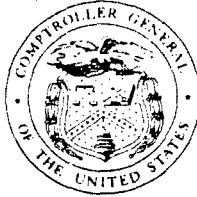


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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

[Protest of HEW contract Award]

FILE: B-197516

DATE: November 26, 1980

MATTER OF: Panuzio/Rees Associates

DIGEST:

1. So long as proposal is not so technically inferior or out of line as to price as to render discussions meaningless, proposal may be included in competitive range.
2. While protester may disagree with evaluators' subjective technical evaluation and resulting point scores, it has not shown that point scores were without rational basis.
3. Extreme differences in scoring and awarding of perfect scores on two technical criteria by one evaluator do not, without more, call validity of scores into question.
4. Where only evidence in record concerning alleged postaward changing of technical point scores is inconsistent statements of protester and agency, protester has not carried burden of proof on that issue.

Panuzio/Rees Associates (P/R) protests the award of a contract to the National Association of Counties Research Division (NACOR) under request for proposals (RFP) No. 144-79-HEW-OS issued by the Department of Health, Education and Welfare (HEW). The contract is for the development of a training workshop for elected county officials to facilitate implementation of section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 701, et seq. (1976), which states that:

"No otherwise qualified individual
* * * shall, solely by reason of his

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handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."

P/R argues that NACOR's proposal was "nonresponsive," that NACOR's technical proposal was deficient in several areas and should have received fewer points, that P/R's technical proposal should have received more points, and that the technical point scores were changed at a postaward debriefing to justify an improper award.

The protest is denied.

Background

The RFP listed the following technical evaluation criteria:

<u>"Criteria</u>	<u>Numerical Weights</u>
Technical Approach to accomplish tasks described in Scope of Work	40
Management Work Plan	20
Offeror's Past Experience in 504 and in training handicapped people	20
Offeror's utilization of minorities, women, and handicapped people in key positions on this contract. Most desirable utilization will be on-board staff. Less desirable utilization will be consultants and/or subcontractors. Least desirable utilization will be the exclusive use of technical advisors or panels.	20

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The solicitation further provided that, while price would be a factor in proposal evaluation, technical excellence would be a "more significant factor."

NACOR's technical score was 68.6 and its price was \$185,698. P/R's technical score was 55.67 and its price was \$189,948. HEW awarded the contract to NACOR as the higher-ranking, lower-priced offeror. At a debriefing, requested by P/R, HEW discovered errors in the technical scores and changed the scores to 66.5 for P/R and 69.5 for NACOR. Since NACOR remained the higher-rated, lower-priced offeror, HEW did not disturb the award.

Responsiveness

P/R argues that NACOR's proposal was "nonresponsive" because it did not include names and resumes of proposed key personnel and because a management plan and job descriptions were added to its proposal after the closing date for initial proposals.

The concept of responsiveness is not applicable to negotiated procurements, because, in a negotiated procurement, deficiencies in proposals reasonably susceptible of being made acceptable may properly be corrected during discussions after the initial closing date for receipt of proposals. Self-Powered Lighting, Ltd., 59 Comp. Gen. 298 (1980), 80-1 CPD 195.

Here, while the points raised by P/R were considered to be deficiencies in NACOR's proposal, they were not considered by HEW to be so serious as to warrant a finding of technical unacceptability. Generally, a proposal may be considered to be within the competitive range so as to require negotiations unless it is so technically inferior or out of line as to price as to render discussions meaningless. 53 Comp. Gen. 1 (1973). Since neither of those circumstances is present here, it was not improper to accept NACOR's initial proposal.

Technical Evaluation

P/R argues that NACOR received too high a technical score and that P/R's score was too low. P/R disputes the results of the evaluation in a number of specific areas.

Before discussing the specific complaints raised by P/R, we note that in resolving cases in which a protester, as here, challenges the validity of a technical evaluation, it is not the function of our Office to evaluate proposals in order to determine which should have been selected for award or to rescore the proposals. The determination of the relative merits of proposals is the responsibility of the procuring agency, since it must bear the burden of any difficulties incurred by reason of a defective evaluation. In light of this, we have held that procuring officials enjoy a reasonable degree of discretion in the evaluation of proposals and such discretion must not be disturbed unless shown to be arbitrary or in violation of procurement statutes and regulations. Industrial Technology Associates, Inc., B-194398.1, July 23, 1979, 79-2 CPD 47. Thus, our Office will not substitute its judgment for that of the procuring agency by making an independent determination. John M. Cockerham & Associates, Inc.; Decision Planning Corporation, B-193124, March 14, 1979, 79-1 CPD 180.

P/R contends that NACOR should have received no points for utilization of minorities, women, and handicapped persons in key positions, because NACOR had no staff on board and included only one name and resume with its proposal. Also, P/R believes that it should have received more points in this area, because it included names and resumes of four women, minorities or handicapped staff members. In support of its contention that resumes must be furnished for points to be awarded, P/R points to an RFP section entitled "Content of Technical Proposals," which stated that, as a minimum, the proposals must contain:

"* * * the name of direct technical supervisors, key personnel and the approximate percentage of the total time each will be available for this program. Resumes are required * * *. To assist in evaluation of offers, names of professional personnel proposed shall be coupled with their labor categories."

HEW contends that P/R has misinterpreted the evaluation criterion concerning utilization of minorities. The criterion does not require that proposed staff be employed by an offeror at the time that offers are submitted. HEW states, in a memorandum from the project officer, that the requirement in the RFP for names and resumes was not used by the technical panel in evaluating proposals under this criterion because the language "is boiler-plate, and * * * the nature of these contracts preclude[s] having a large number of people commit themselves before award of the contract." According to HEW, NACOR received its points for this criterion because its proposal explained in an affirmative action plan and a personnel manual how minorities, women and the handicapped would be used and because it proposed a minority woman as project director and provided a list of potential resource people some of whom could be identified as members of the desired groups.

We agree with HEW's contention that personnel proposed in an offer need not be presently employed by the offeror to be considered in proposal evaluation. See, e.g., Government Sales Consultants, Inc., B-193477, August 9, 1979, 79-2 CPD 103. However, we cannot agree that the provision concerning names and resumes of proposed key personnel can be read out of the RFP and ignored in the evaluation of offers because it is "boiler-plate" or because the nature of such contracts precludes commitment of proposed personnel before award. Solicitations must be interpreted by reading them as a whole and construing them in a reasonable manner, Tymshare, Inc., B-198020, October 10, 1980, 80-2 CPD _____, and, whenever possible, effect must be given to each word, clause or sentence. Astrodyne Incorporated, B-184999, April 27, 1976, 76-1 CPD 282.

While the project officer stated that names and resumes were not considered in the evaluation, the narrative comments of the technical evaluation panel members show that they did generally consider the presence or absence of names and resumes in their evaluation. Out of 20 possible points, NACOR received an average score of 8.75; P/R's average

score was 13.5. The comments of the individual evaluators indicated that P/R received more points because it included names and resumes and NACOR received fewer points because of its lack of specificity in the area. Also, NACOR apparently received some points for its proposed advisory panels and for its affirmative action plan and personnel manual. The evaluation criterion explicitly provides for some credit for advisory panels and the other two are arguably within the intent of the criterion as indicators of proposed utilization of minorities, women and the handicapped. While P/R may disagree with the points awarded, we do not find that the point scores assigned to each proposal on this criterion were arbitrary.

P/R also disagrees with the relative points awarded to each offeror for its proposed technical approach. Out of 40 possible points for this criterion, P/R was awarded 26.25; NACOR received 35.5. According to P/R, NACOR's proposal did not provide sufficient detail in the areas of curriculum, workshop management and subject matter of teaching. In a comparison of the two proposals, P/R argues that it lost points because it did not list teaching methods, yet NACOR listed no teaching methods and still received a high technical score. Also, P/R was criticized for having only 14 pages of technical approach while NACOR's proposal only had 4 pages. In addition, NACOR's statement of technical assistance covered less than one page.

In response, HEW basically disagrees with P/R's assessment of the degree of detail provided in NACOR's proposal and the degree of detail required by the RFP. According to HEW, NACOR's proposal provided sufficient detail on curriculum development because it showed how regulatory requirements would be taught through discussions of issues relevant to county officials and how workshops would be structured around those issues. Additionally, NACOR's proposal clearly identified workshop management by, for example, showing how participants would be grouped according to geographic size and commonness of issues. Regarding the comparison of proposals, HEW states that P/R

lost points, not because it did not list teaching methods, but because its workshop plans emphasized a schedule of activities rather than a substantive description of topics to be discussed. HEW points out that the RFP did not require a detailed listing of teaching methods. Concerning the page number totals raised by P/R, HEW states that the proposals were evaluated on the basis of the stated criteria, not on the basis of number of pages submitted.

Again, we do not find that HEW's evaluation was unreasonable. P/R's objections are really no more than a matter of disagreement over subjective judgments. The RFP statements concerning technical approach were sufficiently general to permit a range of acceptable approaches and amounts of detail and to provide for a great degree of discretion in judging the relative merits of the approaches. The narrative summary of strengths and weaknesses of the offerors and the notes of the individual evaluators are consistent in downgrading P/R's technical approach for being overly concerned with administrative details and weak in the area of substantive approach. NACOR, on the other hand, while providing a shorter and less detailed approach, was consistently praised for its conceptual approach. From our review of the proposals and the evaluation documents, we cannot conclude that the evaluation did not have a rational basis.

P/R also questions the points awarded to NACOR under the criteria "Management Work Plan." P/R received 13 points out of a possible 20; NACOR's score was 12.5. P/R argues that NACOR should have received even fewer points because it had no staff, no detailed management plan and weak experience in work involving section 504 of the Rehabilitation Act.

HEW admits that NACOR has no separate management plan as such, but found that a sufficiently detailed management plan was incorporated into other parts of the proposal. For example, HEW states job descriptions and selection criteria were provided for key management positions, a description of the linkage between the workshops and followup technical assistance was included and corporate resources and

additional resource people were identified. Concerning the section 504 experience, HEW argues that NACOR provided documentation showing experience in workshops presentation, while P/R listed attendance at workshops and did not document any presentations.

We cannot conclude that HEW's evaluation of NACOR's management plan was unreasonable. The narrative comments of the evaluators indicate that NACOR's proposal was downgraded by some because it did not include a separately identifiable management plan, but received points from other evaluators because the management plan was implicit in other sections of the proposal. Since the RFP does not spell out in detail how the management plan is to be presented and of what it must consist, the evaluators' numerical scoring and stated rationales were within the range of discretion properly accorded them and, therefore, cannot be considered unreasonable.

Finally, P/R disputes the points awarded to NACOR under the criterion for past experience in section 504 and in training handicapped people. NACOR received 12.5 points out of 20 possible points. According to P/R, NACOR should have received fewer points because it had no staff for which to provide experience information and only one 504 workshop was shown as part of NACOR's annual convention.

HEW's evaluation in this area was reasonable. The criterion appears to be concerned with an offeror's overall experience as an organization, not just with the experience of proposal staff members. While NACOR had previously conducted only one 504 workshop, its annual conventions for 4 years included sessions that were generally concerned with the problems and rights of the handicapped.

In addition to its arguments concerning point totals awarded for specific evaluation criteria, P/R also questions the point scores awarded NACOR by one of the evaluators. One evaluator awarded NACOR a perfect score for technical approach and for management plan. Additionally, that same evaluator awarded

NACOR a much higher total score than any other evaluator did. Also, the difference between the total points awarded to each offeror by that evaluator was much greater than the difference in total points awarded to each offeror by each of the other evaluators. P/R argues that such variance is suspect because it is unusual and because the evaluation panel should work together as a team.

The individual evaluators scored the technical proposals independently, not as a team. Considering the inherently subjective nature of scoring proposals, it is not unusual that evaluators' scores differ substantially. We have held that the fact that an individual evaluator gives a perfect score or that the scores of individual evaluators are extreme or inconsistent does not, without more, cast doubt on the validity of the scores. See C.L. Systems, Inc., B-197123, June 30, 1980, 80-1 CPD 448.

Changed Point Scores

P/R alleges that the technical point scores awarded by individual evaluators of both offerors were changed during the debriefing held at the request of P/R. According to P/R, it had the highest technical point total under the figures given to it originally at the debriefing. Then new figures were provided which showed P/R as the lower-rated offeror. As evidence of the changes, P/R cites the individual panel members' evaluation sheets on which there are scores which have been crossed out and changed. P/R believes that these changes were made at the debriefing to support the final point total which favored NACOR.

HEW states that there were mathematical errors which resulted in a changed score. However, this error was in computing the averages from the scores of the individual evaluators. HEW denies that any changes were made after the fact in the scores of the individual evaluators. According to HEW, the crossed-out point scores and new figures on the individual evaluation sheets were made by the evaluators during the evaluation.

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Where the only evidence in the record concerning a disputed issue of fact are the inconsistent statements of the protester and the agency, the protester has not carried its burden of proof. Reliable Maintenance, Inc.--request for reconsideration, B-1985103, May 24, 1976, 76-1 CPD 337. Since that is the case here, we cannot conclude that the point scores of the individual evaluators were changed after the award of the contract.

The protest is denied.

B-1985103

Milton J. Aroslan

For the Comptroller General
of the United States