



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

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Matter of: Resource Management International, Inc.

File: B-278108

Date: December 22, 1997

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Gary M. Winter, Esq., United States Agency for International Development, for the agency.

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DIGEST

Protest alleging that the agency improperly awarded a contract to the awardee on the basis of its lower cost, lower technically rated proposal where the RFP emphasized that technical factors were significantly more important than cost is denied where the contracting officer reasonably determined that the protester's and the awardee's proposals were essentially technically equal and that the slight technical advantage represented by the protester's proposal did not merit the expenditure of roughly \$[deleted] in additional funds that it would cost to have the protester perform the work.

DECISION

Resource Management International, Inc. (RMI) protests the United States Agency for International Development's (USAID) award of a contract for providing technical assistance to the Government of the Philippines to Hagler Bailly Services, Inc. (HBS) pursuant to request for proposals (RFP) No. 492-97-323. The protester contends that, in deciding to award the contract to HBS on the basis of its lower priced proposal, the contracting officer placed undue emphasis on cost and ignored the RFP's stated evaluation criteria, which emphasized technical superiority and quality of proposed personnel.

We deny the protest.

Issued on March 19, 1997, the RFP solicited proposals for providing technical assistance to the Government of the Philippines concerning mitigation of greenhouse gases. Among other things, the contractor will provide technical and training assistance to: (1) several government agencies involved in energy planning, policy development, regulation and program implementation; (2) private utilities involved in developing cleaner fuel generation facilities or improving the efficiency of existing generation, transmission and distribution systems; and (3) industrial and commercial sectors related to using energy more efficiently. The RFP contemplated award of a 40-month, level-of-effort contract, and stated that the contractor would be paid on a cost-plus-fixed-fee basis.

The RFP stated that the contract would be awarded to the offeror whose proposal offered the best value to the government after consideration of both technical factors and cost. The RFP stated that technical proposals would be evaluated and point-scored by a technical evaluation committee (TEC) and listed the evaluation criteria and the maximum number of evaluation points available for each as follows: (1) team organizations, qualifications and experience (50 points); (2) past performance and commitment to deliver quality people (35 points); and (3) partnering for best use of resources (5 points). The RFP also stated that cost would be given a point score and provided a formula whereby the lowest-cost proposal would receive the maximum of 10 points, while other proposals would receive fewer points based upon comparison of their proposed costs with the lowest proposed cost. The RFP cautioned that the government would not be obligated to award the contract to either the offeror proposing the lowest cost or the offeror whose proposal garnered the highest evaluation score. The RFP also advised that "[t]he formula set forth above will be used by the Contracting Officer as a guide in determining which proposals will be most advantageous to the Government."

Six offers were received by the May 7, 1997, closing date. After evaluation of technical and cost proposals, four offers were determined to be in the competitive range, and written and oral discussions were held with each competitive-range offeror. Offerors were allowed to clarify and/or revise proposals and submitted best and final offers (BAFO). The TEC members individually reviewed technical BAFOs and then met as a group to discuss their findings and to reach a consensus. Based solely upon its evaluation of technical proposals, the TEC recommended that RMI be awarded the contract. The contracting officer assigned each BAFO cost points according to the formula set out in the RFP.

The final ranking of offers, based upon technical and cost scores combined, was:

Offeror	Proposed Cost	Cost Score	Technical Score	Total Score
RMI	[deleted]	[deleted]	[deleted]	[deleted]
HBS	[deleted]	[deleted] ¹	[deleted]	[deleted]
Offeror C	[deleted]	[deleted]	[deleted]	[deleted]
Offeror D	[deleted]	[deleted]	[deleted]	[deleted]

As explained in detail below, the contracting officer performed a best value analysis, reviewing the major cost elements of RMI's and HBS' proposals, and comparing both offerors' proposed costs to the agency's in-house cost estimate. Notwithstanding the TEC's recommendation that the contract be awarded to RMI, and acknowledging that cost was worth only 10 points out of the 100 points available under the RFP's evaluation scheme, the contracting officer determined that the proposals of RMI and HBS "could be considered technically equal" and awarded the contract to HBS. After a debriefing, RMI filed this protest.

The protester contends that the award to HBS was contrary to the RFP's stated basis for evaluation and award. Specifically, RMI contends that the contracting officer improperly awarded the contract to the firm that submitted the lower cost, technically acceptable offer, instead of giving more weight to the technical factors as required by the RFP's evaluation scheme. Citing Tulane Univ., B-259912, Apr. 21, 1995, 95-1 CPD ¶ 210, as support, RMI argues that because the RFP's evaluation formula required the award of evaluation points for both technical merit and cost, the contracting officer should not have performed any further analysis and was required to award the contract to RMI because its proposal had received the greatest number of technical and cost points combined.

The protester misconstrues our Tulane University decision. In that case, at 4, we held that, since the RFP included a cost/technical tradeoff formula for determining the best value to the government that accounted for both technical factors and cost, the agency properly could award the contract to the offeror whose proposal had obtained the highest combined technical/cost score without performing any additional cost/technical tradeoff analysis to justify its selection. However, we did not hold, as the protester argues, that source selection officials are required to mechanically award contracts to the offeror whose proposal receives the highest number of points in any case where the solicitation's evaluation formula accords

¹Our calculations show that this figure should actually be [deleted]; however, the difference is de minimis and had no effect on the outcome of the competition or our resolution of the protest.

points for both cost and technical factors. We also did not hold that the inclusion of such an evaluation formula in the solicitation prohibits the source selection official from examining the evaluation materials and the evaluation panel's recommendation or from performing any additional cost/technical tradeoff analysis before selecting the winning offer. Furthermore, this RFP specifically advised that AID was not obligated to award to the offeror proposing the lowest cost or the offeror who obtained the highest evaluation score. The RFP also stated that the formula would be used as a guide for the contracting officer. Thus, in contrast to the RFP at issue in the Tulane University decision, this RFP clearly notified offerors that the award would not be based solely on the formula.

Source selection officials are vested with a very broad degree of discretion to determine the manner and extent to which they will make use of evaluation results, and they are not bound by the recommendations made by evaluation panels or other advisory groups. Grey Adver., Inc., 55 Comp. Gen. 1111, 1120 (1976), 76-1 CPD ¶ 325 at 11; PRC, Inc., B-274698.2, B-274698.3, Jan. 23, 1997, 97-1 CPD ¶ 115 at 7. In a negotiated procurement with a best value evaluation plan, point scores are useful as guides but do not mandate automatic selection of a particular proposal. PRC, Inc., supra, at 12. Whether a given point spread between two competing proposals indicates a significant superiority of one proposal over another depends upon the facts and circumstances of each procurement and is primarily a matter within the discretion of the procuring agency. Grey Adver., Inc., 55 Comp. Gen. 1111, 1118-1119, (1976) 76-1 CPD ¶ 325 at 9-10. The question of whether a difference in point scores is significant is for determination on the basis of both what that difference might mean in terms of performance and what it would cost the government to take advantage of it. Id. Where selection officials reasonably regard proposals as being essentially equal technically, cost can become the determining factor in making award notwithstanding that the evaluation criteria assigned cost less importance than technical factors. The Parks Co., B-249473, Nov. 17, 1992, 92-2 CPD ¶ 354 at 4. Moreover, an agency may properly award to a lower rated, lower cost offeror, even if cost is the least important evaluation factor, if it reasonably determines that award to the higher cost offeror is not justified given the level of technical competence available at the lower cost. PRC, Inc., supra, at 12. The record shows that the contracting officer's decision to award the contract to HBS was both reasonable and consistent with the RFP's evaluation scheme.²

²The record included the protester's and the intervenor's legal briefs; the agency report and legal briefs; the evaluation documents; the TEC's consensus memorandum summarizing its evaluation of each offer and recommending award to RMI; declarations from the TEC chairman, each TEC member, and a contract specialist; and the contracting officer's memorandum of negotiation which, among other things, provided the rationale for the selection of HBS. We also convened a
(continued...)

RMI's BAFO received a technical score of [deleted] points while HBS' received [deleted] points--a difference of [deleted] technical points in RMI's favor (see page 3 above). RMI's proposed price (i.e., proposed costs plus fee) was \$[deleted] while HBS' proposed price was only \$[deleted]. Thus, it would cost USAID approximately \$[deleted] more to have RMI, instead of HBS, perform the work. The record shows that the contracting officer was aware of the technical and cost differences and she knew that the TEC preferred RMI's BAFO and recommended award to RMI. Tr. at 19. However, based upon her review of the BAFO scoring, the contracting officer believed that HBS' proposal was "running very close behind" RMI's and, based upon her review of the earlier evaluation record, the contracting officer believed that RMI's and HBS' proposals were basically "nip-and-tuck technically" throughout the procurement. Tr. at 19 and 30. The contracting officer testified that, in accord with the RFP's express provisions, she viewed the evaluation scores as mere "guides" for her use in determining which proposal was most advantageous to the government, and the TEC's recommendation as just that--a recommendation to be considered in making the selection decision. Tr. at 26 and 84. She also testified that, in making her best value determination, she gathered as much information as she could, reviewed relevant Comptroller General decisions, consulted with a legal adviser, indirectly communicated with the TEC (through the TEC chairman and a contract specialist), and "wrestled over this problem of lower price, lower technical score, for close to a week." Tr. at 16-17, 24-29.

After reviewing the evaluation materials, including the TEC's recommendation, the contracting officer considered a number of factors before deciding that the proposals of RMI and HBS "could be considered technically equal" and that RMI's proposal's slight technical advantage "did not appear to merit paying the cost premium."³ Tr. at 31. Among other things, the contracting officer carefully examined RMI's [deleted]-point technical advantage over HBS and made the following observations:

²(...continued)

hearing on November 14, 1997, during which the contracting officer testified concerning her decision to award the contract to HBS notwithstanding the TEC's recommendation to award to RMI; transcript (Tr.) citations refer to the transcript of that hearing.

³The protester focuses on the apparent inconsistency between the contracting officer's reference to the proposals being essentially technically equal and her recognition of the cost/technical tradeoff required for the source selection. In our view, there is no real inconsistency here. The contracting officer concluded (based on the analysis summarized below) that, while the protester's proposal was rated higher, the difference between the two proposals was slight and did not justify paying the cost premium associated with RMI's proposal.

1. The contracting officer noted that RMI's overall technical advantage was due exclusively to its higher rating on the most important evaluation factor ("team organizations, qualifications and experience"), but that HBS' proposal received slightly higher ratings than RMI's on the second and third most important evaluation factors ("past performance and commitment to deliver quality people" and "partnering for best use of resources"). Tr. at 44-45 and 56-58.

2. The contracting officer testified that she was aware from her review of the evaluation record and discussions with her staff that RMI's key personnel (i.e., the proposed chief of party and deputy chief of party) had done a better job during oral discussions than had HBS' key personnel.⁴ Tr. at 23 and 45. In this connection, the contracting officer testified that she considered the fact that HBS had changed some of its proposed key personnel during the course of the procurement and, therefore, since HBS' key personnel had not been associated with the proposal from the outset "maybe they weren't able to shine as much as somebody who might have been connected with the proposal from day one." Tr. at 23.

3. The contracting officer testified that RMI's proposed deputy chief of party had worked with at least one and possibly other TEC members previously. While she did not discount the higher ratings RMI's proposal received in the evaluation of its key personnel's qualifications and experience, she did consider the fact that the evaluators might have scored RMI's proposal a little higher because they knew, or had worked with, RMI's deputy chief of party before. Tr. at 23, 66-67.

4. The contracting officer noted that the TEC was not completely satisfied with RMI's proposed personnel. In particular, the TEC criticized RMI's choice for the [deleted] and stated that it would have welcomed a different candidate; the TEC also recommended a performance review of this candidate after a year (if RMI were selected) and that he be replaced if his performance were found to be less than satisfactory. Tr. at 24.

5. The contracting officer also examined the qualifications of HBS' proposed personnel and determined that their qualifications were also quite high. Tr. at 78.

The contracting officer also reviewed the roughly \$[deleted] difference between RMI's and HBS' proposed costs (see page 3 above) and observed that the bulk of the cost differential was due to the fact that RMI proposed to have [deleted]. The contracting officer noted that this resulted in approximately \$[deleted] of indirect costs, for such items as general and administrative expenses, additional indirect

⁴Each offeror's proposed chief of party and deputy chief of party were interviewed by the TEC during oral discussions. HBS replaced its originally proposed chief of party just days before the interview.

costs, and additional fees, being included in RMI's total price. The contracting officer determined that such indirect costs would not directly benefit the Government of the Philippines in terms of a greater level of effort. Tr. at 21 and 38.

Based upon the above analysis, the contracting officer determined that RMI's proposal's slightly higher technical rating did not merit the expenditure of approximately \$[deleted] in additional funds. The contracting officer also noted that this was a level-of-effort contract in which the government was basically purchasing "bodies and person-months" of work and that both offerors were offering basically the same thing (Tr. at 20), the RFP did not seek and the proposals did not include any unique or innovative approaches to performing the work, and the TEC unanimously agreed throughout the procurement that HBS could provide the skills needed under the contract. Finally, even though there was no requirement that she do so, the contracting officer, using the TEC chairman and a contract specialist as intermediaries, contacted the TEC members and informed them that it would cost roughly \$[deleted] more to award the contract to RMI as the TEC had recommended and gave them each an opportunity to provide any justification, in addition to the ratings and preferences stated in the evaluation documents, for paying that cost premium.⁵ Tr. at 24-27. The record shows that the TEC members, apparently because they viewed their role as limited to the technical evaluation, did not provide any such justification.

In view of the very thorough deliberative process described above, we think that the contracting officer reasonably determined that HBS' proposal was the most advantageous to the government. Accordingly, even though the RFP emphasized the importance of technical factors over cost, the award to HBS on the basis of its lower cost proposal was reasonable and supported by the record.

The protest is denied.

Comptroller General
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⁵Before this the TEC was not aware of proposed costs or of the magnitude of the cost differential. Tr. at 25