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DECISION

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

FILE: B-211129 **DATE:** August 23, 1983

MATTER OF: BDM Corporation

DIGEST:

1. Unless a solicitation sets forth a precise, numerical evaluation formula and provides that award will be made to the offeror whose proposal receives the highest number of points, award need not be made on that basis. In any other case, scores are merely guides for intelligent decision making by selecting officials.

2. GAO generally will defer to selecting official's judgment, even when he disagrees with an assessment of technical superiority made by a working level evaluation committee or by individuals who may be expected to have technical expertise. The manner in which the official uses the results of technical and cost evaluations is limited only by the tests of rationality and consistency with established evaluation factors.

3. When evaluation factors and subfactors listed in solicitation clearly cover relative strengths and weaknesses used to distinguish two closely-ranked proposals, GAO will deny protest alleging that Source Selection Official abused his discretion and did not apply evaluation factors rationally.

4. There is no legal requirement that the Government consider the advantages obtained by an incumbent contractor due to its status unless the Government somehow has contributed to this advantage.

5. Source Selection Official's overruling of lower level evaluators does not, of itself, demonstrate that choice is arbitrary or the result of bad faith or bias.

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In a pre-award protest, the BDM Corporation challenges the Department of Energy's selection of an incumbent contractor, Midwest Research Institute (MRI), to continue to manage, operate, and maintain the Solar Energy Research Institute (SERI) in Golden, Colorado.

BDM argues that it should be awarded the 5-year, cost-plus-award-fee contract, valued at $200 million, because--on a scale of 1,000--it received six evaluation points more than MRI. In addition, if the proposed award is made, the Government will be obligated to pay approximately $22,000 for moving an MRI official to Golden, since the firm has proposed establishing an on-site corporate office. BDM, by contrast, has offered to absorb all transition costs itself. BDM contends that because of these two factors, it was the "clear winner" of the competition, and it alleges that DOE's Source Selection Official abused his discretion in selecting MRI.

We deny the protest.

Background:

SERI was established by the Solar Energy Research, Development, and Demonstration Act of 1974, § 10(a), 42 U.S.C. § 5559 (1976). A Government-owned, contractor operated facility, it is described by DOE as the primary Federal laboratory for solar energy research, conducting and coordinating long-term, high-risk research and development that private industry is not expected to undertake. Current activities are principally in the areas of solar electric conversion, solar fuels and chemicals, solar thermal processes, and materials and supporting research. While work is approved by DOE's solar program personnel and authorized by a contracting officer, the operating contractor is responsible for research, maintenance, general administration and support, and engineering, design, and construction of new facilities, as well as alteration of existing ones.

MRI was the first operating contractor of SERI, having been competitively selected in 1977; DOE extended its contract, scheduled to expire in 1982, for 15 months in order to scope down and redirect its activities and to conduct this procurement, which will cover the period from 1983 to 1988. See generally "Selected Aspects of the Department of Energy's Operating Contract for the Solar Energy Research

Institute," GAO/RCED-83-66, March 15, 1983 (a report from our Office to the Chairman, Subcommittee on Energy Conservation and Power, Committee on Energy and Commerce, House of Representatives).

The Protested Solicitation:

The request for proposals, No. DE-RP02-82CH10093, issued June 4, 1982, indicated that in accord with the procedures outlined in DOE's Procurement Regulations Handbook (DOE/PR-0027), a Source Evaluation Board would evaluate initial proposals, due by September 29, 1982, and that a Source Selection Official would determine which proposal was "most advantageous to the Government."

The provision that BDM believes entitles it to award stated that proposals would be evaluated against three criteria: management and technical, business and transition, and cost. Management and technical factors, with a detailed list of subfactors, were described as "predominant"; these were to be point-scored. Business and transition factors, described as "secondary," were to be given an adjectival rating, i.e., outstanding, good, satisfactory, poor. The solicitation specifically stated that if two or more competing proposals were within the competitive range, evaluated cost effectiveness to the Government and cost reasonableness might be the deciding factor for selection, depending upon whether the most acceptable overall proposal (excluding cost considerations) was determined to be worth the cost differential, if any.

Evaluation of Proposals:

Four offerors, MRI, BDM, Lockheed Renewable Energy Research Company, Inc., and Bendix Field Engineering Corporation, responded to the request for proposals. All met DOE's qualification criteria and accordingly, all were ranked. Initially, the Source Evaluation Board awarded MRI and BDM 763 and 762 points, respectively, for management and technical ability; it rated both outstanding as to business and transition factors. The Board did not project any costs to DOE for MRI, but expected that an award to BDM would cost the Government about $308,000. (In evaluating cost, DOE did not consider the day-to-day operating costs of the facility. Instead, it considered only such things as transition costs and the cost associated with adding personnel or changing the existing compensation package.)

As a result of written and oral discussions early in 1983, the Board increased BDM's management and technical score to 800 and MRI's to 794; both retained their outstanding ratings for business and transition. As for expected cost to the Government, the Board reduced BDM's to zero because, during discussions and in its best and final offer, the firm agreed to absorb all costs associated with transition and phase-in at SERI, as well as those incurred at its home office. At the same time, the Board increased MRI's expected cost to the Government to $22,236, due to salary, fringe benefits, and relocation expenses for a corporate controller that the firm proposed to transfer to SERI.

After outlining major strengths and weaknesses of each proposal, listing significant differences among them and evaluating each offeror's potential organizational conflicts of interest, the Board ranked final proposals as follows:

	Management/ Technical	Business/ Transition	Expected Cost to DOE
BDM	800	Outstanding	- 0 -
MRI	794	Outstanding	$22,236
Lockheed	771	Good	$2,997,500
Bendix	730	Good	- 0 - to $1,775,000

The Board stated that for the management and technical factor, there were "no statistically significant differences" between the first three proposals.

The Source Selection:

Presented with these findings, the Source Selection Official concluded that the proposals of Lockheed and Bendix were less advantageous to the Government than those of BDM and MRI. While noting that the Board had ranked the latter two as essentially equal, the Source Selection Official found substantial differences between them.

MRI's proposal, he stated, set forth more pertinent laboratory research experience and provided for far better

operating plans and procedures; additionally, he regarded the proposed MRI corporate office as offering support to SERI at no cost to the Government.

He found that BDM's proposal reflected a sound understanding of the importance of a conservative approach to cost and schedule control, but did not demonstrate a similar understanding in its limited discussion of operating plans and procedures. BDM, the Source Selection Official continued, had not described the criteria by which it would evaluate existing SERI plans before deciding whether to implement changes. In addition, BDM had proposed an organization where both administrative and technical functions reported to the deputy director of the laboratory. This, the Source Selection Official believed, could dilute the effectiveness of the director, whose qualifications were a major strength of BDM's proposal. Finally, BDM had proposed a new program coordination and budget office that the Source Selection Official believed might overlap with or duplicate functions of the SERI Budget Branch.

The Source Selection Official concluded that the choice between MRI and BDM was a close and difficult one, but that:

> "* * * upon careful review of the relative strengths and weaknesses of each proposal, and applying the criteria contained in the solicitation, I have determined that MRI's proposal is more advantageous to the Government, albeit by a small margin. In making this determination, I note that the cost differentials are too slight to have any impact on the selection. * * *"

BDM's Protest:

BDM alleges that this determination was arbitrary, capricious, and an abuse of discretion. In view of its 6-point lead on the management and technical factor and its outstanding rating for business and transition, the firm argues, it obviously was the winner of the competition. Even if BDM and MRI are considered substantially equal, the firm continues, since BDM's proposal also was the most cost effective, under the terms of the solicitation, it should be awarded the contract.

Under prior decisions of our Office, BDM asserts, a selecting official's discretion is limited to a choice between a higher priced, higher technically-rated proposal and one that is lower priced, but also lower technically-rated. When, as here, an offeror is both higher technically and lower priced, BDM argues, such an official does not have discretion either to reject that offeror's proposal or to declare a tie. BDM regards the Source Selection Official's choice of MRI as an improper veto of DOE's "own select team of expert reviewers."

BDM further argues that the Source Selection Official used unlisted evaluation criteria in selecting MRI. For example, if DOE had requested a corporate office at SERI, BDM states, it would have provided one; in any event, BDM asserts, the proposed presence of a director and founder of BDM at SERI will serve the same purpose. While MRI received evaluation credit for the corporate office, BDM continues, its own offer for conversion of an automatic data processing system already in use at another BDM facility, which purportedly would have resulted in substantial savings to DOE, was not even considered in the evaluation of cost effectiveness.

BDM also asserts that an award to MRI will deter any firm from attempting, in the future, to compete against an incumbent. Such a selection, BDM argues, will serve as a signal that any competitor will have to attain a huge margin of superiority in order to prevail over an incumbent, and few will risk it.

Finally, by implication and innuendo, BDM attempts to show that the Source Selection Official's decision was influenced by individuals or factors other than those that have been publicly announced and that DOE favored and intended to award the contract to MRI regardless of evaluation results.

GAO Analysis:

We find, first, that in asserting that its 6-point superiority in management and technical ability made it a "clear winner," BDM has ignored the many decisions of our Office with regard to point scoring. While point scores are often used by agencies to evaluate proposals, unless a solicitation sets forth a precise numerical formula and provides that award will be made to the offeror whose

proposal receives the highest number of points, award need not be made on that basis. Telecommunications Management Corp., 57 Comp. Gen. 251 at 254 (1978), 78-1 CPD 80. In any other case, we regard point scores merely as guides for intelligent decision making by selecting officials. See, e.g., Group Hospital Service, Inc. (Blue Cross of Texas), 58 Comp. Gen. 263 at 268 (1979), 79-1 CPD 245; Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 CPD 325.

Here, the solicitation contained no precise numerical formula, but only a statement that award would be made to that offeror whose proposal, conforming to the solicitation, was considered most advantageous to the Government. Thus, BDM is not entitled to award on the basis of its 6-point lead in the management and technical area. Moreover, the 6-point lead did not indicate a technically superior proposal here. As noted above, the Board found "no statistically significant differences" among three proposals separated by 29 points on the technical and management evaluation factor.

As for the Source Selection Official's allegedly improper veto, selection officials are not bound by the recommendations and conclusions of evaluators, and as a general rule our Office will defer to such an official's judgment, even when he disagrees with an assessment of technical superiority made by a working level evaluation committee or by individuals who normally may be expected to have the technical expertise required for such evaluations. See Tracor Jitco, Inc., 54 Comp. Gen. 896 at 899 (1975), 75-1 CPD 253; Boone, Young & Associates, Inc., B-199540.3, November 16, 1982, 82-2 CPD 443. The selection decision, and the manner in which such an official uses the results of technical and cost evaluations, and the extent, if any, to which one is sacrificed for the other are governed only by the tests of rationality and consistency with established evaluation factors. Frank E. Basil, Inc. et al., B-208133, January 25, 1983, 83-1 CPD 91; Grey Advertising, Inc., supra.

We find the selection in this case meets both tests. The evaluation factors and subfactors listed in the solicitation clearly cover the relative strengths and weaknesses that the Source Selection Official used to distinguish the proposals.

For example, MRI's strength in the area of laboratory research falls under "Proposing Organization Qualifications" and its subfactor, "experience in managing and/or conducting relevant high-technology research and development," while the proposed on-site corporate office falls under a second subfactor, "availability and usefulness to SERI of resources from the parent organization."

For BDM, under "Management Approach," one subfactor covered "adequacy and suitability of operating plans and procedures," while potential problems with two divisions reporting to the same director could be considered under another subfactor, "proposed organizational structure."

In our opinion, however, the potential savings to the Government of conversion to BDM's automatic data processing system would not properly have been evaluated. As DOE pointed out during a conference at our Office, the agency still was considering whether to continue to use a system already at SERI, and the system proposed by BDM might never be required.

As for other projected costs, we find the Source Selection Official reasonably determined that the approximately $22,000 cost differential was too slight to have an impact on the choice between BDM and MRI, since it amounts to only .01 percent of the total contract price.

DOE purposely did not consider the impact of a Colorado sales/use tax on tangible personal property that it estimated would increase the cost to the Government by $150,000 a year if award were made to BDM, Lockheed, or Bendix. The tax would apply to these profit-making firms, while MRI, as a not-for-profit organization, is exempt from it. DOE states that consideration of this tax would have given MRI a $750,000 advantage due solely to its status.

While DOE believes that either this status could be challenged or the state statute changed, unless one of these events occurs, such a tax apparently could be imposed on BDM, offsetting its $22,000 price advantage. DOE's decision not to consider the tax, in our opinion, demonstrates one way in which the agency attempted to place MRI and other offerors on an equal competitive basis.

Even if incumbency otherwise placed MRI at a competitive advantage, there is no legal requirement that the

Government consider this advantage unless it has somehow contributed to it. See Vector Engineering, Inc., B-200536, July 7, 1981, 81-2 CPD 9; Fox & Company, B-197272, November 6, 1980, 80-2 CPD 340.

Finally, a selecting official's overruling of lower level evaluators does not, of itself, demonstrate that his choice was arbitrary or the result of bad faith or bias. See generally The Ohio State University Research Foundation, B-190530, January 11, 1979, 79-1 CPD 15 (in which the protester also asserted that it was the clear winner due to a 20-point difference between it and the awardee). Here, we find no evidence of any such improper action. See also GAO/RCED-83-66, supra, in which our evaluators, examining this procurement at the request of a congressional subcommittee, found that the process for recompeting MRI's contract was reasonable and in accord with DOE's established procedures.

The protest is denied.

Harry R. Van Cleve
for Comptroller General
of the United States