

**DECISION**



18639  
*Carter*  
**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

FILE: B-201291

DATE: June 26, 1981

MATTER OF: BDM Corporation

**DIGEST:**

1. Neither use of consultant to assist agency in evaluation of proposals nor change in evaluation scoring method from average to consensus rating is improper.
2. Contention that agency evaluated information not in proposals because contracting officer requested evaluators for information as to general knowledge of offerors which might be used in negotiations is denied, since general advice for use in negotiations is distinct from evaluation.
3. Under solicitation which clearly shows that both cost and technical factors are important, and which states criteria evaluation with technical and cost under equally weighed outline headings, but does not explicitly indicate relative importance of cost and technical factors, cost and technical factors should be considered substantially equal in importance.
4. Although agency may have improperly stressed technical factors in awarding contract under which technical and cost factors should have been weighed substantially equal, protester does not appear to have been prejudiced, since, even if cost and technical

*[Protest of FEMA Contract Award]*

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factors are considered equal, awardee's proposal could reasonably be interpreted to be more favorable.

5. Protester's criticism of awardee's proposal format and content is unconvincing. Negotiated procurements afford wide latitude to offerors to demonstrate competence. Whether offeror elects extensive technical discussion, as bid protester, or less technical discussion with emphasis on experience, as awardee did, is discretionary. Contracting agency's assessment that awardee's proposal was better does not appear unreasonable.
6. Allegations that agency failed to negotiate face-to-face and failed to request best and final offer are untimely because not filed within 10 working days of advice of contract award when bases should have been apparent. 4 C.F.R. § 20.2(b)(2) (1980).
7. Letter and accompanying questions which afforded offerors chance to revise proposals constituted discussions.

The BDM Corporation protests the Federal Emergency Management Agency's (FEMA) award of a cost-plus-fixed-fee contract for the design, development, and acquisition of a "Distributed Survivable Direction and Control Communications System." BDM was an unsuccessful competitor for the contract. We find BDM's protest to be without merit.

On September 10, 1979, FEMA issued a request for quotations (RFQ) to 72 prospective offerors for the development of a communications system to support FEMA's multiple civil defense and emergency roles. The RFQ contemplated a comprehensive systems analysis

and design in six phases, starting with an analysis of FEMA's mission and requirements and ending with a plan for equipment requisition and system implementation. As originally issued, the RFQ essentially provided that the contract would be awarded to the offeror submitting the best technical proposal and that proposal costs would be a material consideration only if two or more proposals were technically equal. In its final form, after amendment, the RFQ provided that award would be made on the basis of the most advantageous proposal, cost and other factors considered. The technical evaluation factors were spelled out in detail with particular stress on each offeror's demonstration of its understanding, capability and capacity in problem definition and analysis with emphasis on the application of current communications technology in the design of systems that will still work after a disaster, or what the RFQ called survivable systems. The RFQ advised that a team of technical experts would evaluate the technical proposals and that any information not submitted with the proposal might not be considered. The proposals were evaluated by a four-member source evaluation board to which a nonvoting consultant was added for technical advice.

Rather than conduct face-to-face negotiations, FEMA sent each of the five offerors in the competitive range an identical list of 22 questions accompanied by a cover letter which established a common cut-off date for responses and advised the recipients that "If, as a result of any of the questions raised, you feel that parts of either your technical or cost proposals should be changed, you should submit a revised proposal." The questions sought extensive information on the offeror's experience in various aspects of communications.

BDM submitted a discussion of its experience in response to FEMA's letter, but did not alter its cost proposal. Three of the five recipients did change their cost proposals. The final results of FEMA's evaluation were as follows:

<u>Offeror</u>	<u>Technical Score</u>	<u>Proposed Cost</u>
Computer Sciences Corporation (CSC)	95.8	\$1,392,262
Booz, Allen & Hamilton, Inc.	88.4	1,229,450
Electrospace Systems, Inc.	87.0	1,639,651
R & D Associates	85.1	1,304,239
BDM	83.2	1,252,352

The contract was awarded to CSC.

The majority of BDM's various challenges to the propriety of this procurement are directed at areas in which procuring agencies enjoy considerable discretion. We have consistently, as an example, deferred to the procuring agency's assessment of the relative merits of technical proposals unless it could be clearly shown that the agency's judgment lacked a reasonable basis, was an abuse of discretion, or otherwise was in violation of procurement statutes or regulations. Joule Technical Corporation, B-197249, September 30, 1980, 80-2 CPD 231; E-Systems, Inc., B-191346, March 20, 1979, 79-1 CPD 192; Joseph Legat Architects, B-187160, December 13, 1977, 77-2 CPD 458. Our review of source selection decisions is subject to the same standard. National Puerto Rican Forum, Inc., B-189338, November 23, 1977, 77-2 CPD 400; Riggins & Williamson Machine Company, Incorporated; ENSEC Service Corporation, 54 Comp. Gen. 783 (1975), 75-1 CPD 168. Consequently, our review of most of BDM's several objections is limited to the sole question of the reasonableness of FEMA's actions in the particular circumstances.

BDM's objections to this procurement fall into three broad categories: (1) BDM challenges the propriety of FEMA's conduct of the evaluation; (2) BDM asserts that the evaluation criteria in the RFQ were

not used; and (3) BDM contends that FEMA's conduct of discussions was improper. We will discuss BDM's contentions in this order.

BDM bases its challenges to FEMA's conduct of the evaluation on four separate premises. First, BDM alleges that FEMA's use of a consultant to assist the source evaluation board was improper. In this regard, BDM asserts that the consultant dominated the consideration of proposals, in effect preempting the board's role, and also suggests that the consultant may have had a conflict of interest or been biased in CSC's favor. Second, BDM argues that FEMA did not consider the proposal modifications which BDM submitted in response to FEMA's questions. Third, BDM contends that a change in the board's rating system from average to consensus scoring was improper, and, fourth, BDM states that the board did not limit its evaluation solely to information in the proposals.

We find no merit in BDM's contentions. BDM has suggested no regulation or other proscription, and we have found none, which would make it inherently improper for an agency to supplement its own knowledge with a consultant to aid in the evaluation of proposals. Moreover, while not encouraging the practice, we see nothing improper per se in an agency using an outside consultant to assist its technical evaluation team where it is the only reasonable way to obtain needed special expertise not available from an agency's own staff. University of New Orleans, B-184194, January 14, 1976, 76-1 CPD 22. Further, BDM has provided no evidence in support of its assertion of bias on the part of the consultant. And, contrary to BDM's implicit suggestion of impropriety, we would expect a consultant normally to dominate those areas of proposal evaluation which fall within the consultant's special expertise to make a meaningful contribution to the board's deliberations in those areas where no such contribution might have been expected from the agency's own staff. BDM's assertion that FEMA did not evaluate its proposal revisions is based at least partially on a statement in FEMA's report on this protest to the effect that BDM made no changes in its proposal. Read in context, however, it is clear that this statement refers solely to BDM's cost proposal which BDM, in fact, did not change. FEMA states that all

proposal revisions were carefully reviewed and were found to offer approximately proportional improvement with the result that the technical scores remained unchanged.

Similarly, we find no evidence to support BDM's last two challenges to FEMA's conduct of the evaluation. Although the source evaluation board did, as BDM asserts, change its scoring from an average to consensus basis, we find nothing in the RFQ which either mandates or precludes either method. BDM's contention that FEMA did not limit its evaluation to information solely in proposals is based on a request by the contracting officer to the evaluators for information as to their general knowledge of the offerors which might be used in negotiations and to a remark pertaining to CSC's strength in "intangibles." We agree with FEMA that general advice for use in negotiations is distinct from the evaluation of proposals. Further, we note that the source evaluation board chairman relied on "intangible factors" to support his conclusion that, while the CSC proposed cost was next to the highest, in reality it was the lowest. However, the reference to "intangible factors" is no indication that the factors came from outside the proposal.

BDM relies on two principal allegations as the basis for its assertion that FEMA did not properly apply the RFQ's evaluation criteria. First, BDM contends that the change in the evaluation criteria accomplished by amendment No. 3 to the RFQ, to which we referred above, elevated the importance of cost as an evaluation factor above technical considerations and that, as a consequence, it was improper for FEMA to award the contract to a higher cost offeror. Second, BDM compares its own technical proposal to that of CSC and concludes that if the technical evaluation criteria were properly applied, its own proposal would be scored higher than CSC's. In response, FEMA asserts that offerors were adequately advised that technical considerations were more important than cost and that any questions concerning this subject should have been raised earlier. FEMA contends that, since BDM did not raise this question

until after the award of the contract, this aspect of BDM's protest is untimely under our Bid Protest Procedures, 4 C.F.R. part 20 (1980). FEMA also asserts that BDM has provided no evidence that the evaluation criteria were not applied.

We believe FEMA's assertion that BDM's first contention is untimely is based on a misunderstanding of BDM's protest. BDM is not charging here that the RFQ's evaluation criteria were unclear or incorrect, in which case FEMA would be right, but that FEMA misapplied or ignored criteria clearly stated in the RFQ. If we accept BDM's premise that the RFQ clearly indicated that cost outweighed technical considerations as an award factor, then we find no basis upon which we might conclude that BDM could or should have learned that FEMA did not adhere to these relative values until BDM's debriefing. Since BDM protested within 10 working days of its debriefing, we find BDM's objection to be timely and will consider it on the merits. 4 C.F.R. § 20.2(b)(2).

We do not agree with the positions taken by either BDM or FEMA concerning the relative value of cost as an evaluation criterion. As finally stated, the evaluation criteria in this solicitation were "cost and other factors" followed by a listing in outline format of the several technical factors and their subelements which would be of paramount importance in the evaluation of technical proposals, and cost--under a separate outline heading of equal weight to that used for the technical category. The solicitation contained no explicit statement of the relative value of cost and technical factors. Although we agree with BDM that the effect of the change in the evaluation criteria introduced by amendment No. 3 was to elevate the importance of cost as a consideration in FEMA's award decision, we find wholly unreasonable BDM's assertion that under these criteria cost outweighed technical factors in importance. On the contrary, we believe that the solicitation clearly indicated that both cost and technical factors would be important in making the award. In these circumstances, these two factors should be of substantially equal importance. 52 Comp. Gen. 686 (1973); University of New Orleans, B-184194, May 26, 1978, 78-1 CPD 401.

Although FEMA may have improperly stressed the technical merits of proposals in making its award decision, as contended by BDM, we nonetheless find no basis upon which we might conclude that BDM was prejudiced by this impropriety and no other offeror has protested. In this regard, we note that CSC's technical score is approximately 14 percent higher than BDM's while CSC's cost is only about 11 percent higher. Consequently, even if we consider cost and technical factors to be substantially equal in importance, we cannot conclude that FEMA's decision to award the contract to CSC rather than BDM clearly lacked a reasonable basis.

BDM also argues that, if the evaluation criteria had been properly applied, its own proposal should have been rated higher than CSC's proposal. BDM relies for this statement on its own comparison of the two proposals in which BDM points out that while its own proposal contained extensive technical discussion, CSC's proposal generally only identified specific problem areas and then identified prior CSC contracts for the same or similar work for other agencies.

We find nothing unreasonable in FEMA's evaluation of the proposals. One of the principal advantages of a negotiated procurement is the wide latitude it affords offerors in the choice of ways to demonstrate their competence. We see nothing inherently wrong in either method reflected here--whether an offeror chooses BDM's course of explaining how it would approach a given problem, or elects CSC's method of showing that they had resolved similar problems before, the objective is the same--to communicate to evaluators the offeror's ability to do the job. On the record before us, we cannot conclude that FEMA was unreasonable in its assessment that CSC's proposal offered greater merit.

BDM raises two separate challenges to FEMA's conduct of negotiations. First, BDM argues that sending the same questions to all offerors is not discussions and, second, that FEMA failed to request best and final offers. FEMA responds that BDM's allegation of a failure to request best and final



offers is untimely because BDM waited more than 2 months after it learned of the award of the contract to raise this question. FEMA also contends that the questions and accompanying cover letter that it sent to each offeror in the competitive range was sufficient both to constitute discussions and to put offerors on notice that best and final offers were being solicited, even if the letter did lack an explicit reference to "best and final."

We agree with FEMA that BDM's allegation of a failure to request best and final offers is untimely under our Bid Protest Procedures. As a general rule, each separate basis for protest must independently satisfy the timeliness criteria of our Bid Protest Procedures. Courseware, Inc., B-200731, February 25, 1981, 81-1 CPD 133; Annapolis Tennis Limited Partnership, B-189571, June 5, 1978, 78-1 CPD 412. And, although we have frequently stated that a protester might reasonably delay the filing of its protest until it has had a debriefing when the information available earlier left uncertain whether there was any basis for protest, see Control Data Corporation, B-197946, June 17, 1980, 80-1 CPD 423; Chauncey Bell and Associates, Inc., B-192015, October 6, 1978, 78-2 CPD 257; Lambda Corporation, 54 Comp. Gen. 468 (1974), 74-2 CPD 312, we have found untimely protests which are not filed until after the debriefing when the bases are evident prior to the debriefing. Oswego Package Boiler Company, Cyclotherm Division, B-194714.2, August 6, 1979, 79-2 CPD 84; Bauer Ordnance Company, B-193308, December 28, 1978, 78-2 CPD 441.

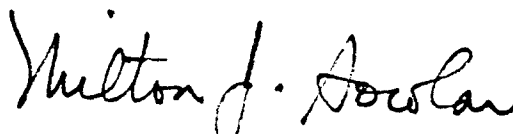
We think it clear that the basis for BDM's contention that FEMA failed to request best and final offers was apparent at the latest when BDM was advised of the award of the contract to CSC without ever having received what BDM might have considered a request for best and final offers. The 2 months BDM waited to raise this question falls well beyond the 10 working days contemplated under our Bid Protest Procedures. 4 C.F.R. § 20.2(b)(2) (1980). Consequently, this contention is untimely and will not be considered on the merits.

BDM's challenges to FEMA's conduct of negotiations are also without merit. In this regard, BDM raises the twin objections that FEMA should have conducted face-to-face negotiations and that sending identical questions to all offerors is not "discussions." FEMA argues that both of BDM's objections to the conduct of discussions are untimely under our Bid Protest Procedures, supra, because BDM did not protest these matters within 10 working days of the award of the contract.

We agree with FEMA only with respect to BDM's first contention cited above. Our Bid Protest Procedures require, with certain exceptions not relevant here, that protests be filed within 10 working days of the date on which the protester knew or should have known of the basis for protest. 4 C.F.R. § 20.2(b)(2). We think it self-evident that BDM was aware when it learned of the contract award of the lack of "face-to-face" negotiations prior to award. BDM did not raise this question until substantially more than 10 working days had passed. Consequently, it is untimely and not for consideration. FEMA has suggested no way, however, and we perceive none, in which BDM might have learned that all offerors received identical questions at any time prior to its debriefing. Consequently, we will consider that question.

We find BDM's last charge to be without merit. The form and extent of discussions necessary to satisfy the requirement for meaningful discussions is a matter of judgment primarily for determination by contracting officials and is not subject to question by our Office unless shown clearly to be without a reasonable basis. Joule Technical Corporation, supra; E-Systems, Inc., supra; Checchi and Company, B-187982, April 4, 1977, 77-1 CPD 232. In that regard, we have held that the opportunity to revise a proposal constitutes discussions. Food Science Associates, Inc., B-183054, April 30, 1975, 75-1 CPD 269. FEMA's letter of August 22 and the accompanying questions afforded offerors the chance to revise their proposals and, therefore, constituted discussions.

The protest is denied in part and dismissed in part.

A handwritten signature in cursive script, reading "Milton J. Rowland".

Acting Comptroller General  
of the United States