



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Medical Care Development, Inc.;  
Birch and Davis International, Inc.  
File: B-227848.3; B-227848.4  
Date: October 19, 1987

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### DIGEST

1. Where the technical point score of the lower cost proposal is marginally less than another offeror's point score, the agency may reasonably find the proposals are technically equal and use cost as the award selection factor.
2. The cost evaluation of the low proposal is reasonable, where the agency conducted an in-depth review of the initial cost proposals and conducted cost discussions, in response to which the low offeror factored in the missing cost elements, and where the cost reduction in the low offeror's best and final offer is primarily based upon a reduction in proposed fee and a lower overhead rate on which there will be a contractually binding ceiling.
3. An agency conducted meaningful discussions where the discussions lead the protester into the lower rated portions of its proposal. Moreover, where all the protester's proposed personnel are rated lower than the other offerors' proposed personnel and its costs are much higher, the agency is not obligated to point out all evaluated weaknesses inherent in the protester's proposed personnel.
4. An agency may conduct post best and final offer, preaward clarification negotiations with only the selected offeror to address minor provisions unrelated to the award evaluation.

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### DECISION

Medical Care Development, Inc. (MCD), and Birch and Davis International, Inc. (BDI), protest the award of a contract to John Snow Incorporated (JSI) by the Agency for International Development (AID) pursuant to request for proposals (RFP) No. 521-0091, for a rural health delivery systems project in Haiti. MCD protests the award evaluation and the alleged improper discussions conducted during the

procurement. BDI protests the award evaluation and alleges that AID improperly requested best and final offers (BAFOs) after BDI had been selected for award.

We dismiss BDI's protest in part and deny the remainder. We deny MCD's protest.

The RFP requested technical and cost proposals for this project. Cost criteria composed 10 percent of the evaluation weight and technical criteria 90 percent. Of those technical criteria, "quality and availability of personnel proposed: professional qualifications: reputation, experience, education and language abilities" accounted for 55 percent of the total evaluation weight.

Seven proposals were received in response to the RFP, and JSI, MCD and BDI were found to be in the competitive range. JSI received the highest point score followed by MCD and BDI, respectively.

Discussions were conducted and revised proposals submitted and evaluated. BDI then had the highest rated technical proposal followed closely by JSI and MCD, respectively. BDI's proposed cost and fee for the revised proposal was \$1,759,667, while JSI's proposed cost and fee was \$1,378,902 and MCD's proposed cost and fee was \$1,851,045. The competitors' cost proposals were only evaluated for completeness and effectiveness and all three offerors received approximately the same score. Consequently, since BDI had the highest rated offer under this evaluation scheme, the contracting officer selected BDI for award.

When JSI and MCD were advised of the selection, both complained that no formal request for BAFOs had been made. AID found that this complaint was valid. Therefore, AID's contracting officer reopened discussions and requested BAFOs from the three firms to be submitted by March 11, 1987.

After receipt of BAFO's the technical proposals were again rescored. The average technical scores and proposed costs and fees were as follows:

BDI	73.73	\$1,589,072
JSI	72.23	1,168,780
MCD	69.05	1,851,045

The contracting officer selected JSI for award. He found that the "revised prices were realistic for the services to be provided" and that "the difference in technical scoring superiority between JSI and BDI (1.5 points) was

insufficient to award the contract to BDI on the basis of technical superiority, the two offers being essentially equal on a technical basis, and, in view of the substantial price difference between the firms, JSI should be selected to commence negotiations for the contract award."

BDI protests that although it was notified of its selection for award, AID withdrew the selection and improperly requested BAFOs. BDI speculates that its proposed cost or technical proposal may have been disclosed in the award notification and debriefing and that the competitive offerors became aware of each other's identities.

Although the competitive offerors apparently became aware of each other's identities prior to the submission of BAFOs, there is no evidence which suggests that proposed costs or point scores were disclosed. In any case, BDI was required to protest the issuance of the request for BAFOs by the closing date, March 11, 1987. 4 C.F.R. § 21.2(a)(1) (1987). Therefore, this protest basis is untimely and is dismissed.

BDI also protests that its proposal is the most technically qualified and is entitled to the award. In this regard, BDI contends there may be conflicting evaluation rankings and that numerous "improprieties" occurred in the conduct of the procurement. BDI also protests that JSI cannot perform the work within its proposed costs. MCD also protests that AID did not properly evaluate JSI's proposed costs so proposed cost cannot be used as the award selection factor. In this regard, MCD claims that JSI's proposed costs were not realistic and did not include certain costs, e.g., local support staff.

The record does not support BDI's contention that there were conflicting evaluation rankings and the only evidence that BDI presents to support the contention that it is entitled to the award is the AID decision to select BDI before BAFOs were solicited. However, since MCD and BDI have not been provided with details or justification for the award selection, we will consider MCD's specific and BDI's general protest of the award selection based on our in camera review of AID's records to ascertain whether AID had a reasonable basis for the award selection. Professional Review of Florida, Inc.; Florida Peer Review Organization, Inc., B-215303.3; B-215303.4, Apr. 5, 1985, 85-1 C.P.D. ¶ 34 at 9.

In this case, award was made to JSI since its proposal was considered technically equal to BDI's proposal and it proposed a significantly lower cost. MCD was ranked third technically (not equal to BDI and JSI) and its proposed costs were even higher than those of the other two.

Where proposals are found technically equal, cost or price may become the determinative factor in making an award, notwithstanding that the evaluation criteria assigned cost or price has less importance than technical considerations. Ship Analytics, Inc., B-225798, June 23, 1987, 87-1 C.P.D. ¶ 621; PRC Kentron, B-225677, Apr. 14, 1987, 87-1 C.P.D. ¶ 405. The judgment of the procuring agency concerning the significance of the difference in technical merit of proposals and whether or not offers are technically equal is afforded great weight by our Office. PRC Kentron, B-225677, supra, at 4. In this case, in view of the marginal 1.5 point difference in average technical score between JSI and BDI and in the absence of a specific protest of the technical evaluation, we conclude that AID had a reasonable basis for finding the proposals technically equal such that cost became the award determinative factor. PRC Kentron, B-225677, supra, at 5.

The protesters contend that cost should not be the determinative factor for award because JSI's proposed cost was unrealistically low and not properly evaluated. However, the record shows that AID made an in-depth evaluation of the initial cost proposals of all offerors. In JSI's case, there was concern by the evaluators that the proposed cost was a "low ball" figure. However, JSI's cost proposal was the subject of discussions, in response to which JSI factored in cost elements that were not initially included. JSI's proposed cost for its revised proposal was \$1,378,902.

JSI lowered its proposed cost to \$1,158,280 in its BAFO. MCD speculates that this amount might represent the cost of local staff, office space and equipment. However, our in camera review of JSI's cost proposal shows that these cost elements were included in JSI's BAFO. The cost reduction in JSI's BAFO was primarily attributable to JSI's lowering its fee proposal and proposing a significantly lower overhead rate--which JSI agreed would be a contractually binding ceiling. Consequently, JSI's proposed reduction in costs was not unsupported. See, Ecology and Environment Inc., B-209516, Aug. 23, 1983, 83-2 C.P.D. ¶ 229 at 10 (overhead ceiling can be accounted for in the cost evaluation). In this regard, the contracting officer determined the revised "prices" were "realistic for the services to be provided."

MCD contends that AID's principal basis for the cost evaluation may actually be the ratio of indirect costs to direct cost. However, the record shows that although AID determined this ratio for cost evaluation purposes to help assess cost realism, total proposed costs and fee was the award selection basis in the cost evaluation. Consequently, the cost evaluation and award selection basis was reasonable.

MCD protests that meaningful and equal discussions were not conducted, inasmuch as AID did not communicate all of MCD's deficiencies to MCD in discussions, yet apparently conducted more detailed discussion with JSI.<sup>1/</sup> Specifically, MCD contends that AID did not point out all evaluated deficiencies in the most heavily weighted evaluation area--"quality and availability of personnel proposed" (55 of 100 points).

MCD concedes that AID raised questions about its personnel during discussions, but claims that it was misled because only the availability of the public health specialist and the possible overqualification of MCD's alternate training specialist and operations officer was mentioned concerning these proposed individuals during discussions. MCD points out that these individuals were downgraded for other reasons that were not communicated in discussions. For example, the public health specialist's experience in the implementation of these programs was questioned in the evaluation and the other two individuals were also downgraded, even though they were labeled "overqualified."

Agencies must generally conduct written or oral discussions with all offerors within a competitive range, which includes advising offerors of deficiencies in their proposals, so they can have the opportunity to satisfy the government's requirements. Tracor Marine Inc., B-207285, June 6, 1983, 83-1 C.P.D. ¶ 604. Discussions are required to be "meaningful," that is, discussions must be as specific as practical considerations will permit. Id. However, agencies are not obligated to afford offerors all-encompassing negotiations. Universal Shipping Co., Inc., B-223905.2, Apr. 20, 1987, 87-1 C.P.D. ¶ 424. All that is necessary is that agencies lead offerors into areas of their proposals needing amplification. Target Financial Corp., B-226683, June 29, 1987, 87-1 C.P.D. ¶ 641.

In this case, we find that the discussions were meaningful, that MCD was not improperly misled, and that the discussions were sufficient to lead MCD into the lower-rated portions of its proposal. For example, although MCD claims that AID should have advised it that its proposed public health specialist's experience was not considered optimum in program implementation, MCD does not allege that this perceived weakness is not the case, or state what further information it would have provided to remedy this perceived weakness, or indicate that it would have substituted a more

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<sup>1/</sup> This contention is partially based upon on MCD's erroneous belief that JSI's initial technical proposal was rated lower than MCD's initial technical proposal.

qualified person for this position. The record also shows that MCD's alternate training specialist and operations officer were not considered by AID to be as suitable as the other persons proposed by MCD for these positions; indeed, the other candidates for these positions proposed by MCD were the basis for MCD's technical score.

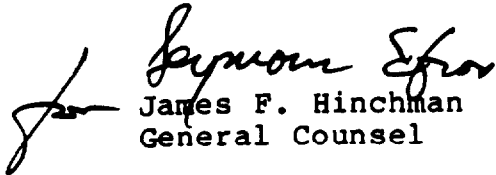
Furthermore, the record shows that each of MCD's proposed personnel received less credit than the other offerors' proposed personnel. It does not necessarily follow that MCD's proposed personnel are deficient; in this case, it means that AID considered the personnel of the other offerors in the competitive range to be more qualified and/or available under the RFP evaluation criteria. In this case, not only does MCD have the high proposed cost and fee, it would have had to substitute much of its proposed staff and obtain even better qualified and/or available staff as a result of the discussions to have a chance of being considered the most acceptable offeror. For example, MCD concedes that it was advised of the evaluated weakness of its Chief of Party, but the record shows that MCD did not propose an alternate candidate who was more acceptable to AID. In these circumstances, agencies are not obligated to point out weaknesses inherent in an offeror's proposed personnel. Advanced Technology Systems, Inc., B-221068, Mar. 17, 1986, 86-1 C.P.D. ¶ 260.

MCD also contends that improper post-BAFO discussions were conducted only with JSI, even though MCD was still in the competitive range. AID and JSI state that no such discussions have yet occurred because of the intervening protests. However, AID states the planned preaward negotiations concern matters that would have been clarified with any successful offeror and concern matters completely unrelated to the evaluation or any specifics of JSI's proposal. Specifically, the negotiations will concern contract provisions for quarters allowance, post differential levels in Haiti, two-way radios and security guards for contractor personnel.

It is true that if discussions are reopened with one offeror after the receipt of BAFOs, they must be reopened with all offerors within the competitive range. Greenleaf Distribution Services, Inc., B-221335, Apr. 30, 1986, 86-1 C.P.D. ¶ 422. However, in this case, JSI was already selected for award in accordance with the RFP evaluation criteria. AID states that a small reduction in cost is anticipated as a result of these clarifications. The planned touch-up negotiations would appear to have no effect on the evaluation or selection basis, but will only address minor provisions unrelated to the award evaluation. Although MCD has been advised of the nature of these touch-up

negotiations, it has not responded and stated why they are sufficient to require reopening discussions with all competitive offerors in this instance. Under the circumstances, we believe these minor clarifications can be made prior to award with the successful offeror without reopening negotiations. Information Systems & Networks Corp., B-220661, Jan. 13, 1986, 86-1 C.P.D. ¶ 30

The protests are denied in part and the remainder is dismissed.

  
James F. Hinchman  
General Counsel