

DECISION



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

FILE: B-220965

DATE: March 12, 1986

MATTER OF: Training and Management Resources, Inc.

DIGEST:

1. The General Accounting Office will not appraise the qualifications of contracting agency personnel evaluating technical proposals in the absence of a showing of possible fraud, conflict of interest, or bias on the part of those evaluators.
2. Offerors are not bound by recommended or minimum staffing levels set forth in agency handbooks incorporated by reference into a solicitation. Offerors should consider such levels as guidelines, and they may assign additional staff for a particular function where deemed necessary or advisable.
3. Agency's in-house staffing estimate may properly be utilized as a tool for evaluating offerors' proposed staffing levels.
4. The requirement for meaningful discussions does not obligate agencies to advise an offeror of what is, comparatively, a minor weakness that is not considered significant, but subsequently becomes the determinative factor when two closely-ranked proposals are compared.
5. An agency may select one of two offerors with a slightly higher technical point score and a slightly higher cost where the selecting official finds, consistent with the evaluation criteria established in the solicitation, that the technical superiority outweighs minimal savings.
6. Where a selecting official determines that the technical scoring of proposals by an evaluation panel does not accurately reflect significant differences between the

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proposals, the selection official properly may consider this difference in making an award decision.

Training and Management Resources, Inc. protests the Department of Labor's award of a contract to Res-Care, Inc. for operation of the Miami, Florida Job Corps Center under request for proposals (RFP) No. 85-RIV-JC-0002. The protester contends that the evaluation panel was composed of individuals unfamiliar with applicable Job Corps regulations, and it questions their ability to evaluate the proposals properly. Training and Management also contends that it submitted the offer most advantageous to the government and should have been selected for award.

We deny the protest in part and dismiss it in part.

Background

The RFP, issued on April 10, 1985, solicited offers for a cost-plus-fixed-fee contract for a base period of 2 years, plus three additional 1-year option periods. The contractor is to provide educational and vocational training, transportation, residential and food services, and related support for 210 Job Corps members at the Miami center.

The solicitation provided that offers were to be evaluated with respect to 10 technical criteria: design of program; placement support, direct placement, and outreach/screening support; educational training; vocational training; Corps member support; health services; residential living support; administration and financial management; past program and financial performance; and reasonableness of cost. A range of points was assigned to each criterion, with a possible maximum of 100 points. Price was to be evaluated but not point scored.

The solicitation stated that award would be made on the basis of the offer deemed most advantageous to the government. In making this determination, technical factors were to be considered significantly more important than evaluated price. The solicitation further provided that the agency would consider the base 2-year price plus the cost of transition and phaseout, and that it would adjust these for reasonableness, taking into account omissions, unreasonably low wages, mathematical inaccuracies, and other deficiencies. Price was to become a controlling factor if the agency considered two or more technical proposals substantially equal.

Only the protester and Res-Care, the incumbent contractor, submitted proposals in response to the solicitation. After discussions, the agency requested each to submit a best and final offer. Res-Care received a final technical score of 83.3, while Training and Management received 80.2. The final evaluated price of Res-Care's proposal was \$3,935,104, as compared with the protester's \$3,836,770, a difference of \$98,334. When phase-out costs were considered, the difference was reduced to \$35,452.

In a selection memorandum, the selecting official stated that the 2.8 percent difference in technical scores of the two proposals indicated that they were substantially equal. He believed, however, that the cost savings attributable to the protester's proposal were "negligible" and that lost productivity during transition and startup would more than offset the \$35,452 savings. He also believed any saving was outweighed by the advantages in staffing that Res-Care offered. He considered Res-Care's staffing levels to meet the agency's needs better than those of the protester in three areas--educational instructors, security officers, and evening and weekend residential advisors. He concluded that Res-Care's proposal would be most advantageous to the government. The agency awarded the contract to Res-Care on October 29, 1985, and this protest followed.

Composition of Evaluation Panel

Training and Management first alleges that Labor's evaluation panel was composed of individuals who had insufficient knowledge of applicable Job Corps regulations and therefore were unable to evaluate the proposals properly. This lack of familiarity, the protester states, is evidenced by the numerous concerns about its proposal raised by panel members during the evaluation process.

Labor responds that the evaluation panel was composed of 10 members, of whom 2 had approximately 1-1/2 years of experience in the Job Corps; the remaining 8 members had at least 5 years of such experience. Panel members' questions during discussions that the protester attributes to a lack of knowledge of applicable regulations were, according to Labor, efforts to determine whether the firm understood those regulations. Labor states that the panelists' concerns were largely resolved in the protester's favor, as evidenced by an increase in its score after review of best and final offers.

The selection of individuals to serve as proposal evaluators is essentially a matter within the discretion of the agency, and we therefore decline to appraise the qualifications of such individuals absent a showing of possible fraud, conflict of interest, or actual bias on the part of the evaluators. See Petro-Engineering, Inc., B-218255.2, June 12, 1985, 85-1 CPD ¶ 677. None of these is present here. We therefore will not consider the protester's challenge to the expertise of the members of Labor's evaluation panel, and we dismiss this ground of protest.

Technical Evaluation and Discussions

Training and Management next asserts that its staffing was in accord with staffing levels recommended by the agency, and that it therefore was improper for Labor to base the award upon the relative levels of staffing offered. The protester maintains that Labor was required to evaluate offerors' staffing plans solely in terms of their compliance with standards prescribed in Job Corps handbooks that contractors are required to use.

The cited Job Corps publications^{1/} set forth general guidelines for the operation and administration of Job Corps facilities throughout the United States. The staffing levels prescribed in these publications are clearly described as recommendations or minimums, and inherent in these stated levels is the understanding that a particular facility may require additional staff. Prospective contractors therefore are not bound by these recommendations, and they are not precluded from assigning additional staff for a particular function where deemed necessary or advisable.

The record shows that Labor, to facilitate the evaluation and scoring of proposals, developed a model staffing plan for the Miami facility. Levels under this plan, which exceed some of the levels recommended in

^{1/} "Center Security and Law Enforcement Guide" (ET Handbook 337), "Job Corps Evaluation Guide" (ET Handbook 401); and "Residential Living Guide" (JCH 404). These handbooks were incorporated by reference into the solicitation.

the publications cited by the protester, represent Labor's determination, based on its experience at the center, of the optimum staffing for this particular facility. We see nothing improper with Labor's utilization of this model plan as an evaluation tool, see, e.g., Vinnell Corp., B-203806, Aug. 3, 1982, 82-2 CPD ¶ 101 (agency utilized in-house estimate of required staffing when evaluating proposals), nor with the selection official's reliance on the comparative staffing approaches taken by the two offerors.

The protester contends that if it proposed less than optimum staffing, Labor should have pointed this out during discussions. Agencies generally must conduct written or oral discussions with all responsible offerors within a competitive range, and this includes advising offerors of deficiencies in their proposals, so that they have an opportunity to satisfy the government's requirements. Federal Acquisition Regulation, 48 C.F.R. § 15.610 (1984). This requirement can be satisfied only when discussions are meaningful, which means that negotiations should be as specific as practical considerations will permit. Tracor Marine Inc., B-207285, June 6, 1983, 83-1 CPD ¶ 604.

Agencies are not obligated, however, to afford offerors all-encompassing negotiations. The content and extent of discussions in a given case are matters of judgment primarily for determination by the agency involved and are not subject to question by our Office unless without a reasonable basis. Information Network Systems, B-208009, Mar. 17, 1983, 83-1 CPD ¶ 272. Where a proposal is considered to be acceptable and in the competitive range, the agency is under no obligation to discuss every aspect of it that has received less than the maximum possible score. See ADP Network Services, Inc., B-200675, Mar. 2, 1981, 81-1 CPD ¶ 157.

The record indicates that Labor had no significant concerns with the protester's proposal. When the selecting official distinguished between two proposals that were considered very close--one slightly better technically, the other with a slightly lower cost--the difference in proposed staffing became determinative. The protester's staffing approach was never considered a meaningful weakness, however, and we believe that Labor was not obligated to advise the protester of it. See Bauer of America Corp. & Raymond International Builders, Inc., A Joint Venture, B-219343.3, Oct. 4, 1985, 85-2 CPD ¶ 380.

Contract Award

Relying upon the statement in the selection memorandum that the 2.8 difference in technical scores indicates substantial equality, the protester argues that Labor was required to award it the contract. As we noted above, the solicitation provides that cost will be a controlling factor in an award decision between two substantially equal technical proposals. The firm's complete reliance on the technical scoring of proposals by the evaluation panel resulting in its characterization of the proposals as being substantially equal, is misplaced, however. Closeness of scores does not necessarily indicate that proposals are technically equal. See Moorman's Travel Service, Inc.--Request for Reconsideration, B-219728.2, Dec. 10, 1985, 85-2 CPD ¶ 643 (proposals were not considered equal despite the fact that they only differed by .5 points on a 100 point scale). Point scores are used as guidelines to intelligent decision making by source selection officials, and award should not be based solely upon differences in technical scores. Rather, a selection should reflect the procuring agency's considered judgment of the significance of the difference in point scores. In this regard, source selection officials must determine whether the point scores are indicative of technical superiority and what the difference in point scores may mean during contract performance. RCA Services Co., B-208871, Aug. 22, 1983, 83-2 CPD ¶ 221.

The selecting official, while acknowledging that the closeness in scores "indicated" substantial equality, nevertheless properly looked behind these scores. In so doing, the selecting official determined that although the evaluation panel recognized a difference in the overall staffing levels proposed by the two offerors, the technical scores did not reflect this overall difference. The record clearly establishes that the selecting official considered this difference, especially in view of the staffing differences in three key areas, to be significant, and consequently he considered Res-Care's proposal to be technically superior.

It is well settled that source selection officials are generally bound neither by the technical scores nor by the recommendations of technical evaluators. Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 CPD ¶ 325. The only limitation on this broad discretion is that the selection authority's use of the results of technical and cost evaluations and the extent to which he sacrifices one for the

other be reasonable and consistent with the RFP's stated evaluation factors. See New Mexico State University/Physical Science Laboratory, B-215348, Nov. 6, 1984, 84-2 CPD ¶ 504. Here, the selection official concluded that the staffing level difference in three important areas outweighed the protester's "negligible" cost advantage (a difference in price of less than 1 percent), which, as noted above, he believed might be offset by expenses incurred in changing contractors. In view of the importance of staffing to instruction, training, and the operation and administration of support functions for the Job Corps facility, we do not find this decision to be unreasonable, nor do we find it inconsistent with the evaluation criteria. We deny the protest on this basis.

The protest is denied in part and dismissed in part.

for Seymour Efron
Harry R. Van Cleve
General Counsel