



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Planning Systems Incorporated

File: B-246170.4

Date: December 29, 1992

John R. Tolle, Esq., Barton, Mountain & Tolle, for the protester.

Paul Shnitzer, Esq., Crowell & Moring, for MAR, Inc., an interested party.

Robert C. Peterson, Esq., and Eric A. Lile, Esq., Department of the Navy, for the agency.

Daniel I. Gordon, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest alleging defects in the evaluation of price and technical proposals is denied where the record establishes that the evaluation was reasonable and consistent with the solicitation.

DECISION

Planning Systems Incorporated (PSI) protests the award of a contract to MAR, Incorporated under request for proposals (RFP) No. N00612-90-R-7004, issued by the Department of the Navy for the acquisition of technical analysis and management support for the Naval Oceanographic Office at the Stennis Space Center. PSI raises a number of challenges to the technical and price evaluations and to the source selection process.

We deny the protest.

The RFP, issued on May 31, 1990, and amended several times in the ensuing 2 years, anticipates award of an indefinite delivery, indefinite quantity contract for a base year with 4 option years. MAR performed these services under the predecessor contract. Pricing is on a time-and-materials basis, with a fixed material handling rate as well as fixed hourly billing rates for each of ten labor categories and for computer time.

The labor categories include project manager, scientist (principal, regular, and assistant), engineer, computer specialist, technician, illustrator, editor, and clerk typist. The RFP sets forth personnel qualification requirements for each labor category in terms of minimum education and experience, to be evaluated on the basis of resumes submitted with proposals. The RFP also states that offerors "shall identify proposed personnel and their capabilities/experience" in 21 enumerated technical areas, such as "design and construction or modification of measurement systems for recording acoustic or oceanographic data."

The RFP provides that the realism of proposed hourly rates and other costs will be evaluated. It also includes Federal Acquisition Regulation (FAR) § 52.222-46, "Evaluation of compensation for professional employees." That provision notifies offerors that the government is concerned that unrealistically low compensation may threaten the quality and stability of the professional work force, and that the proposed compensation levels for professional employees will be evaluated to ensure that those employees will be compensated at a realistic level.

The RFP, as amended, states that technical factors (corporate experience, personnel qualifications, and technical management approach) would be weighted approximately 2-1/3 times more than price, but that, "[w]here competing proposals are found to be substantially equal technically, price may be the controlling factor in award."

Proposals were received only from PSI and MAR. After reviewing the proposals, the Navy informed each offeror of aspects of its proposal which the agency considered weak or deficient. For reasons not relevant to this protest, there were three rounds of best and final offers (BAFOs). Throughout the review process, the evaluators assigned higher numerical scores to PSI's technical proposal than to MAR's, while MAR's evaluated proposed price was lower than PSI's.

After review of the scores assigned to the third BAFOs, the contracting officer questioned whether the point advantage of PSI's technical proposal actually reflected any technical superiority. Consequently, she requested that the technical evaluators provide a summary evaluation comparing the two technical proposals, fully documenting any conclusion of technical superiority of one proposal over the other. The technical evaluators responded with a brief statement that the two competing proposals were essentially equal.

The contracting officer found this short statement inadequate to support a finding of technical equality. Accordingly, she requested that the evaluators provide a more detailed narrative explaining their conclusion. She also asked the evaluators to explain their use of the term "major deficiency" in describing certain aspects of both offerors' proposals. In addition, the contract negotiator, who had learned that the evaluators had inadvertently neglected to consider whether the proposed personnel satisfied the RFP's education and experience requirements, asked the evaluators to review both offerors' proposed personnel for compliance with those requirements.

After further review of the proposals, including the resumes submitted by the offerors, the evaluators provided additional written analysis to the contracting officer. They stated that they were unable to "find any fundamental difference in the content of the proposals that would support defining a difference in technical superiority of one contractor over the other."

The evaluators also explained that the term "major deficiency" was used as part of the evaluation to determine the breadth of technical background cited in resumes, in terms of experience and the 21 areas of capabilities/experience listed in the RFP. At the time of the evaluations, the evaluators had apparently recorded a "major deficiency" where not all capabilities were indicated in a resume, even where the missing capabilities were not needed for the labor category at issue, or where, if needed, the missing capabilities could be provided by a person in another labor category.¹ In explaining this rating system to the contracting officer, the evaluators indicated that the "major deficiency" label did not reflect a judgment that the resume was less than satisfactory. The evaluators wrote that, while "it would be nice to be able to take advantage of [proposed individuals'] breadth of experience, [the 'major deficiency'] does not constitute a substantive difference in the technical capability of the respective contractors to perform the required work."

¹The evaluators provided an example relating to one of the 21 capabilities set forth in the RFP, "current meter mooring design, deployment and recovery operations of various kinds of current meters." According to the evaluators, although one of the offerors proposed as a computer specialist a person who appeared to have no background in this current-meter capability, so that the offeror was identified as having a "major deficiency," the evaluators had concluded that the skills associated with the particular capability were not essential to the accomplishment of the computer specialist's tasks, as defined in the RFP.

In addition, the evaluators summarized the educational and experience requirements for every labor category, reviewed the qualifications shown in each resume submitted by the two offerors, and determined that all of the personnel proposed by PSI and MAR met the RFP's minimum educational and experience requirements. The written analysis indicates that, although the evaluators did not apply the RFP requirements stringently, they used the same flexible approach in evaluating both offerors' proposals. For example, although both offerors proposed individuals without doctorates for a position requiring a doctorate degree "or equivalent," the evaluators found the proposed individuals' experience adequate to equate to a doctorate in every instance. Similarly, although the RFP requires that proposed computer specialists have a bachelor's degree in "computer or physical science," the evaluators found acceptable an individual proposed by PSI whose degree was in mathematics. In addition, for clerk typists, for whom the RFP calls for the ability to type 60 words per minute, the evaluators found that the clerk typists proposed by MAR were acceptable, even though their resumes did not specify their typing speed.

Having reviewed the evaluators' additional analysis, the contracting officer determined that PSI's proposal was not technically superior in any meaningful way to MAR's. Because MAR's proposal was lower priced, the contracting officer decided that award to MAR's proposal represented the best value to the government and award was made to MAR on August 14, 1992.

PSI challenges various aspects of the technical and price evaluation of MAR's proposal, as well as the source selection decision. With respect to the evaluation of MAR's price proposal, PSI contends that the agency failed to conduct a reasonable cost realism assessment. PSI argues that the average of MAR's proposed hourly rates is considerably lower than the average rates in MAR's predecessor contract, and that the agency failed to consider the realism of such rates, particularly for professional employees.

It is not a function of our Office to reevaluate proposals; rather, we review the agency's evaluation of proposals only to ensure that it was fair, reasonable, and consistent with the evaluation criteria stated in the solicitation. VSE Corp., B-247610.2, Aug. 6, 1992, 92-2 CPD ¶ 81.

Here, during the evaluation of proposals, the contracting officer analyzed proposed prices for realism, including hourly rates for the various labor categories. Specifically, the contracting officer compared the proposed rates with those of MAR's predecessor contract, PSI's

proposed rates for the RFP, and the prevailing rates in the area. Among other points, the contracting officer noted that, for several of the labor categories, MAR's proposed rates were higher than in its predecessor contract; and, for several categories of professionals, MAR's proposed salaries were higher than PSI's.

For those labor categories for which MAR's labor rates were lower than in its predecessor contract, the contracting officer obtained information indicating that those lower rates were nonetheless realistic. In particular, the contracting officer took into account the wage surveys that the offerors submitted with their professional employees compensation plans. MAR's plan included analysis of economic trends increasing the availability of qualified personnel and therefore applying downward pressure on wages and salaries.

The contracting officer's analysis led her to conclude that MAR's proposed labor rates, including the compensation for professionals, were realistic. Although this is a fixed-rate, rather than a cost-reimbursement, procurement, so that cost realism per se is not an issue, the record makes clear that the agency carefully considered the realism of MAR's proposed prices, in general, and of its proposed compensation for professionals, in particular. We find that the agency's conclusion and the analysis on which it was based were reasonable and consistent with the RFP evaluation criteria. Although PSI may dispute the Navy's view, such disagreement alone does not render the agency's conclusion unreasonable. ESCO, Inc., 66 Comp. Gen. 404 (1987), 87-1 CPD ¶ 450.

Concerning the technical evaluation, PSI asserts that MAR's proposal should have been downgraded for proposing the use of part-time personnel, including retirees and consultants. PSI claims that part-time staff cannot respond quickly enough to agency requirements. PSI also alleges that the evaluation of resumes was inconsistent with the RFP evaluation criteria, in particular in the failure to evaluate educational credentials until the contract specialist raised the matter with the evaluators. In addition, PSI claims that the "major deficiencies" identified by the evaluators were unreasonably explained away after the fact; that MAR's resumes do not make clear that the RFP's educational and experience requirements have been satisfied; and that the agency engaged in technical leveling by providing MAR with more detailed descriptions of its proposal's deficiencies.

PSI has failed to show that the agency's evaluation of MAR's proposal was unreasonable or inconsistent with the RFP. Nothing in the RFP prohibited the use of part-time employees, and PSI offers no cogent argument that MAR should have been downgraded for proposing such employees.

As to PSI's complaint that the agency did not initially evaluate educational credentials, this does not provide a basis to sustain the protest. On the contrary, the agency acted properly in carefully reviewing the evaluation to ensure that there was full compliance with the RFP and, upon discovering that educational credentials had not been reviewed, insisting that they be evaluated before the source selection process could continue.

Similarly, regarding the use of the expression "major deficiency," the contracting officer reasonably expressed concern about the evaluators' use of the term. Her concern that the term was being used inappropriately proved to be well-founded, as the evaluators explained that they were using it as part of a scoring system to evaluate the breadth of experience shown in the resumes of proposed personnel. Nothing in the RFP indicated that resumes would be evaluated to see how many of the procurement's 21 capability areas each individual could cover, and PSI does not allege that such a review was required or would have been appropriate.

Accordingly, when questioned by the contracting officer, the evaluators recognized that the scoring that led to the "major deficiency" label related to a breadth of capabilities which would be "nice," but which did not indicate offerors' ability to perform the work. In light of the evaluators' detailed explanation of each "major deficiency" assigned and why it would not have an impact on performance, the contracting officer reasonably concluded that both offerors' proposals were technically acceptable and, indeed, that the two proposals were substantially equal technically.

Concerning whether the resumes that MAR submitted established compliance with the RFP's educational and experience requirements, we find that the agency reasonably concluded that such compliance was sufficiently demonstrated. Whatever flexibility the agency might have shown was applied equally in the evaluation of both proposals, as is evident from the evaluators' finding acceptable a computer specialist proposed by PSI whose degree was in mathematics, even though the RFP requires that computer specialists have degrees in computer or physical

science.² PSI has failed to show that the Navy's flexibility in interpreting the RFP requirements was unreasonable or that it prejudiced the protester.

There is no evidence to support PSI's contention that the agency engaged in technical leveling. Technical leveling occurs when agencies engage in successive rounds of discussion through which an agency brings an offer up to the level of other offers, FAR § 15.610(d). Here, the agency simply informed each offeror of deficiencies or weaknesses in its proposal. While there were differences in the length and details of the information provided to each offeror, agencies are required to tailor discussions to each particular offer. We note that, in one specific instance raised by PSI, the result of the agency's action was to lower MAR's score, not raise it. The record provides nothing to support PSI's allegation of technical leveling.

Regarding the source selection, PSI contends that the agency failed to give technical factors 2-1/3 times as much weight as price, as required by the RFP. According to PSI, the agency gave too much weight to price.³

The critical development in the source selection process was the agency's determination that the two competing proposals were substantially equal technically. If that determination was reasonable and consistent with the evaluation criteria,

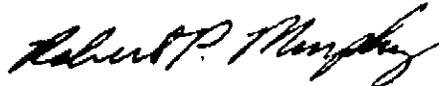
²PSI contends that MAR's clerk typist resumes do not show compliance with the RFP's 60 word-per-minute typing speed requirement. While MAR's resumes do not specify the proposed clerk typists' typing speed, thus leaving unclear whether those typists satisfied the RFP's requirement, we find that noncompliance, if any existed, is not material. Cf. Stocker & Yale, Inc., 70 Comp. Gen. 490 (1991), 91-1 CPD ¶ 460 (improper to award based on proposal failing to conform to a solicitation term or condition that is material). Moreover, PSI has not alleged that the waiver of the requirement, if such a waiver occurred, prejudiced the protester. Dynamic Isolation Sys., Inc., B-247047, Apr. 28, 1992, 92-1 CPD ¶ 399 (even where solicitation requirement has been waived, protest denied because of lack of prejudice).

³PSI sees further evidence of this in the agency's allegedly assigning PSI a price score which differed, on a percentage basis, from MAR's by more than the percentage difference between the two offerors' proposed prices. PSI errs on the facts: the record shows that the final price score for PSI's proposal was lower than MAR's by the same percentage that PSI's proposed price exceeded MAR's.

the RFP permitted the agency to award on the basis of price, notwithstanding the significantly greater weighting of technical factors.

We find that the agency had a reasonable basis for its determination that the proposals were substantially equal technically. The contracting officer appropriately insisted that the technical evaluators fully explain their view, whether it was that one proposal was superior (as originally appeared to be their opinion) or that the two proposals were substantially equal (as they eventually concluded). As a result of the contracting officer's insistence, the record contains detailed analysis explaining why any differences between the technical proposals were expected to be inconsequential. On the basis of that analysis, we find that the agency reasonably concluded, in accordance with the RFP evaluation criteria, that the two proposals were substantially equal technically. Once that determination was made, the agency was free, consistent with the RFP evaluation criteria, to award on the basis of MAR's lower price.

The protest is denied.



for James F. Hinchman
General Counsel