evaluation process that MIL's personnel would perform the contract notwithstanding that there was no real expectation that they would do so," and thus performed an improper evaluation of MIL's proposal. The only evidence provided

by the protester in support of its assertion here is the notation of one of the four members of the TEG, on one of his individual evaluation worksheets, that MIL's phase-in plan, among other things, "[i]ncludes an intent to preserve NLM's investment in incumbent personnel."¹

The protester also argues that because of MIL's strategy of hiring AAC's personnel, "MIL's BAFO made clear that it had no intention of having its personnel on-site on the effective date" of the contract. The protester contends that because of this, the agency's evaluation of MIL's phase-in plan, including its ability to have two-thirds of its staff on-site on the effective date of the contract, was unreasonable. The protester claims that MIL's failure to have any staff on-site within the first 3 days of the contract's effective date confirms that it did not have the ability to do so.

Contrary to the protester's assertions, the record demonstrates that the agency's evaluation of MIL's proposal under the quality and availability of proposed personnel and management plan evaluation criteria was reasonably based upon the evaluation of only MIL's proposed personnel, not on the assumption that MIL was offering the incumbent personnel. With the exception of the single notation of one member of the TEG on an initial evaluation worksheet, the record provides no indication whatsoever that the agency, in evaluating MIL's proposal, gave any consideration, in either a positive or negative manner, to the qualifications or potential for recruitment of AAC's personnel. Rather, the record reflects that the agency reviewed the resumes of MIL's proposed personnel in detail, compared the skills identified in the resumes and matrices with the RFP requirements, and carefully considered what aspects of the personnel's qualifications were strengths or weaknesses.² The record further demonstrates that the agency carefully considered the ability of MIL to have the requisite two-thirds of its proposed personnel on-site on the effective date of the contract, including conducting discussions on this point

¹The protester also argued in its initial protest to our Office that "MIL proposed personnel that it ha[d] no intention of having perform the project," and had thus engaged in an improper "bait & switch" tactic. In its report on AAC's protest, the agency responded in detail to this argument, noting that MIL had in fact hired only one AAC employee in a non-key position. Because AAC did not respond to the agency's position in its comments on the agency report, we consider AAC to have abandoned this aspect of its protest. D & M General Contracting, Inc., B-259995; B-259995.2, May 8, 1995, 95-1 CPD ¶ 235.

²Each member of the TEG completed detailed narratives setting forth their views of the strengths and weaknesses of each of the offerors' initial proposals and BAFOs under each of the evaluation criteria, as well as scoring sheets.

to satisfy itself that MIL would comply with this requirement, and reasonably found that MIL's proposal met the RFP requirements.³

AAC protests that the agency's evaluation of MIL's proposal under the past performance evaluation criterion was unreasonable. The protester contends that in reviewing MIL's past performance, the TEG was informed of certain problems that customers of MIL had with MIL's performance; for example, that MIL's customers reported problems with MIL's "[DELETED]" approach and noted that MIL's "low labor prices make it difficult to find and retain skilled personnel." The protester asserts that the negative comments made by certain of MIL's customers "apparently had little or no effect on the ultimate decision to award to MIL," and that "[t]he [a]gency made no effort to seriously evaluate MIL's ability to perform in view of its proposed dramatic reductions in labor costs."

The protester's assertions here are, again, simply unsupported by the record and represent selected quotes from the evaluators taken out of context. For example, as stated by the protester, one member of the TEG noted that "MIL's record of adhering to contract schedules is weakened by accounts of poor management on-site and off-site according to references," and that "MIL's '[DELETED]' concept is unsuccessful." This same evaluator also noted as "strengths" that "[a]ccording to references for contracts for similar products/services, MIL's past technical performance appears to be quite good," and that "MIL's record of business-like concern for the interests of the customer is very good." Overall, taking into account both the positive and negative aspects of MIL's past performance, it received an average score of only 7.5 out of 10 points under this criterion. The source selection official was specifically apprised of MIL's strengths under this criterion and that there were some reported problems with MIL's past performance. Moreover, with regard to MIL's proposed labor rates, the record reflects that the contracting officer reviewed the payroll records of each offeror, including MIL's, to verify the proposed hourly rates and to verify that proposed personnel represented each offeror's existing staff, and determined that MIL's proposed labor rates, as well as MIL's indirect rates, were reasonable and consistent with MIL's current actual labor rates. Accordingly, we cannot find, based upon our review of the record and the

³The agency points out that, contrary to AAC's assertion, MIL had, depending on the day, five or six staff members on-site in the first 3 days of the contract, and met the two-thirds requirement by having at least eight staff members on-site by the 4th day of performance. MIL's actual compliance with this requirement is a matter of contract administration not reviewable under our bid protest function. Bid Protest Regulations, section 21.5(a), 61 Fed. Reg. 39039, 39403 (1996) (to be codified at 4 C.F.R. § 21.5(a)).

arguments presented by the protester, that the agency's evaluation of MIL's proposal under the past performance evaluation criterion was unreasonable.

AAC argues that the agency acted improperly because "it failed to conduct a technical evaluation separate from the evaluation of prices," as evidenced by the final report of the TEG, and that the TEG's exposure to the offerors' prices "created the incentive and opportunity to manipulate the technical scores to facilitate an award based upon price."

The protester does not explain why it believes that the final report of the TEG substantiates its claim that the TEG was aware of the offerors' prices at any time during its consideration of the offerors' technical proposals. The report is comprised of a cover memorandum summarizing the evaluation process and the conclusions/recommendations of the TEG based upon the offerors' technical scores and proposed prices. It includes, as attachments, a summary of the technical scores by evaluation criteria and evaluator, and a summary of the strengths and weaknesses of each offerors' proposal. Although it is obvious that the TEG was aware of the offerors' proposed prices when making its award recommendation, we do not see, and the protester has not pointed out, where the report evidences that the TEG was aware of the offerors' proposed prices during its evaluation of technical proposals. As such, the protester's argument here is unsupported by the record. Moreover, the protester has failed to cite to, and we are unaware of, any requirement in law or regulation that technical evaluators be unaware of the offerors' proposed prices during the evaluation of technical proposals.

The protest is denied.

Comptroller General
of the United States