



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** D & M General Contracting, Inc.

**File:** B-259995; B-259995.2

**Date:** May 8, 1995

Joel S. Rubinstein, Esq., Bell, Boyd & Lloyd, for the protester.

John J. Fausti, Esq., and Lori M. Murphy, Esq., for R & R International, Inc., an interested party.

Jeffrey I. Kessler, Esq., and David H. Scott, Esq., Department of the Army, for the agency.

John L. Formica, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Award to the offeror submitting the more technically advantageous, higher-priced proposal was reasonable where it was consistent with the solicitation's evaluation scheme and the agency could reasonably determine that the protester's lower price did not outweigh the documented technical advantages of the awardee's higher-priced proposal.

### DECISION

D & M General Contracting, Inc. protests the award of a contract to R & R International, Inc. under request for proposals (RFP) No. DAAD05-93-R-0279, issued by the Department of the Army for the construction, alteration, and repair of facilities at the Aberdeen Proving Ground, Aberdeen, Maryland. D & M challenges the agency's price/technical tradeoff decision.

We deny the protest.

The RFP provided for the award of a firm, fixed-price, indefinite quantity contract for a 1-year base period with three 1-year options. The RFP stated that award would be made to the responsible offeror whose offer, conforming to the solicitation, was most advantageous to the government, price and other factors considered. The RFP listed the following technical evaluation criteria in descending order of importance:

- (1) Management Ability;
- (2) Technical Staff Capability;
- (3) Experience;

- (4) Subcontracting Support;
- (5) Fiscal, Management and Technical Support by Home or Corporate Office.

Offerors were also informed that their proposals would be evaluated for proposal risk to assess the risk associated with an offeror's proposed approach, and for performance risk to assess the probability of successful performance based upon the offeror's past and present performance. The RFP added that the proposal risk assessment would be integrated into the rating for each of the listed evaluation criteria, and that performance risk would be assigned a narrative rating.

The agency received 14 proposals, including those of D & M and R & R, by the RFP's closing date. The proposals were evaluated, and a preliminary round of discussions was held with 13 offerors. The competitive range was narrowed to six offers, including R & R's and D & M's, and a second round of discussions was conducted. Best and final offers (BAFOs) were then requested, received, and evaluated. R & R's proposal received an overall score of 825 points out of 1,000 total points and a performance risk rating of "low" at a price of \$38,022,535.<sup>1</sup> D & M's proposal received an overall score of 765 points at a price of \$35,937,000, and was also evaluated as having "low" performance risk. The agency determined that R & R's proposal represented the best overall value to the government based on technical and price considerations, and made award to that firm.

D & M protests that the agency's selection of R & R for award was unreasonable in light of R & R's higher price. The protester does not, however, point to any aspect of the agency's evaluation of proposals as being unreasonable.<sup>2</sup> Rather, the protester points to weaknesses in R & R's

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<sup>1</sup>The agency did not disclose in the RFP either its plan to point score the offerors' proposals on a 1,000 point scale or the specific point value of each evaluation criteria.

<sup>2</sup>In its original and supplemental protests to our Office, D & M argued that the agency failed to conduct meaningful discussions with it, and that certain aspects of the agency's evaluation of its proposal were unreasonable. In its report on D & M's protests, the agency responded to these arguments in detail. Because D & M did not respond to the agency's position in its comments on the agency report, we consider D & M to have abandoned these aspects of its protest. Decision Sys. Technologies, Inc.; NCI Information Sys., Inc., B-257186; et al., Sept. 7, 1994, 94-2 CPD ¶ 167.

proposal as identified by the agency during its evaluation and for which the agency criticized and downgraded R & R's proposal, and argues generally that because of these weaknesses R & R should not have been selected over D & M for award.

In a negotiated procurement, award may be made to an offeror submitting a higher-rated, higher-priced offer, where the decision is consistent with the solicitation's evaluation criteria and the agency reasonably determines that the technical superiority of the higher-priced offer outweighs the price difference. Robert G. Rupprecht, B-255516, Mar. 7, 1994, 94-1 CPD ¶ 179.

We find that the agency's selection of R & R for award was reasonable and in accord with the RFP's evaluation scheme.<sup>3</sup> For example, in selecting R & R for award, the SSA noted that R & R's proposal was superior to D & M's proposal overall, as reflected by R & R's higher point score, and that a significant percentage of this overall superiority stemmed from the determination that R & R's proposal was significantly better than D & M's under the two most important evaluation criteria--Management Ability and Technical Staff Capability. Specifically, the agency found in evaluating R & R's Management Ability that R & R's quality control plan was a "strength" in that it was "very well detailed and well documented and would enhance project development." R & R's proposal's score of 360 out of 400 points under the Management Ability evaluation criterion, a score also given to another offeror's proposal, was the highest score received under this criterion. In contrast, D & M's Management Ability, as explained in the evaluation documentation, was considered a "major weakness," and its proposal received the lowest score among the six competitive range offers under this evaluation criterion.<sup>4</sup>

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<sup>3</sup>The RFP did not state the relative weight to be given price versus technical merit. Price and technical merit were thus equal in weight. Transportation Research Corp., B-231914, Sept. 27, 1988, 88-2 CPD ¶ 290. Although the agency concedes that it did not give equal weight to price in its initial source selection, but rather gave price significantly less weight than technical merit, the contracting officer/source selection authority (SSA) affirmed his source selection under an evaluation scheme which gave equal weight to price and technical merit after the protest was filed.

<sup>4</sup>As indicated previously, despite D & M's access under a protective order to all of the evaluation documentation, D&M did not, after receipt of the agency report, challenge the  
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With regard to technical staff capability, the agency noted that "R & R's architect, civil, electrical, and mechanical engineers more than met the solicitation requirements," and that "[t]his strength would enhance project development and execution." R & R's score of 185 out of 210 points under this criterion was the second highest received. Again, in contrast, D & M's technical staff capability was considered a "major weakness," and its proposal received the lowest score of any of the six competitive range offers under this evaluation criterion.

Although the protester points out that the agency criticized R & R's proposal to some extent under each of the five evaluation criteria, and rated it lower than D & M's proposal under the less important evaluation criteria, the record reflects that the agency downgraded R & R's proposal for these weaknesses by awarding it commensurately fewer points under each of these evaluation criteria. For example, while the protester accurately points out that the agency found significant weaknesses in R & R's proposal under the Fiscal, Management and Technical Support by Home or Corporate Office evaluation criterion, the record reflects that R & R's proposal was significantly downgraded under this criterion, receiving a score of only 65 out of 90 points.<sup>5</sup> In short, the proposal received a score of 825 rather than 1,000 points because the agency identified certain weaknesses in R & R's proposal.

In sum, the record shows that the agency found R & R's proposal to be significantly superior to D & M's with regard to the two most important evaluation criteria and overall. Further, the record reflects that the SSA, in concluding that R & R's proposal "was worth the additional money," carefully weighed the relative technical merits and prices of these two proposals--as well as of the other four competitive range proposals--and reasonably selected R & R for award. As such, we have no basis to find unreasonable

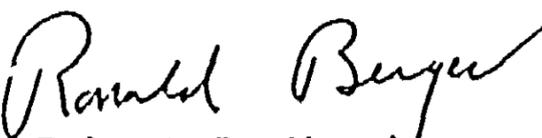
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<sup>4</sup>(...continued)  
propriety of the evaluation of either its or R & R's proposals.

<sup>5</sup>For purposes of comparison, the agency's deduction from its scoring of R & R's proposal of approximately 28 percent of the points available under the Fiscal, Management and Technical Support by Home or Corporate Office criterion is similar in percentage to its deduction from D & M's proposal of approximately 26 percent of the points available under the Management Ability criterion.

the agency's determination that the technical superiority of R & R's proposal was worth a cost premium of approximately \$2 million on a \$38 million contract.

The protest is denied.

  
for Robert P. Murphy  
General Counsel