



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Wesley Medical Resources, Inc.; Human Resource Systems, Inc.

File: B-261938.5; B-261938.6

Date: November 20, 1995

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John R. Osing, Jr., Esq., Department of the Navy, for the agency.
Linda S. Lebowitz, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Where the agency's evaluation of the protesters' initial proposals for experience and price realism was reasonable and in accordance with the solicitation's evaluation criteria, and where the agency reserved the right to make an award on the basis of initial proposals without conducting discussions, the award to a higher technically rated, higher-priced offeror was proper.

DECISION

Wesley Medical Resources, Inc. and Human Resource Systems, Inc. (HRSI) protest the award of a contract to Premier Nurse Staffing, Inc. under request for proposals (RFP) No. N62645-95-R-0009, issued by the Naval Medical Logistics Command, Department of the Navy, for registered nurse services at the National Naval Medical Center, Bethesda, Maryland. The protesters basically challenge the evaluation of their proposals, the agency's decision to award on the basis of initial proposals without conducting discussions, and the agency's price/technical tradeoff decision.

We deny the protests.

The RFP contemplated the award of a firm, fixed-price contract for a base period with 4 option years. For each period of performance, the RFP specified that the contractor would be required to provide shifts of "registered nurse" services¹ in the

¹The agency states in its report that the shift totals in the RFP equate to a staffing level of approximately 70 "registered nurses." The agency characterizes the

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following critical care medical center units: intensive care nursery; medical surgical; intensive care; coronary care; neuroscience intensive care; and post anesthesia care. In addition, for each period of performance, the RFP included options for "registered nurse" services in the ambulatory care clinic, ambulatory procedure unit, and operating rooms. The RFP described minimum experience and education requirements for all critical care categories of "registered nurses."

The RFP stated that the contract would be awarded to the firm whose proposal was deemed most advantageous to the government, price and technical evaluation factors considered. Concerning the evaluation of technical proposals, the RFP included the following three equally weighted technical evaluation factors: (1) implementation plan; (2) management policies; and (3) experience in nursing services. Regarding the experience evaluation factor, the RFP required an offeror to demonstrate "either directly related or similar experience in delivering nursing services," including "numbers and types of personnel provided under [an offeror's prior] contract," and to provide "an explanation of how the experience is directly related and/or similar to the statement of work." The RFP stated that the agency would consider the quality and scope of an offeror's past performance. Concerning the evaluation of price (basically to include an offeror's average compensation rate, fringe benefits rate, and management effort rate, *i.e.*, expenses to manage the contract), the RFP provided that price would be evaluated for completeness, reasonableness, and realism. The RFP provided that in selecting the most advantageous offer, the combined technical evaluation factors would be considered slightly more important than price, but between technically equal proposals, price would become the determining factor for award; the RFP specifically advised that the award could be made to other than the low-priced offeror. Finally, the RFP stated that the award could be made on the basis of initial proposals without conducting discussions; accordingly, offerors were advised that initial proposals should contain an offeror's best terms from a technical and price standpoint.

Twenty-five firms, including the protesters and Premier, submitted initial proposals. Technical proposals were evaluated by the agency's technical evaluation team (TET) which assigned color/adjectival ratings to each technical evaluation factor and assigned an overall color/adjectival rating. The color/adjectival ratings were as follows: (1) blue—offeror's proposal exceeded the performance or capability specified in a beneficial way to the agency; high probability of successful performance; (2) green—offeror's proposal was satisfactory; good probability of successful performance; (3) yellow—offeror's proposal contained one or more significant deficiencies and was considered less than satisfactory; low probability of

¹(...continued)

furnishing of this number of personnel as "large-scale." The protesters do not dispute this characterization.

successful performance; and (4) red-offeror's proposal contained major deficiencies and was considered unsatisfactory; no probability of successful performance.

Price proposals were evaluated by the agency's cost evaluation team (CET). In evaluating the completeness of an offeror's price, the CET ensured that all required pricing information was provided and in evaluating the reasonableness and realism of an offeror's price, the CET compared an offeror's price to the independent government cost estimate.

The protesters' and Premier's proposals received the following technical ratings:

	<u>Wesley</u>	<u>HRSI</u>	<u>Premier</u>
Implementation plan	Green	Green	Green
Management policies	Green	Green	Green
Experience	Yellow	Yellow	Green
Overall	Yellow	Yellow	Green

HRSI submitted the lowest price; Wesley submitted the third lowest price; and Premier submitted the sixth lowest price.

The TET downgraded Wesley's proposal for the experience evaluation factor because it failed to provide a numerical and type breakdown of "registered nurses" furnished under prior contracts. Wesley described five prior contracts. For its most significant prior contract, which involved providing nursing services at an Air Force medical center, Wesley stated that it staffed 14 clinical areas with registered nurses, licensed vocational nurses, operating room technicians, and operating room registered nurses, providing a "volume [of] 40 [permanently assigned, full-time] nurses" or a total of "60 [full-time equivalents]" on a weekly basis and "approximately 175 [to] 200 [weekly] shifts" on a per diem basis. Wesley's failure to specifically describe the number and type of "registered nurses" provided under its prior contract prevented the TET from concluding, as required by the RFP, that Wesley had directly related experience in providing "registered nurse" services or that Wesley could support a contract of the scope and complexity contemplated by the RFP. In addition, the CET concluded that because Wesley's proposed base year average compensation rate was approximately 19 percent below the government estimate and was not offset by a higher fringe benefits rate (and, in fact, its fringe benefits rate was slightly below the government estimate), the firm may have difficulty in recruiting and retaining registered nurses.

The TET downgraded HRSI's proposal for the experience evaluation factor because its previous experience was not of the scope and complexity contemplated by the RFP. In this regard, HRSI stated in its proposal that it "does not currently manage any single health care contract of the size provided in the [RFP]; however, this

contract is smaller in scope than our current aggregate operations." HRSI described 11 prior contracts. For its most significant prior health care contract at a Navy medical center, HRSI stated that it provided a "[t]otal of [eight] Registered Nurses, Licensed Practical Nurses, and Certified Nurse Assistants" to various clinical areas. Although HRSI did not provide a numerical and type breakdown of "registered nurses" previously provided, the TET concluded, based on the categories of nurses listed in its proposal for this contract, that HRSI could have provided no more than six registered nurses. The TET did not believe that HRSI's performance of this contract demonstrated that HRSI had sufficient experience in providing large-scale "registered nurse" services. Under its other health care contracts, HRSI provided nurse practitioners, a dietician, a radiology technician, pharmacists, and pharmacy technicians. Under another contract, HRSI provided 80 multi-disciplined, professional engineers to support the United States Postal Service. Again, the TET did not believe that HRSI's experience in providing the services of other health care professionals and engineers was comparable to furnishing large-scale "registered nurse" services. In addition, the CET had concerns with HRSI's ability to recruit and retain registered nurses and to effectively manage the contract because its total price was approximately 25 percent below the government estimate, and its average management effort rate, which was negative for the option requirements, was approximately 9 percent below the government estimate.

Concerning Premier, the TET concluded that there were no weaknesses in the firm's experience. Premier listed 21 prior contracts, but specifically described only one of these contracts. Under this particular contract, Premier stated that it was the "exclusive provider of [registered nurses] to [an Army] [m]edical [c]enter." Premier stated that it provided, without the use of subcontractors, approximately 180 registered nurses, retaining a core group of 40 registered nurses. Based on Premier's experience under this contract, the TET determined that the firm demonstrated experience of the scope and complexity contemplated by the RFP. The CET, in comparing Premier's price with the government estimate, concluded that the firm's price was complete, reasonable, and realistic.

The technical and cost evaluations were reviewed by the agency's source selection advisory council (SSAC). The SSAC considered the proposals of the four offerors, including Premier, which received "green" overall technical ratings. Based on this review, the SSAC concluded that the four proposals were technically equal. With respect to Premier, the SSAC concluded that the firm's technical proposal contained no weaknesses. More specifically, the SSAC determined that Premier offered a solid plan for recruitment and retention of registered nurses; a good plan for verification and timely submission of individual personnel files; and a detailed methodology for personnel scheduling and substitutions. The SSAC determined further that Premier had a strong management plan, including a computerized database to satisfy the RFP's shift, scheduling, and substitution requirements. Finally, the SSAC found that Premier's experience in providing 180 registered nurses

for an Army medical center was comparable to the effort contemplated by the RFP. Among these four technically equal proposals, the SSAC concluded that Premier's, which was the lowest-priced of the four, was the most advantageous to the government.

The SSAC then considered the proposals of the five offerors, including Wesley and HRSI, which submitted lower prices than Premier. The SSAC concurred with the TET and CET concerning weaknesses in the technical and price proposals of Wesley and HRSI with regard to a lack of comparable experience and unrealistic pricing vis-a-vis the government estimate. The SSAC concluded that any price advantage associated with these proposals was "illusory" because of the inherent technical and price weaknesses.

Accordingly, the SSAC recommended, on the basis of initial proposals (without conducting discussions), that a contract be awarded to Premier, a higher technically rated, higher-priced offeror, which submitted the most advantageous proposal. The agency's source selection authority concurred with the SSAC's recommendation. Following the contracting officer's affirmative determination of Premier's responsibility, a contract was awarded to Premier.

Wesley and HRSI basically contend that the agency unreasonably evaluated their proposals for the experience evaluation factor. In this regard, Wesley does not dispute that it failed to provide a numerical and type breakdown of its experience in providing "registered nurses" under prior contracts. Rather, it argues that requiring this breakdown constituted the use of an unstated evaluation factor for which it was improperly downgraded. Wesley maintains that if the agency required such a breakdown, this information was readily ascertainable and the agency should have afforded Wesley an opportunity to clarify its proposal. Moreover, HRSI argues that the agency, in evaluating its experience, was overly restrictive in requiring "registered nurse" experience. In this respect, HRSI acknowledges that while it does not currently have a health care contract of the scope and complexity contemplated by the RFP, it has provided "registered nurse" services under a prior contract, and has similar experience in providing the services of other health care professionals. HRSI maintains that it was not given appropriate credit for this similar experience. Furthermore, HRSI points out that it has performed a contract requiring it to provide a significant number of engineers to the federal government.

In reviewing protests against the propriety of an agency's evaluation of proposals, we will examine an agency's evaluation to ensure that it was fair and reasonable and consistent with the evaluation criteria stated in the RFP. Research Analysis and Maintenance, Inc., B-239223, Aug. 10, 1990, 90-2 CPD ¶ 129; Institute of Modern Procedures, Inc., B-236964, Jan. 23, 1990, 90-1 CPD ¶ 93. Based on our review of the record, we believe that the agency reasonably evaluated the experience of Wesley and HRSI and reasonably concluded that neither firm demonstrated in their

initial proposals comparable experience in providing "registered nurse" services as required by the RFP.

The RFP's statement of work clearly and explicitly required the contractor to furnish "registered nurses" in six basic and three optional critical care medical center units. The RFP also described minimum experience and education requirements for each critical care category of "registered nurses." For example, in describing the additional qualification requirements for each critical care category of "registered nurses," the RFP specifically included in the caption the term "registered nurses," i.e., "intensive care registered nurses" and "coronary care registered nurses." Further, in describing the basis for the evaluation of an offeror's experience, the RFP required an offeror to demonstrate "either directly related or similar experience in delivering nursing services," including "numbers and types of personnel provided under [an offeror's prior] contract" and to provide "an explanation of how the experience is directly related and/or similar to the statement of work." Since the statement of work in the RFP clearly solicited proposals for the furnishing of a significant number of critical care "registered nurses," the agency could reasonably downgrade the proposal of an offeror which failed to demonstrate such experience. See FMS Corp., B-255191, Feb. 8, 1994, 94-1 CPD ¶ 182.

With respect to Wesley, the record shows that the firm did have experience in providing "registered nurse" services. However, the agency could not conclude that this experience was comparable to the effort contemplated by the RFP since Wesley provided information showing a cumulative "volume of nurses" furnished, rather than, as required by the RFP, a numerical and type breakdown of critical care "registered nurses" previously furnished. Contrary to Wesley's position, the requirement for a numerical and type breakdown was, as described above, explicitly required by the terms of the RFP; it was not an unstated evaluation factor. Since Wesley did not furnish the required breakdown, the agency reasonably downgraded Wesley's proposal on the basis that the firm's proposal failed to demonstrate that it had comparable experience. Compare Sherikon, Inc.; Technology Management & Analysis Corp., B-256306 et al., June 7, 1994, 94-1 CPD ¶ 358.

Although Wesley argues that it could have provided the numerical and type breakdown of critical care "registered nurses" under its primary prior contract, and has asserted in connection with its protest that for this contract 35 out of the 40 nurses provided were "registered nurses," it was incumbent upon Wesley to provide this information in its initial proposal. In this respect, the RFP specifically stated that award could be made on the basis of initial proposals and the RFP advised offerors to include in their initial proposals their best terms from a technical and price standpoint. In light of the terms of the RFP, Wesley could not reasonably presume that it would have a chance to clarify or improve its proposal through discussions; rather, the burden was on Wesley to submit an initial proposal that adequately demonstrated its own merits, and Wesley ran the risk of not

receiving the award by failing to do so. See Titan Corp., B-260557.2, July 18, 1995, 95-2 CPD ¶ 89.

With respect to HRSI, the firm acknowledged in its initial proposal that it did not have experience in providing "registered nurse" services to the degree contemplated by the RFP. In this regard, the record shows that for HRSI's primary "registered nurse" contract, its experience was even more limited than believed by the agency—only one, rather than six, of the eight personnel provided was a "registered nurse." In addition, under its other health care contracts, while HRSI provided nurse practitioners, a dietician, a radiology technician, pharmacists, and pharmacy technicians, the record shows that it did so in numbers significantly smaller than the 70 "registered nurses" required under the RFP. The agency did not believe that the minimum experience and education requirements for these other health care professionals were comparable to the requirements as described in the RFP for "registered nurses." In addition, while the record shows that HRSI had large-scale experience in providing professional engineers, the agency concluded that the experience and education requirements for engineers were not relevant to the requirements for "registered nurses."

Since HRSI's health care experience was more limited in scope and complexity than that required by the RFP and did not reflect the furnishing of personnel with sufficiently similar experience and education to that required for "registered nurses," the agency reasonably downgraded HRSI's proposal for failing to demonstrate comparable experience. Moreover, we think the agency reasonably discounted HRSI's furnishing of large-scale engineering services to the federal government on the basis that the experience and education requirements for engineers are not reasonably related to the experience and education requirements for "registered nurses." See AWD Technologies, Inc., B-250081.2; B-250081.3, Feb. 1, 1993, 93-1 CPD ¶ 83.

Wesley and HRSI challenge the agency's price realism analysis. The protesters essentially contend that since this was a firm, fixed-price contract, an offeror would bear the risk and responsibility of not being able to perform at its lower price; accordingly, the agency's concerns with the firms' lower-priced proposals were unwarranted.

We think the agency reasonably evaluated Wesley's and HRSI's proposed prices in light of the RFP's technical requirements. The RFP specifically provided for the evaluation of an offeror's price for completeness, reasonableness, and realism, and stated that an unrealistically low-priced proposal may suggest that an offeror understated its costs or misunderstood the RFP's technical requirements. As discussed, the agency questioned whether Wesley could recruit and retain qualified personnel due to its low average base year compensation rate, and questioned HRSI's ability to recruit and retain personnel and to effectively manage the contract

because its total price was approximately 25 percent below the government estimate and its average management effort rate, which was negative for the option requirements, was approximately 9 percent below the government estimate. Since neither protester has established that the government estimate was defective, we have no basis to question the agency's price reasonableness analysis or conclusions.

Wesley and HRSI, both lower-priced offerors compared to Premier, argue that the agency should have conducted discussions, affording them an opportunity to address the agency's experience and price realism concerns. The protesters maintain that had they been given an opportunity to improve their proposals, they would have been rated technically equal to Premier and, as lower-priced offerors, would have been in line for award.

All offerors, including Wesley and HRSI, were on notice from the RFP that the agency might not conduct technical and price discussions, and that their initial proposals should contain the most favorable terms which they were prepared to offer. As discussed above, we find that the agency reasonably evaluated the experience of each protester and reasonably questioned the realism of each protester's price. Under these circumstances, the agency could properly make award to Premier, on the basis of its higher technically rated, higher-priced initial proposal, in accordance with the RFP's evaluation methodology. 10 U.S.C. § 2305(b)(4)(A)(ii) (1994); Federal Acquisition Regulation (FAR) § 15.610(a)(4); Analytical Chemists, Inc., B-256037, Apr. 29, 1994, 94-1 CPD ¶ 283; Honolulu Marine, Inc., B-245329, Dec. 27, 1991, 91-2 CPD ¶ 586.

Further, since the agency determined that Premier's proposal was technically superior to the proposals submitted by Wesley and HRSI, the agency properly could justify an award to Premier even at its higher price. See Hornet Joint Venture, B-258430.2, Jan. 27, 1995, 95-1 CPD ¶ 55. In this regard, the agency determined that unlike the protesters, Premier had experience comparable to that required by the RFP since the firm had furnished 180 "registered nurses" to an Army medical center. Moreover, unlike the prices proposed by the protesters, Premier's price, in comparison to the government estimate, was considered reasonable and realistic and did not pose a performance risk in terms of recruitment and retention of personnel and effective contract management. These were legitimate reasons for

determining that Premier's higher technically rated, higher-priced proposal represented the most advantageous offer to the government.

The protests are denied.²

Comptroller General
of the United States

²We disagree with Wesley's complaint that its proposal and Premier's proposal were not evaluated on an equal basis since Premier was not downgraded for failing to provide, for the 20 other contracts it listed, details required by the RFP. In our view, since for its primary "registered nurse" contract it provided all information required by the RFP and the agency could reasonably evaluate this information in light of the RFP's requirements, Premier's omission of details for the other contracts did not preclude the agency from concluding that Premier demonstrated comparable experience in furnishing critical care "registered nurse" services.

Wesley and HRSI also complain that the agency did not equally weigh the technical evaluation factors, as demonstrated by the fact that the "lowest" color/adjectival rating received by an offeror for any single technical evaluation factor became the overall color/adjectival rating assigned to the offeror's proposal, even if for the other technical evaluation factors the offeror received higher color/adjectival ratings. The mere fact that the agency did not average the color/adjectival ratings does not show that the factors were not equally weighted; the same color rating may blur qualitative differences between proposals which ultimately may be taken into account in totaling the ratings. In any case, the agency did not mechanically apply the color/adjectival ratings in assessing the overall qualitative merits of proposals; rather, the record shows that the agency used the color/adjectival ratings as guides to decision-making. In other words, the agency relied on the underlying qualitative assessments of proposals, not the overall color/adjectival rating assigned to an offeror's proposal, in making a relative comparison of proposals. Compare Redstone Technical Servs.; Dynamic Science, Inc., B-259222 et al., Mar. 17, 1995, 95-1 CPD ¶ 181.