



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Behavioral Science Consulting

**File:** B-268777; B-268777.2

**Date:** February 13, 1995

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Joe L. Conner, Ph.D. for the protester.

Terrrence J. Tychan and Michael Colvin, Department of Health & Human Services,  
for the agency.

Peter A. Iannicelli, Esq., and Michael R. Golden, Esq., Office of the General Counsel,  
GAO, participated in the preparation of the decision.

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### DIGEST

1. Protest that contracting officials were biased in favor of the awardee because of their familiarity with that firm from prior contracts is denied where the protester has provided no evidence and there is none in the evaluation materials to substantiate the allegation; the General Accounting Office will not attribute bias in the evaluation of proposals or award decision on the basis of inference or supposition.
2. Protest that contracting officials used prohibited auction techniques during discussions is denied where the protester provided no evidence to support its conjecture; the General Accounting Office's review of evaluation materials, discussions questions, and awardee's responses and revisions showed that discussions questions asked of the awardee were directly related to perceived weaknesses in the awardee's initial offer or to areas of the offer that needed further explanation and made no reference, either direct or indirect, to protester's proposed methodology or costs.
3. Contracting agency reasonably evaluated "enhancing options" included in the protester's best and final offer (BAFO) and the associated costs of those options where: (1) it is clear from reading the entire BAFO that the options were included in the BAFO in response to concerns expressed by the evaluators regarding perceived weaknesses in the protester's initial offer, (2) the options were intended to improve the protester's initial proposal, and (3) at the agency's request, the protester subsequently confirmed in writing that the options and their associated costs were incorporated into its BAFO.

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## DECISION

Behavioral Science Consulting (BSC) protests the Department of Health & Human Services (HHS) award of a contract to Support Services International (SSI) pursuant to request for proposals (RFP) No. 282-94-0026. The protester contends that (1) the contracting officials were biased in favor of SSI; (2) the contract should have been awarded to BSC on the basis of initial proposals without negotiations; (3) HHS conducted unfair negotiations, encouraging BSC to increase its proposed costs while at the same time encouraging SSI to reduce its proposed costs; and (4) HHS incorrectly evaluated its best and final offer (BAFO). We deny the protest.<sup>1</sup>

Issued on June 30, 1994, as a competitive Buy Indian set-aside, the RFP solicited offers for evaluating the Indian Health Service's adolescent regional treatment centers on a cost-plus-fixed-fee basis. The centers provide alcoholism rehabilitation programs for American Indian and Alaska native youth. Five proposals were received by the August 1 closing date for submission of initial proposals and, after evaluation, two offers (BSC's and SSI's) were determined to be in the competitive range. Written and oral discussions were held with both competitive range offerors and both submitted BAFOs by the September 23 closing date. After BAFOs were evaluated, the contracting officer and the project officer concluded that the proposals were essentially equal in technical merit. Consequently, the contracting officer awarded the contract to SSI on September 29 on the basis of its lower proposed cost, and BSC filed its initial protest in our Office on October 5. After receiving the agency's report on its initial protest, BSC filed a supplemental protest on November 29.<sup>2</sup>

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<sup>1</sup>As the protester is not represented by legal counsel, and because neither the agency nor the protester requested that we issue a protective order, we did not issue one in this case. Therefore, while we have examined all pertinent evaluation materials, our discussion necessarily will be limited to prevent disclosure of proprietary and source selection sensitive information.

<sup>2</sup>In its supplemental protest, BSC made additional allegations including: (1) the technical evaluation report was altered to show that SSI's initial proposal was technically acceptable when, in fact, it was not; (2) the contracting officer requested a cost comparison between BSC's and SSI's initial cost proposals before the technical evaluation was completed; and (3) SSI has no experience in adolescent substance abuse treatment and will have to use subcontractors to make up for this deficit. The agency responded to the allegations in its protest report, but BSC did not address the issues further in its comments on the report. Therefore, we consider these protest grounds to be abandoned. See Heimann Sys. Co., B-238882, June 1, 1990, 90-1 CPD ¶ 520.

The protester states that contracting activity officials were familiar with SSI and its employees because it has performed work for the contracting activity under numerous other contracts. BSC alleges that contracting officials were biased in favor of SSI because of their familiarity with that firm, resulting in an improper evaluation and contract award to SSI. However, this allegation appears to be mere speculation on BSC's part. BSC has provided no evidence and there is none in the evaluation materials which were reviewed by our Office to substantiate this allegation. Our Office will not attribute bias in the evaluation of proposals or award decision on the basis of inference or supposition. See Novel Pharmaceutical, Inc., B-255374, Feb. 24, 1994, 94-1 CPD ¶ 149; TLC Sys., B-243220, July 9, 1991, 91-2 CPD ¶ 37.

The protester contends that HHS should have awarded the contract to it on the basis of initial proposals without negotiations. The protester argues that there was no need for discussions and submission of BAFOs because its initial proposal was technically acceptable and was rated higher than SSI's on technical merit, and it proposed to do the work at a lower total cost than SSI.

The record shows that HHS evaluators believed there were a number of weaknesses in BSC's and SSI's initial proposals that could be remedied through discussions. This action was entirely consistent with the Federal Acquisition Regulation (FAR) requirement that contracting agencies conduct discussions with all offerors that have submitted proposals having a reasonable chance of being selected for award and allow those offerors to submit cost or price revisions to their proposals that may result from the discussions. See FAR §§ 15.609(a), 15.610(b) and (c). See, e.g., Astro Pak Corp., B-256345, June 6, 1994, 94-1 CPD ¶ 352; Milcom Sys. Corp., B-255448.2, May 3, 1994, 94-1 CPD ¶ 339.

The protester also contends that the negotiations HHS conducted were unfair, because HHS improperly encouraged BSC to increase its initial total proposed costs, which were lower than SSI's initial total proposed costs, while at the same time HHS encouraged SSI to decrease its initial total proposed costs. The protester also suggests that HHS might have given SSI a competitive advantage by informing SSI that it was competing with an offeror, BSC, whose lower-priced initial proposal was rated higher technically.

Essentially, BSC is suggesting that agency negotiators engaged in an improper auction. Prohibited auction techniques include: (1) indicating to an offeror a price it must meet to obtain further consideration; (2) advising an offeror of its relative standing; and (3) furnishing information about other offerors' prices. FAR § 15.610(e)(2). BSC has provided no evidence that contracting officials engaged in any of these practices or otherwise provided SSI with information about BSC's

offer. As the allegation is unsupported and appears to be mere speculation, this ground of protest is denied. See Alpha Bldg. Corp., B-255178; B-255178.2, Feb. 14, 1994, 94-1 ¶ 102. Moreover, our review of the evaluation materials, discussions questions asked of SSI, and SSI's responses and revisions uncovered nothing to support BSC's speculation. The discussions questions asked of SSI were directly related to perceived weaknesses in SSI's initial offer or to areas of the offer that needed further explanation and made no reference, either direct or indirect, to BSC's proposed methodology or costs.

Finally, BSC contends that the agency misunderstood its BAFO and therefore misevaluated it. The protester asserts that it explicitly stated in its BAFO that it was simply resubmitting its initial proposal. The protester states that it offered three "enhancing options" with its BAFO, but the options were not part of and should not have been evaluated as part of its BAFO. The protester argues that HHS improperly considered the performance options as part of the BAFO and added the associated option costs to BSC's total evaluated cost. Because the contracting officer considered SSI's and BSC's BAFOs to be equal on technical quality and ultimately selected SSI for contract award on the basis of its lower proposed price, BSC contends that the agency's improper consideration of the options and their associated costs prevented BSC from receiving the contract award.

Evaluating the relative merits of competing proposals is a matter within the discretion of the contracting agency since the agency is responsible for defining its needs and the best method of accommodating them. Simms Indus. Inc., B-252827.2, Oct. 4, 1993, 93-2 CPD ¶206. In reviewing an agency's evaluation, we will not reevaluate proposals but instead will examine the agency's evaluation to ensure that it was reasonable and consistent with the stated evaluation criteria. Id.

The record shows that BSC's initial proposal was considered to be technically acceptable, but the evaluators perceived a number of weaknesses in the proposal. These perceived weaknesses were identified to BSC during oral discussions and were confirmed in a written document, entitled "Negotiation Points," that was provided to BSC. BSC responded to the agency's concerns in its September 23, 1994, BAFO.

While the cover letter of BSC's BAFO stated "[o]ur Best and Final Offer is contained in our original proposal," the cover letter also stated that "BSC has responded with clarification and justifications for all Negotiation Points in the attached." Furthermore, the attached BAFO stated that "BSC in recognition of the validity of the Negotiation Points and in recognition that our approach can be improved, we offer the following Options . . . ." The BAFO then described in some detail how BSC would address the agency's concerns. For example, the evaluators criticized BSC's initial proposal stating, "[t]echnical approach and management plan reflects heavy reliance on [regional training centers] staff which may be problematic." In its BAFO, BSC specifically responded with what it called "Option 1" and stated that

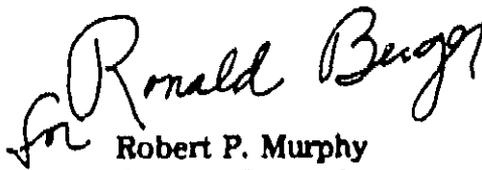
"[t]his option is offered to reduce any unnecessary burden on [regional training centers] staff . . ." BSC also included Options 2 and 3 in its BAFO<sup>3</sup> and explicitly stated that these options were offered to address other specific concerns expressed by HHS in the oral/written discussions.

The contracting agency asked BSC to correct its total proposed cost to include the three options, and, by letter of September 26, BSC responded as follows:

"Our final total is \$313,553.37. This total incorporates the changes requested in the negotiation in both programmatic and costing issues. This total reflects the costs of our original bid, plus the costs of three options we proposed in response to the negotiations of 9/20/94."

We think it is clear from reading the September 23 cover letter, as well as the rest of the BAFO, that BSC was attempting to respond to the evaluators' expressed concerns by incorporating the three "enhancing options" into its proposal. To the extent that there was any ambiguity in the BAFO regarding whether the options and their related costs were intended to be part of the BAFO, that doubt was eliminated by BSC's September 26 letter, quoted above, which clearly incorporated the options into the offer and stated the total price that BSC would be paid if awarded the contract. Thus, BSC received the benefit of having the options evaluated as part of the technical/management evaluation, but the agency also reasonably considered the costs of the options because it would have to pay those costs. In these circumstances, we believe it was reasonable for agency officials to evaluate the options contained in BSC's BAFO.

The protest is denied.

  
for Robert P. Murphy  
General Counsel

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<sup>3</sup>The proposed costs for options 1, 2, and 3 were \$14,056, \$22,737 and \$15,567, respectively; thus, the total additional cost for all three options in BSC's BAFO was \$52,360.