



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Levine Associates, Inc.

File: B-228543

Date: February 5, 1988

---

### DIGEST

Although contracting agency did not conduct adequate discussions, offeror was not prejudiced by agency's failure to advise it of two weaknesses agency found in its proposal where, even if offeror had resolved both weaknesses to the agency's satisfaction, offeror had no reasonable chance at award because of its higher proposed costs.

---

### DECISION

Levine Associates, Inc. protests the award of a cost-plus-fixed-fee contract to Group Associates, Inc. under request for proposals (RFP) No. NICHD-EBRP-87-02, issued by the Department of Health and Human Services (HHS) for data management and analysis services. Levine challenges the agency's evaluation of its and the awardee's technical and cost proposals. We deny the protest.

The RFP called for data management and analysis services needed in connection with HHS' evaluation of the Better Babies Project, a trial program to reduce the number of babies with low birth weight in a selected area of Washington, D.C. The services called for under the RFP primarily involve entering data collected under the program into computerized files created and maintained by the contractor. The contractor is to provide all the personnel, materials, equipment and facilities necessary to perform the services. Similar services have been provided by the protester for the initial phase of the project under a contract scheduled to be completed in late 1987. The RFP contemplated award of a new multiyear contract to run from the date of award through fiscal year 1991.

041212/134981

With regard to the evaluation of proposals, section M of the RFP provided that the technical proposal would be the most important consideration in the award decision unless two or more offerors were found to be approximately equal technically, in which case the estimated cost of performance would become the paramount consideration. The RFP set out the following technical evaluation criteria with their respective weights: soundness of proposed technical approach (40 points); capability and qualifications of personnel (40 points); and capabilities and resources of the offeror (15 points).

Nine offers were submitted under the RFP; only two, from Levine and Group Operations, were included in the competitive range. Based on HHS' initial evaluation of the two offerors' technical proposals, Levine received 74 points and Group Operations 89 points of the 95 total points. HHS then issued a series of written questions relating to the proposals, to which each offeror responded. Although the proposals were not rescored based on the responses, HHS' position is that both offerors adequately responded to its questions. HHS then conducted oral discussions with both offerors, that was followed by submission of best and final offers.

With regard to the cost proposals, Levine initially estimated its costs at \$641,977; in its best and final offer, it increased its estimated costs to \$707,991. Group Operations initially estimated its costs at \$562,442, and reduced them to \$559,668 in its best and final offer. HHS ultimately made award to Group Operations based on its higher technical score and lower estimated costs, which HHS found to be reasonable.

Levine first challenges the agency's evaluation of its technical proposal. The record shows that in the initial evaluation, the agency listed several weaknesses in Levine's proposal. In its report on the protest, however, HHS concedes that only two of the weaknesses, described as follows, were significant in the evaluation:

"Levine Associates appears to show lack of leadership regarding the relational edits. They seem to be waiting for [HHS] to specify variables instead of making suggestions themselves in relation to analytic needs."

"There is no description of how the database would be designed. In addition, the issues of the natural relationships between data items and how items in one file will link to another are not addressed."

HHS concedes that these two areas were not raised during discussions with Levine. According to HHS, it was not necessary to do so because HHS was familiar with Levine's performance under its prior contract during the first phase of the Better Babies Project. We find the agency's rationale for not raising the two significant weaknesses unpersuasive, however, since they do not appear to be related to Levine's performance under its prior contract; rather, they concern a lack of detail in Levine's proposal which, had the agency's concerns been brought to its attention, Levine could have corrected. In fact, in its protest submission, Levine furnished details concerning the two areas of its proposal which HHS questioned, and HHS itself states that in all likelihood the two areas would not have been counted as weaknesses had Levine's proposal contained the information provided in its protest.

In order for discussions in a negotiated procurement to be meaningful, contracting officials must furnish information to all offerors in the competitive range as to areas in which their proposals are believed to be deficient so that offerors are given an opportunity to revise their proposals to satisfy the government's requirements. See Federal Acquisition Regulation § 15.610(c)(2); Avitech, Inc., B-223203.2, Mar. 27, 1987, 87-1 CPD ¶ 351. Here, HHS concedes that the two areas not discussed with Levine were the most significant weaknesses in its proposal and would have been corrected if Levine's proposal had included the information later furnished in its protest.

Nonetheless, while the discussions therefore were inadequate, the record does not show that Levine was prejudiced; even if Levine's technical score would have been higher had adequate discussions been held, Levine still would not have been in line for award. As noted above, Levine's technical proposal received 74 of 95 total points, while the awardee received 89 points. These proposals were considered technically equal at the close of discussions. It is clear from the record that in the evaluators' view, the awardee had submitted an exceptional proposal that meet all of the RFP requirements and contained no significant weaknesses. Thus, even if Levine had resolved the two significant weaknesses in its proposal to HHS' satisfaction and had received a higher score, we think that at best Levine would have been viewed as the technical equal of the awardee.

With regard to cost, both Levine's initial (\$641,977) and final (\$707,991) costs were significantly higher than either the awardee's initial (\$562,442) or final (\$559,668) costs. Levine argues that it was misled by HHS during discussions into increasing its initial proposed costs in its best and

final offer; however, we see no reason to assume that, if HHS had raised the two weaknesses in its proposal during discussions, Levine would have reduced its initial proposed costs enough to overcome the \$80,000 difference between its and the awardee's estimated costs. Levine argues that it prepared its cost estimate on the assumption that it would have a technical advantage by virtue of its performance under the prior contract; according to Levine, had it known that HHS had significant questions about its technical proposal, it would have reduced its estimated costs. We find this argument to be without merit. To the extent that Levine submitted a high cost estimate in reliance on its assumed technical superiority, Levine assumed the risk that another, lower cost offeror would receive an equal or better technical score. Under these circumstances, with Levine at best having an equal technical score but significantly higher estimated costs than the awardee, we do not believe that Levine had a reasonable chance at receiving the award.

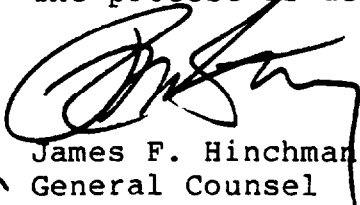
Levine attempts to show that HHS' failure to conduct meaningful discussions did prejudice it by arguing not only that its own technical score would have been higher and its costs lower, but also that the awardee's technical score should have been lower and its estimated costs higher. In our view, Levine has not shown that HHS's evaluation of the awardee's technical proposal and estimated costs was improper. In challenging HHS' technical evaluation, for example, Levine contends that the awardee's proposal did not adequately justify the awardee's decision to use a different type of software than had been used by Levine under its prior contract. We fail to see how the awardee's proposed use of different software constituted a deficiency in its proposal, however, since the RFP did not require the use of any particular software. Levine also argues that the awardee's proposal was deficient because it did not discuss all the data collection forms which Levine states must be processed under the RFP. In our view, the discussion of the forms in the awardee's proposal to which Levine refers is illustrative only; it does not indicate that the awardee intends to limit its performance to less than all the forms involved in the program.

With regard to the awardee's costs, while Levine argues generally that the agency's cost realism analysis was inadequate, Levine does not demonstrate that the awardee's costs should have been raised so significantly (by at least \$80,000) as to exceed even Levine's initial estimated costs. On the contrary, the record shows that the awardee's estimated costs approximated HHS' own estimate. Levine's most specific argument is that the awardee's costs do not include the costs involved in substituting the software proposed by the awardee for that used in Levine's prior

contract, which Levine estimates at \$30,000. Even accepting Levine's contention that the awardee's costs do not reflect the software substitution, Levine's estimate of the amount involved is significantly less than the difference between Levine's and the awardee's estimated costs.

Since Levine has not shown either that its own estimated costs would have been reduced significantly or that the agency's evaluation of the awardee's technical and cost proposals was unreasonable, we conclude that Levine was not prejudiced as a result of HHS' failure to advise it of the two weaknesses in its proposal during discussions.

The protest is denied.



James F. Hinchman  
General Counsel