

DECISION



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

FILE: B-220431 **DATE:** March 13, 1986
MATTER OF: Analytics, Inc.

DIGEST:

1. Where protester, which submitted lower-priced, acceptable offer, argues that contracting agency has not justified payment of price premium to successful offeror even where non-cost factors are more important than cost, protest states a valid basis of protest and will not be dismissed.
2. Contracting agency may award to offeror submitting higher cost proposal where cost is of lesser importance than noncost considerations, if the superiority in the higher cost proposal is reasonably considered by the agency to be worth the price premium involved. Therefore, contracting agency may reasonably decide to pay price premium for proposal it regards as superior because lower-priced, acceptable proposal has weaknesses in two key technical areas.
3. Protest against alleged lack of meaningful discussions is untimely when filed--as new ground of protest--more than 10 working days after protester should reasonably have been aware of this basis of protest.

Analytics, Inc. (Analytics), has protested the award of a contract to Management Consulting and Research, Inc. (Management), under Air Force request for proposals (RFP) No. F33657-85-R-0063, issued by Wright-Patterson Air Force Base for a specialized cost analysis study support contract. The estimated cost of this indefinite quantity contract is a minimum of \$10,000 and a maximum of \$16,000,000.

Analytics contends that the award at a substantially higher hourly cost has not been justified by the Air Force especially given the favorable evaluation of Analytics' proposal by the Air Force. We find no merit to the protest.

The RFP informed offerors that the purpose of the contract was to expand the Air Force's capability to provide "high quality cost, schedule, and financial management support" to Air Force units. The RFP also stated that the contract would be awarded to a company which would have the

". . . technical capability to assess cost and schedule implications of existing and projected technological advances, as well as being able to evaluate the impact of new and innovative acquisition strategies."

Section "M" of the RFP further provided that proposals would be evaluated under two "primary evaluation considerations"--technical/management and cost/price--of which cost/price was lesser in importance. As to cost, the RFP stated that:

". . . while cost to the Government is a consideration in this solicitation, [cost] will not be the overriding basis for contract award. The offeror's proposed price, and other aspects of cost which can be reasonably defined will be evaluated . . . to determine the combination of factors most advantageous to the Air Force. Therefore, the Air Force reserves the right to award a contract at other than the lowest price."

The Air Force reports that it received four proposals under the RFP and that "discussions were held with each offeror and weaknesses pointed out." After evaluating final offers under the RFP, the Air Force determined that Management's proposal was "technically superior to that of Analytics, and represented the proposal most advantageous to the government on the basis of technical merit and cost."

Analytics contends that the Air Force has not justified the award at a higher price especially since Analytics' proposed hourly "composite weighed average rate" used for evaluating and comparing costs was 50 percent lower than Management's rate and Analytics' proposal was considered technically acceptable. Specifically, Analytics argues that: (1) the Air Force has not shown that Management's proposal was technically superior to Analytics' proposal; (2) Analytics has recently been awarded a contract with a statement of work which is identical to that found in the protested contract; (3) the successful awardee allegedly intended to subcontract the work to Analytics--thereby showing the essential technical equality of Analytics and Management especially given Analytics' good performance

history; (4) the RFP services "were complex, but by no means exotic or state-of-the-art"; consequently, the Air Force should have given more weight--rather than hardly any weight at all--to cost in the selection of the contractor as was contemplated by the listing of cost as the second of two primary evaluation factors; and (5) the Air Force did not conduct meaningful discussions with Analytics concerning the weaknesses in the company's proposal as reported to the company at a debriefing held on November 15, 1985.

The Air Force first argues that we should dismiss the protest under our Bid Protest Regulations, 4 C.F.R. § 21.3(f) (1985), because Analytics' protest fails to state a valid basis of protest. The Air Force refers to our decision in Systems Research Laboratories, Inc., B-219780, Aug. 16, 1985, 85-2 C.P.D. ¶ 187, in which we dismissed a protest based solely on the initial allegation that the protester should have been awarded a contract as the low, technically acceptable offeror under a solicitation which stated that cost was the "least important" evaluation standard.

In dismissing the protest, we pointed out that where a solicitation for a negotiated procurement advises offerors that technical considerations are more important than cost, the contracting agency may conclude that it is more advantageous to the government to award the contract to an offeror with a superior technical proposal, even though its price is higher than that associated with other technically acceptable proposals, if the lower prices are offset by the advantages of the technically superior proposal. Barber-Nichols Engineering Co., B-216846, Mar. 25, 1985, 85-1 C.P.D. ¶ 343. Consequently, an offeror is not automatically entitled to award merely because it offered the lowest price. Henderson Aerial Surveys, Inc., B-215175, Feb. 6, 1985, 85-1 C.P.D. ¶ 145. We further pointed out that the government is not obligated to make award to the low offeror in a negotiated procurement, unless the solicitation specifies that cost will be the determinative factor. In Systems Research, the solicitation did not state that award would be made on the basis of the lowest priced, technically acceptable proposal. Rather, offerors were clearly on notice that cost would be only one (the least important) of the specific considerations in determining the successful offeror.

Unlike the protester in Systems Research, Analytics does not contend it was automatically entitled to award merely because the company had submitted the lowest-priced, technically acceptable offer. Instead, Analytics argues that the Air Force has not justified why it was willing to pay a much higher price for Management's services compared with the lower price found in Analytics' technically acceptable proposal. Therefore, we do not agree with the Air Force that the precedent established in the Systems Research decision should result in the dismissal of Analytics' protest.

In considering the merits, we note that the Air Force has refused to release many of the contract evaluation documents to Analytics; however, we have reviewed those documents in the course of deciding this protest. Nevertheless, our discussion of the Air Force's evaluation findings is necessarily limited because of the restriction.

Analytics acknowledges that the Air Force formally advised the company of the results of its evaluation of Analytics' proposal on November 15, 1985, after the Air Force's contract award to Management. At that time, Analytics was told of the "strengths and significant weaknesses" of its proposal. Specifically, the Air Force found significant weaknesses in Analytics' "Cost/Schedule Control Systems" (this involves the contractor's ability to conduct review team planning for cost research, training of review teams, and providing performance analysis support to program offices to identify cost/schedule variances and project estimates) and "Program Planning, Control, Integration, and Analysis" (the requirement involves program schedule analysis and the conducting of research for use in planning documentation). These areas were considered important to the Air Force's overall needs. By contrast, the Air Force did not list any significant weaknesses in Management's proposal.

As noted above, an agency may conclude, consistent with the evaluation criteria, that an award to a higher-priced superior proposal, rather than a lower-priced, technically acceptable offer is justified if the lower price is offset by the advantages of the technically superior proposal. Barber-Nichols Engineering Co., B-216846, supra.

Based on our review of the record, we find reasonable the Air Force's source selection decision which was based on a finding that Management's proposal was superior to all other proposals and constituted the best value to the government. For example, the Air Force considered that

Management's proposal showed an outstanding technical approach. Further, Management's proposal was also found to: (1) demonstrate a thorough knowledge of program control functions and regulatory/directive guidance; and (2) contain a management approach of significant importance since the company's corporate president would serve as project director--thus arguably enhancing, in our view, corporate accountability for the work to be done. On the other hand, Analytics' proposal was found to have weaknesses in two key areas, cost/schedule control systems and program planning and analysis.

In response to the Air Force's conclusion regarding weaknesses in its offer, Analytics insists that the weaknesses were not significant because its proposal was otherwise found to be acceptable. It is not uncommon, however, that proposals included in the competitive range may still be considered to have significant weaknesses--especially when compared with proposals found to be superior or entitled to higher scores. See Fairchild Weston Systems, Inc., B-218470, July 11, 1985, 85-2 C.P.D. ¶ 39. Since the RFP expressly stated as factors for evaluation an offeror's experience and capability in the areas of cost/schedule control systems and program planning control, integration and analysis, the Air Force reasonably could find that these weaknesses were significant, and that a proposal which more satisfactorily addressed these areas would be a better value to the government.

Further, as noted above, Analytics argues from alleged facts--its recent contract award under an identical work statement, and the alleged attempt of Management to subcontract with Analytics under this contract--that its experience and capability generally meets the RFP requirements. These allegations are irrelevant, however, to the issue of whether the Air Force abused its discretion in determining the superiority of Management's proposal and the acceptability of Analytics' proposal as written and transmitted to the Air Force. Further, we see no evidence in the record before us that the Air Force abused its discretion in evaluating the respective corporate experience of Analytics and Management.

Consequently, and based on our review of the record, we find that the Air Force has not abused its discretion in determining that Analytics' proposal has the above significant weaknesses and that Management's technical proposal was entitled to be considered "superior."

Analytics' also argues that the Air Force should have given more weight to cost since, in Analytics' view, the services were not "state-of-the-art." Nevertheless, the RFP clearly informed offerors that cost was second in importance to technical approach as well as being a primary evaluation standard. Our prior cases, as noted above, clearly permit a proper award to other than the low offeror on a showing of proposal superiority--found to be present in Management's proposal--even if there are other competitive, lower-priced proposals when cost, as under this RFP, is only one proposal evaluation standard (not the most important) and the contracting agency determines the proposal superiority is worth the price premium to be paid. Consequently, we cannot conclude that the Air Force violated the RFP evaluation standards by giving improper weight to noncost considerations in the selection of Management, and we cannot find that the Air Force unreasonably determined to pay the price premium involved.

Finally, in its December 31, 1985, comments on the Air Force's report on the protest, Analytics has argued for the first time that the Air Force failed to conduct meaningful discussions with it concerning the above significant proposal weaknesses which the Air Force notified Analytics of on November 15, 1985. It is well-established that a protester may delay the filing of its protest until after a debriefing when the information available earlier left uncertain whether there was any basis for protest. Trellclean, U.S.A., Inc., B-213227.2, June 25, 1984, 84-1 C.P.D. ¶ 661.

It is also well-established that new protest issues must independently satisfy the timeliness requirements of our Bid Protest Regulations. Le-Gals, Inc., B-212531.2, Oct. 5, 1984, 84-2 C.P.D. ¶ 386.

Since Analytics became aware of the Air Force's view that its proposal contained significant, specific weaknesses as of November 15, 1985, the company should reasonably have been aware of any issue concerning lack of meaningful discussions about those specific weaknesses as of that same date. Consequently, Analytics should have filed a separate protest concerning this new issue within 10 working days of November 15 in order to satisfy the timeliness requirements of our Bid Protest Regulations. Since the company first raised this issue on December 31, more than 10 working days after November 15, the issue is untimely filed and will not be considered.

Protest denied, in part, and dismissed, in part.

for Seymour Efra
Harry R. Van Cleve
General Counsel