



Gorczycki



Comptroller General
of the United States

51288

Washington, D.C. 20548

Decision

Matter of: Renaissance Development Corporation

File: B-260947

Date: August 7, 1995

Glenn L. Blackwell, Esq., and Ruth E. Ganister, Esq., Rosenthal and Ganister, for the protester. Joe Z. Hernandez for Hernandez Enterprises, Inc., an interested party. Cpt. Bryant S. Banes, Cpt. Holly S. G. Coffey, and Lt. Col. Ralph L. Littlefield, Department of the Army, for the agency. Henry J. Gorczycki, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Under a solicitation providing that quality was more important than cost, an agency properly selected an offeror with a slightly lower-rated, significantly lower-cost proposal where the agency reasonably determined that the advantages of the protester's higher-rated proposal did not outweigh the awardee's highly regarded, low-cost proposal.

DECISION

Renaissant Development Corporation protests the award to Hernandez Enterprises, Inc. under request for proposals (RFP) No. DAKF48-93-R-0042, issued by the Department of the Army for attendant support services in 21 dining facilities and full food service in one dining facility at Fort Hood, Texas.

We deny the protest.

The RFP, a set-aside for 8(a) contractors, contemplated the award of a cost-plus-award-fee contract for 6 months with four 1-year options. The RFP stated that the contract would be awarded on a best value basis with quality being substantially more important than cost, although cost would become more important as the quality difference between proposals decreased. The RFP stated three quality factors in descending order of importance as follows:

(1) Technical, (2) Management, (3) Quality Control. The RFP also stated subfactors for each quality factor, which

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in some cases were further divided into sub-subfactors; the relative weight assigned to each of these subfactors and sub-subfactors was stated in the RFP. Under the technical factor, the subfactors in descending order of importance were (1) technical approach, (2) resources (under which the staffing sub-subfactor was substantially the most important), and (3) technical experience.

In the description of the work to be performed, the RFP provided offerors with information on the estimated work load (i.e., meal hours and operating days for each facility, facility information, and historical head counts for each facility by meal period and by weekday or weekend), and required staffing plans be submitted with sufficient staffing levels to perform the work requirements.

The agency's source selection plan (SSP) stated a weighted scoring scheme for the evaluation factors, subfactors and criteria that was consistent with the relative weights stated in the RFP. The SSP assigned adjectival ratings to the total point scores as follows:

<u>Point Score</u>	<u>Adjectival Rating</u>
92-100	Exceptional
84-91	Good
76-83	Acceptable
70-75	Marginal
69 or less	Unacceptable

The SSP designated separate evaluation panels for evaluating quality and cost. The SSP instructed evaluators for the quality factor that where a proposal exceeds the agency's requirements, the evaluator "must determine . . . whether the excess represents a useful value to the Government."

The Army received initial proposals from three offerors, including Renaissance and Hernandez, and all were included in the competitive range. Both Renaissance and Hernandez received "good" quality scores (87 and 84 points, respectively). Among other things, the Army's evaluators identified that Renaissance had proposed staffing levels that exceeded the government's estimated staffing level by more than 150,000 personnel hours. During discussions with Renaissance, the Army, among other things, stated, "staffing appears to be excessive in every [facility]. Need to review requirements, i.e., . . . shift hours, etc."

The Army requested and received best and final offers (BAFO) from all three offerors. The quality scores and evaluated probable costs of Renaissance's and Hernandez's BAFOs follow:

Offeror	Quality Score (Adjective Rating)	Probable Cost
Hernandez	90 (Good)	\$29,719,568
Renaissant	92 (Exceptional)	31,309,204

After evaluating Renaissance's BAFO, the Army determined that Renaissance's proposed staffing level still exceeded the government estimate by more than 85,000 hours, which, according to the Army, represents approximately 45-50 personnel. The evaluation panel stated that:

"[w]hile [Renaissant's proposal] demonstrates a thorough understanding of technical requirements, there is no indication that quality warrants the additional personnel hours included in this proposal."

The Army determined that Hernandez's proposal demonstrated its understanding of the technical requirements; proposed an overall staffing plan that approximated the government estimate and demonstrated the offeror's ability to perform smoothly from the start of the contract; and proposed an innovative plan for daily cleaning of facilities that would translate to manpower savings.

The Army recognized the slightly higher quality score of Renaissance's proposal, but determined that there was only a slight difference in quality between the proposals of Hernandez and Renaissance, and noted that Hernandez's proposal offered a nearly \$1.6 million lower probable cost and that the advantages offered by Renaissance were not worth the additional cost. The Army concluded that Hernandez's proposal offered the best value to the government, considering quality and cost, and made award to that firm. This protest followed.

Renaissant first alleges that the evaluation of staffing was unreasonable. Renaissance explains that the stated work requirements did not reflect the level-of-work requirements which the agency will actually need, and that, based on its knowledge as the incumbent contractor, it proposed staffing based on actual requirements, whereas other offerors proposed, and the agency based its evaluation, on the basis of alleged inaccurate or incomplete statement of the requirements in the RFP.

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. Science Sys. And Applications, Inc., B-240311; B-240311.2, Nov. 9, 1990, 90-2 CPD ¶ 381. In reviewing an agency's technical evaluation, we will not reevaluate the proposal, but instead will examine the agency's evaluation to ensure that it was reasonable and not in violation of the procurement laws and regulations. Information Sys. & Networks Corp., 69 Comp. Gen. 284 (1990), 90-1 CPD ¶ 203; Instructional Design Sys., B-246314, Feb. 28, 1992, 92-1 CPD ¶ 254. We will not object to a technical evaluation that the record shows was fair and reasonable, and consistent with the evaluation criteria. Instructional Design Sys., supra.

As indicated, the Army evaluated Renaissance's proposed staffing levels as excessive for the work requirements stated in the RFP and determined that this excess staffing would not provide significant value to the government. Renaissance does not challenge the reasonableness of the government staffing estimates as based on the work requirements stated in the RFP, but asserts that its proposal recognized work not called for in the RFP, and it should therefore be credited, not penalized, for its offered staffing levels.¹ Nothing in the record suggests that the agency's determination regarding the excessiveness of Renaissance's staffing levels for the work actually provided for in the RFP was unreasonable. Moreover, the record does not indicate that proposals were evaluated on different bases; indeed, Renaissance essentially concedes that the staffing proposals were evaluated on the same basis, i.e., the level of work as defined in RFP, in asserting that its proposal should be credited for staffing requirements not included in the RFP.

¹The evaluators noted that Renaissance's proposal addressed work not required by the RFP and that such work may need to be added by amendment. This additional work has never been added, however. To the extent that Renaissance is alleging that the agency's work requirements as stated in the RFP are defective, the protest is untimely since, as the incumbent contractor, Renaissance should have known from the face of the RFP that the stated requirements did not accurately reflect the work level it was performing and should have protested this issue prior to submission of initial proposals. 4 C.F.R. § 21.2(a)(1) (1995); see Allstate Van & Storage, Inc., B-247463, May 22, 1992, 92-1 CPD ¶ 465.

Renaissant alleges that the Army did not conduct adequate discussions regarding the extent of Renaissant's excessive staffing. We disagree.

Discussions are legally adequate if offerors are advised of the weaknesses, excesses, and deficiencies in their proposals. DynCorp, et al., B-257037.2 et al., Dec. 15, 1994, 95-1 ¶ 34. Although discussions should be as specific as practicable, E.L. Hamm Assocs., Inc., B-250932, Feb. 19, 1993, 93-1 CPD ¶ 156, discussions need not be all encompassing nor overly specific in describing the extent of the agency's concerns, but rather must generally lead offerors into the areas of their proposals which require amplification or correction without being misleading. DynCorp, et al., supra; HLJ Management Group, Inc., B-248201.2, Dec. 15, 1992, 92-2 CPD ¶ 415.

Here, the Army told Renaissant during discussions that its proposed staffing was excessive for all dining facilities and advised Renaissant that it needed to review the stated work requirements. This instruction very specifically identified the nature of the problem, and Renaissant's somewhat reduced manning level in its BAFO evidences that Renaissant understood the nature of the agency's concern. While Renaissant asserts that the agency should have advised the protester of the extent of its staffing excesses, the Army was not required to advise Renaissant of the staffing levels which the agency considered appropriate for performing the stated work requirements, inasmuch the offerors' precise staffing plans were to be evaluated in order to assess their understanding of the RFP requirements, as well as their technical approaches. See DynCorp, et al., supra. We think that the discussions adequately informed Renaissant of its proposed excessive staffing and provided it a meaningful opportunity to address the agency's concern in its BAFO. See id.; HLJ Management Group, Inc., supra.

Renaissant alleges that since its proposal received an "exceptional" quality rating and Hernandez received a "good" rating, the agency's determination that the quality difference between the proposals was slight was unreasonable. Renaissant has submitted quotes from the evaluators' notes that it asserts demonstrate that the technical difference between the proposals was not slight.

Adjectival ratings and point scores are only a guide to assist contracting agencies in evaluating proposals. Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 CPD ¶ 325; A & W Maint. Servs., Inc.--Recon., B-255711.2, Jan. 17, 1995, 95-1 CPD ¶ 24. Source selection officials in negotiated procurements have broad discretion in determining the manner and extent to which they will make use of the technical and cost evaluation results subject only to the

tests of rationality and consistency with the RFP evaluation criteria. Bunker Ramo Corp., 56 Comp. Gen. 712 (1977), 77-1 CPD ¶ 427; Grey Advertising, Inc., supra. In a negotiated procurement, even if cost is the least important evaluation factor, an agency may properly award to a lower-priced, lower-rated offeror if the agency determines that the cost premium involved in awarding to a higher-rated, higher-priced offeror is not justified given the acceptable level of technical competence available at the lower price. Bunker Ramo Corp., supra; Science Applications Int'l Corp., B-238136.2, June 1, 1990, 90-1 CPD ¶ 517.

Here, although the different adjectival ratings for quality could superficially suggest a significant difference between proposals, the record substantiates the reasonableness of the agency's determination that the difference was slight. As indicated, the overall adjectival ratings are based on predesignated point scores, and only 2 points separated the proposals of Hernandez and the protester, with the protester's proposal receiving just enough points to place it in a higher adjectival rating category than Hernandez's proposal. In addition, the adjectival ratings assigned to each proposal for each evaluation subfactor were quite similar:

Offeror	Factor 1	Factor 2	Factor 3
Hernandez	Good	Exceptional	Exceptional
Renaissant	Good	Exceptional	Exceptional

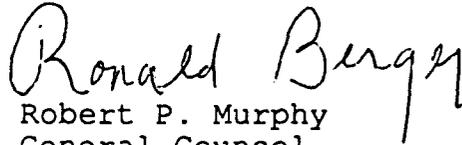
Renaissant does not challenge the propriety of any point score assigned to any offeror on any particular evaluation factor, subfactor or sub-subfactor. While Renaissant supports its assertion of substantial technical superiority by reference to selective quotes from the evaluation documentation, Renaissant has not shown that the agency could not reasonably conclude that the quality difference between the proposals was slight, and that Renaissant's proposal, which reflected overstaffing, did not offer advantages that outweighed the cost advantages of Hernandez's highly regarded, but slightly lower-rated, proposal. See Bunker Ramo Corp., supra; Science Applications Int'l Corp., supra.

Renaissant alleges that the quality evaluators improperly considered cost in evaluating the quality of proposals. The agency states that the quality evaluators did not have access to cost proposals during evaluation, but the evaluators did consider the impact on cost that proposed strengths and weaknesses in quality would likely pose in order to determine the impact on value to the government as they were instructed to do by the SSP. For example, the

evaluators considered that Renaissance's excessive staffing would add cost to the contract, but would not provide any noticeable increase in quality--this perception could logically be inferred from Renaissance's quality proposal. In any event, we know of no restriction on technical evaluators considering cost or price and do not consider the possibility of such disclosure a basis for sustaining a protest. See David A. Clary, B-200877, Apr. 28, 1981, 81-1 CPD ¶ 326.

Lastly, Renaissance alleges that evaluations were unreasonable because the quality evaluation panel had one less evaluator than the minimum number stated in the SSP, which provided that this panel would be composed of three to five members. However, the agency is required to follow the evaluation scheme stated in the RFP. Requirements stated in evaluation and source selection plans which are not disclosed to offerors are internal agency instructions and, as such, do not give outside parties any rights.² Telos Field Eng'g, B-253492.6, Dec. 15, 1994, 94-2 CPD ¶ 240; Mandex, Inc.; Tero Tek Int'l, Inc., B-241759 et al., Mar. 5, 1991, 91-1 CPD ¶ 244.

The protest is denied.


Robert P. Murphy
General Counsel

²In any case, as called for in the SSP, the quality panel was initially composed of three members, all of whom evaluated initial proposals. However, one member retired prior to final evaluations and was not replaced. Although only two evaluators evaluated BAFOs, they conducted evaluations reasonably and consistent with the stated terms of the RFP. Renaissance has not shown otherwise.