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**Comptroller General
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**United States General Accounting Office
Washington, DC 20548**

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Decision

Matter of: AdapTech General Scientific, LLC

File: B-293867

Date: June 4, 2004

John E. Jensen, Esq., Devon E. Hewitt, Esq., and Daniel S. Herzfeld, Esq., Shaw Pittman, for the protester.

Claude P. Goddard, Jr., Esq., and Mary Katherine Holohan, Esq., Wickwire Gavin, for Resource Management Concepts, Inc., an intervenor.

Mitzi S. Phalen, Esq., Naval Air Systems Command, for the agency.

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

DIGEST

1. Where underlying evaluation record confirms agency's finding of no significant difference in technical quality between protester's and awardee's equally-rated proposals, source selection authority reasonably concluded that awardee's lower-priced proposal represented "best value" to the government.

2. Allegation of improper "bait and switch" scheme by awardee based on job offers to incumbent key and non-key personnel is denied where there is no showing that awardee misrepresented availability of its proposed key personnel; job offers were made after incumbent personnel contacted awardee post-award; contract includes key personnel substitution provision; although awardee plans to request substitution of 3 of 11 key personnel, all but one proposed key employee—who left the firm—is available to perform if substitution is not approved; and potential substitution of non-key personnel could have no impact on evaluation, which focused on key, not non-key, personnel qualifications.

DECISION

AdapTech General Scientific, LLC protests the award of a contract to Resource Management Concepts, Inc. (RMC) under request for proposals (RFP) No. N00421-03-R-0114, issued by the Naval Air Warfare Center Aircraft Division as a competitive section 8(a) set-aside for support services. AdapTech challenges the agency's source selection methodology and asserts that RMC engaged in an improper "bait and switch" of its proposed personnel.

We deny the protest.

The RFP sought proposals to provide engineering, analytical, and program management support services at the agency's facility in Patuxent River, Maryland. The RFP called for 68 personnel in 10 labor categories, including the project manager and technical expert, both of which were identified as key personnel. All labor categories had minimum education and experience requirements, and offerors were required to identify both key and non-key personnel on a matrix showing education, years of experience, and experience related to the statement of work. In addition, proposals were to include a 1-page narrative demonstrating each key employee's specific experience and specialized qualifications. The RFP contemplated the award of an indefinite-delivery/indefinite-quantity time and materials contract for a base year, with 4 option years.

Proposals were to be evaluated on the basis of price and offeror capability, the latter factor including the following subfactors (in descending order of importance): relevant corporate experience, (key) personnel resources, and past performance.¹ Offeror capability was considered significantly more important than price. The technical evaluation was intended to result in a level of confidence assessment rating (LOCAR)—ranging from low-minus to high-plus—which represented the agency's subjective assessment of the likelihood that an offeror would comply with the contract requirements. Award was to be made to the offeror whose proposal represented the "best value" to the government.

Five offerors, including AdapTech and RMC, submitted proposals that were evaluated by separate technical and price evaluation teams. The final evaluation results for AdapTech and RMC were as follows:

	AdapTech	RMC
Offeror Capability		
Corporate Experience	Excellent	Excellent
Personnel Resources	Excellent	Excellent
Past Performance	Excellent	Excellent
LOCAR	High +	High +
Price	\$26,760,525	\$26,368,901

In making his award determination, the source selection authority (SSA) consulted with the contracting officer and reviewed the results of the technical evaluation, the business clearance memorandum, and the reports of the technical and price evaluation teams. Based on this information, and in view of the offerors' identical

¹ The RFP also included an optional oral presentation, which the agency did not utilize.

high+ LOCAR ratings, the SSA concluded that RMC's lower price made its proposal the best value, and thus made award to RMC. After receiving a debriefing, AdapTech filed this protest.

EVALUATION/SOURCE SELECTION

AdapTech asserts that the SSA improperly made a mechanical best value decision based solely on the equal summary adjectival ratings assigned to each offeror's proposal. In AdapTech's view, its proposal should have been found substantively superior to RMC's in the areas of personnel resources and past performance.² Noting that the technical factors were of greater importance than price, AdapTech asserts that, had the SSA compared the substantive merits of the proposals, he would have awarded it the contract.

In reviewing a protest of an agency's evaluation of proposals and source selection decision, our review is confined to a determination of whether the agency acted reasonably and consistent with the terms of the solicitation and applicable statutes and regulations. United Def. LP, B-286925.3 et al., Apr. 9, 2001, 2001 CPD ¶ 75 at 10-11.

The evaluation and source selection were unobjectionable. The record does not support the protester's assertion that the SSA relied solely on the subfactor adjectival ratings and the LOCAR rating, without considering the substantive differences in the proposals. Rather, the record shows that he reviewed the business clearance memorandum, which examined the underlying scores of each evaluator; the reports of the technical and price evaluation teams; the evaluation write-ups that explained the rationale behind the assigned adjectival ratings; and the evaluation team's LOCAR scores, to ensure that the LOCAR scores he ultimately assigned were appropriate. Source Selection Decision; SSA Declaration, ¶ 4. Nothing in these underlying evaluations establishes that AdapTech's proposal was superior to RMC's in any area. In fact, although the consensus evaluation assigned AdapTech's proposal overall excellent scores under each technical subfactor, RMC's proposal received consistently higher individual ratings. For example, two of the three evaluators rated AdapTech's proposal as simply good under the personnel subfactor,

² In its comments on the agency report, AdapTech asserts that its superiority over RMC under the past performance factor is shown by the fact that none of its performance reports was below excellent or good/excellent, while RMC's past performance was rated only good under some reports. AdapTech Comments at 8. This allegation is without merit. While AdapTech's past performance reports included four excellent ratings and one good/excellent rating, RMC and its team had seven excellent, one good/excellent, and three good ratings. Based on these scores, the agency reasonably could conclude that AdapTech's past performance was not superior to RMC's.

while all three evaluated RMC's proposal as excellent under this subfactor. Thus, on this record, there was no basis for the SSA to conclude that AdapTech's proposal was superior to RMC's.

While AdapTech identifies two discriminators under the personnel subfactor, neither provides a basis for finding its proposal was superior to RMC's. AdapTech asserts that its proposal was superior to RMC's because it proposed no contingent hires, while RMC proposed [deleted]. Agency Report (AR) Tab 11 at 3-4, Tab 12 at 10-11. We disagree. The RFP did not require that all proposed personnel be currently employed by the offeror, and the source selection plan provided for a rating of excellent where the majority of the personnel were currently employed. AR Tab 4 at 40. Given this evaluation starting point, the agency reasonably could determine that a [deleted] did not constitute a meaningful distinction between the proposals.³ Indeed, this is precisely what the agency determined. In finding both proposals excellent, the SSA specifically considered RMC's proposal of [deleted], and concluded that it was offset by the mix of specialty expertise of RMC's key personnel. The SSA further found in this regard that, while AdapTech proposed no contingent hires, it also had no noted specialty expertise. SSA Declaration at ¶ 5.

AdapTech suggests that its proposal should have been rated superior to RMC's under the personnel subfactor because one evaluator commented that RMC's specialty expertise mix was subject to an overall "theme" in one area, and did not make a similar comment about AdapTech's proposal. AdapTech Comments at 9, n.4. Again, we disagree. When a selection official determines that proposals are technically equal, it does not mean that the proposals are identical in every respect; one may be superior to the other in a variety of areas. Rather, such a finding means that, overall, there is no meaningful difference in what the proposals have to offer. Schaeffer Eye Center, B-284268, Mar. 20, 2000, 2000 CPD ¶ 53 at 5. Thus, the mere fact that AdapTech's proposal may be superior to RMC's in one identifiable respect under an evaluation subfactor does not establish a flaw in the agency's finding that the proposals were equivalent overall. In any case, it is not clear to us how the cited comment indicates that the evaluator considered RMC's proposal weak or deficient compared to AdapTech's, particularly given that the evaluator rated both proposals as excellent. AR, Tab 21. Moreover, the other two evaluators did not make a similar comment about RMC's proposal, and rated the proposal as excellent under this

³ As discussed below, RMC plans to substitute up to three of its proposed key personnel with comparably qualified incumbent personnel. We do not believe that these substitutions, if allowed, call into question the validity of the RMC evaluation. In this regard, as stated, an offeror's proposal could be rated excellent if a majority of its personnel exceeded the requirements, and the substitution of three personnel would leave RMC still proposing a majority of excellent-rated key personnel. Further, the proposed substitutes are incumbent personnel who were also rated as excellent in the evaluation.

subfactor while rating AdapTech's as only good, citing its limited breadth of expertise for the majority of its proposed technical experts. We conclude that the SSA reasonably found that AdapTech's proposal was not superior to RMC's in this area.

BAIT AND SWITCH

AdapTech alleges that RMC misrepresented the availability of its proposed key personnel, and that its proposal should be rejected for this reason. As evidence of RMC's misrepresentation of availability, AdapTech cites RMC's contacting and extending job offers to 18 incumbent AdapTech personnel, including the project manager and five others identified as key personnel in AdapTech's proposal. RMC acknowledges that it is seeking the substitution of up to 3 of its 11 key personnel—its program manager and up to two technical experts.⁴

An offeror may not propose to use specific personnel that it does not expect to use during contract performance; doing so would have an adverse effect on the integrity of the competitive procurement system and generally provide a basis for proposal rejection. CBIS Fed. Inc., B-245844.2, Mar. 27, 1992, 92-1 CPD ¶ 308 at 5. The elements of such an impermissible bait and switch are as follows: (1) the awardee represented in its proposal that it would rely on specified personnel in performing the services; (2) the agency relied on this representation in evaluating the proposal; and (3) it was foreseeable that the individuals named in the proposal would not be available to perform the contract work. Ann Riley & Assocs., Ltd.—Recon., B-271741.3, Mar. 10, 1997, 97-1 CPD ¶ 122 at 2-3.

As required by the RFP, RMC proposed specific individuals for the 11 key personnel positions and the agency relied on these representations in evaluating the proposal. RFP §§ L.2.2.b.2 and M.2.B. However, under the circumstances of this case, the firm's plan to substitute some of its key personnel provides no basis for concluding that it misrepresented their availability for this contract. In this regard, all 11 of the proposed key personnel were RMC's or its subcontractor's employees and, according to RMC, it intends to provide all but one of them to perform, if the agency does not allow substitution. Declaration of RMC Controller at ¶¶ 7-8. The one employee who RMC claims cannot be provided left RMC's employ on March 4, 2004, less than 1 week before the agency awarded RMC the contract. There is no evidence that RMC anticipated this employee's leaving prior to termination of his employment, and substitution of such key personnel is specifically provided for in the RFP. RFP § H, clause 5252.237-9501. Thus, the need to replace this employee does not

⁴ It is not clear from the record whether RMC intends to replace two of its key personnel in the technical expert labor category or only one technical expert who has left its employ. For purposes of this decision, we assume that RMC plans to replace both of these key personnel.

establish that RMC misrepresented his availability. Likewise, since award was made on the basis of initial proposals, eliminating an opportunity to advise the agency of this change in a revised proposal, and award was made shortly after the employee's departure, we do not believe RMC's failure to notify the agency implies an intent to misrepresent the availability of its proposed personnel. See Unisys Corp., B-242897, June 18, 1991, 91-1 CPD ¶ 577 at 4.

We reach the same conclusion with regard to RMC's planned substitution of its proposed program manager and the other technical expert. After contract award, the incumbent program manager contacted RMC offering to provide information on incumbent employees. Declaration of Human Resources Director, at ¶¶ 7-8. By that time, RMC had already received unsolicited resumes from most of the incumbent personnel. Id., ¶ 8. Subsequently, he met with RMC management and expressed an interest in working for RMC on the contract, but advised that, due to health considerations, he was unable to work full time. Declaration of RMC Controller, ¶¶ 2, 4. Based on his history with the incumbent contract, his relationship with the agency, and other qualifications, RMC offered him a position as a program manager on the new contract.⁵ Id., ¶ 5. RMC plans to offer him as a substitute for its proposed program manager, subject to the agency's approval, and will use its original program manager if the substitution is unacceptable. Id., ¶ 6. Similarly, with regard to a third key employee, RMC explains that the employee is equally qualified and that it will seek the agency's authorization for the replacement. Id., ¶ 9. If the agency refuses to allow this substitution, RMC intends to use its proposed key personnel. Id., ¶¶ 6-9. As with the terminated employee, there is nothing in the record to indicate that RMC intended to substitute its program manager and the other technical expert prior to the incumbent employees' (post-award) contact with RMC seeking employment. The substitution of incumbent employees for proposed employees with an agency's permission, and where there has been no misrepresentation, is not an improper bait and switch. A&T Eng'g Techs., VECTOR Research Div., B-282670, B-282670.2, Aug. 13, 1999, 99-2 CPD ¶ 37 at 8.⁶

⁵ In fact, RMC had offered the program manager the opportunity to be proposed for the position on the RMC team but, when he refused, the firm proposed another individual. However, there is nothing in the record to indicate that a substitution was planned.

⁶ Moreover, while the agency relied on the personnel proposed by RMC and rated them excellent, it also rated the incumbent key personnel (proposed by AdapTech) as excellent. Thus, there is no reason to infer that the evaluation would have been any different had RMC either proposed these personnel or specifically proposed to hire qualified incumbent personnel after award of the contract.

AdapTech also notes that an additional 15 incumbent employees, including other key personnel, have been offered employment by RMC and its subcontractors. There is no evidence that RMC has sought approval to substitute these incumbent employees for its proposed personnel, but even if it does so in the future, there would be no basis for finding an improper bait and switch scheme. As with the key personnel discussed above, there is no evidence that RMC intended to substitute these personnel prior to receiving the award; rather, the record shows that the incumbent employees contacted the firm, unsolicited, post-award, seeking employment on the new contract. Declaration of RMC Director of Human Resources at ¶ 8. In addition, there is no evidence that the agency relied on the proposed non-key personnel in its evaluation, an integral element of an improper bait and switch. Ann Riley & Assocs., Ltd.-Recon., supra, at 3. In this regard, while the RFP required that non-key personnel be identified and that they meet minimum qualifications, it did not require the submission of resumes, and non-key personnel were not included as part of the personnel resources evaluation. RFP §§ L.2.2.b.1, M.2.B. Under these circumstances, there is no basis to find a bait and switch.

The protest is denied.

Anthony H. Gamboa
General Counsel