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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-199593 DATE: May 6, 1981

MATTER OF: Underwater Systems, Inc. DL606660

DIGEST:

1. To extent protester is objecting to delay in award beyond February 1980, delay should have been protested before July 1980 filing in GAO.
2. Where protester's allegations of bias or preselection by proposal evaluators are speculative and unsupported by record, protester has failed to meet burden of affirmatively proving case.
3. Although errors were made in rating resumes included in technical proposals, fact that agency rescoring of proposals considering only resumes of principal personnel proposed for each labor category has not altered relative position of offerors requires denial of protest against original rating technique.

Underwater Systems, Inc. (USI), has protested against the award of a cost-plus-fixed-fee tasking-type contract to provide acoustical systems and signal analysis engineering services for the Navy's multichannel narrowband noise measurement and analysis system to MAR, Inc. (MAR), under request DL602568 for proposals (RFP) No. N00167-80-R-0006 (RFP-0006) issued by the Department of the Navy, David W. Taylor Naval Ship Research and Development Center (Navy). For the reasons discussed below, the protest is dismissed in part as untimely filed and denied in part. DL605775

[Protest of Navy Contract Award]

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The requirements for the RFP were originally announced in the Commerce Business Daily as RFP No. N00167-79-R-0156, which the Navy explains was delayed until fiscal year 1980 and issued as RFP-0006 on November 7, 1979. The closing date for receipt of initial proposals was December 7, 1979. Contract N00167-80-C-0092 was awarded to MAR on May 30, 1980. USI's protest was filed (received) in our Office on July 14, 1980.

USI contends that the technical evaluation of proposals was conducted by only two evaluators who graded resumes inconsistently--in some cases averaging all resumes for a position and in other cases scoring only the principal resume for the position. The protester asserts that the 6-month delay from the submission of proposals to the award of the contract was excessive and could only result from problems which existed during the evaluation. On the basis of telephone conversations with contracting agency personnel, USI claims that the evaluation was "messed up" and that the contract negotiator received conflicting instructions from his superiors. USI states it is necessary for consistent application of rating factors that Navy evaluators complete all the proposal evaluations within a few days, but the Navy evaluators took longer in this case. The protester also states that, if either or both evaluators knew any of the personnel MAR proposed or if they were former contracting agency employees, the technical evaluation was not objective. USI suggests that, if MAR was evaluated as offering the greatest value score on both its initial and best and final offers (BAFO), the award could and should have been made in February 1980. Although BAFO's, in USI's experience, are usually requested in order to reduce the offerors' prices, MAR increased its proposal price in its BAFO by \$3,625 (4.15 percent). In further support of alleged irregularities and inconsistencies in the Navy's procurement practices, USI states that the contracting agency previously changed its technical evaluation criteria under RFP No. N00167-79-R-0014 (RFP-0014) from buying value to making award to the lowest priced, acceptable offer.

The Navy takes the position that USI's complaint, which questions the change in evaluation method used in RFP-0014 under which a contract was awarded to Cambridge Acoustical Associates, Inc., on September 27, 1979, is untimely filed and not for consideration under either of the exceptions pursuant to which our Office will consider an otherwise untimely protest. 4 C.F.R. § 20.2 (1980). The Navy also contends that USI's assertions that an allegedly excessive delay existed between the issuance of the RFP and the award, that the evaluation was "messed up," and that conflicting instructions were given to the agency's contract negotiator by his superiors with regard to RFP-0006 are untimely. The remainder of the protester's contentions concerning the propriety of the technical evaluation of the proposals are, in the Navy's opinion, without merit.

The initial issue for resolution is whether USI has timely presented its protest for our review. USI asserts that it never filed or implied a protest concerning RFP-0014, but cites it as an indication of unfairness of the Navy's contracting procedures and concludes that, if the lowest acceptable proposal was acceptable for RFP-0014, award should be made to USI on the same basis under RFP-0006. Insofar as USI's protest pertains to the Navy's treatment of the firm's proposal submitted in response to a solicitation issued and awarded prior to RFP-0006, that aspect of the protest will not be addressed because it does not concern the instant procurement and objections to that procurement at this juncture would be untimely filed and not for consideration on the merits. 4 C.F.R. § 20.2 (1980); Airway Industries, Inc., et al., 57 Comp. Gen. 687, 694 (1978), 78-2 CPD 115.

To the extent that USI's concern about delay in making award to MAR is meant to be a ground of protest against the continuation of the procurement past February 1980, the delay should have been protested long before the July 1980 filing in our Office. 4 C.F.R. § 20.2 (1980); McNamara-Lunz Vans & Warehouses, Inc., B-198259, August 11, 1980, 80-2 CPD 107.

USI states that its assertion that something was wrong with the evaluation resulted from a telephone conversation with the Navy contract negotiator on February 15, 1980. Consequently, any protest on this basis in order to be timely filed should have been made to the Navy or to our Office within 10 working days after that conversation. 4 C.F.R. § 20.2(b)(2) (1980). Similarly, USI indicates that it was initially advised on May 20, 1980, that new evaluation instructions had purportedly been issued and again during a telephone conversation with Navy personnel on June 3, 1980. The protester, therefore, was aware of this basis of its protest at the latest by June 3, 1980, requiring the filing of a protest within 10 working days.

USI essentially contends that the Navy improperly evaluated the offerors' technical and price proposals. To the extent that USI takes exception to the evaluators and the manner in which they conducted the evaluation, we find these bases of the protest inappropriate for our consideration. We have held that the composition of a technical evaluation panel is within the discretion of the contracting agency and, absent allegations of fraud, bad faith, or conflict of interest, is not a matter appropriate for review by our Office. New York University, B-195792, August 18, 1980, 80-2 CPD 126. Therefore, we will not attribute unfair motives to evaluators on the basis of inferences or supposition, nor is the mere allegation of bias or preselection, as here, without a showing of actual bias sufficient to disqualify evaluators. University of New Orleans, B-184194, May 26, 1978, 78-1 CPD 401; Roy F. Weston, Inc., B-197866, B-197949, May 14, 1980, 80-1 CPD 340. The protester has the burden of affirmatively proving its case in such matters. Tulane University, B-193012, May 1, 1980, 80-1 CPD 309; Industrial Writing Institute, Inc., B-193245, May 10, 1979, 79-1 CPD 328. In view of the absence in the record of any evidence of bias or favoritism by the evaluators, we believe that USI has not met its burden of proof.

USI argues that if MAR had the greatest value score on the initial proposals, the delay in their evaluation, request for BAFO's and further delay in making the award provide evidence of considerable maneuvering during proposal evaluations. The protester contends that the evaluators rated the technical proposals inconsistently and implies that consistent application of the evaluation criteria would have resulted in award to USI.

In reviewing cases in which a protester questions the validity of a technical evaluation, it is not the function of our Office to independently reevaluate the proposals in order to determine which should have been selected for award. The determination of the relative technical merits of proposals is the responsibility of the contracting agency and will ordinarily be accepted by our Office. We therefore will question such determinations only where they are clearly shown to be unreasonable, an arbitrary abuse of discretion or in violation of procurement statutes and regulations. Bell Helicopter Textron, 59 Comp. Gen. 158, 171 (1979), 79-2 CPD 431; Pacific Consultants, Inc., B-198706, August 18, 1980, 80-2 CPD 129.

RFP section "D," "Evaluation Factors for Award," provides that, in addition to price, proposals shall be evaluated on the basis of the following factors and subcriteria, listed in descending order of importance:

"I. Technical Capabilities

A. Individual Category Capabilities.

B. Documentation Approach.

"II. Management

A. Direct or related experience of the personnel the offeror proposes to assign to the resulting contract in the type of work described in the Statement of Work.

B. Company experience in time series analysis and frequency domain analysis and personnel resumes.

C. Company experience in acoustic measurement, data processing and personnel resumes.

D. Completion of tasks of similar complexity and concept.

E. The extent to which the offeror proposes using full-time employees under the resulting contract."

The RFP further advises offerors that the Technical Capabilities factor is worth 2-1/3 times the Management factor and that technical considerations are approximately three times more important than price considerations. With regard to the latter considerations, the RFP states that price, while not necessarily controlling, will increase in importance with the degree of equality of the proposals on the other selection factors. Price proposals are also to be evaluated for cost realism, the offeror's ability to project reasonable costs which indicate its understanding of the nature and scope of the work to be performed. Finally, the RFP provides that award will be made to the offeror determined to be able to perform the proposed contract in a manner most advantageous to the Government.

Six proposals were received by the December 7 closing date and forwarded to the two evaluators who determined that all the proposals were technically acceptable and in the competitive range. Proposal evaluations were numerically computed in accordance with the technical/cost tradeoff formula stated in the RFP, weighting technical scores at 75 percent and cost scores at 25 percent to arrive at an evaluation (greatest value) score. A total of 100 points was possible for the combined technical and price factors. The evaluators' price proposal scoring was

"normalized," the lowest priced proposal (USI's) was given the maximum points available (25 points) and the remaining price proposals were converted to normalized scores by a formula in which USI's low price was divided by each offeror's price and the quotient was multiplied by the maximum possible points. See, e.g., 52 Comp. Gen. 382, 387 (1972); Francis & Jackson, Associates, 57 *id.* 245 (1978), 78-1 CPD 79. The MAR and USI initial proposals received the following technical, cost and greatest value (overall evaluation) scores:

	<u>Technical Score</u>	<u>Cost Score</u>	<u>Greatest Value Score</u>
MAR	61.125	23.726	84.951
USI	52.875	25	77.875

The evaluators indicated that resumes were the specific technical proposal weakness of all six offerors. Discussions were held with all the offerors and best and final offers were submitted on May 9, 1980. Four of the offerors modified their technical proposals, their BAFO's were reviewed by the evaluators and those of MAR and USI were scored as follows:

	<u>Technical Score</u>	<u>Cost Score</u>	<u>Greatest Value Score</u>
MAR	61.125	22.78	83.905
USI	53.7	25	78.7

Contrary to USI's insinuation, MAR did receive the highest technical and overall evaluation scores on both its initial and best and final proposals. MAR was obviously downgraded for increasing its BAFO price, as indicated by the 0.946-point decrease in its BAFO cost and greatest value evaluation scores. USI's proposal price was accorded the maximum available cost score during both initial proposal and BAFO evaluations. As the RFP evaluation provisions stated, the protester's proposal could only have received more favorable consideration on the basis of its optimum price to the degree that its technical proposal score more closely approached the highest technical score.

However, because USI's proposal received only the third highest technical score in both initial and BAFO evaluations and the relative technical scores of the offerors were not close to one another, price did not become the decisive factor in determining the successful offeror. See Didactic Systems, Inc., B-190507, June 7, 1978, 78-1 CPD 418.

We believe that the evaluation scores also show that the additional academic credential and the substitute backup resume USI included in its BAFO were favorably considered by the evaluators and are reflected in the protester's BAFO technical and greatest value scores by the 0.825-point increase from its initial proposal scores.

Section "F" of the RFP states, in pertinent part, with regard to the qualifications of contractor personnel, that:

"The Contractor may submit a maximum of three resumes for each of the following required specialties. The evaluation of personal expertise for a particular category will generally be based upon an assumption of equal participation by all persons proposed by the Contractor for performance under a specific labor category. The Contractor may propose a combination of personnel for a given category. This combination would achieve the required experience and expertise. Such a combination could count as one 'person.'" (Emphasis added.)

The Navy takes the position that the portion of the provision quoted above with emphasis states that in the event several resumes are submitted for a single labor category, the combined resumes would be averaged to evaluate personnel qualifications for that job category. USI, on the other hand, suggests that only the resume of the principal person proposed for each job category should have been evaluated and that averaging resumes for a single labor

category downgrades the evaluation of the offeror's personnel because backup personnel are generally less qualified than the principal person proposed for the job. We agree with the Navy that, absent any qualification to the contrary in the proposals, averaging resumes submitted for a particular labor category is consistent with the evaluation method set out in the RFP. Moreover, the evaluator's resume rating forms contain separate columns for the evaluation of up to three resumes, a column for the average rating scores, and a space under the latter column for the total points for the particular labor category.

We do not, however, believe that averaging was an appropriate technique to apply in evaluating USI's proposal considering the terms of the firm's offer. The protester expressly states at page 5 of its proposal that:

"USI has sufficient talent in the technical staff to provide alternates for the key positions of the task team. As such, the first name in each billet [of its Task Team Organization diagram] is the principal candidate proposed, but the others shown have comparable qualifications. It is USI's intention to use the principal candidates unless illness or other unavoidable events preclude this option."

USI therefore specifically provided in its proposal that only one person was proposed for each of the required labor categories and that the other people for whom resumes were submitted would not contribute at all, let alone equally, to the project unless extraordinary circumstances required their substitution for the principal person originally intended for the job. The circumstances under which USI indicated that substitution would be necessary are those stated in the "Substitution of Personnel" clause set forth on page 30 of the RFP. See Cerberonics Incorporated, B-192161, November 21, 1978, 78-2 CPD 354. The clause requires that during the first 90 days of the contract performance period no personnel substitutions will be permitted unless they

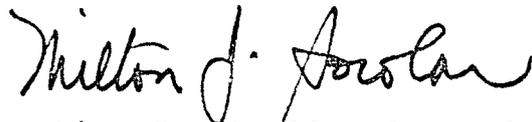
are necessitated by an individual's sudden illness, death, or termination of employment. The Navy's averaging technique thus had the effect of evaluating a combination of skills of individuals who were offered to the Navy only in the alternative, rather than collectively.

In response to USI's protest, the Navy reviewed the evaluator's technical rating worksheets and admits that their resume scoring was not error free because the evaluators differed in the number of MAR and USI resumes they scored. With one exception, the evaluators scored less than the total number of resumes each of the offerors submitted for various labor categories. Only the first evaluator scored all the resumes USI submitted, but he scored less than the total number of resumes which MAR furnished for four labor categories. The second evaluator scored less than the full number of resumes furnished by USI for five labor categories, and by MAR for two labor categories. Therefore, some of the offerors' personnel qualification evaluations were based upon the scoring of a single resume despite the fact that several were submitted or reflect the average score of two resumes notwithstanding the fact that the offeror submitted three. Even if averaging had been an appropriate evaluating technique, it was not consistently applied by or between the evaluators. In our opinion, the above-quoted provision of section "F" of the RFP in addition to the resume rating form instructions and format caused the evaluators' confusion concerning the manner in which multiple resumes for a job category were to be evaluated.

The contracting agency recalculated the MAR and USI resumeratings and initial proposal and BAFO technical and greatest value scores in the manner USI proposed. Scoring only the resumes of the principal persons proposed by the offerors for each labor category, as USI has suggested, results in a 0.368-point increase in USI's BAFO technical (54.068) and greatest value (79.068) scores, and a 0.402-point increase in MAR's technical (61.527) and greatest value (84.307) scores. Therefore, we cannot conclude that USI was prejudiced by the original resume rating and proposal evaluation technique.

Based on the Navy's reevaluation of the offerors' resume ratings, technical and overall evaluation scores, it appears that their proposals may have been more technically meritorious than originally indicated, but that MAR's proposal was still technically superior to and more advantageous than USI's proposal. See C.L. Systems, Inc., B-197123, June 30, 1980, 80-1 CPD 448. Moreover, we have held that, where the contracting agency recalculates technical proposal scores based on the proposal scores compiled as of the time of the original award selection, the fact that the rescoring does not alter the relative position of the offerors requires the denial of a protest against improprieties in the agency's original scoring technique. Datapoint Corporation, B-194277, September 14, 1979, 79-2 CPD 198; E.I. du Pont de Nemours & Company, et al., B-190611, September 22, 1978, 78-2 CPD 218. Therefore, this ground of USI's protest is denied.

We are nevertheless concerned with the inconsistent evaluation of the offerors' personnel resumes. By separate letter to the Secretary of the Navy we are therefore recommending that the RFP evaluation provision and rating forms and instructions be revised to clearly advise both prospective offerors and evaluators of the manner in which multiple resumes will be evaluated in order to preclude recurrence of similar misunderstandings in future procurements.



Acting Comptroller General
of the United States