



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Health Management Resources, Inc.

File: B-270185; B-270185.2

Date: January 25, 1996

Terrence M. O'Connor, Esq., for the protester.

Terrence J. Tychan and Mike Colvin, Department of Health and Human Services, for the agency.

Paul E. Jordan, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency conducted meaningful discussions regarding the protester's proposed approach to a particular task through discussion questions which reasonably led the protester into the areas of concern.
2. Agency's decision not to rescore proposals is unobjectionable where record establishes that agency considered all matters contained in offerors' best and final offer proposal revisions, and reasonably determined that relative standing of offerors' proposals did not change as a result.
3. Award to offeror who submitted higher-cost, higher technically rated proposal is reasonable where solicitation evaluation scheme gives greater weight to technical merit than to cost, and record supports selection official's determination that the relatively slight cost savings associated with the protester's proposal did not outweigh technical superiority of awardee's proposal.

DECISION

Health Management Resources, Inc. (HMRI) protests the award of a contract to J&E Associates under request for proposals (RFP) No. HRSA 240-BPHC-38(5) NAB, a small business set-aside, issued by the Health Resources and Services Administration, Department of Health and Human Services for furnishing travel and logistical support services. HMRI contends that the agency failed to conduct meaningful discussions and lacked a rational basis for its award decision.

We deny the protest.

The RFP, which was issued on March 6, 1995, sought proposals to furnish conference and travel support for National Health Service Corps activities and coordinate with other federal, state, and regional agencies in providing logistics for recruitment and retention conferences, management development/training conferences, and other meetings. The RFP contemplated award of a cost-plus-fixed-fee contract for a base year with 4 option years.

Award was to be made to the offeror whose proposal was most advantageous to the government with greater consideration given to the evaluation of technical proposals than to cost. Proposals were evaluated on the basis of cost and four technical factors: problem and approach; personnel and organization structure; facilities; and demonstrated capability of offeror.

Eleven offers, including HMRI's and J&E's, were received by the April 20 closing time for receipt of proposals. Based upon an initial evaluation, the agency found three proposals, including those of HMRI and J&E, to be in the competitive range. Prior to discussions, HMRI's proposal was scored at 79.2 points and J&E's proposal was scored at 84 points. The agency conducted written and oral discussions with each competitive range offeror. At the close of discussions, the agency requested best and final offers (BAFO) from the three offerors. The agency reviewed the BAFOs and found that the offerors had responded to all questions asked by the technical review committee (TRC). The TRC determined that it was not necessary to rescore the proposals in light of the BAFOs. In reviewing HMRI's cost proposal, the evaluators determined that HMRI had understated the costs of tasks related to change of station travel and orientation conferences. Accordingly, the agency added more than \$5 million to HMRI's evaluated total cost. The final scores and evaluated BAFOs are as follows:

| Offeror | J&E | HMRI |
|-----------------------|--------------|--------------|
| Problem-Approach (35) | 30.6 | 24.6 |
| Personnel/Org. (30) | 26 | 24.6 |
| Facilities (5) | 4.8 | 3.4 |
| Capability (30) | 22.6 | 26.6 |
| Total Score (100) | 84 | 79.2 |
| Evaluated BAFO Cost | \$27,591,534 | \$26,219,386 |

The third offeror, Casals & Associates, with a proposal score of 86.2 points and the lowest evaluated cost, was selected for award, but the Small Business Administration (SBA) determined that Casals did not qualify as a small business for

purposes of this procurement.¹ The contracting officer, finding that the relatively small cost difference between the remaining proposals (\$1.37 million) was not sufficient to warrant award to the technically lower rated offeror, determined to award the contract to J&E. Upon learning of the award, HMRI requested a debriefing and filed a protest with our Office. After receiving its debriefing, HMRI amended its protest.

HMRI contends that the agency failed to provide it with meaningful discussions with regard to its proposed costs for the change of station travel task and for the orientation conference tasks. In HMRI's view, had the agency properly discussed these matters with it, there would have been no need to adjust its costs so far upward.

Agencies are required to conduct meaningful discussions with all competitive range offerors. Stone & Webster Eng'g Corp., B-255286.2, Apr. 12, 1994, 94-1 CPD ¶ 306. In order for discussions to be meaningful, contracting officials must advise offerors of deficiencies in their proposals and afford offerors an opportunity to revise their proposals to satisfy the government's requirements. Id. This does not mean that offerors are entitled to all-encompassing discussions. Agencies are only required to lead offerors into areas of their proposals that require amplification. Caldwell Consulting Assocs., B-242767; B-242767.2, June 5, 1991, 91-1 CPD ¶ 530. The degree of specificity required in conducting discussions is not constant and is primarily a matter for the procuring agency to determine. JCI Envtl. Servs., B-250752.3, Apr. 7, 1993, 93-1 CPD ¶ 299.

Here, during the conduct of discussions, the agency raised the issue of HMRI's treatment of the change of station task a number of times, and provided HMRI with a summary of the narrative comments of the evaluators. For example, the comments advised that the change of station travel was "weak" and would require further clarification, and that the proposal did not address how movement of household goods would occur or the reimbursement process. The agency also addressed this task in a general information statement, provided to all offerors, which explained how offerors should base their costs. While the protester states that the agency made no oral representations about this task, the agency's summary of negotiation states that all offerors were advised that the cost of this task would be high and should be reevaluated before submission of BAFOs. The agency also raised questions concerning HMRI's travel vendor and the costs associated with it.

¹Casals has appealed the SBA's determination.

While these references did not specifically state that the protester's costs were too low, they did apprise the protester that the agency was concerned with the protester's proposal for these tasks. Implicit in the agency's identification of these areas was the need for the protester to reevaluate the costs associated with them. Thus, they were sufficient to lead the protester into this area of its proposal and provide it the opportunity to review and revise its cost proposal.

With regard to the orientation conference tasks, in reviewing the protester's BAFO the agency found that HMRI had proposed only the minimum number of conferences each year. Since the number of scholarship conferences was already anticipated to exceed the minimum, the agency increased the costs, using the protester's own figures. Similarly, the agency found that HMRI's BAFO had decreased certain conference costs associated with its subcontractor, without apparent explanation. Since the RFP advised, and HMRI acknowledged in its proposal, that the number of certain conference attendees would increase by 100 persons each year, the agency determined that an increase in costs was warranted. These matters were not the subject of discussions. However, since they were first introduced in HMRI's BAFO, the agency was not required to reopen discussions to obtain HMRI's input. See Potomac Research, Inc., B-250152.8; B-250152.11, July 22, 1993, 93-2 CPD ¶ 109.

HMRI next argues that the agency should have rescored the proposals after reviewing the offerors' BAFOs. Generally, there is no requirement that an agency formally rescore BAFOs; rather, all that is required is that the contracting officer consider the effect on proposals of any changes contained in the BAFOs. University of Dayton Research Inst., B-245431, Jan. 2, 1992, 92-1 CPD ¶ 6. Here, in the course of its evaluations, the agency scored the initial proposals on the basis of strengths and weaknesses it identified in each proposal. The agency then provided each offeror with the narrative comments of the evaluators. Both J&E and HMRI responded to the initial identification of weaknesses and questions. These responses resulted in additional questions and comments from the evaluators, which were provided to the offerors prior to the conduct of oral discussions. At the close of discussions, both offerors provided technical and cost BAFOs. After reviewing the BAFOs, the agency determined that the offerors had responded to all questions asked, identified the remaining concerns, and determined that rescoring was not necessary. While the offerors had responded to all outstanding questions, the record does not indicate that the responses rendered the proposals perfect. Rather, since both offerors provided satisfactory responses, the agency in effect found that each had improved to the same degree. It is apparently for this reason that no rescoring was done, since any rescoring would have left HMRI and J&E in the same relative positions. While the protester argues that its improvements were not considered, the record makes it clear that the contracting officer reviewed the final evaluations and considered the relative strengths and weaknesses under the final

evaluation in making his award determination. Accordingly, we agree with the agency that there was no need to rescore the BAFOs.

HMRI also argues that the award was flawed because the record does not establish that it had any rational basis. In the protester's view, the source selection statement does not support the award determination.

In a negotiated procurement, the government is not required to make award to the lowest-cost, technically acceptable offeror unless the RFP specifies that cost will be the determinative factor for award. General Servs. Eng'g, Inc., B-245458, Jan. 9, 1992, 92-1 CPD ¶ 44. Agency officials have broad discretion in determining the manner and extent to which they will make use of technical and cost evaluation results. Cost/technical tradeoffs may be made; the extent to which one may be sacrificed for the other is governed by the test of rationality and consistency with the established evaluation factors. Id. Even where a source selection official does not specifically discuss the technical/cost tradeoff in the selection decision document, this does not affect the validity of the decision if the record shows that the agency, in consideration of the relative technical merit of the awardee's and the lower-cost protester's proposals, reasonably decided that the higher-cost awardee's proposal was worth the additional cost. McShade Gov't Contracting Servs., B-232977, Feb. 6, 1989, 89-1 CPD ¶ 118. In this case, the record supports the contracting officer's decision to award the contract to J&E as the technically superior offeror, even though J&E proposed a higher cost.

The contracting officer's source selection statement details the chronology of the procurement and contains the scores and adjusted costs for each offeror's proposal. In it, the contracting officer concludes that award to J&E is in the best interests of the government, noting that J&E's proposal is higher rated technically than HMRI's, and that HMRI's costs were understated. This selection statement alone does not contain sufficient detail to demonstrate that the contracting officer's decision is rationally based. However, other documents in the record, including the evaluations and the contracting officer's statement filed with the agency report, provide sufficient information to support the award decision.

According to the contracting officer's statement, he reviewed the TRC's evaluation narratives in determining the original competitive range and in reviewing the award recommendations of the TRC and contract specialist. Based on these reviews, he concluded that J&E had submitted a technically superior proposal. We have reviewed the TRC's narrative comments on the evaluations and they support the contracting officer's conclusion.

For example, the evaluations show that J&E's proposal received higher scores than HMRI's under three of the four evaluation factors. Under the most important factor, problem and approach, the evaluators found that J&E had a very positive

approach to recruiting and that it had demonstrated a true understanding of the contract's scope, while HMRI's proposal was evaluated simply as showing a thorough knowledge and understanding of the problem. Further, J&E proposed to provide all services itself, while HMRI proposed the use of subcontractors. Throughout this factor evaluation, the evaluators praised J&E's excellence in organization, proposal of experienced staff, and proposal detail including the narrative on the change of station task. Conversely, the agency identified twice as many weaknesses in HMRI's proposal and found its handling of the change of station task to be very weak. As discussions progressed, the agency had some 21 questions for the protester compared with 14 for J&E. In reviewing the BAFOs, the agency had only two concerns with J&E's proposal, an ambiguity regarding the identity of one regional coordinator and the high cost proposed for that contract activity. Conversely, the agency identified four concerns with HMRI's proposal, regarding HMRI's significant understatement of costs for three tasks (including the change of station task), and the project officer's assessment that it could not perform the contract at the proposed BAFO costs. Though it appeared that the remaining concerns with HMRI's proposal could be "corrected" by increasing the relevant costs, the contracting officer considered the concerns to be significantly greater than those identified in J&E's proposal. As a result, notwithstanding the evaluators' initial conclusion that HMRI had a thorough understanding of the problem, the contracting officer concluded that the concerns raised in HMRI's BAFO called into question the protester's overall understanding and technical capability.

As discussed above, even though HMRI's responses to the discussion questions improved its proposal, the same conclusion can be made with regard to J&E's proposal. Implicit in the evaluators' decision not to rescore the proposals is their finding that both offerors improved their proposals to the same relative degree. Taking the evaluations, including the relative strengths and remaining concerns into consideration, the contracting officer reasonably concluded that J&E's proposal was technically superior to HMRI's proposal. After considering the adjustment to HMRI's costs to reflect the more likely costs involved, he found that J&E's proposal was only \$1.37 million higher than HMRI's for a more than \$27 million contract effort. Since the cost difference only represents about 5 percent of the contract award over 5 years, we think the contracting officer could reasonably conclude that

this difference was not sufficient to outweigh the significance of J&E's technical superiority. Accordingly, we have no basis to object to the source selection decision.²

The protest is denied.

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²HMRI also argues that the agency failed to follow the evaluation criteria because it made technical considerations the sole, rather than paramount, basis for award without consideration of cost. While HMRI disagrees with the contracting officer's conclusions regarding the importance of the cost difference here, it is plain from the record that the contracting officer did consider cost in making his source selection.