



Comptroller General
of the United States

1241172

Washington, D.C. 20548

Decision

Matter of: Microeconomic Applications, Inc.

File: B-258633.2

Date: February 14, 1995

Dr. Henry B. R. Beale for the protester,
G. John Heyer, Esq., Committee For Purchase From People
Who Are Blind Or Severely Disabled, for the agency,
Adam Vodraska, Esq., and James A. Spangenberg, Esq., Office
of the General Counsel, GAO, participated in the preparation
of the decision.

DIGEST

1. In an RFP for a survey of disabled employees, the agency reasonably, and in accordance with the evaluation criteria, found the awardee's higher-priced, technically superior proposal represented the best value instead of the protester's lower-priced proposal, which was reasonably found to be technically inferior.

2. Although an agency did not conduct meaningful discussions with the protester in that it failed to raise the issue of interviewer experience/availability--which the agency regarded as a major weakness in the protester's proposal--the protester was not prejudiced by the agency's failure since there is no suggestion that the protester would have proposed more experienced and available interviewers if this matter had been the subject of discussions.

DECISION

Microeconomic Applications, Inc. (MAI) protests the award of a contract to Planning Analysis Corporation (PAC) under request for proposals (RFP) CF-94-01, issued by the Committee For Purchase From People Who Are Blind Or Severely

Disabled for a survey of disabled individuals employed by nonprofit agencies under the Javits-Wagner-O'Day (JWOD) Act.¹

We deny the protest.

The RFP contemplated the award of a firm, fixed-price contract for implementing the first phase of an existing methodology for a cost-benefit analysis of the JWOD program. The statement of work (SOW) listed three specific objectives of the contract: (1) prepare an Office of Management and Budget (OMB) clearance package² for the JWOD employee survey; (2) set up technology for the JWOD employee survey; and (3) conduct approximately 75 percent (375) of the interviews of the JWOD employee survey. The survey instrument itself had already been prepared as part of the methodology development. The SOW stressed the importance of the contractor's adhering strictly to the established research methodology because the study methodology relies on control group data gathered as part of a separate survey effort. To this end, the RFP specified that interviews are to be conducted near the 2-year anniversary date of the start of JWOD employment for each respondent. Interviews of JWOD employees are to be conducted in several designated cities throughout the country where the respondents are employed by nonprofit agencies participating in the JWOD program.

¹The Committee For Purchase From People Who Are Blind Or Severely Disabled is an independent agency established under the Javits-Wagner-O'Day Act, 41 U.S.C. §§ 46-48c (1988 and Supp. V 1993) to facilitate increased employment and training opportunities for people who are blind or have other severe disabilities. The Act mandates that certain services, which are placed on a procurement list by the committee, be procured only from nonprofit agencies employing persons who are blind or have other severe disabilities. See Federal Acquisition Regulation (FAR) Part 8.7. The committee is presently conducting an overall cost-benefit analysis of the JWOD program, including measuring the impact of the program from the perspectives of the disabled employees of the nonprofit agencies, which is the subject of the procurement at issue in this protest.

²OMB reviews and approves questionnaires and surveys used by federal agencies in order to ensure that the information is necessary and useful and to minimize the burden on the respondents.

The RFP provided that award would be made to the responsible offeror whose proposal conformed with the RFP's terms and was considered most advantageous to the government, price and technical factors considered. The RFP stated that technical quality was equally important to price, and set forth the following technical evaluation scheme in section M:

"1. Proposed Technical Approach

"The offeror's proposal shall be evaluated on the specificity and comprehensiveness of the technical discussion related to the tasks in the SOW.

"The following subfactors are of special concern for purposes of evaluation:

"(a) identification and discussion of issues relevant to successfully interviewing people with severe disabilities (especially mental retardation, mental illness, blindness);

"(b) proposal of appropriate survey technology, including:

"- demonstration of expertise in achieving required response rate (minimum 75 [percent]);

"- quality control mechanism for maintaining accuracy of data;

"(c) identification and discussion of issues relevant to the preparation of the OMB clearance package;

"(d) ability to draw on experiences of related studies.

"2. Qualifications and Experience of Key Staff

"Offeror's proposal shall be judged upon the qualifications and experience of the proposed Principal Investigator and other key personnel assigned to the project. History of accomplishments related to the project will be evaluated.

"The following subfactors shall be considered for purposes of evaluation:

"(a) familiarity with programs and issues affecting people with disabilities;

"(b) experience interviewing individuals with severe disabilities, especially mental retardation, mental illness, and blindness;

"(c) experience in the design, revision and implementation of questionnaires;

"(d) experience in OMB clearance package preparation.

"3. Related Experience and Capacity of the Firm

"The following subfactors will be given special consideration for purposes of evaluation:

"(a) previous experience in studies of a similar nature;

"(b) references concerning the organization's performance on relevant recent contracts."

Five proposals were received by the closing date for receipt of proposals. After initial evaluation by the source selection committee (SSC), three of the proposals, including PAC's and MAI's, were deemed to be within the competitive range. The SSC was unanimous in rating PAC's proposal the highest based on the technical evaluation factors--PAC received an average score of 82.6 out of a total possible 90 points. MAI's technical score was second highest with an average score of 61 points. Discussion questions were asked each of the firms and best and final offers (BAFO) requested. Both offerors submitted BAFOs that included responses to the discussion questions. The overall final technical evaluation ratings for the offerors did not change from the initial evaluation. MAI's BAFO price was \$94,997.00 and PAC's was \$112,941.55. Based on its review of the BAFOs, the agency determined that PAC's technically superior, higher-priced proposal was the best value to the government.

In notifying MAI of the award decision, the agency identified the primary evaluated weaknesses in MAI's proposal. Specifically, the agency stated that it was concerned about MAI's proposed "use of graduate students for the interviewing, particularly with respect to their lack of prior experience in face-to-face interviews with persons with severe disabilities, and the limitations on their availability beyond the summer months." The agency also stated that it was concerned about MAI's "lack of quality assurance checks in the interview and data entry process," and that the number of hours proposed by MAI for the project may underestimate the level of effort required for the project's successful completion.

MAI contends that the agency did not raise these issues during discussions and that its proposal was at least technically equal to PAC's and that, because MAI's proposal was less expensive, MAI should have received the award.

The evaluation of technical 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, and must bear the burden of any difficulties resulting from a defective evaluation. Data Sys. Analysts, Inc., B-255684; B-255684.2, Mar. 22, 1994, 94-1 CPD ¶ 209. In cases challenging an agency's technical evaluation, our Office will not independently weigh the merits of the offers; rather, we will examine the agency's evaluation to ensure that it was reasonable and consistent with the stated evaluation factors and applicable statutes and regulations. South Capitol Landing, Inc., B-256046.2, June 20, 1994, 94-2 CPD ¶ 3. A protester's mere disagreement with the agency does not render the evaluation unreasonable. Id.

MAI proposed to hire two graduate social work students during the summer of 1995 to serve as interviewers, but did not specify particular individuals. The offerors' interviewers were evaluated by the SSC under both the proposed technical approach factor and the qualifications and experience of key staff factor. While the protester asserts that the graduate social work students would be experienced with working with the disabled from their field

placements, and would have had some training in interviewing and dealing with people, the protester concedes that the qualifications of the individual listed as the lead interviewer in PAC's proposal are clearly superior.³

Nonetheless, the protester doubts whether the lead interviewer listed by PAC will actually conduct most of the interviews because PAC assertedly did not propose any other staff to conduct interviews. However, PAC's proposal states this interviewer will be fully available and PAC's staffing plan substantiates this statement. In addition, in discussions, PAC confirmed that its proposed interviewer would perform all the interviews, and listed the names and qualifications of several other individuals who would be available on short notice to conduct interviews should the need arise.

MAI asserts that its proposal is superior to PAC's because its graduate social work students will conduct all interviews in person, which MAI claims is superior to the telephone interviews which allegedly will be used by PAC. Again, MAI's assertion is incorrect because PAC proposes to conduct interviews both via telephone and in person, or through a combination of the two methods, depending on the individual needs of each respondent. PAC stated that only a small percentage of the interviews could be conducted via telephone and that "a majority of the interviews will need to be conducted in-person due to the characteristic of the disability or combination of disabilities of the individual [to be interviewed]." In any event, the offerors' use of in-person or telephone interviews was just one element of the survey technology subfactor considered by the SSC in evaluating the offerors' proposed technical approaches. The record shows that MAI's proposed use of only in-person interviews was evaluated highly by members of the SSC, but so was PAC's willingness to adapt its interview techniques to the needs of each disabled respondent.

In evaluating MAI's proposal, the agency also properly downgraded MAI for proposing an interview schedule that may be too rigid to accommodate the RFP's stated goal of scheduling interviews near the 2-year anniversary date of the start of the respondents' JWOD employment, which was

³In evaluating qualifications and experience of key staff, the SSC determined that more cooperative responses would be obtained with PAC's lead interviewer, who is already on PAC's staff and who has extensive experience communicating and working directly with persons with a variety of disabilities; is familiar with programs and benefits for the disabled; and is a certified sign language interpreter which may be useful in communicating with deaf JWOD employees.

part of the designated methodology in the RFP. In requesting a BAFO from MAI, the agency stated that it will be necessary to visit some sites more than once "to achieve the proper timing of interviews as interviewees reach the two year anniversary date." MAI responded that the earlier the site visits are made, the greater the likelihood that a return visit will be necessary, and that a later start date and "a more compact" overall schedule will help minimize travel. The SSC also pointed out to MAI that its proposal calls for completing the interviews between June and August 1995, instead of March to September 1995 as outlined in the RFP's performance schedule.⁴ MAI confirmed in its BAFO that its interviewers are only available from late May through the first week of September and stated that "it was not desirable to attempt to begin interviews before May and not necessary to begin interviews before June."⁵

MAI's response indicates that it is more concerned about the impact of the agency's requirements on MAI's proposed staffing plan and anticipated costs than in meeting the agency's requirements, stating that "delay of another couple of months prior to interviewing would not appear to have much effect on the quality of the data." MAI seemingly underestimated the importance of the agency's requirement that the interview dates be scheduled near the 2-year anniversary dates to satisfy the parameters of the study. In this regard, frequency of return visits was not considered a negative by the agency, as is evidenced by its request to MAI to provide for additional return visits in its BAFO.

⁴While the RFP states that interviews will not begin until March 1995, it provides for the possibility that the interview schedule will begin even earlier if employees with an earlier start date are added to the sample.

⁵In contrast, PAC's proposal shows that it was ready to start interviewing in March. In advocating the later interview start dates, MAI appears to be counting on what it anticipates as delays in obtaining OMB approval for the survey, beyond the milestones established in the RFP. We also note here that although PAC initially proposed completing the project by October 31, 1995, a month later than the September 30 date specified in the RFP, PAC subsequently amended this aspect of its proposal in its BAFO, which showed that PAC would complete the project by September 30, 1995.

Furthermore, the agency also saw a risk that certain JWOD employees would be eliminated from the survey if their 2-year anniversary date did not coincide with MAI's relatively short interview time frame because MAI may merely draw other respondents from the JWOD population whose anniversary date coincided with the limited availability of the student interviewers. Given the small sample of JWOD employees, and the possibility that the study will involve most of the population of eligible JWOD participants, the agency reasonably found that MAI's proposal invited a risk that potential interviewees would not be reached because of the limited availability of MAI's interviewers.

The SSC also expressed concern "about [MAI's] lack of quality assurance checks in the interview and data entry process." MAI proposed a data verification system in which the responses from the interview are entered twice into a portable computer by the interviewer in the field. MAI asserts that the SSC ignored elements in its proposal which addressed quality assurance such as training for the interviewers, twice-a-week telephone conferences, review of completed questionnaires, and data verification and editing. However, contrary to the protester's claim that the SSC ignored its proposed quality assurance steps, the record shows that the SSC took note of MAI's data verification system, but rated PAC's proposed quality assurance more highly. While PAC's proposal provided for independent quality control checks, MAI's proposal principally relies on its student interviewers to correctly enter the data in the first place without further verification. We think that PAC reasonably received a higher score for its quality assurance efforts.

The protester asserts that the agency's objection to its proposed level of effort is misplaced because the RFP is for a fixed-price contract and the contractor is obligated to use as much effort as necessary to complete the project. It seems apparent, however, that level of effort relates to the successful performance of this contract and can reasonably be considered a weakness in MAI's management approach unless MAI adequately justified how it would successfully accomplish the work with its lesser level of effort. Contrary to MAI's assertion, the SSC did not question whether the work would get done under MAI's approach, but was properly concerned about the quality of work that would be done if insufficient hours are devoted to the project.

Thus, the agency reasonably found MAI's proposal contained such weaknesses that PAC's proposal was properly considered technically superior to MAI's.

MAI nevertheless maintains that because its proposal was priced lower than PAC's, and because the RFP states that price and technical factors are considered equal, MAI should have received award. Where, as here, the solicitation's evaluation criteria include both technical and price-related factors, procuring officials enjoy a reasonable range of discretion in the determination of which offer is most advantageous to the government; there is no requirement that the award be made to the offeror offering the lowest cost. R Squared Scan Sys., Inc., B-252393.2, Dec. 8, 1993, 93-2 CPD ¶ 308. Award may be made to a higher-rated, higher-priced offeror where the decision is consistent with the evaluation factors and the agency reasonably determines that the technical superiority of the higher-priced offer outweighs the cost difference. George A. Fuller Co., B-247171.2, May 11, 1992, 92-1 CPD ¶ 433.

In determining that PAC's proposal was most advantageous to the government, the agency found that PAC's relative strengths, including its higher level of effort, offset MAI's lower price, and that the additional costs in PAC's proposal are largely attributable to the inclusion of the very experienced interviewer and an independent quality

MAI has also made numerous other related contentions concerning the agency's evaluation of proposals and the selection of PAC for award. Although we do not here discuss them, each contention was carefully considered by our Office and found either to be insignificant, in view of our other findings, or invalid based upon the record as a whole. For example, MAI alleges that one of the SSC evaluators was biased in favor of PAC because the evaluator gave PAC perfect scores on all of the evaluation criteria while consistently giving MAI mediocre scores, even in areas where the other evaluators scored MAI highly. However, MAI has not furnished any evidence to support its allegation that the evaluator was biased and we will not attribute bias in the evaluation of proposals on the basis of such inference or supposition. Novel Pharmaceutical, Inc., B-255374, Feb. 24, 1994, 94-1 CPD ¶ 149. It is not unusual for individual evaluators to reach disparate conclusions and assign different scores when evaluating proposals since both objective and subjective judgments are involved. Id. In any event, MAI was not prejudiced because even if the scores of the evaluator in question are deleted from both MAI's and PAC's score sheets, PAC's average technical score remains substantially higher, 79 to 71.5.

control specialist. The agency concluded that these personnel are worth the additional cost in view of their potential contribution to the quality of the data gathered for the project. We see nothing unreasonable with determination.

MAI contends that the agency did not conduct meaningful discussions because it did not advise MAI of the perceived weaknesses in the experience and availability of the social work graduate students, in MAI's quality assurance approach, or in MAI's low level of effort.

The Competition in Contracting Act of 1984 (CICA), 41 U.S.C. § 253b(d)(2) (1988), as implemented in FAR § 15.610(b), requires that written or oral discussions be held with all responsible offerors whose proposals are in the competitive range. Once discussions are opened--and a request for BAFOs constitutes discussions--the agency must, at a minimum, advise offerors of deficiencies in their proposals so that they are given an opportunity to satisfy the government's requirements. FAR § 15.610(c)(2); Price Waterhouse, B-254492.2, Feb. 16, 1994, 94-1 CPD ¶ 168. There is no requirement, however, that an agency conduct all-encompassing discussions; rather, agencies are only required to lead offerors into areas of their proposals that are considered to be deficient. TRW, Inc., B-243450.2, Aug. 16, 1991, 91-2 CPD ¶ 160.

We agree with MAI that the agency's failure to advise MAI during discussions of the significant perceived weakness in the use of its proposed social work graduate students as interviewers was inconsistent with the agency's obligation to conduct meaningful discussions. See MetaMetrics, Inc., B-248603.2, Oct. 30, 1992, 92-2 CPD ¶ 306; Columbia Research Corp., B-247631, June 22, 1992, 92-1 CPD ¶ 539. However, competitive prejudice is an essential element of a viable protest; where no prejudice is shown or otherwise evident, our Office will not sustain a protest, even if a deficiency is evident. MetaMetrics, Inc., supra.

We find no basis from our review of the record to find the possibility that MAI may have been prejudiced by the agency's failure to discuss this matter. MAI does not suggest that, if it had been advised of the agency's concerns, it would have replaced the social work graduate students with more experienced interviewers or with individuals who would be available to conduct the interviews during a longer time frame than the summer months available to the students--to the contrary, MAI continues to defend its approach in its protest. Moreover, when the agency did question MAI's proposed time frame for conducting the interviews in its request for BAFOs, MAI reiterated its approach of using only summer hire graduate social work

graduate students to conduct the interviews.⁷ Nor does MAI respond to the agency's contention that if MAI had used more experienced interviewers, its price would have been much higher and its proposal less competitive. Finally, MAI has had the opportunity during this protest to explain why its use of graduate students was not a weakness, but has not shown the agency's evaluation in this regard was unreasonable. Thus, we cannot sustain MAI's protest on this point.

Similarly, while the agency might also have raised its concerns about MAI's quality assurance approach during discussions, MAI suffered no prejudice because even if MAI were given the full 10 points by each evaluator for its quality control, MAI's relative standing would not have changed given PAC's overall higher technical ranking. See MetaMetrics, Inc., supra; George A. Fuller Co., supra.

Finally, the agency was not required to raise the issue of MAI's level of effort during discussions because the RFP specified that the contractor should anticipate a level of effort equivalent to 1.2 person years. In these circumstances, we do not think the agency was obligated to inform MAI during discussions that the firm's decision to assign less than 1.2 person years to the contract might cause the agency to consider MAI's proposal to be riskier, in the absence of a reasonable justification for the lesser level of effort. See JTC Envtl. Consultants, Inc., B-229882; B-229882.2, May 2, 1988, 88-1 CPD ¶ 420.

The protest is denied.

for 
Robert P. Murphy
General Counsel

⁷MAI only raised in its protest correspondence the possibility of using other hires, such as more social work graduate students for a shorter period of time, or "fresh [Masters of Social Work] MSWs," who will not have to return to school, in the context of meeting the project's delayed time frame should MAI be successful in its protest.