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Comptroller General
of the United States

Washington, D.C. 20548

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Decision

Matter of: Hager Sharp, Inc.

File: B-258812

Date: February 17, 1995

David P. Metzger, Esq., and Gena E. Cadieux, Esq., Davis, Graham & Stubbs, L.L.C., for the protester.
William M. Rosen, Esq., and Leticia E. Flores, Esq., Dickstein, Shapiro & Morin, L.L.P., for Ogilvy Adams & Rinehart, an interested party.
Robert S. Brock, Esq., Federal Emergency Management Agency, for the agency.
Charles W. Morrow, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency conducted meaningful discussions by apprising the protester of the significant evaluated weaknesses in its technically acceptable proposal; an agency is not obligated to discuss every aspect of a technically acceptable proposal that receives less than the maximum score.

2. Agency did not apply unannounced criteria in evaluating the protester's proposal, but only considered matters reasonably related to the stated criteria in making qualitative distinctions between the proposals.

3. Agency conducted an adequate cost realism analysis in finding the awardee's proposed costs reasonable, in the absence of cost information available from the Defense Contract Audit Agency, based upon the agency's evaluation of the offerors' staffing levels and mixes, payroll documentation, invoices, vendor quotes, indirect pool breakdowns, prior contract costs, and the detailed discussions conducted to verify the reasonableness of the cost elements.

DECISION

Hager Sharp, Inc. protests the award of a contract to Ogilvy Adams & Rinehart under request for proposals (RFP) No. EMW-94-R-4443, issued by the Federal Emergency Management Agency (FEMA), for educational support services involving fire safety and emergency medical services (EMS) for the United States Fire Administration (USFA). Hager Sharp contends that FEMA conducted inadequate discussions and misevaluated Hagar Sharp's proposal.

We deny the protest.

The USFA is authorized to educate the public with regard to fire prevention, protection, safety and EMS. FEMA issued the RFP on May 27, 1994, to obtain a contractor to assist the USFA in educating the public on fire prevention, fire protection, and EMS. The contractor was required to provide the necessary personnel, services, expertise, products, materials, and equipment to satisfy eight separate tasks specified in the statement of work. The RFP contemplated the award of a cost-plus-fixed-fee contract for a base year with 4 option years.

The RFP provided for a best value award with the technical evaluation to be more important than cost. The RFP stated that cost could be the deciding factor if proposals were ranked technically equal, but that the government reserved the right to make award to other than the low offeror. The technical evaluation criteria and their weights were: "Proposal Preparation" (5 points), "Understanding of Requirement and Technical Approach" (55 points), "Organizational Experience and Past Performance" (15 points), and "Competence of Personnel" (25 points). The RFP also listed various subcriteria under each of the criteria other than "Proposal Preparation." Cost/price proposals were not to be separately point scored but were to be evaluated for realism and probable cost to the government, and could be used to assess the offeror's understanding of the requirements.

The RFP contained detailed proposal preparation instructions that advised offerors that their technical approach should describe, among other things, their unique skills, and special capabilities or innovations, and should reflect their understanding of the requirements. Offerors also were required to describe their past performance experience, which included a self-assessment of completing projects on schedule, within cost limitations. The cost proposals were required to be submitted on Standard Form 1411, with certified cost or pricing data.

FEMA received five proposals by the June 6 closing date for the receipt of proposals. The technical proposals were evaluated by a five-member technical evaluation panel (TEP). The TEP utilized a 10-point adjectival rating scale to rate proposals under each evaluation subcriterion.[1] The TEP assigned a consensus point score to each technical proposal based upon the average of individual evaluators' scores, and issued a TEP report containing the TEP's consensus of the strengths and weaknesses of each proposal.

The three highest-rated technical proposals were included in the competitive range. Of these proposals, Ogilvy's had the highest rating of 92.5 points on a 100-point scale, while Hager Sharp's had the second highest rating of 82.9 points. Ogilvy had the lowest proposed cost of the competitive range offerors and Hager Sharp had the highest.

On August 2, FEMA conducted discussions with each offeror posing written questions concerning the weaknesses in each offeror's proposal. These discussions also covered the impact of amendment No. 3, which modified the work under tasks Nos. 7 and 8. FEMA received revised proposals on August 10. The TEP's review of revised proposals resulted in a competitive range of only the Ogilvy and Hager Sharp proposals. A detailed evaluation of these offerors' cost proposals was conducted on August 18 by the chairperson of the TEP, which included an analysis of each offeror's staffing level, labor mix, and other direct costs. The cost evaluation did not involve the assistance of the Defense Contract Audit Agency (DCAA) because of the lack of availability of cost information on these offerors.

FEMA conducted further discussions with Ogilvy and Hager Sharp on September 13. FEMA's discussions included a request that the offerors furnish information to verify various elements of proposed costs, including indirect rates and labor rates. These discussions also discussed the impact of amendment No. 4, which reduced work under task No. 7.

FEMA received best and final offers (BAFO) on September 16. The TEP's review of the BAFOs did not result in any rescoring of the technical proposals. The cost evaluation was based upon an analysis of offerors' proposed labor hours and mixes, payroll documentation, invoices, vendor quotes, indirect pool breakdowns and comparison to costs under the previous contract, as updated by the offerors' revised

[1]The adjectival ratings were as follows:

0	Unacceptable
1-3	Poor
4-6	Fair
7-9	Good
10	Excellent

proposals in response to the discussion questions.[2] Both offerors' proposed costs were found reasonable. The final evaluation results were as follows:

Offeror	Score	Proposed Cost
Ogilvy	92.5	$3,125,856 (Base Year-$622,590)
Hager Sharp	88.2	$3,501,576 (Base Year-$649,350)

The TEP determined that both Ogilvy and Hager Sharp were "technically capable of performing the tasks," and the source selection official determined that, despite the point differential, there was no significant technical difference between the two offerors' proposals. On September 30, FEMA awarded the contract to Ogilvy, which submitted the highest-rated, lowest-cost proposal. Following a debriefing, Hager Sharp filed this protest.

Hager Sharp first argues that the discussions were inadequate because certain weaknesses identified in its proposal at the debriefing were not discussed by FEMA during the course of discussions.

In negotiated procurements, agencies generally are required to conduct meaningful discussions with all offerors in the competitive range. See Specialized Technical Servs., Inc., B-247489.2, June 11, 1992, 92-1 CPD ¶ 510. While this requires agencies to advise offerors of proposal deficiencies and to afford them an opportunity to submit a revised proposal, it does not mean that offerors are entitled to all-encompassing discussions. Id. Where a proposal is considered to be acceptable and in the competitive range, an agency is not obligated to discuss every aspect of the proposal that receives less than the maximum score. EG&G Washington Analytical Servs. Ctr., Inc., B-242149, Apr. 4, 1991, 91-1 CPD ¶ 349.

Here, the record reflects that the TEP rated Hager Sharp's proposal to be technically acceptable with no deficiencies and only weaknesses in certain areas that required a more detailed explanation. In the consensus report, the TEP found that Hager Sharp's proposal demonstrated a clear and thorough understanding of the requirements; that the areas covered were complete; that it reflected an understanding of fire safety and EMS, was creative, and demonstrated good research and background. The identified weaknesses were

[2]The independent government estimate (IGE) prepared before amendment Nos. 3 and 4 reduced the statement of work was calculated to be $800,000 for the base year, and the RFP advised that the estimated level of effort was 12,000 labor hours.

that the proposal did not specifically speak to quality assurance; that it lacked complete information on graphics personnel; that it failed to discuss facility and equipment necessary to perform the work; and that it failed to indicate the project manager's fire/EMS experience. Hager Sharp does not dispute, and the record confirms, that FEMA conducted discussions on these specific weaknesses in its proposal.

Hager Sharp principally objects to the discussions because at the debriefing FEMA identified several additional alleged weaknesses in its proposal that were not the subject of discussions, which Hager Sharp argues deprived it of the opportunity to submit a revised proposal that could have been technically superior to Ogilvy's. While it is true that FEMA at the debriefing mentioned a number of weaknesses that were not discussed with Hager Sharp, these weaknesses were taken from the rating narratives of the individual TEP members and were not the TEP's above-noted consensus weaknesses. Our review confirms that in most instances where the narratives reflected weaknesses, TEP members also rated Hager Sharp's proposal in the category just below the highest rating[3] and that FEMA conducted discussions in the areas where Hager Sharp's proposal received the lowest numerical/adjectival ratings.[4] Since discussions are not required to ensure ultimate award by pointing out every single weakness in a technically acceptable proposal, _see_ _DynCorp et al._, B-257037.2 _et al._, Dec. 15, 1994, 95-1 CPD ¶ 34, the record provides no basis to conclude that the discussions conducted with Hager Sharp were inadequate.

Hager Sharp next contends that FEMA applied unstated evaluation criteria to evaluate its proposal. Specifically, Hager Sharp asserts that FEMA improperly downgraded its proposal because its proposed project manager lacked specific experience in fire/EMS services and failed to show that its performance on prior contracts was on time and within budget. Hager Sharp argues that the agency's evaluation of its proposal on these bases resulted in FEMA imposing unannounced evaluation criteria, since the RFP neither mentions fire/EMS experience in the qualifications

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[3]For example, one TEP member noted that Hager Sharp's proposal did not discuss in any detail special problems associated with reaching high risk audiences and what is needed to motivate a change of behavior, but rated the proposal with a numerical score of eight.

[4]Hager Sharp received the lowest ratings under the quality assurance approach and adequacy of facilities and equipment subcriteria under Understanding of Requirement and Technical Approach criterion.

for the project manager nor requires a demonstration that prior contracts were completed on time and within the budget.

Although the RFP did not specify experience in fire/EMS under the project manager's qualifications, the RFP noted that the qualifications listed were only the minimum qualifications. It is reasonable to expect that offerors would understand that since the listed qualifications were only the minimum qualifications, other experience could be assessed in the evaluation. If this was not otherwise apparent, the project manager's fire/EMS experience was, as noted above, the subject of a discussion question. We also note that the RFP proposal instructions specifically instructed offerors to include a self-assessment of completing projects on schedule, within cost limitations. While agencies are required by statute to inform offerors of the significant factors and subfactors for proposal evaluations, they are not required to specifically identify all possible areas for evaluation. Information Sys. Networks, Inc., B-254384.3, Jan. 21, 1994, 94-1 CPD ¶ 27. The agency may properly consider specific matters, albeit not specifically identified, that logically relate to the stated evaluation criteria. RAI, Inc.; The Endmark Corp., B-250663 et al., Feb. 16, 1993, 93-1 CPD ¶ 140.

Given the purpose of the contract as announced in the RFP, and the detailed proposal instructions, FEMA could properly credit offerors proposing personnel with fire/EMS experience and give less credit for personnel without such experience. Similarly, FEMA could give more credit to proposals which demonstrated successful prior contract experience over proposals which did not demonstrate the same level of successful experience. In both cases, these factors logically relate to the stated criteria, and the agency is entitled to make qualitative distinctions between proposals. Id. In any event, these weaknesses were relatively minor aspects of Hager Sharp's highly rated proposal,[5] and the record reflects that FEMA considered Hager Sharp's proposal to be technically equal to Ogilvy's proposal, despite the differences in technical scores. There is no evidence that Hager Sharp's proposal was technically superior to Ogilvy's very highly rated proposal, or could be considered superior, if these weaknesses did not exist.

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[5]The record of the evaluation under project manager experience reflects that TEP members rated Hager Sharp's proposal either in the good or excellent range. Similarly, under the Organizational Experience and Past Performance Criteria, the TEP members rated the proposal either in the good or excellent range, with only one member posting a fair rating in one of the subcriteria.

Hager Sharp next argues that FEMA failed to conduct a proper cost realism analysis of Ogilvy's proposal, particularly given FEMA's failure to revise its estimate of labor hours after issuing amendment Nos. 3 and 4. Hager Sharp alleges that FEMA perfunctorily and mechanically reviewed Ogilvy's labor hours and rates without establishing that it could perform the contract at its proposed cost, and that the record lacks adequate contemporaneous documentation. Hager Sharp concludes that FEMA failed to perform an independent audit of Ogilvy's costs.

Before awarding a cost reimbursement contract, an agency is required to perform a cost realism analysis. The purpose of a cost realism analysis is to determine what, in the governments view, it would realistically cost the offeror to perform given the offerors own technical approach. Allied-Signal Aerospace Co., Bendix Communications Div., B-249214.4, Jan. 29, 1993, 93-1 CPD ¶ 109. Because the agency is in the best position to make this cost realism determination, our review is limited to determining whether the cost realism analysis is reasonably based and not arbitrary. Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 CPD ¶ 325. While DCAA audits may be of assistance to a contracting officer in evaluating proposed costs, they are only advisory in nature and are not necessarily required for a proper cost analysis. Anamet labs., Inc., B-241002, Jan. 14, 1991, 91-1 CPD ¶ 31.

As noted, there was no cost information available from DCAA on either offeror. Thus, FEMA evaluated costs based upon payroll documentation, invoices, vendor quotes, indirect pool breakdowns, and comparison to cost under the previous contract. Detailed cost discussions were conducted to corroborate the reasonableness of the offered costs. Although Hager Sharp complains that Ogilvy proposed too few labor hours, the record shows that FEMA determined that Ogilvy's labor hours, mixes and rates were reasonable based upon its proposed technical approach, even considering the changes to the work made in amendments Nos. 3 and 4. Under the circumstances, we find that the FEMA conducted a cost realism analysis that was sufficiently adequate to determine that Ogilvy's proposed costs were reasonable. See PRC Computer Ctr., Inc. et al., 55 Comp. Gen. 60 (1975), 75-2 CPD ¶ 35.

In sum, based on our review, we find that FEMA reasonably evaluated the proposals and properly determined that Ogilvy's highest-rated, lowest-cost proposal represented the best value to the government.

The protest is denied.

for Paul Lieberman
Robert P. Murphy
General Counsel