



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

DECISION FOR PUBLIC RELEASE

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Matter of: Juarez & Associates, Inc.

File: B-265950.2

Date: February 8, 1996

Richard J. Webber, Esq., Tenley A. Carp, Esq., and Alison Michaeli, Esq., Arent Fox Kintner Plotkin & Kahn, for the protester.

David P. Metzger, Esq., and Craig A. Holman, Esq., Holland & Knight, for COCA, Inc. intervenors.

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

Susan K. McAuliffe, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Contracting officer reasonably determined that the proposals of the protester and awardee were essentially technically equal, such that award should be made on the basis of the lower-cost proposal in accordance with solicitation's stated evaluation scheme.

DECISION

Juarez and Associates, Inc. protests the award of a contract to CODA, Inc. under request for proposals (RFP) No. NCI-CO-50507-50, issued by the Department of Health and Human Services for technical support for cancer communications research and program evaluation within the Office of Cancer Communications, National Cancer Institute. Juarez challenges the contracting officer's determination that the protester's and CODA's proposals were essentially technically equal and the agency's evaluation of the offerors' cost proposals.

We deny the protest.

The RFP, issued as a total small business set-aside, sought technical and business (cost) proposals for a cost-plus-fixed-fee contract. The RFP required 49,000 direct labor hours to perform the tasks delineated in the solicitation's statement of work, including specified evaluation tasks. Section M of the RFP set out the following technical evaluation factors for award: technical approach (worth 45 percent of the available 1,000 technical evaluation points); capability and resources of the firm

(worth 30 percent); and competence and availability of personnel (worth 25 percent). The RFP provided that the technical evaluation factors were to be more important than cost, but that if two or more offerors' proposals were approximately equal in technical ability, cost might become a significant factor in determining award.

Five proposals were received in response to the RFP; only the proposals submitted by Juarez and CODA were included in the competitive range. Discussions were held with the two offerors and best and final offers (BAFO) submitted. Juarez proposed 44,000 professional and 5,000 nonprofessional labor hours for the required 49,000 labor hours, as compared to CODA's proposal of 39,000 professional and 10,000 nonprofessional hours. Juarez's proposal also included additional labor hours to conduct certain evaluation tasks included in the RFP's statement of work, which were included in Juarez's cost proposal as outside services under other direct costs.

The Juarez BAFO [DELETED] received a technical score of 848 out of the 1,000 points available; CODA's BAFO (at \$3.16 million) received a technical score of 841 points. CODA's proposal received the highest score (7 points higher than Juarez's proposal) for technical approach, the RFP's most important technical evaluation factor. Both offerors' proposals received the same score under the capability factor. Juarez's proposal received a higher technical point score (14 points) than the CODA proposal for personnel, the least important factor.

Under the technical approach factor, the evaluators found that Juarez's proposal provided a strong technical approach, but that it offered only a limited focus in response to discussion questions about special populations and provided "textbook" descriptions of proposed outcome evaluation programs without any innovation or relevant samples; a concern was noted regarding the low level of effort to be provided by certain experts. CODA's proposal was rated high under the technical approach factor for its proposed outcome evaluation schema and full-coverage evaluation program, as well as its strong understanding and experience in working with diverse populations; proposal weaknesses were cited for failing to give more comprehensive descriptions of certain specific experience (although good quality samples of work related to agency programs were submitted) and of low literacy issues.

Under the personnel factor, the Juarez proposal was credited for providing lists of task assignments and management of work loads, but the evaluators cited as a weakness the project director's limited availability for the first 6 months of the contract. Under the personnel factor, the evaluators found CODA's proposal's skills matrix, which correlated tasks with staff expertise, to be a strength, but the proposal was downgraded for failing to demonstrate the relevant evaluation

experience of the proposed project director¹ and fully explain the role of consultants. Although CODA proposed the 49,000 labor hours required by the RFP, a concern was noted regarding the sufficiency of staff time proposed.

The agency's source evaluation group (SEG) recommended award to Juarez based on "the superior Project Director proposed, and on the level of professional staff proposed to be devoted to the project." The contracting officer, who was present at the SEG deliberations, reviewed the technical evaluation record and conducted a "best buy" analysis, finding that on the basis of the large cost difference and slight technical score difference between the proposals award should be made to the lower-cost offeror, CODA, since the two proposals were essentially equal in technical merit. The contracting officer's determination was approved and award was made to CODA on July 31, 1995. After Juarez's agency-level protest was denied, this protest was filed.

Juarez principally contends that the contracting officer unreasonably failed to accept the SEG recommendation for award to Juarez and improperly concluded, on the basis of technical point scores, that the two proposals were essentially technically equal. In particular, the protester contends that its proposal should have been chosen for award, despite its higher cost, because it proposed to use additional labor hours beyond those required by the RFP to perform the statement of work's evaluation tasks (including the costs for the additional labor in its other direct costs) and proposed more professional (and less nonprofessional) labor hours than did the awardee. Juarez states that since the RFP gave greater weight to technical evaluation factors than cost and its proposal was rated higher technically by the SEG, the award is improper.

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. In exercising that discretion, they are subject only to the tests of rationality and consistency with the established evaluation factors. See Mevatec Corp., B-260419, May 26, 1995, 95-2 CPD ¶ 33. A source selection official's deviation from the recommendation of a technical evaluation panel provides no basis to upset an award unless the source selection official's award decision itself lacks a reasonable basis. See Gary Bailey Eng'g Consultants, B-233438, Mar. 10, 1989, 89-1 CPD ¶ 263.

¹The record shows that after award, due to the unexpected unavailability of CODA's proposed project director, another individual (who Juarez acknowledges as having more experience) was substituted and is concurrently performing as project director under the contract.

Juarez contends that the contracting officer limited his determination that the proposals were essentially technically equal to a review of the point scores alone. Point scores can be used as an informational guide in source selection decision-making, and there was only a .7-percent difference in the total technical scores between the proposals, which reasonably suggests that proposals could properly be viewed as technically equal, notwithstanding the SEG's recommendation. The record shows that the contracting officer reviewed the full technical evaluation record (including the strengths, weaknesses, and concerns cited for each of the two proposals), as well as the resulting technical point scores and the cost evaluation results. The contracting officer's award determination statement concluding that the proposals, on balance, were essentially technically equal, cites the slight point differential and provides a reasoned analysis pointing out that while the Juarez proposal was rated higher in the least important technical evaluation factor, personnel, CODA's proposal was rated higher under the most important technical evaluation factor, technical approach.

In making the award selection, the contracting officer was aware that the SEG downgraded the CODA proposal for concerns regarding the project director's perceived lack of evaluation experience and proposed staff time, but the record evidences that these problems were only relative weaknesses in CODA's otherwise strong proposal, as indicated by its relatively high overall rating. We note that Juarez, in its protest submissions, pinpoints each of the concerns raised by the SEG about CODA's proposal; however, the protester fails to rebut or even acknowledge any of the concerns or weaknesses cited in its own proposal (such as Juarez's failure to adequately respond to the RFP's outcome evaluation and special population requirements), which resulted in a downgrading of its own proposal to a level essentially equal to CODA's proposal.

Juarez contends that the agency failed to recognize the difference in, or give technical credit for, the offerors' labor hour approaches (i.e., Juarez proposed, at a higher rate, more professional hours and less nonprofessional hours than did CODA and also proposed additional hours to perform certain tasks). The record shows, however, that the agency recognized the difference in the proposals' professional/nonprofessional labor hour approaches and regarded it to be a strength in Juarez's proposal. The agency was not required to give the difference any greater weight than that since the RFP did not require a specific allocation of professional and nonprofessional staff within that total amount of hours and did not state that additional credit would be given for the proposal of a higher percentage of professional labor hours.

In sum, the contracting officer reasonably determined that the proposals were essentially equal and that the slightly higher technical rating (.7 percent) of the Juarez proposal did not justify award at the substantial [DELETED] cost premium. The record also shows that the decision was made in accordance with the RFP's

evaluation scheme, which specifically provided that if offers were approximately equal in technical merit, cost could become a significant factor for award. See Ogilvy, Adams & Rinehart, B-246172.2, Apr. 1, 1992, 92-1 CPD ¶ 332.

The protester also challenges the agency's cost evaluation of the proposals. Juarez contends that the agency failed to conduct a proper cost realism analysis of the awardee's proposal because the independent audits of CODA's proposal did not take into consideration the fact that the CODA proposal failed to provide specific costs for certain sample focus group studies that were to be considered in preparing the cost proposals as part of the RFP's stated budget assumptions. Juarez contends that the omitted focus group costs amount to approximately \$230,000. The agency responds that the RFP did not require the offerors' cost proposals to specifically state the proposed costs for each stated budget assumption. The agency also reports that even if the \$230,000 omission suggested by the protester (although neither the agency nor the awardee concedes the accuracy of that amount) is added to CODA's proposed costs, the resulting cost differential between the proposals would still be so substantial (representing at least a [DELETED] cost savings) that the award decision would remain unchanged.² Given that the proposals were reasonably found technically equal, we agree with the agency that the protester was not prejudiced, even assuming that these costs should have been included in CODA's cost proposal. See Barfield Assocs., Inc., B-238992, Mar. 29, 1990, 90-1 CPD ¶ 342; Alascom, Inc.--Recon., B-227074.2 et al., Sept. 16, 1987, 87-2 CPD ¶ 257.

The protest is denied.

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²The protester points out that the agency's report, stating that the award would still be made to CODA even if the protester's cost realism challenge had merit, is signed by the contracting officer and not the individual (i.e., the contracting officer's supervisor) who signed the source selection determination. The agency, however, has advised our Office that both individuals have the authority to bind the government on this contract action and that the contracting officer's statement represents the agency's position.