



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: tg Bauer Associates, Inc.

File: B-229831.6

Date: December 2, 1988

DIGEST

1. Contracting agency conducted meaningful discussions when it informed the protester that it considered certain resumes of the protester to be unacceptable, even though the agency did not specify why this was the case, because this information reasonably led the protester into the personnel areas of its proposal needing amplification, given the detailed personnel requirements set forth in the RFP.

2. Where an agency lists unacceptable personnel during discussions with an offeror, but some of those personnel are actually rated "marginal" and other unacceptable personnel are not listed, the offeror is nevertheless not competitively prejudiced by these failures, where its proposal would still be unacceptable, even assuming it received full credit for the unacceptable personnel that were mislabeled or not listed.

3. The mere fact that scoring of initial and best and final proposals by different evaluators results in different conclusions as to the quality of an offeror's proposal does not automatically indicate an improper application of the evaluation criteria by any of the evaluators, given the subjective nature of the proposal evaluation process.

DECISION

tg Bauer Associates, Inc., protests the rejection of its proposal as unacceptable under request for proposals (RFP) No. N00019-87-R-0059, which was issued by the Naval Air

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Systems Command on April 24, 1987, for various support services.^{1/}

We deny the protest.

The RFP enumerated various tasks to be performed and estimated that 104,000 hours of work would be required for each year of the contract, including the 2 option years. These work hours involved the labor categories of: project manager (9,000 hours), senior analyst (18,000 hours), analyst (38,000 hours), junior analyst (14,000 hours), technician (5,000 hours), technical assistant (10,000 hours), technical typist (8,000 hours), and technical illustrator (2,000 hours).

The RFP required submission of technical, personnel, and cost proposals. Technical and personnel proposals were to be evaluated only as acceptable or unacceptable. As to personnel proposals, the RFP specified in detail the job descriptions, education and work experience requirements for each of the above labor categories. To perform the personnel evaluation, the evaluators used worksheets to determine whether proposed personnel were acceptable. Award was to be made "based on the lowest, realistic, and reasonably-priced offer" from those offerors whose proposals were found to be in the acceptable category.

After the Navy received and evaluated proposals, it conducted discussions, received best and final offers (BAFO-1) and selected first one offeror for award and then another--neither of which was Bauer. The Navy then further reviewed the proposals and found that they were unacceptable or contained such evaluated deficiencies that it had insufficient information to determine that either firm was entitled to the award. This constituted a reasonable basis to reopen negotiations and solicit new BAFOs.

The Navy's request for a second round of BAFOs (BAFO-2) was issued on February 12, 1988, to the four offerors considered

^{1/} The procurement has previously been protested by National Technologies Associates, Inc., and JWK International as well as Bauer. We have denied those protests. National Technologies Associates, Inc.; JWK International Corp., B-229831.2, B-229831.3, May 13, 1988, 88-1 CPD ¶ 453; JWK International Corp.; tg Bauer Associates, Inc., B-229831.4, B-229831.5, Sept. 29, 1988, 88-2 CPD ¶ 298.

in the competitive range, including Bauer,^{2/} for response by February 19. The Navy states that it issued this request to "clarify the Navy's concerns regarding personnel, composite hourly rates, and the amount of competitive time proposed by some of the offerors, among other clarifications." Bauer was told that the resumes of 24 key personnel, in the areas of project manager, senior analyst and analyst, were found to be unacceptable, and that if Bauer did not provide 24 acceptable replacement resumes, Bauer's proposal would be found to be unacceptable. As a result of the evaluation of BAFO-2, Bauer's proposal was eliminated from the competitive range because the Navy found Bauer's final proposal to contain insufficient resumes. National Technology Associates, Inc., was selected for award, since it was determined to have submitted the lowest-priced, acceptable proposal.

In this case, Bauer protests the Navy evaluation of its proposed key personnel and the conduct of discussions with Bauer prior to the submission of BAFO-2's. Bauer notes that, of the 24 resumes termed unacceptable in the Navy's February 12, 1988, letter to Bauer, only 17 were actually so rated as of that date and that of the remaining 7 key personnel (three proposed project managers, three senior analysts, and one analyst), the Navy had actually assigned a rating of "marginal," rather than unacceptable, to these other resumes. Bauer contends those resumes were "acceptable" and the Navy's statement to Bauer that these seven key resumes were unacceptable, rather than marginal, was, at least, a misstatement concerning the actual evaluation category. Bauer alleges that this misstatement prejudiced the consideration of Bauer's proposal and that if the Navy had informed the company that the seven resumes in question were, in fact, considered marginal, it would have improved its competitive position "with a cost which, in all probability, would have been low." Bauer argues that because it accepted the unacceptable rating on these seven individuals at face value, it "needlessly substituted other personnel which were later rated unacceptable or downgraded some personnel which increased the price ultimately proposed

^{2/} The Navy's position is that Bauer was included for BAFO-2's "even though there was doubt as to the technical acceptability of Bauer's proposal [because Bauer's] proposal was considered to have a chance for award if appropriately revised."

by Bauer in" BAFO-2 to Bauer's competitive disadvantage.^{3/} In addition, Bauer also notes, and the Navy admits, that, through an inadvertent omission, the Navy did not inform Bauer during these discussions of 10 unacceptable resumes in the junior analyst and technician categories.^{4/} Finally, Bauer contends that an agency does not satisfy its obligation to conduct meaningful discussions by merely telling it that the resumes were unacceptable without specifying the reasons therefor.

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. Medical Care Development, Inc.; Birch and Davis International, Inc., B-227848.3; B-227848.4, Oct. 19, 1987, 87-2 CPD ¶ 371; Tracor Marine, Inc., B-207285, June 6, 1983, 83-1 CPD ¶ 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 CPD ¶ 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 CPD ¶ 641. Ultimately, the content and extent of discussions are matters within the judgment of the agency involved and are not subject to question by our Office unless they are clearly without a reasonable basis. Professional Pension Termination Assocs., B-230007.2, May 25, 1988, 88-1 CPD ¶ 498. However, the government may not mislead an offeror into lowering the evaluated quality of its proposal. PanAm World Services, Inc., et al., B-231840 et al., Nov. 7, 1988, 88-2 CPD ¶ ____; Unisys Corp., B-231704, Oct. 18, 1988, 88-2 CPD ¶ ____.

We do not believe in the circumstances present here that the Navy was required to do more than inform Bauer which personnel were unacceptable. Given the RFP's detailed

^{3/} The Navy's report shows that Bauer's final price was about two percent more than the proposed awardee's price. Bauer lowered its initial offer price in both BAFO-1 and BAFO-2.

^{4/} Nevertheless, for purposes of proposal evaluation, the Navy states that Bauer's proposed work hours for these two categories were "utilized assuming full approval."

listing of job descriptions, education, and work experience requirements, the Navy's pointing out to Bauer that it considered certain resumes unacceptable was sufficient to lead Bauer into areas of its personnel proposal needing change or amplification.

With regard to the alleged misleading discussions, the Navy should not have advised Bauer that 7 of the 24 resumes were unacceptable when they were marginal. Moreover, the Navy failed to point out Bauer's unacceptable resumes in the junior analyst and technician categories. However, even assuming Bauer was given full credit for the seven marginal resumes in question and for all of the junior analysts and technicians, Bauer would still be considered unacceptable. That is, even giving Bauer this full credit, its total acceptable work hours would fall significantly short of the required total number of work hours set forth in the RFP. Although Bauer claims that all BAFO-2 resumes met RFP requirements, the record indicates this was not the case and that Bauer failed to correct all cited deficiencies in its BAFO-2. Bauer has not met its burden of showing the evaluation was unreasonable in this regard. See Pacord, Inc., B-224520.2, Mar. 6, 1987, 87-1 CPD ¶ 255.

Given Bauer's unacceptable proposal rating, even as adjusted in Bauer's favor, as described above, Bauer's argument about prejudice to its proposed price is irrelevant. It is well-established that price need not be considered where the associated non-price proposal is unacceptable. Data Resources, B-228494, Feb. 1, 1988, 88-1 CPD ¶ 94.

Bauer asserts that under DBA Systems, Inc., B-224306, Dec. 31, 1986, 86-2 CPD ¶ 722, it need not conclusively be shown that a protester would have been selected for award, absent contracting agency error, in order for the protester to be entitled to a remedy, if the contracting agency deprived the protester of a reasonable chance of receiving an award. However, we think it important that, before we disturb a procurement or contract, there be some evidence, especially where, as here, cost or price is an important selection factor, that the protester would have been competitive but for the agency action. B.K. Dynamics, Inc.--Reconsideration, B-228090.2, Feb. 18, 1988, 67 Comp. Gen. _____, 88-1 CPD ¶ 165. Here, we have no doubt that Bauer's personnel proposal was reasonably rated as unacceptable, even if Bauer was given full credit in the affected areas. Thus, Bauer was not competitively prejudiced, such that it is entitled to a remedy.

Bauer has made other arguments about the Navy's scoring of the personnel proposal. First, Bauer contends that the Navy

improperly introduced the evaluation category of "marginal" on the scoring sheets used by the evaluators to evaluate proposed personnel. Bauer contends that only "acceptable" or "unacceptable" ratings could be awarded under the RFP.

In reply, the Navy explains that the category "marginal" was contained in the source selection plan for the RFP and was provided to identify resumes which required closer scrutiny to determine if they were acceptable or unacceptable. This would allow the Navy to include as many offerors in the competitive range as possible, see Federal Acquisition Regulation § 15.609(a) (FAC 84-16), but that once the responses to BAFO-2 were received, the proposals were finally rated either acceptable or unacceptable. We are persuaded by the Navy's explanation and find nothing objectionable in the Navy evaluators' use of "marginal" ratings to evaluate the proposed personnel.

Bauer has further critiqued the evaluators' worksheets contending that: (1) many worksheets do not indicate whether the resumes submitted in BAFO-1 were acceptable, unacceptable or marginal; (2) that BAFO-2 worksheets for some resumes were not included in the record; and (3) that some resumes that were rated acceptable in the initial submission were inexplicably rescored as unacceptable after BAFO-1.

The Navy responds that Bauer has misunderstood the evaluator worksheets. For example, the Navy notes that while some of the individual evaluation sheets for BAFO-1 do not show "acceptable," "unacceptable," or "marginal" ratings for Bauer's resumes, the BAFO-1 summary sheets show evaluation ratings for all of Bauer's resumes. Further, the Navy explains that Bauer has misjudged some of the BAFO-1 resumes as being rated "acceptable," even though they were actually rated "marginal," as evidenced by the check or minus marks on the individual evaluation sheets. As to Bauer's contention that some resumes do not have a corresponding new evaluation sheet for BAFO-2, the Navy notes that, if a resume was identified as unacceptable in the initial offer stage or under BAFO-1, a new evaluation sheet was not prepared if, as Bauer did, an offeror resubmitted a resume as part of the BAFO-2 submission. Our review of the evaluators' worksheets indicates no basis to challenge the Navy's evaluation of the personnel proposal.

As to the nine resumes that were judged to be acceptable after initial offers but unacceptable after BAFO-1's, the Navy explains that this occurred because resumes were reevaluated by a single evaluator after BAFO-1 to ensure that the rating criteria were being applied accurately and

uniformly. This evaluation precaution resulted in changes from acceptable to unacceptable in resume evaluations in all of the offerors' proposals, not just on Bauer's evaluation. Moreover, the Navy notes that, as a result of this reevaluation, one of Bauer's resumes was changed from "unacceptable" to "acceptable."

The mere fact that scoring of initial and BAFO proposals by different evaluators results in different conclusions as to the quality of an offeror's proposal does not automatically indicate an improper application of the evaluation criteria by any of the evaluators, given the subjective nature of the proposal evaluation process. See Chemonics International, B-222793, Aug. 6, 1986, 86-2 CPD ¶ 161; Magnavox Advanced Products and Systems Co., B-215426, Feb. 6, 1985, 85-1 CPD ¶ 146. We find that the Navy's reevaluation and rescoring of the offerors' proposals in the personnel area was reasonable, given the stated need to ensure that the criteria were being applied accurately and uniformly. In any case, Bauer has not successfully challenged the Navy's determination that Bauer's BAFO-2 personnel proposal was unacceptable.

The protest is denied.

for *John F. Mitchell*
James F. Hinchman
General Counsel