

DECISION

24757

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

FILE: B-208147**DATE:** April 8, 1983**MATTER OF:** Martin-Miser Associates**DIGEST:**

1. Bias will not be attributed to a technical evaluation committee member based only on inference or supposition.
2. GAO will not question an agency's technical evaluation unless the protester shows the agency's judgment lacked a reasonable basis, was an abuse of discretion, or otherwise was in violation of procurement statutes or regulations.
3. Even though the results of a technical evaluation under one of four evaluation factors appear questionable, protest by lower-cost offeror against the selection of a contractor is denied since in view of the evaluation results under the other three factors, and the RFP's cost/technical weighting scheme, GAO cannot conclude that the selection was unreasonable.

Martin-Miser Associates protests the award of a contract to MSM Security Services, Inc. under request for proposals (RFP) 01G-82-R-3 issued by the Department of Agriculture for the investigation of complaints of discrimination in Federal employment. Martin-Miser contends that one of three evaluators was prejudiced in favor of MSM, and that the selection was otherwise unreasonable.

We deny the protest.

The RFP stated that a technical evaluation committee would evaluate technical proposals according to the following evaluation criteria: factor 1--relevant technical experience; factor 2--understanding of the problem; factor 3--qualifications of assigned personnel; and factor 4--

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project management. The RFP advised that factors 1 and 2 were equally important, as were factors 3 and 4, although factors 3 and 4 were worth less than factors 1 and 2. (In the actual evaluation, the first two factors were worth 30 points each, and the last two, 20 points each.) The RFP further advised that the evaluated technical and price scores of the technically acceptable proposals would be consolidated to determine overall scores, and award would be based on the technical/price relationship most advantageous to the Government. The RFP stated:

"* * * Price will be a significant factor in the award decision, although the award may not necessarily be made to that offeror submitting the lowest fixed price. If proposals are considered to be essentially equal as a result of the consolidation of scores, award will be made to the responsive, responsible offeror whose proposal received the highest technical score of those equal overall scores."

The technical evaluation committee determined Martin-Miser's initial proposal to be technically acceptable and assigned it a technical score of 76. The committee assigned MSM a technical score of 91. Martin-Miser's proposed price was \$46,440, and MSM's was \$67,245. The committee weighted the technical score at 75 percent and the price score 25 percent, and as a result, MSM's proposal had the highest total score, 92.3, with Martin-Miser's proposal second highest, 87.6, among ten technically acceptable offerors. No negotiations were conducted, so that the selection decision was based on these initial proposal scores.

Martin-Miser suggests that one of the three members of the technical evaluation committee was prejudiced in favor of MSM. Martin-Miser points out that Wallace Welch, a member of the committee, is also the technical contact for the Department of Commerce in a current contract with MSM. Mr. Welch rated MSM over Martin-Miser, 95 to 55 points, while the other two evaluators on the technical evaluation committee rated Martin-Miser over MSM, 92 to 91 points, and MSM over Martin-Miser, 83 to 79 points. Martin-Miser protests that the low scores it received from Mr. Welch

distorted the technical scoring in favor of MSM, and that Martin-Miser's low cost therefore did not receive appropriate consideration in the selection decision.

Agriculture reports that before making his evaluations Mr. Welch signed a certificate stating that no conflict of interest existed regarding his evaluation of any of the offers. Also, Agriculture explains that all three members of the technical evaluation committee had experience with a number of the offerors and that in a field as small and specialized as Equal Employment Opportunity (EEO) investigative work, EEO investigative personnel often know each other. Agriculture further asserts:

"The technical scores assigned were a consensus reached by the three panel members, rather than a mere mathematical average. In reaching a consensus evaluation of the offerors, the panel was not overly influenced by the ratings of any one member. All three panel members discussed each offeror and noted strengths and weaknesses that were considered important under the rating criteria. These criteria were consistently applied with regard to all offerors, and were based on the total information presented in the proposals."

We have repeatedly held that bias will not be attributed to procurement officials based on inference and supposition. See Art Services and Publications, Inc., B-206523, June 16, 1982, 82-1 CPD 595. We recognize that where the subjective motivation of an agency's procurement personnel is being challenged, it may be difficult for the protester to establish on the written record--which forms the basis for our decisions--the existence of bias. Martin-Miser proffers no evidence that Mr. Welch actually was biased in favor of MSM, except to infer bias from the fact that Mr. Welch scored Martin-Miser lower than any other evaluator did. Inference of that sort does not suffice to carry the protester's burden of proof where bias is alleged, since there must be evidence that the evaluator's scoring reflects other than his reasoned judgment as to the

merits of the proposals in issue. Western Engineering and Sales Co., B-205464, September 27, 1982, 82-2 CPD 277; Development Associates, Inc., B-205380, July 12, 1982, 82-2 CPD 37. Based on the evaluation record, which we discuss at length below, we find that the existence of bias has not been established.

Under the first evaluation factor, which was worth 30 points, offerors were to submit:

"information as to the qualifications and relevant technical experience of the offeror including descriptions of directly relevant investigative projects that have been performed by the offeror."

There is no narrative accompanying the technical evaluation committee scoring sheets. The scoring sheets show that Mr. Welch gave MSM 25 points (with the comment "extensive background in several Federal agencies"), and the other two evaluators gave the firm 25 points ("exp. & guidebook") and 24 points ("has contracted for several agencies"). Mr. Welch gave Martin Miser 20 points, commenting:

"Well-defined and explained, however, the degree of sophistication is self-claimed, not matched to any claimed contract completion. The cited reference is to other OPM work when the two principals were Federal employees."

The other two evaluators gave Martin-Miser 20 points ("adequate experience") and 27 points ("lot of exp.-class").

Agriculture explains the committee's consensus evaluation in its report on the protest. According to the report, work in EEO investigations was sufficient for a score of approximately 20 points, and additional points were given "if there was an indication that the work was complex or otherwise demanding." The committee found that both Martin-Miser and MSM had performed EEO investigations under contract to Federal agencies, but that neither offeror explicitly indicated the complexity of any of the individual cases investigated. Each firm therefore

initially was awarded only 20 of the 30 available points. The committee, however, awarded MSM 5 extra points for providing a guidebook with its proposal that, in Agriculture's words, "demonstrated reasonable experience in handling complex cases with in-depth investigations." Thus, the consensus score for MSM was 25 points, and the consensus score for Martin-Miser was 20 points.

Martin-Miser argues that its proposal in fact indicated extensive experience in the investigation of complex complaint issues. Martin-Miser also argues that MSM should not have been awarded extra points for its guidebook because the guidebook allegedly addresses only the most basic requirements involved in analyzing the problems of employment discrimination, and thus merely indicates that MSM's staff has limited expertise in complex complaint investigations.

Our examination of the proposals show that MSM's brief response under factor 1 basically only listed a variety of issues that have been involved in its complaint investigations for various Federal agencies. MSM did enclose as an exhibit an extensive list of Federal contracts it had completed or was performing, but the list did not provide any information about the nature of the contract investigations. Martin-Miser responded to factor 1 with somewhat more information, the bulk of which addressed the advantages of contracting with a firm such as Martin-Miser. The offeror also listed the types of issues it has encountered in its investigations, which were similar to those listed by MSM, and identified a number of on-going Federal contracts. The only specific investigation discussed was one performed by the firm's two partners while they were employed by the Federal Government, and which Mr. Welch noted in his evaluation comments.

We see nothing improper with the consensus scores. The technical evaluation committee basically judged MSM and Martin-Miser equally well-qualified and experienced, despite the latter's submission of considerable more in the way of, in essence, self-serving statements about its abilities and attributes. We see no basis to find that judgment unreasonable. Also, although each offeror listed issues it has investigated, the issues were not related to any specific investigation except for Martin-Miser's reference to one project. The RFP, however, required a

description of "directly relevant investigative projects that have been performed by the offeror," and the noted project was not under a Martin-Miser contract, but was an effort by the firm's principals while they were Federal employees. In sum, we do not believe the committee was compelled to conclude that Martin-Miser's offer established relative superiority in the above respect.

Also, we see no reason why MSM's guidebook cannot be viewed as indicative of MSM's qualifications or relevant technical experience under factor 1. Although the pro- tester and the evaluators disagree on the merits of the guidebook, the guidebook does contain extensive and detailed descriptions of investigative technique. One cannot conclude that the evaluators' view that the guidebook demonstrated experience and qualifications in conducting investigations, and thus to award MSM the final five evaluation points under factor 1, was not rationally founded.

Finally, since Mr. Welch's scores for both offerors under this criterion generally are consistent with the other evaluators', and in view of Agriculture's explanation as to how the consensus scores were reached, we cannot object to Mr. Welch's input.

Factor 2 (worth 30 points) stated that offerors were to submit:

"a statement of concept which will in specific terms demonstrate an understanding of the technical requirements and shall outline the actual work proposed as detailed technical discussion and description of the offeror's methodology to be used in accomplishing the effort and the rationale for the approach proposed."

Martin-Miser's response to factor 2 was brief. The firm essentially stated that it understood the purpose of the investigations, and would conduct investigations in the necessary depth. Evaluator Welch gave Martin-Miser only 13 of the 30 available points under this factor, commenting that the "section did not address methods of investigation." In contrast, the other evaluators gave Martin-Miser 24 points ("good, but brief"), and 29 points ("good desc."). The consensus score was 25 points.

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MSM responded with slightly more detail, and referenced its guidebook as a guide to determining the scope of an investigation. The three evaluators scored MSM 30, 29, and 24 points under factor 2, with 29 points being the consensus score.

In its report on the protest, Agriculture states that under factor 2 the evaluators examined each submission in terms of uses of the product, competing requirements of other programs, EEO law and regulations, and an explanation of investigative technique. The agency admits it awarded extra points for evidence of specific understanding of these aspects, such as guides and sample cases, and that "good and complete general statements earned in the area of 25 points." Agriculture notes that both Martin-Miser and MSM submitted good general statements, but that MSM received points for its guidebook.

Martin-Miser argues that MSM should not have been awarded extra points for its guidebook, for the same reasons as mentioned in our discussion of factor 1. Martin-Miser also argues that it should have received extra points because one of its partners developed and presented EEO courses to Federal agency personnel. Martin-Miser contends that this experience of one of its partners, which is noted in that individual's resume, reflects an in-depth understanding of the problem.

As to MSM's offer, we believe the technical evaluation committee reasonably concluded that MSM's guidebook indicates an understanding of the problem, particularly in view of factor 2's emphasis on investigative methodology. The guidebook is expressly referenced in response to factor 2, and appears to include precisely the type of detail and specificity that the RFP advised offerors would be evaluated under that criterion.

Concerning Martin-Miser's proposal, while the resume of one of Martin-Miser's partners does reflect experience in teaching EEO courses, the resume is contained in Martin-Miser's response to RFP factor 3, not factor 2. Resumes were submitted to demonstrate the qualifications of assigned personnel, for evaluation under factor 3, and we cannot conclude that the evaluators should have examined resumes submitted under factor 3 in search of indications of an "understanding of the problem" under factor 2.

We cannot discern why Mr. Welch's score of 13 points for the protester under this criterion is so much lower than the other two evaluators' scores of 24 and 29 points. Nonetheless, since Mr. Welch did provide some explanation for his scoring, and since the consensus score was 25 points (disregarding Mr. Welch's scoring, the average score would have been 26.5), we cannot object to the evaluation's result under factor 2.

Under factor 3 (worth 20 points), offerors were to submit a list of the professional personnel to be assigned to the project, their titles, a statement of their responsibilities in relation to the contract to be awarded, and a resume for each person named which cited experience relevant to the investigations to be undertaken. Factor 3 further stated that all personnel assigned should have experience, as demonstrated by job experience and/or education in: (1) the Federal discrimination complaint system and complaint adjudication, (2) investigative and reporting techniques, and (3) Federal personnel practices and procedures, program management processes and organization structures and operations.

The technical evaluation committee found that Martin-Miser did propose individuals with employee relations or EEO investigation experience, but that the firm relied on only one of two staff members to provide the personnel management knowledge. The committee states that Martin-Miser's "team approach" nonetheless did allay its concern. The committee claims it awarded MSM more points than Martin-Miser, however, because it felt MSM had a better overall balance of the three experience-related items. Also, MSM's offer was "enhanced" by the fact that MSM had available a large and geographically widespread staff. Evaluator Welch gave Martin-Miser only 10 points, while giving MSM the full 20 points, noting only that he had direct knowledge about MSM through a Department of Commerce contract. The other two evaluators awarded MSM 18 and 17 points, and Martin-Miser 18 and 19 points. The consensus scores were 18 points for MSM, and 16 points for Martin-Miser.

Martin-Miser contends that MSM's proposal does not evidence an extensive background in Federal personnel/discrimination systems by the majority of MSM's personnel.

By way of example, Martin-Miser points to the fact that MSM employs several former employees of the Federal Bureau of Investigation, and claims that the agency's personnel system is so dissimilar from that of most other agencies that these employees would need a training guide to perform the work under contract with Agriculture. Martin-Miser further contends that fulfilling the terms of the contract does not require a large organization or a geographically widespread staff since the work is to be performed in California for a term of 6 months, and the caseload is not expected to exceed 20 cases.

We cannot agree with Martin-Miser that the technical evaluation committee's basic finding that the job experience qualifications of MSM personnel were relevant to the work to be performed lacked a reasonable basis. Factor 3 states in broad terms that offeror personnel should have experience in Federal discrimination/personnel matters. Without a more specific definition of the term "Federal" we cannot find fault with the committee's assessment that MSM employees with job experience in various Federal agencies had the requisite qualifications.

With respect to MSM's large, geographically widespread staff, however, we agree with the protester that at least the diverse locations of elements of MSM's organization have no apparent relationship to contract performance in general or factor 3 in particular. In other words, we do not understand how the qualifications of MSM personnel are enhanced in connection with performing this contract because of their geographically diverse locations.

Mr. Welch explains his low score for Martin-Miser only on the basis of "average array of skills with specific experience by the two principals." It is not apparent, however, whether MSM's maximum score was at all based on the firm's actual response to factor 3, or only Mr. Welch's personal view of MSM's capabilities. If the two remaining evaluators' scores for Martin-Miser are averaged, and disregarding the unknown impact of MSM's geographically diverse organization on the evaluation, Martin-Miser would have received 18.5 points (rather than the consensus 16)

and MSM 17.5 (rather than 18). This would have raised Martin-Miser's overall technical score 2.5 points, and lowered MSM's at least .5 points.

Factor 4 (worth 20 points) concerned project management. Offerors were to describe proposed management controls that would insure meeting the delivery, reporting, and other contract requirements.

MSM received 18, 19, and 20 (Mr. Welch) points for this factor, with a consensus score of 19. Martin-Miser received only 12 points from Mr. Welch, but 17 points from each of the other two evaluators; the protester's consensus score was 15 points. Agriculture reports:

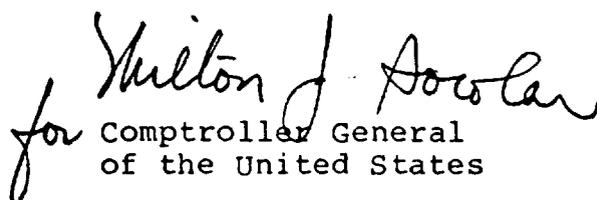
"The panel looked for specific statements as to how the individual cases would be managed, including before, during and after field work. Martin-Miser provided a general description of pre- and post-investigation review efforts, and included a work report form for time and cost control. Management during the investigation was dependent on the request of the individual investigator for assistance, and this was considered a weakness. MSM had a similar general description and approach. However, included in MSM's guidebook were the firm's management policy and techniques. Extensive investigator coordination with Headquarters Management Personnel during the investigation were provided for. Having this guidebook was considered a positive project management factor. Thus, Martin-Miser was rated 15 and MSM 19 for this factor."

While we again note that Mr. Welch scored Martin-Miser lower than the other two evaluators did, the protester proffers no evidence or arguments to suggest that the criticism of its proposal as reported by Agriculture was unfounded or unreasonable, except to complain about Mr. Welch's scoring in relation to the other two evaluators.

On the basis of this evaluation record, we do not find the selection decision to be unreasonable. As discussed above, there appears to be a reasonable basis for most of the evaluation results. Relatively low scoring by one member of a technical evaluation panel does not establish that the member was biased. See Western Engineering and Sales Co. supra. Moreover, while Mr. Welch's low scoring of Martin-Miser's offer had an obvious effect on the scoring of proposals, the agency's use of consensus evaluation scores significantly reduced the impact of Mr. Welch's scores.

The only evaluation results we find questionable on this record involve factor 3, under which Mr. Welch gave MSM a maximum score, and under which the committee's consensus score for the same firm resulted, we believe, from consideration of an irrelevant factor. Nonetheless, as we also discussed above, it appears that correction of this discrepancy would not eliminate MSM's overall point scoring edge, but would only reduce it. Given MSM's significant technical superiority and the paramount importance of the technical scores--high technical score would determine the awardee if overall evaluation scores were essentially equal even if the other firm's proposed costs were lower--we think it unreasonable to believe that rescoring of factor 3 would result in a change in the selection decision. Therefore, we cannot conclude that the selection of MSM instead of Martin-Miser was unreasonable.

The protest is denied.

for 
Comptroller General
of the United States