



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

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Matter of: Research for Better Schools, Inc.

File: B-270774.3

Date: June 17, 1996

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Jeffrey Morhardt, Esq., Department of Education, for the agency.
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DIGEST

1. Protest that awardee's proposal does not comply with applicable statute relating to the composition and authority of proposed governing board is denied where record shows awardee proposed board meeting all statutory requirements.
2. Allegations relating to awardee's compliance with material informational requirements in solicitation are denied where record shows that, in fact, awardee provided all necessary information.
3. Protest that agency source selection official relied on documents that failed to accurately embody the opinions of the agency's technical evaluators is denied where record shows that documents presented to source selection official contained the consensus conclusions of the technical evaluators.
4. Agency properly did not advise protester during discussions that aspects of its proposal were not viewed as favorably as same aspects of awardee's proposal; such relative weaknesses are not matters for discussion, as they do not relate to deficiencies found to protester's proposal, but rather to fundamental differences in the offerors' proposed solutions.

DECISION

Research for Better Schools, Inc. (RBS) protests the award of a contract to Temple University under request for proposals (RFP) No. 95-040, issued by the Department of Education (DOE) for the operation of a mid-Atlantic regional educational

laboratory. RBS contends that the agency improperly evaluated proposals, failed to engage in adequate discussions and made an irrational award decision.

We deny the protest.

The RFP contemplated the award of a 5-year cost reimbursement contract that requires the contractor to perform research and implement broad-based, systemic school improvement strategies.¹ Award was to be made to the firm submitting the proposal deemed to offer the best overall value to the government, considering price and numerous technical factors. The technical factors (and relative weights based on a possible 125 point evaluation scale) were as follows: quality of technical approach (35 points); quality of management plan (25 points); quality of personnel (20 points); corporate performance and capability (20 points); and quality of the offeror's proposed specialty area (25 points). (Within each evaluation area, the points were further divided among various subfactors.)

DOE received three initial proposals including RBS' and Temple's (the third was excluded from the competitive range and is not relevant here). The agency conducted discussions, solicited technical proposal revisions, obtained best and final offers (BAFO) and then evaluated the BAFOs. RBS' BAFO received an average technical score of 94 points and Temple's a score of 93.5 points; RBS' evaluated price was \$21,197,005 and Temple's \$21,000,000. On the basis of these evaluation results, the agency made award to Temple, finding that its proposal represented the best overall value to the government. In this regard, the agency found that, despite its slightly lower average technical point score, Temple's proposal, in fact, was technically superior to RBS'. The agency also concluded that Temple's proposal offered the better value from a cost standpoint because its evaluated cost was lower than RBS' and because it offered more professional hours over the life of the contract.

COMPLIANCE WITH 20 U.S.C. § 6041

RBS maintains that Temple's regional laboratory will not comply with the terms of 20 U.S.C. § 6041(h)(6) (1994), which requires each laboratory to establish a governing board comprised of representatives from various constituent organizations and groups (such as teachers, state educational representatives and commissioners, and educational researchers). The statute further requires that the governing board be "the sole entity" responsible for guiding and directing the

¹This contract is one of 10 awarded to run regional laboratories throughout the United States. DOE issued a single RFP for all 10 contracts, but essentially conducted separate acquisitions for each region. This decision concerns only the agency's acquisition in the mid-Atlantic region.

regional laboratory, determining the regional agenda, and performing various oversight functions. RBS maintains that Temple's proposed laboratory will not be compliant with the statute because the laboratory is to be located within the organizational structure of the university, and will utilize university facilities and personnel. RBS concludes that the laboratory therefore ultimately will be subject to the authority of the Temple University Board of Trustees.

This contention is without merit. Temple's proposal takes no exception to the governing board requirement. On the contrary, the firm's proposal describes in detail its plan for the establishment of the board and the selection of its members, as well as the governance and operations of the board on an ongoing basis. Temple's proposal also specifically states that:

"The Governing Board of Directors . . . will have sole overall responsibility for establishing the programmatic goals of the Laboratory, and for directing and overseeing the work of the [laboratory] in fulfilling the terms and conditions of the award. . . . The Board will also oversee and evaluate the performance of the Laboratory's Executive Director, Executive directorate, and key laboratory staff on an annual basis."

The proposal goes on to describe the responsibilities of the board, including evaluation of the laboratory's overall programmatic direction and approval, oversight, and direction of the laboratory's specific programs and projects.

The essence of RBS' argument is that Temple's laboratory cannot be governed "solely" by the board because the resources of the laboratory are located within or are owned in part by Temple University. However, there is nothing in the statute which precludes an entity that is located within, or is a part of, a university from meeting the statutory requirement of having an independent board, see The Regional Laboratory for Educational Improvement of the Northeast and Islands, Inc. B-270774 et al., Apr. 22, 1996, 96-1 CPD ¶ 204, and the record does not show that there is any legal impediment to an agreement between the laboratory and the university that vests the necessary authority in the proposed governing board. Since Temple's proposal does not take exception to the requirements of the statute, and in fact goes to some length to explain the establishment and functioning of its outside board, we have no basis to find its proposed laboratory noncompliant with the statute.

FAILURE TO MEET MATERIAL RFP REQUIREMENTS

RBS contends that Temple's proposal failed to meet numerous material informational requirements.² We have reviewed all of RBS' allegations in this regard and find them to be without merit. We discuss two of RBS' arguments below.

50-Percent Time Commitment

RBS maintains that Temple failed to include information in its proposal showing that all of its key employees were committed to work on the contract for at least 50 percent of their time, as required by the RFP. In support of its contention, RBS notes that Temple's proposal lists some 40 professionals as "key" employees, but fails to include information relating to the time commitments of some 26 of these individuals. RBS contends that, without this information, Temple's proposal is technically unacceptable, and thus ineligible for award.

RBS' allegation is based on an unreasonable reading of Temple's proposal. The RFP required firms to propose key staff who had committed at least 50 percent of their time to the contract, but went on to describe key staff as ". . .the executive director and all those who will direct major laboratory programs or functions, e.g. director of planning, etc." Temple's proposal contains a manloading chart that is captioned "time commitments of key personnel," but this chart lists not only those individuals who will be responsible for directing major laboratory programs or functions, but also all of Temple's other professional and support personnel, including, for example, clerical staff that are not specifically identified. The chart does contain a separate section entitled "laboratory management unit" and under this subheading are listed the individuals who will be responsible for directing the laboratory's major programs and functions. The laboratory management unit includes four individuals who are clearly identified as the personnel responsible for managing the laboratory's operations--the executive director, two associate directors, and one assistant director responsible for administration and management services functions. The chart goes on to specify the time commitments of these individuals;³

²RBS contends that Temple's proposal failed to offer key personnel meeting the RFP requirement that such employees commit at least 50 percent of their time to contract performance; did not identify the other time commitments of its key personnel; did not include letters of commitment from all of its key employees; did not include information necessary for a proper past performance evaluation; and did not include evidence of its subcontractors' legal commitment to cap their overhead cost rates at [deleted].

³Not all of the key employees' time is designated as committed to laboratory
(continued...)

each employee is committed to work on the contract in excess of 50 percent of his or her time. While Temple's chart does suggest that all individuals listed are key employees, it is clear from the solicitation's definition of key employee that only those individuals involved in the direction or management of the laboratory are to be considered key. Since Temple's offer clearly shows that its managing employees are in fact committed to work at least 50 percent of their time in performing the contract, Temple's offer meets the 50-percent requirement.

Cap on Subcontractors' Overhead Rates

RBS contends that the agency unreasonably concluded that Temple's subcontractors' overhead rates were capped at [deleted] on the basis that Temple proposed to cap its own rate at [deleted], since the proposal did not include separate documentation showing that the subcontractors had agreed to the cap. According to RBS, the agency should have performed a cost realism evaluation and adjusted Temple's evaluated cost upward to account for the difference between Temple's subcontractors' ordinary overhead rates and the [deleted] rate that the agency used for establishing Temple's evaluated cost.

This argument is without merit. The agency, in requesting Temple's BAFO, specifically asked it to clarify whether its subcontractors' overhead rates would be capped at [deleted] for the contract's period of performance. In response Temple stated "[y]es, the overhead rate for all subcontractors will be CAPPED at [deleted] throughout the five years of the contract. All subcontractors have agreed to the [deleted] cap." Based on this language, the agency reasonably concluded that both Temple's and its subcontractors' overhead rates would be capped at [deleted].

TECHNICAL EVALUATION PROCESS AND RESULTS

RBS argues that the source selection was based on misleading information--various memoranda prepared by an individual designated as the agency's technical evaluation facilitator--that allegedly does not accurately embody the evaluation results found in the individual evaluation worksheets.⁴ More specifically, RBS

³(...continued)

management; their time is divided between management functions and research and development activities.

⁴The record shows that, consistent with its source selection plan, the agency provided copies of the initial proposals to the members of the technical evaluation team; the evaluators read the proposals and prepared detailed individual evaluation worksheets for each of the evaluation criteria. After reviewing the initial proposals, (continued...)

disagrees with the emphasis given to the respective strengths and weaknesses of the two proposals, as initially identified by the individual evaluators. For example, RBS maintains that the facilitator's memoranda fail to adequately convey the deficiencies found with Temple's proposed management strategy. (Some of the evaluators downgraded Temple's proposal for what they perceived as a weak management strategy associated with its technical approach.)⁵

There is nothing in the record to suggest that the facilitator's memoranda inaccurately report the consensus views of the evaluators. The focus of those memoranda is the debate among the evaluators regarding the comparative benefits of the proposals--two evaluators originally preferred the RBS offer while two preferred Temple's--and, ultimately, the basis for the entire group's view that the Temple proposal offered the greatest technical merit. While recognizing that Temple's proposal contained some weaknesses (and RBS' proposal some strengths), the evaluators concluded that Temple's basic technical approach of forming a coalition of educational institutions and individual researchers was preferable to RBS' essentially "self-contained" laboratory approach. The shift in emphasis between the views expressed by the individual evaluators and those found in the facilitator's memoranda reflects no more than the process of forming a consensus opinion from competing views; as the process of achieving consensus necessarily involves compromise, there is nothing inherently improper in there being less than complete correlation between each individual evaluation worksheet and the consensus materials. See MVM, Inc.; Burns Int'l Sec. Servs., 73 Comp. Gen. 124 (1994), 94-1 CPD ¶ 279; DUAL, Inc., B-252593.3, Aug. 31, 1993, 93-2 CPD ¶ 190. Since there is nothing in the record to suggest that the facilitator's memoranda inaccurately embody the consensus reached by the evaluators, we find no basis to

⁴(...continued)

the evaluators forwarded questions to the agency's technical evaluation facilitator, who in turn prepared discussion questions for each offeror. The technical evaluators then were provided with the offerors' responses to the discussion questions; after reviewing these materials, the evaluators prepared revised individual evaluation sheets that were forwarded to the technical evaluation facilitator. The facilitator then convened a telephone conference among the evaluators for the purpose of their arriving at a consensus rating for each proposal, and also to provide the evaluators an opportunity to comparatively discuss the relative merits of the two offers. The results of this conference call are embodied in the memoranda relied on by the source selection official.

⁵RBS takes issue with numerous specific conclusions in the facilitator's memoranda. For the reasons discussed, we find that these conclusions are not inconsistent with the views of the evaluators overall.

object to the source selection official's basing the award decision on those memoranda.

RBS also maintains that the facilitator's memoranda improperly recommended award to Temple based on factors outside the RFP or, alternatively, accorded too much weight to one of the subfactors. The evaluators ultimately preferred Temple's proposal because it reflected "vision" in its method and strategy for conducting research and development activities. The evaluators commented favorably on Temple's proposal to [deleted]. (In contrast, the evaluators found that RBS' proposal lacked "vision" because, as the incumbent, RBS had proposed to build on its existing programs and had offered essentially a "self-contained" laboratory rather than one involving partnering arrangements with other institutions throughout the region.) RBS maintains that "vision" was not one of the stated evaluation criteria and thus should not have been the basis for preferring Temple's proposal. Alternatively, RBS asserts, to the extent "vision" is encompassed by the quality of technical approach factor, the facilitator improperly relied on Temple's advantage under the first of the three stated subfactors, which was worth only 15 points, rather than on RBS' advantage under the other two subfactors, which were worth 20 points combined.

We have no basis to object to the agency's reliance on "vision" in discriminating between the proposed approaches. While the protester is correct that the RFP did not specify "vision" as a discrete evaluation criterion, we think this consideration is reasonably encompassed in the first subfactor under the quality of technical approach criterion. That subfactor required the agency to consider:

"The extent to which the proposed work as a whole constitutes a coherent, sustained program of development and applied research in the field using a well-conceptualized and theoretically sound framework."

While the evaluators apparently used the term "vision" for descriptive purposes, it is clear from a reading of the evaluation materials that they were referring to Temple's proposed program of applied research and development as it would be implemented throughout the region. The panel members agreed that Temple offered "approaches . . . for research and development [that were] novel, challenging, and replete with fruitful strategies grounded in basic research." The evaluators also agreed that Temple offered to implement (or 'scale up') numerous well documented and validated programs throughout the region and "[deleted]." Agencies properly may consider unstated evaluation elements that are reasonably related to or encompassed by the stated criteria. ORI Servs. Corp., B-261225, July 28, 1995, 95-2 CPD ¶ 55.

In addition, the fact that the other two subfactors under the quality of technical approach criterion together were weighted more heavily than the first subfactor is immaterial. There is no requirement that the key award discriminator between offers be the most heavily weighted factors. Corvac, Inc., B-254222, Dec. 2, 1993, 93-2 CPD ¶ 294.

DISCUSSIONS

RBS maintains that the agency failed to conduct meaningful discussions with it. In this respect, RBS focuses on the criticisms made by the agency evaluators in connection with its proposal, including its lack of "vision," its status quo approach which built upon its earlier work, its failure to propose partnering arrangements with outside institutions which made its approach relatively insular and conservative, and its failure to optimally address the needs of the region, especially in urban areas. RBS maintains that if the agency had discussed these matters, it would have changed its proposed approach and emphasis.

The noted concerns in no way reflected a finding of deficiencies in the RBS proposals. Rather, the criticisms noted were identified primarily in connection with the evaluators' comparative assessment of the two proposals for purposes of choosing between the firms' respective technical approaches. Thus, for example, the observation that RBS' proposal lacked "vision" did not reflect a finding that RBS' proposal was somehow deficient or unacceptable; it merely represented a finding that Temple's proposal showed greater promise for contract performance. Agencies are not required to--and in fact ordinarily should not--discuss elements of a competitor's technical approach that render it comparatively superior; such matters are not properly for discussion. Bioqual, Inc., B-259732.2; B-259732.3, May 15, 1995, 95-1 CPD ¶ 243.

SOURCE SELECTION

RBS challenges the award decision on grounds that the agency incorrectly found that Temple's proposal was lower in cost, that it had offered approximately 62,000 more professional hours than RBS offered, and that there was no basis for finding Temple's proposal technically superior in light of RBS' slightly higher technical point score.

In making source selections, agencies enjoy broad discretion to make cost/technical tradeoffs, and such judgments are subject only to the test of rationality and consistency with the solicitation's stated evaluation and award criteria. Information Sys. Networks, Inc., B-254384.3, Jan. 21, 1994, 94-1 CPD ¶ 27. Evaluation point scores are no more than guidelines for intelligent decision making; they do not automatically mandate the selection of a particular proposal. Porter/Novelli, B-258831, Feb. 21, 1995, 95-1 CPD ¶ 101. The question, ultimately, is whether the

record supports the agency's conclusions regarding the relative merits of the proposals.

RBS' argument regarding the agency's conclusion that Temple's proposal was lower in cost is based on RBS' position that Temple's subcontractors did not agree to cap their overhead rates at [deleted]. As discussed above, however, we find that Temple's proposal did effectively cap its subcontractors' overhead rates. There is thus no basis for questioning the agency's reliance on Temple's lower evaluated cost in its source selection.

With respect to the conclusion that Temple's proposal was technically superior, the record shows that the evaluators assigned virtually equal scores to the two proposals, with only one-half point separating the two. The record further reflects that, during the conference discussion between the evaluators, they reached consensus that Temple's proposal was technically superior notwithstanding its slightly lower point score. As discussed, the evaluators preferred the Temple proposal primarily because of the potential for substantial improvement in student achievement for the region; this conclusion was based primarily on Temple's coalition approach, and its proposed research and development initiatives that, in the evaluators' opinion, represented a positive departure from the status quo nature of RBS' proposal. The evaluators also concluded that, with close agency monitoring, the central deficiency in Temple's proposal—its weak management strategy—could be overcome; they therefore concluded that the Temple proposal was superior to RBS'. Since numeric point scores are merely guides to intelligent decision making, they do not necessarily establish that a particular firm is technically superior or mandate selection of a particular proposal for award. Contract Servs., Inc., B-251761.4, July 20, 1993, 93-2 CPD ¶ 40. RBS has not shown that the evaluators' central conclusions regarding the relative strengths and weaknesses of the proposals are not supported by the record. In addition, as discussed above, the evaluators' conclusions were consistent with the solicitation's evaluation criteria. Thus, there is no basis for questioning the agency's conclusion that Temple's offer was slightly superior from a technical standpoint.

Finally, we need not decide the validity of RBS' contention that, had the agency properly calculated professional hours, it would have found that Temple did not offer more hours. Even if RBS were correct, this would eliminate only one of Temple's evaluation advantages. Given our findings above—that Temple's offer was

properly found technically superior and lower in cost--there is no basis to conclude that the agency's source selection decision would have been different without the professional hours advantage.

The protest is denied.

Comptroller General
of the United States