

DECISION



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

118491

P.L.-1
Lieberman

FILE: B-203998; B-204115 - DATE: May 25, 1982

MATTER OF: Medical Services Consultants, Inc.;
MSH Development Services, Inc.

DIGEST:

1. Agency is not obligated to credit newly formed subsidiary company with high contractor experience rating to reflect experience of parent company which was ineligible for set-aside award.
2. Allegation that solicitation was defective for failure to expressly state award criteria is untimely where filed after award.
3. Where solicitation does not expressly state relative importance of cost versus technical evaluation, it may be presumed that the two will be considered to be substantially equal in importance.
4. Award by agency under prior solicitation is of no consequence with respect to basis of award under subsequent solicitation.
5. Award of cost-reimbursement contract to lower technically rated proposal which offers substantial cost savings to the Government is within discretion of agency.
6. Allegation that agency failed to realistically evaluate estimated costs is unsubstantiated where agency states that it did perform independent cost projections and record shows that awardee's estimated costs, other than fee and overhead costs, were substantially comparable to protester's estimated costs.
7. Allegation that agency conducted unequal negotiations is unsubstantiated where it is based purely on protester's surmise that reductions in awardee's overhead and fee must have been prompted by agency suggestions and agency states that all offerors were given substantially similar advice with respect to these items.

MSH Development Services, Inc. (MSH), and Medical Services Consultants, Inc. (MSC), protest the award by the Agency for International Development (AID) of a 5-year contract for rural health care and population control technical assistance in Nepal to the John Snow Public Health Group, Inc. (Snow), under request for proposals (RFP) No. 367-00041, a total small business set-aside,

MSH protests, in essence, that it was not given proper credit for the substantial contracting experience of its parent company, Management Sciences for Health, in AID's technical evaluation of its proposal. MSC protests that, while it had the highest technical evaluation score, award of a cost-reimbursement contract was made to Snow on the basis of estimated cost.

Based on the following, we deny both protests.

On the basis of initial proposals, three firms were found to be within the competitive range. MSC received a technical score of 89.5 percent and had a cost estimate of \$3,554,652; Snow received a technical score of 78.8 percent and had a cost estimate of \$4,026,130; MSH received a technical score of 75.8 percent and had a cost estimate of \$4,335,138. After conducting negotiations, the technical ratings remained the same; Snow's estimated cost was \$3,064,462, MSC's estimated cost was \$3,606,082 and MSH's estimated cost was \$3,566,028. Approximately 40 percent of Snow's cost reduction was the result of the combination of a decrease in its fee from \$298,232 to \$120,000 and a decrease in its overhead from \$525,123 to \$275,955. Award was made to Snow as offering the best value to the Government.

With respect to MSH's allegation that its experience was not properly evaluated, we note that, under the evaluation format, the total weight given to the contractor's previous experience was 40 percent of the total technical score. Of a total possible maximum score of 40 percent, MSH received a score of 23.5 percent compared to the 32.8-percent score achieved by Snow, which was highest in this category. If MSH had received the same score as Snow, its total technical

score still would have been below the 89.5-percent score achieved by MSC. However, award was made to Snow, which achieved a technical score of 78.8 percent, on the basis that it offered the best value to the Government, i.e., primarily on the basis of cost.

In view of the determination to award on this basis, it is clear that MSH's technical score for experience did not affect the outcome materially. The award to Snow was based primarily on cost considerations; even if MSH had received a point total essentially equal to MSC's, its cost was in excess of MSC's and substantially in excess of Snow's.

Moreover, MSH's argument is predicated on the assumption that it is entitled to a high evaluation score for experience on the basis of the experience of its parent company rather than on the basis of its own experience. The parent company was ineligible to compete under the RFP. In this regard, we believe that the Agency could reasonably have concluded that the parent company's experience did not require application to MSH. While the personnel involved may have been the same for both firms, the RFP evaluated personnel experience separately from previous experience of the contractor and the score in one category was not relevant to the score in the other. See SBD Computer Services Corporation, B-186950, December 21, 1976, 76-2 CPD 511. MSH was clearly a new and separate entity, distinct from Management Sciences for Health, which, as a not-for-profit organization, was ineligible for this set-aside award. Federal Procurement Regulations (FPR) § 1-1.701-1(a). (1964 ed., amend. 162). Thus, there is no merit to MSH's protest.

MSC argues primarily that it was inappropriate to award on the basis of estimated cost. In particular, it alleges that, since the RFP did not indicate or state how cost and technical factors were interrelated or what weight would be attributed to cost, as the recipient of the highest technical score, MSC was entitled to award. MSC further asserts that, to the extent cost was considered, the Agency failed to evaluate cost realism or to normalize costs and that negotiations were not conducted in an even-handed manner because MSC was not given meaningful comments

or guidance with respect to its proposed overhead cost while it believes that such guidance was provided to Snow.

With respect to the relative weight of cost versus technical considerations, the RFP contained a 100-point schedule for technical evaluation and the statement that a contract would be awarded to:

"* * * that responsible offeror whose proposal will be most advantageous to the Government, price and other factors considered."

To the extent that MSC asserts that the RFP was defective for failure to disclose adequately the award criteria, the protest is untimely. Our Bid Protest Procedures require that a protest based on an alleged impropriety apparent on the face of an RFP be filed prior to the closing date for receipt of initial proposals, 4 C.F.R. § 21.2(b)(1) (1981). MSC did not protest until after award had been made.

With respect to the relative importance of cost, MSC cites our decision, Law Engineering Testing Co., B-200814, August 3, 1981, 81-2 CPD 82, for the proposition that mere reference to price and other factors without more is inadequate to inform offerors of the relative importance of price in relation to technical factors; therefore, MSC concludes that on the basis of the RFP language, it was justified in considering the technical proposal to be of paramount importance in the evaluation process. However, the Law case involved a unique factual situation and is easily distinguishable. In Law, the agency conducted a negotiated procurement using an RFP which referred to cost in a manner which suggested it was subsidiary in importance, but also indicated that award would be made on the basis of cost and technical considerations. Under the apparent mistaken notion that it was procuring architect-engineer services under Brooks Act procedures, certain of the agency evaluators appeared to have treated the procurement as one in which cost had no relevance in the evaluation of proposals. No such circumstances exist in the present fact situation.

MSC's contention that the RFP language made it clear that technical rather than cost factors were to be of paramount importance is unwarranted. We have frequently held that where, as here, an RFP indicates that cost will be considered, without explicitly indicating the relative importance of cost versus technical evaluation, it must be presumed that cost and technical considerations will be considered approximately equal in weight. University of New Orleans, B-184194, May 26, 1978, 78-1 CPD 401; 53 Comp. Gen. 5, 10 (1973); 52 Comp. Gen. 686, 690 (1973).

Also, we have held that it is reasonable for an agency to base its award determination on cost factors where cost is estimated and the contract is on a cost-reimbursement basis. 50 Comp. Gen. 390, 410 (1970). Moreover, we have specifically held that, even where price is not listed at all as an evaluation factor, it should be obvious to all offerors that, if proposals are otherwise equal, the overall cost to the Government to procure would be an important factor, since cost must be considered in every competitive procurement. Multi-national Agribusiness Systems Incorporated, B-201447, June 15, 1981, 81-1 CPD 482; Work System Design, Inc.--- Reconsideration, B-200917.2, September 29, 1981, 81-2 CPD 261.

In support of its view of the relative importance of cost versus technical, MSC also asserts that in a prior AID procurement with similar criteria, award was made to Snow on the basis of technical superiority, despite the significantly lower cost of MSC's proposal. This allegedly inconsistent prior result is of no consequence. The propriety of each award for a negotiated procurement depends upon the facts and circumstances of each procurement and is primarily a matter within the discretion of the procuring agency. Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 CPD 325.

MSC also argues that AID's determination was contrary to FPR § 1-3.805-2 (1964 ed., amend. 208), which requires that cost not be considered controlling in selecting contractors for cost-reimbursement-type contracts. However, MSC misconstrues the regulation, which indicates that estimated costs should not be

considered as controlling because of the possible problems of unrealistically low cost estimates and the likelihood of cost overruns inherent in these types of procurements and concludes that: "the primary consideration in determining to whom the award shall be made is which contractor can perform the contract in a manner most advantageous to the Government." This does not preclude the use of estimated cost as the determining factor in such procurements, even when the offeror submitting the lower scored technical proposal is awarded the contract as a result. Southern California Ocean Studies Consortium, 56 Comp. Gen. 725, 728 (1977), 77-1 CPD 440.

We have recognized that in a negotiated procurement, selection 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, and the extent to which one may be sacrificed for the other is governed only by the tests of rationality and consistency with the established evaluation factors. Grey Advertising, Inc., supra. Thus, we have upheld awards to lower priced, lower scored offerors where it was determined that the cost premium involved in making an award to a higher rated, higher priced offeror was not justified in light of the acceptable level of technical competence available at the lower cost. Grey Advertising, Inc., supra. As we indicated in 52 Comp. Gen. 358 (1972), the determining element is not the difference in technical merit per se, but the considered judgment of the procuring agency concerning the significance of that difference.

The question here is simply whether AID's determination to award to MSC had a reasonable basis. We find no reason to conclude that AID's determination to award to MSC, primarily in view of the projected cost savings, was without a reasonable basis. In effect, the contracting officer decided that it was not worth about an 18-percent higher cost to obtain only about a 13-percent better technical proposal.

With respect to the allegation that AID considered the estimated costs without evaluating cost realism or normalizing costs, it is unsupported by the record.

MSC argues that there is no way of judging, based on the AID report, whether AID performed an independent cost projection of the offeror's proposed costs as required by FPR §1-3.807-2, since the report contains only the AID statement that the contracting officer based his cost projection on preaward advisory audits, the other proposals, his past experience, and the agency's cost estimate for the contract, without providing any verification for this statement. However, while the Agency report does not provide information regarding three aspects of these projections, the record contains information regarding the cost estimates contained in the other two technically acceptable proposals. As MSC concedes, the projected costs are substantially comparable with the bulk of the cost differential arising from Snow's agreement to accept a reduced fee and a lower overhead rate.

As AID points out, the Snow proposal was approximately \$550,000 lower than the MSC proposal, which difference is mainly the result of Snow's lower fee and lower overhead rate. Snow's fee is \$120,000 and its overhead is estimated as \$275,955. MSC's fee is \$243,141 and its overhead and G&A is estimated as \$735,234. As AID also points out, this cost differential is essentially guaranteed, since the fee is fixed and the contract with Snow provides for a 40-percent overhead ceiling. In view of these facts, we believe that AID did reasonably evaluate the projected costs of the offerors in making its assessment. Moreover, under our decisions, where, as here, the only evidence in the record consists of conflicting statements of the protester and the contracting agency, the protester has not met its burden of affirmatively proving its case. United Inter-Mountain Telephone Company, B-197471.2, August 14, 1981, 81-2 CPD 140. In this regard, our Office has held that the method of analyzing cost realism under a cost-reimbursement procurement is within the discretion of the contracting officer, that it will not be overturned without a showing that there is no rational basis for the determination, and that it may be reasonable without an in-depth analysis. Grey Advertising, Inc., supra.

MSC's final allegation is that AID negotiations were not conducted equally with Snow and MSC. MSC bases this allegation on the fact that Snow elected

to drastically reduce its overhead cost estimate (from 70 percent to 40 percent) during the course of negotiation while MSC was not given any guidance by AID during cost negotiations with respect to its overhead estimates other than an indication that its overhead rate "seemed a little high." However, MSC provides no specific evidence that any more information was provided to Snow with regard to its overhead rate. The Agency report indicates that in the negotiations with Snow it pointed out that if Snow were awarded this contract, Snow's base would increase and that indirect costs should not increase proportionally. Therefore, AID suggested that a decrease in the provisional overhead rate might be in order, but that if a substantial reduction were proposed, AID would insist upon a guaranteed maximum rate over the life of the project. The AID report indicates that the same discussion was conducted with, and the same line of reasoning was presented to, the other two offerors in the competitive range. In this regard, we note that MSH reduced its initial overhead cost estimate from \$900,688 to \$625,626. Accordingly, there is nothing in the record to suggest that there was any differential treatment of the offerors during the negotiations. The agency statement is un rebutted by anything other than the protester's surmise that the reduced overhead figure provided by Snow must have been somehow suggested during the course of the negotiations. We view this allegation as purely speculative.

The protests are denied.

Milton J. Rowland
for Comptroller General
of the United States