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DECISION



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

FILE: B-203302

DATE: July 8, 1982

MATTER OF: Human Resources Research Organization

DIGEST:

1. Technical evaluation that found proposal deficient based on factor not explicitly identified in solicitation was proper because factor was reasonably related to stated criterion.
2. Questions during discussions were sufficiently detailed to lead protester to deficiencies in its proposal. Protester was provided two opportunities to revise proposal in response to questions, which was sufficient.
3. Fact that chairman of technical evaluation committee was nonactive graduate student at university that awardee proposed as subcontractor for small portion of contract is not reason to disturb award where there is no evidence of bias, chairman disclosed relationship to his superiors prior to award, and no statute or regulation was violated.

Human Resources Research Organization (HRRO) protests the award of a cost-plus-award-fee contract to the RCA Service Company (RCA) under request for proposals (RFP) No. DABT60-80-R-0027 issued by the Department of the Army (Army). HRRO argues that its technical proposal was improperly downgraded by the application of an evaluation factor that was not revealed in the RFP and which was irrelevant to proposal evaluation and contract performance. HRRO also alleges that the chairman of the technical evaluation committee had a conflict of interest that biased his evaluation and that the reliance on the unstated evaluation factor to downgrade HRRO's proposal is evidence of the bias.

The protest is denied.

Technical Evaluation

The contract is for the development of a curriculum for a Basic Skills Educational Program which will provide soldiers with certain basic skills (called prerequisite competencies) that they need in order to learn the more specialized skills required to perform Military Occupation Specialties (MOS). An MOS is a "grouping of duty positions requiring similar qualifications and the performance of closely related duties."

The RFP scope of work required the contractor to analyze approximately 100 MOS's for the purpose of identifying the relevant prerequisite competencies. The RFP Description/Specifications stated that:

* * * * the Contractor shall identify the baseline prerequisite competencies required for training as derived from an analysis of the tasks listed in the skill level 10 and 20 Soldier's Manual or the most recent list of tasks selected for training as determined by the service school. * * *"

HRRO proposed an analysis of the MOS's which assumed a significant number of tasks (117) as common to all MOS's. Common tasks would only be analyzed once. Thus, assuming commonality lowers the total number of tasks to be analyzed. According to HRRO, it was impossible to predict, prior to contract performance, how many common tasks there were. However, HRRO based its proposal on an estimate of the number of common tasks, which it arrived at by "utilizing its lengthy experience * * *, its excellent technical ability, and its professional judgment."

The RFP provided that technical evaluation factors were of primary importance and that cost was not as important and would not be scored numerically. HRRO's proposal received a technical score of 73.52 and RCA's proposal received a score of 87.41 out of 103 possible points. HRRO's proposed cost was \$1,704,453; RCA's was \$2,451,918. The Army awarded to RCA because its technical proposal was deemed sufficiently superior to justify the difference in cost.

According to HRRO, the Army found only one serious deficiency in its technical proposal--an assumption of too many tasks common to all MOS's. HRRO claims that the Army had a preconceived bias for an approach that assumed little task commonality. However, HRRO contends that nothing in the RFP indicated the number of tasks to be analyzed or that the Government felt that there were few common tasks. Therefore, HRRO argues, it was improper to downgrade its proposal based on that undisclosed evaluation criterion. HRRO also claims that this undisclosed preference was not communicated to it during the course of negotiations. Finally, HRRO asserts that the number of tasks to be analyzed as estimated in its proposal was not relevant to the performance of the contract because the contractor would be required to analyze all noncommon tasks that were discovered during performance. HRRO claims that it could have done this at a lower cost than RCA proposed.

The Army states that one of the major objectives of the contract is the analysis of the tasks within the 100 MOS's and the delivery of a Prerequisite Competencies Analysis Report. Among other things, the Army expects this report to identify tasks that are common across MOS's. According to the Army, the solicitation did not specify the number of tasks to be analyzed per MOS or require offerors to propose a number because that number varies widely among MOS's and there is no way to know, prior to contract performance, how many tasks will be common across MOS's. Therefore, for guidance, the solicitation statement of work required that all tasks listed in the Soldiers Manuals that would be provided as Government Furnished Material or in lists to be provided by service schools be analyzed.

The Army points out that HRRO admitted that it was impossible to predict the degree of task commonality. Yet HRRO based its proposal on the a priori assumption that 117 tasks were common. The Army argues that this permitted HRRO to propose fewer days for the analysis and consequently vastly reduced costs, as compared to offerors who planned to analyze all tasks within the MOS's. This underestimation of the level of effort involved in the performance of the contract was considered to be a technical deficiency that required

discussion with HRRO. The Army states that during the first round of discussions it emphasized the labor intensive nature of the contract. In response, HRRO revised its proposal to increase the time to analyze each MOS to an average of 10.8 days. The Army still felt that this was not an adequate level of effort and, in a second round of discussions, told HRRO that:

"The Government does not believe that a complete task analysis and data collection can be done in an average of 10.8 days per MOS. Using an average of 175 tasks per MOS, this would require an analyst to go through 17 plus tasks per day. Even allowing for some extensive redundancy, this seems to be a very low estimate."

HRRO then increased its proposed analysis time from 10.8 days to 15 days per MOS. The Army states that this was still considered to be a very low estimate. Consequently, HRRO's technical proposal was downgraded. The Army felt that it had provided HRRO with adequate notice of the deficiency and an opportunity to revise its proposal to correct the deficiency. The Army states that the 175 average tasks per MOS that was mentioned in discussions was meant only to indicate that the level of effort proposed by HRRO must be increased and this figure was not used as an evaluation factor.

As HRRO argues, it is a well-settled rule that the solicitation should inform all offerors of the basis for evaluation of proposals and the evaluation must, in fact, be based on the scheme set forth in the solicitation. See, e.g., 51 Comp. Gen. 153 (1971). However, while agencies are required to identify the major evaluation factors, they are not required to explicitly identify the various aspects of each which might be taken into account, provided that such aspects are reasonably related to or encompassed by the stated criteria. Bell and Howell Corporation, B-196165, July 20, 1981, 81-2 CPD 49; Buffalo Organization for Social and Technological Innovation, Inc., B-196279, February 7, 1980, 80-1 CPD 107.

The evaluation criterion in question here states:

"(1) Analysis concept (both pre-requisite competencies and initial entry training course survival skills). The offeror will be evaluated on the ability to comprehend the Government Furnished analysis techniques and his approach to application of the analysis techniques and upon the clarity of the technical proposal in terms of the level of detail, identification of potential problems, and appropriateness of solutions, or upon the creativity, feasibility, and utility of any alternative contractor proposed technique. Does the analytical approach represent a technically sound state-of-the-art technique? Is there capacity for identification of each skill prerequisite to terminal task accomplishment and skills unique to the academic environment?"

While the criterion focuses on the offeror's method for analyzing the tasks, it is broad enough to encompass assumptions about the degree of commonality of tasks and the level of effort required to analyze the tasks. Assumptions of task commonality and amount of time to analyze tasks may not be directly related to the analytical method for analyzing each task, but they are indicative of the offeror's overall approach to task analysis and are reasonably related to the above criterion. Indeed, the criterion refers to the offeror's approach to application of analysis techniques and clarity of problem identification and appropriateness of solutions.

We find it difficult to understand HRRO's assertion that it was not apprised of the Army's concern with its approach during discussions. Questions which lead offerors into areas of their proposals that are weak are sufficient to put them on notice that their proposal may be inadequate in those areas. Dynalectron Corporation, B-199741, July 31, 1981, 81-2 CPD 70; Systems Consultants, Inc., B-187745, August 29, 1977, 77-2 CPD 153. The Army's questions more than met this standard. During both rounds of discussions, the Army

informed HRRO that it had underestimated the amount of time needed to analyze the tasks in each MOS. This was directly related to HRRO's assumption of task commonality. When HRRO did not sufficiently increase its estimated level of effort for task analysis, the Army's question in the second round of discussions was more direct, including the reference to 175 tasks per MOS, a number far in excess of HRRO's estimate. These questions certainly should have let HRRO know that its assumption of massive task commonality was a deficiency in its proposal. The Army provided HRRO two chances to correct the deficiency and was not required to continue with further discussions and opportunities to revise proposals. Serv-Air, Inc., 57 Comp. Gen. 827 (1978), 78-2 CPD 223.

We disagree with HRRO's assertion that its assumption of commonality was irrelevant to contract performance because all offerors would be required to analyze all tasks and that it, therefore, should not have been considered a deficiency. HRRO admitted that the degree of commonality was impossible to ascertain prior to contract performance. Yet HRRO assumed massive commonality and thus proposed a much less intensive effort than did RCA. While HRRO, if it had won the contract, would have had to analyze all noncommon tasks, it did not contemplate the effort that would be required in the event that the degree of commonality did not, in fact, exist. Anytime a contractor is faced with a level of effort greater than it had planned for, there is a strong possibility that performance of the contract will be negatively affected. Such a situation may cause problems with staffing and organization which may delay contract performance. Additionally, HRRO's assumption of massive commonality, in the face of its own admission that the degree of commonality cannot be ascertained prior to contract performance, can reasonably be considered indicative of a lack of understanding of the contract requirements. Most importantly, HRRO's lower cost is directly related to its assumption of commonality and HRRO is essentially arguing that it should be awarded the contract because of its lower cost. If HRRO's assumption is incorrect, as the Army believes it is, then HRRO's apparent cost advantage is illusory. So, even if the assumption is irrelevant for contract performance, it must be considered in proposal evaluation.

Also, contrary to HRRO's assertion, there were other major deficiencies in its proposal that led to its lower technical score. In addition to the deficiency of excessive assumption of commonality, HRRO's proposal was also found to be deficient in its overemphasis on literacy as the major problem in the training program and in its plan for clustering MOS's. These deficiencies were reflected in the individual evaluator's scoring of HRRO's technical proposal and were conveyed to the protester at a debriefing. HRRO has not disagreed with those portions of the technical evaluation.

Finally, while HRRO argues that it should have been awarded the contract, notwithstanding its lower technical score, because its proposal was technically acceptable and its cost was lower, the evaluation criteria do not support such a result. The criteria stated that technical factors would be far more important than cost in determining who should be awarded the contract. We have found such evaluation schemes to be acceptable. Bell and Howell Corporation, supra. We have also recognized that in awarding to a technically superior, higher cost offeror the determination of whether the difference in technical scores is significant enough to justify the higher cost is a matter within the discretion of the contracting agency. Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 CPD 325. Even small differences in technical scores may be significant. Bellmore Johnson Tool Company, B-179030, January 24, 1974, 74-1 CPD 26; 52 Comp. Gen. 358 (1972). Here, the Army has supported its determination that RCA's proposal was technically superior and we cannot say it has abused its discretion. This is particularly true here where the lower cost of HRRO's proposal was directly related to a deficiency in its technical proposal.

Conflict of Interest

HRRO alleges that the chairman of the technical evaluation committee was biased against HRRO because of his affiliation with Florida State University (FSU), a proposed subcontractor of RCA. According to the protester, the chairman was seeking a doctoral degree from FSU during the time he chaired the committee and the professors who supervised his master's degree work

and would grant his doctoral degree would be directly involved in the subcontract. HRRO claims that the chairman's bias is evident in the technical evaluation committee's downgrading of HRRO's proposal on the basis of its assumption of task commonality, which HRRO argues was not a legitimate evaluation criterion, and in the chairman's excessively high scoring of RCA's proposal.

HRRO cites Defense Acquisition Regulation § 1-113.1 (1976 ed.) and 32 C.F.R. § 40.6 (1981) for the proposition that Department of Defense employees must avoid even the appearance of favoritism or partiality with respect to Government contract transactions. The protester also cites Del Rio Flying Service, Inc., B-197448, August 6, 1980, 80-2 CPD 92, as an instance in which GAO found that a contracting officer should not be permitted to administer a contract with a company which employed her daughter. HRRO argues that applying that principle here should result in nullifying the award to RCA.

According to the Army, the chairman's relationship with FSU was rather more distant. The Army states that he did receive his master's degree there, but that he was during the time that he chaired the technical evaluation committee, merely a nonresident nonactive graduate student. The chairman enrolled in the doctoral program while he was working on his master's when he was a resident student at FSU. After leaving FSU, he took some self-paced studies, but has done no work since June 1980. Consequently, he must reapply for admittance in the doctoral program before he can resume degree work. The Army also points out that FSU will perform work amounting to less than 1 percent of the dollar value of the contract.

The Army has also submitted affidavits from the contract specialist who handled the procurement and from the chairman's supervisor stating that when the chairman discovered that FSU was a proposed RCA subcontractor he came to them and discussed his relationship with FSU. Those officials determined that the relationship was not sufficient to present a conflict of interest and advised the chairman not to disqualify himself.

Finally, the Army asserts that there is no evidence of bias in the chairman's conduct or scoring of proposals. All members of the committee scored proposals independently, not by consensus, and no member dominated the scoring. The Army notes that, if the chairman's scores are deleted from the evaluation, RCA's proposal still retains a higher technical score.

We have examined the record of the technical evaluation, including documents that were withheld from HRRO, and find no evidence of bias on the part of the chairman. The allegation concerning the use of a non-disclosed evaluation criterion has been discussed above and found to be without merit. Also, the discussion of this area of deficiency with HRRO and the opportunity for HRRO to revise its proposal is inconsistent with an attempt to sabotage its proposal. While the chairman did score RCA's proposal highly, he also gave HRRO's proposal a relatively high score. Also, the scores of all four evaluators generally follow the same patterns in all subcriteria and the evaluators had consistent comments concerning strengths and weaknesses. Three of the four evaluators rated RCA's proposal significantly higher than HRRO's.

In Del Rio Flying Service, Inc., supra, we found that the award of a contract to a firm that employed the contracting officer's daughter was not improper because there was no evidence of bias in the record of the contract award, the contracting officer notified her superiors of the facts prior to award, and no statute or regulation was violated. We did state that it would be preferable (not necessary) that the contracting officer not administer the contract.

Here, the relationship allegedly creating the conflict is much less close than the mother-daughter relationship in Del Rio, the Government employee has a less critical position in determining the awardee than the contracting officer did in Del Rio, the chairman voluntarily disclosed the relevant facts to his superiors prior to award, the record shows no evidence of bias, and no statute or regulation has been violated. Consequently, the award should not be disturbed.

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Protest denied.

Milton J. Fowler

Acting Comptroller General
of the United States