



Comptroller General
of the United States

859126

Washington, D.C. 20548

Decision

Matter of: Property Analysts, Inc.

File: B-259853.2; B-259853.3

Date: June 13, 1995

Frank S. Swain, Esq., Baker & Daniels, for the protester.
Michael T. Mullen, for MTB Investments Inc., an interested party.

Bruce Kasson, Esq., Department of Housing and Urban Development, for the agency.

Jacqueline Maeder, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of this decision.

DIGEST

Price/technical tradeoff was reasonable where agency determined that protester's slight technical advantage was not worth the associated additional cost; the fact that technical factors are deemed more important than price does not preclude agency from determining that lower-cost, lower technically rated proposal represents the best value to the government.

DECISION

Property Analysts, Inc. protests the proposed award of a contract to MTB Investments, Inc. under request for proposals (RFP) No. H05R94057100000, issued by the Department of Housing and Urban Development (HUD) for single family field review of appraisals in southern Indiana. The protester asserts that the award determination by the source selection official (SSO) was unreasonable and inconsistent with the RFP's evaluation factors.

We deny the protest.

The RFP, issued on June 16, 1994, as a total small business set-aside, contemplated the award of separate requirements contracts for 1 year with two 1-year options. The RFP

The solicitation contemplated the award of two separate contracts for two geographic regions, central and southern Indiana. This protest concerns only the award of the contract for southern Indiana.

advised that award would be made to the responsible offeror whose proposal, conforming to the RFP, was judged to be most advantageous to the government, price and other factors considered. The RFP stated that technical quality was more important than cost, but cautioned that in the event that two or more offers were considered technically equivalent, cost would be of primary importance in determining the proposal most advantageous to the government.

Section M of the RFP contained technical evaluation criteria and associated point values which addressed: experience (25 points), capacity to perform (25 points), capability of key personnel and subcontractors (20 points), understanding of appraisal techniques and procedures (15 points) and management plan (15 points). The solicitation provided that price would be evaluated by extending proposed unit prices by estimated quantities for the base and option periods.

By the July 19 closing date, HUD received 14 proposals. The technical evaluation panel (TEP) used the following 10-point scoring scheme and adjectival ratings to evaluate each proposal: (1) excellent--9 to 10 points; (2) good--7 to 8 points; (3) fair--4 to 6 points; (4) poor--1 to 3 points; and (5) unacceptable--0 points. The score on each factor was multiplied by the weights assigned in the RFP for a maximum of 1,000 points. Detailed narratives, noting the strengths and weaknesses of each proposal, were also prepared.

Six proposals, including those of Property Analysts and MTB, were determined to be in the competitive range. HUD conducted discussions and requested best and final offers (BAFO) from the competitive range offerors. The protester's technical BAFO received a score of 1,000; MTB's technical BAFO received a score of 775. The protester's evaluated price was \$320,620; MTB's evaluated price was \$243,690. The TEP did not recommend the selection of a contractor; rather, the panel stated only that "in a situation where price is close, we hope that the higher rated or more qualified contractor is selected." In reliance on the TEP report, the contracting officer, the SSO for this procurement, awarded a contract to Property Analysts.

MTB protested this award to our Office, alleging that it was based on an improper cost/technical tradeoff. Because of MTB's protest, the contracting officer reviewed the source selection decision and found what appeared to be disparities between the summary narrative statements and the scoring. For example, although MTB's and Property Analysts's proposals were separated by 225 points, the summary narrative statements listed four identical strengths for each proposal and one additional strength for MTB's proposal. While the summary narratives listed no weaknesses

for Property Analysts's proposal, it listed only one weakness for MTB. The contracting officer independently evaluated the three top-rated technical proposals and concluded that the TEP failed to assign sufficient points to the MTB proposal under the evaluation criteria concerning appraisal experience, understanding the work, and management plan. The contracting officer increased these scores for the MTB proposal to total 870 and determined that, while the Property Analysts proposal demonstrated slight technical advantages over the MTB proposal in appraisal experience, capacity, key personnel and management plan, the value of these technical advantages was less than the \$76,930 price premium. As a result, HUD proposed to terminate the award to Property Analysts and award to MTB. Thereupon, our Office closed MTB's protest as academic. This protest followed.

Property Analysts argues that the contracting officer's new cost/technical tradeoff is unreasonable and inconsistent with the terms of the RFP. The protester alleges that the contracting officer unreasonably failed to give substantial weight to the TEP evaluation and contends that the contracting officer's characterization of the differences between the Property Analysts and the MTB proposals as "slight" ignored the weaknesses cited by the TEP in MTB's proposal, including, for example, MTB's inexperienced subcontractors, its lack of local experience and credentials for key personnel² and the potential problems in timely executing the review services given MTB's out-of-state management approach.³ Property Analysts contends that the

²In its comments on the agency report, Property Analysts argues that the proposed award to MTB is improper since certain individuals in that firm are not Indiana licensed residential appraisers, certified residential appraisers, or certified general appraisers as required by the solicitation. HUD fully responded to this issue in a supplemental report which pointed out that the appropriate MTB employees did have the required licenses, and Property Analysts did not comment on the agency's position in any subsequent protest filing. Accordingly, we consider the protester to have abandoned this issue. Delta Research Assocs., Inc., B-254006.2, Nov. 22, 1993, 94-1 CPD ¶ 47.

³MTB's corporate offices are in Norfolk, Virginia and Texas. Under the management plan proposed for this contract, field review assignments would be delivered by overnight carrier to Norfolk. An MTB key appraiser would log work in and distribute assignments to MTB's Indiana subcontractors. The subcontractors would perform the appraisal assignments and return appraisals to the key appraisers for quality review.

point totals, which gave a 130-point edge to the protester, do not indicate "such a small difference in quality as to make price preeminent."

Property Analysts's allegations that the contracting officer was required to essentially defer to the TEP evaluations and that the contracting officer ignored weaknesses in MTB's proposal cited by the TEP are without merit. While technical point scores and descriptive ratings must be considered by an SSO in making a source selection, he or she is not bound by these evaluations or by the recommendation of lower-level evaluators. See Arthur D. Little, Inc., B-243450, July 31, 1991, 91-2 CPD ¶ 106; Wyle Labs., Inc.; Latecoere Int'l, Inc., 69 Comp. Gen. 648 (1990), 90-2 CPD ¶ 107. Rather, the SSO (here the contracting officer) ultimately must determine the relative merits of competing proposals. Since such a determination is a discretionary judgment, it is not subject to objection unless it is unreasonable or inconsistent with the RFP evaluation criteria.

We see nothing unreasonable in the contracting officer's determination. He simply reviewed the proposals, saw what appeared to be inconsistent scoring, and adjusted the scoring to reflect his view of the proposals. Moreover, in doing so, the contracting officer considered the TEP's concerns about MTB's proposal.

For example, TEP members listed MTB's lack of familiarity with the southern Indiana market as a factor in their scoring of MTB's experience. The contracting officer, in his independent review, increased MTB's experience score from 175 to 225 because he found that MTB proposed local subcontractors, presumably with local experience and familiar with the local market, to perform field review work. Additionally, the contracting officer noted that MTB was successfully performing a similar contract in northern Indiana using local appraisers from northern Indiana and the same corporate team proposed for the southern Indiana contract. (The TEP's apparent concern with MTB's apparent lack of direct exposure to the southern Indiana market also appears to have been a questionable basis of assessment since the solicitation did not include knowledge of the local market as an evaluation criterion.)

With respect to MTB's allegedly inexperienced subcontractors, both the TEP and the contracting officer found that MTB's initial proposal was weak in identifying who would perform field reviews of appraisals. However, MTB's BAFO identified eight proposed review appraisers, all located within the southern Indiana area to be served by the contract and each with 3 to 22 years of experience and all TEP members raised their individual scores for MTB on this

factor to 160. The TEP's final evaluation narrative stated that MTB "provided the names, licenses and resumes for [its] sub[contractors] and they are qualified." The contracting officer simply concurred with this increased score."

Finally, while the TEP had expressed concerns about MTB's management plan, the contracting officer reasonably found no basis to object to the plan. Specifically, the contracting officer noted that while MTB's management plan required messenger service pick-up and delivery, rather than employee pick-up and delivery as offered by Property Analysts, its computer-based tracking system allowed prompt assignment and tracking despite the geographic distance between MTB's management offices in Norfolk, Virginia and the southern Indiana appraiser locations. Also, the contracting officer noted that MTB committed to meeting the 15-day contract delivery schedule and stated an intent to deliver within 10 working days. The contracting officer determined that MTB's successful performance of the northern Indiana contract supported the feasibility of the MTB management plan.

In sum, the contracting officer determined that MTB's proposal reflected experience, understanding and planning which, while not identical to what was offered by Property Analysts, did not represent a meaningful diminution in quality; the record provides no basis for concluding that this determination is unreasonable.

In a negotiated procurement, an agency may make award to a lower-priced, lower technically rated offeror if it determines that the price premium involved in awarding to a higher technically rated, higher-priced offeror is not justified given the acceptable level of technical competence obtainable at the lower price, Best Temporaries, Inc., B-255677.3, May 13, 1994, 94-1 CPD ¶ 308; Securiguard, Inc. et al., B-254392.8 et al., Feb. 9, 1994, 94-1 CPD ¶ 92. Here, the contracting officer concluded that the relatively slight technical differences did not offset the associated price premium. While the contracting officer acknowledged that the evaluated technical differences between the proposals were real, he found that they were not sufficient to have a significant effect on successful contract performance. Indeed, the contracting officer stated that he could not point to any specific technical benefits worth the approximate \$77,000 additional cost under the Property Analysts proposal that HUD would receive as a result of having Property Analysts perform the contract rather than

MTB. On this record, this cost/technical tradeoff is neither unreasonable nor inconsistent with the RFP's "best value" award scheme.

Accordingly, the protest is denied.

Ronald Berger
for Robert P. Murphy
General Counsel