



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: EMSA Limited Partnership

File: B-245973

Date: February 5, 1992

David G. Post, Esq., Wilmer, Cutler & Pickering, for the protester.

Wendy T. Kirby, Esq., Hogan & Hartson, for Georgetown University, an interested party.

James F. Trickett, Department of Health & Human Services, for the agency.

Glenn G. Wolcott, Esq., and Paul I. Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Where solicitation provides that technical factors are more important than cost and award was made on the basis of higher rated, higher cost proposal, source selection official's failure to specifically discuss the cost/technical tradeoff in the selection decision document does not render award invalid where tradeoff is supported by the record.

DECISION

EMSA Limited Partnership (EMSA) protests the award of a contract by the National Institutes of Health (NIH), Department of Health and Human Services, to Georgetown University (GU) under request for proposals (RFP) No. 263-90-P(49)-0354. The RFP sought proposals to furnish anesthesiology services for NIH's 500-bed Clinical Center and contemplated award of a 1-year cost-reimbursement contract with 4 option years. EMSA protests that NIH failed to consider EMSA's proposed cost savings in making its award determination.

We deny the protest.

NIH issued the solicitation on January 14, 1991. Section L of the solicitation directed offerors to submit both cost and technical proposals. Section M of the solicitation identified four technical factors that would be considered

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in evaluating technical proposals,¹ stated that technical factors would "receive paramount consideration," and provided that the agency would perform a best-buy analysis taking into account the results of its technical and cost evaluations.

On or before the March 1 closing date, the agency received five proposals including GU's and EMSA's. Following an initial technical evaluation, the contracting officer established a competitive range consisting of the proposals of two offerors--EMSA and GU. The cost proposals submitted by EMSA and GU were subsequently audited and, although not numerically scored, analyzed for reasonableness and cost realism. Discussions were then conducted and best and final offers (BAFOs) were submitted by June 26. Upon receiving BAFOs, the agency performed a final evaluation with the following results.

| | Technical Score (230 pts. possible) | Proposed Cost |
|------|--|------------------|
| EMSA | 159 (69.1%) | \$30,873,357 |
| GU | 199 (86.5%) | \$35,678,236 |

The contracting officer concluded that, because technical factors were of paramount importance, the superiority of GU's technical proposal (scored approximately 25 percent higher than EMSA's technical proposal) offset the approximately 15-percent cost advantage offered by EMSA. In concluding that the technical advantages offered by GU offset EMSA's cost advantage, the contracting officer did not formally quantify his cost/technical tradeoff.

EMSA asserts that during a debriefing following award, it was informed "that cost considerations had played no part in the source selection process" and "that there had been no balancing of technical and cost evaluation factors." Based on this information, EMSA protests the agency's failure to conduct a formal best-buy analysis or establish "weighting factors" to be applied to the technical scores and evaluated costs, and asserts that the contract should be considered void ab initio.²

¹Section M.2 listed the following criteria in descending order of importance: (1) technical approach; (2) personnel; (3) related experience; and (4) managerial efficiency.

²EMSA has not challenged the substance of the agency's technical and cost evaluations.

The agency responds that EMSA misunderstood the information communicated at the debriefing, stating:

"[EMSA's misunderstanding] most likely arose from the contracting officer's failure to distinguish between whether cost was considered and whether, after consideration, cost proved to have a significant effect on the selection for award. As so often happens in a debriefing, the thrust of the comments made by the NIH personnel was to explain or justify the award decision. In the mind of the contracting officer, the award was justified primarily on technical grounds, i.e. the difference in technical merit explained the failure of EMSA to be selected for award. This was the point he was trying to communicate. His apparent emphasis that cost was not a factor in the selection was misconstrued to mean that cost had not been considered at all. . . . In a similar fashion, when EMSA heard the contracting officer say that there had been 'no balancing' of cost and technical factors, what he was attempting to communicate was that the combined technical/cost merit of the GU proposal was so clearly advantageous to the government that no fine analysis or 'balancing' was necessary to reveal that advantage."

Specifically, in responding to the protest, the contracting officer explained that, although he did not quantify his comparison of GU's technical advantage to EMSA's cost advantage, he concluded that EMSA's less expensive proposal was less advantageous to the government due to the fact that EMSA's proposal was "significantly weaker in the demonstrated ability and experience to function in the complex environment of a surgical research setting," and concluded that "the additional specialized surgical experience and expertise available from [GU] . . . more than offset the estimated cost premium."³


³This conclusion by the contracting officer is consistent with, and supported by, the Technical Evaluation Panel's (TEP) final report to the contracting officer dated July 15, 1991. There, the TEP recommended award to GU noting that it considered GU's proposal technically superior to EMSA's due, in part, to questions concerning EMSA's relative capability to function as part of a team in the environment contemplated by the solicitation. The TEP also expressed concern regarding the qualifications and availability of personnel proposed by EMSA.

To the extent EMSA is asserting that the information provided at the debriefing constitutes a separate basis for protest, we disagree. A debriefing is only an after-the-fact explanation of the selection decision and not the selection itself, and our Office is primarily concerned with whether the selection decision itself was consistent with statute and regulations. See JSA Healthcare Corp., B-242313; B-242313.2, Apr. 19, 1991, 91-1 CPD ¶ 388.

Where, as here, the RFP did not include a formula assigning specific weights to technical factors and cost, the selection official retains considerable discretion in determining the significance of technical point score differentials and their relationship to differentials in proposed costs. Assocs. for the Educ. of the Deaf, Inc., B-220868, Mar. 5, 1986, 86-1 CPD ¶ 220. Further, cost/technical tradeoffs may be made in selecting an awardee subject only to the test of rationality and consistency with the established evaluation factors. Maytag Aircraft Corp., B-237068.3, Apr. 26, 1990, 90-1 CPD ¶ 430. Finally, even where a source selection official does not specifically discuss the cost/technical tradeoff in the selection decision document, we will not object to the tradeoff if it is consistent with the evaluation criteria in the solicitation and otherwise supported by the record. Virginia Technology Assocs., B-241167, Jan. 29, 1991, 91-1 CPD ¶ 80.

Here, the record establishes that the contracting officer had a reasonable basis for determining that GU's proposal's significant technical superiority more than offset the approximately 15 percent cost savings offered by EMSA. Specifically, the record demonstrates that the agency determined that EMSA's proposed cost savings did not outweigh the comparative weakness in EMSA's proposal with regard to EMSA's relative ability to function as part of a team in the environment contemplated by the solicitation and the agency's concerns regarding the qualifications and availability of personnel proposed by EMSA. In short, the record demonstrates that the agency had a reasonable basis for its cost/technical tradeoff and the fact that the agency did not apply a particular formula or otherwise perform a formal cost/technical tradeoff prior to award does not render its evaluation and source selection invalid. See Virginia Technology Assocs., supra.

The protest is denied.


James F. Hinchman
General Counsel