



Comptroller General
of the United States

Washington, D.C. 20548

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Decision

Matter of: Technology & Management Services, Inc.

File: B-253117.2

Date: October 14, 1993

Richard Murray, Esq., Murray, Jacobs & Abel, for the protester.

Myrna E. Friedman, Esq., Sargeant & Friedman, for EA Engineering, Science and Technology, Inc., an interested party.

Ronald E. Cone, Cynthia Yee, and Paul A. Gervas, Esq., Department of Energy, for the agency.

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

DIGEST

1. Protest that agency's documentation supporting source selection decision is internally inconsistent is denied where contracting officer testified that inconsistency was caused by a clerical error in drafting the source selection statement and record does not otherwise indicate any disagreement within the agency regarding the basis for the source selection decision.
2. Clarifying information obtained from the offerors during oral discussions may provide a valid basis for adjusting technical scores prior to requesting best and final offers.
3. Protest that source selection official failed to consider all ratings and rankings of technical evaluation committee is denied where record indicates that documentation regarding all of the committee's ratings and rankings was provided to the source selection official prior to the source selection decision.
4. Protest that awardee does not have adequate resources to perform the contract constitutes a challenge to awardee's responsibility and will not be considered.
5. Protest that information regarding the evaluation of proposals "may have" been disclosed to awardee is denied where protester provides no evidentiary support for the allegation.

DECISION

Technology & Management Services, Inc. (TMS) protests the Department of Energy's (DOE) award of a contract to EA Engineering, Science, and Technology, Inc. (EA) under request for proposals (RFP) No. DE-RP01-92CE50340 to provide technical and analytical support services for DOE's Office of Transportation Technologies. TMS protests that the agency's technical evaluation was improperly conducted; that the source selection official failed to consider all technical ratings and rankings; that the awardee will be unable to perform the contract; and that evaluation information was leaked to the awardee during the evaluation process.

We deny the protest.

BACKGROUND

On December 30, 1991, the RFP was issued on an unrestricted basis contemplating award of a contract for a 2-year base period and three 1-year option periods. The RFP sought proposals to furnish the necessary personnel, facilities, and materials to support DOE's administration of various programs under the direction of the Office of Transportation Technologies (OTT).¹ The RFP required each offeror to propose 82,770 direct productive labor hours (DPLH) for the base period and 41,385 DPLH for each option period, and identified various categories of labor to be proposed.

On or before the February 7, 1992, closing date, four proposals were submitted, including those of TMS and EA. Technical proposals were evaluated by a technical evaluation committee (TEC) resulting in the assignment of the following scores:

¹The RFP stated that DOE's OTT is charged with long-term, high risk, and potentially high payoff research and development of promising transportation technologies. The RFP contemplated support for the following specified programs: technology transfer support; heavy duty transport technology; automotive turbine technology applications; advanced materials development; alternative fuels; magnetic levitation; chlorofluorocarbon reduction; heat engine emission reduction; and electrical hybrid vehicle program.

<u>Offeror</u>	<u>Technical Score</u>
EA	835
TMS	755
Offeror A	598
Offeror B	40

The agency subsequently determined that only TMS' and EA's proposal were within the competitive range. On June 25, the agency conducted oral discussions with TMS and EA, giving each offeror an opportunity to clarify various aspects of its proposal by responding to questions presented by the agency evaluators. Following these discussions and before best and final offers (BAFOs) were requested, the agency reassessed the technical merits of each offeror's proposal. EA's technical score was increased by 7.5 points to a score of 842.5; TMS' score was increased by 97.5 points to a score of 852.5.

In a memorandum to the contracting officer dated July 14, the TEC chairman explained the basis for adjusting the scores as follows:

"The score for TMS was substantially revised upward because of their demonstrated technical knowledge and on the strength of their key personnel. They removed the uncertainty felt by the TEC about their expertise in certain key technologies and showed keen insight into the critical issues facing OTT in the near future"

"The closeness of the scores indicates that the TEC believes both offerors are competent and capable of fulfilling the requirements of the [statement of work]. The slight edge given to TMS reflects our view that they bring a broader, more strategic outlook on the issues facing OTT in the coming years. This contrasts with the more nuts and bolts, business as usual approach of EA. For this reason, the TEC unanimously recommends that these two offers be considered equal technically, and that the resulting contract award be based solely on cost."

The agency subsequently requested and received BAFOs from both offerors by December 7. In their BAFOs, both offerors adjusted the allocation of direct labor hours between themselves and their proposed subcontractor(s). TMS shifted labor hours away from its proposed subcontractor; EA shifted

labor hours to its proposed subcontractors. Because the agency viewed each offeror's proposed subcontractor(s) as strengths in their respective proposals,² EA's technical score increased slightly (12.5 points) due to its increased use of the particular subcontractors it had proposed; TMS' score decreased slightly (10 points) due to its decreased use of its proposed subcontractor. Following BAFOs, the technical scores were as follows:

<u>Offeror</u>	<u>Technical Score</u>
EA	855
TMS	842.5

In evaluating the cost proposals submitted on December 7, the agency found that both offerors' proposals contained flaws or ambiguities. For example, TMS' cost proposal included an overhead rate that was approximately 50 percent lower than the rate that had been approved by the Defense Contract Audit Agency (DCAA); EA's cost proposal contained an ambiguity regarding the proposed fee. By letters dated December 31, the agency reopened discussions with each offeror and sought correction or clarification of the cost proposals. On January 8, both offerors submitted revised BAFOs which addressed various aspects of their cost proposals; neither offeror made any changes to its technical proposal. The agency evaluated the revised BAFOs with the following results:

<u>Offeror</u>	<u>Technical Score</u>	<u>Evaluated Cost</u>
EA	855.0	\$10,585,667
TMS	842.5	11,399,000

Based on these final technical scores and evaluated costs, the agency selected EA's proposal for award on January 19. This protest followed.

DISCUSSION

TMS first protests that the agency's documentation supporting the source selection decision is inconsistent regarding the effect that TMS' reallocation of direct labor had on its technical score. TMS notes that the TEC viewed

²At the hearing conducted in connection with this protest, the TEC chairman testified that the agency had experience with, and confidence in, the work previously performed by each of the particular subcontractors proposed by EA and TMS. Video Transcript (VT) at 10:18-10:20.

the reallocation of labor in its BAFO as a negative factor, while the source selection statement indicates that TMS' labor reallocation had a positive effect on TMS' technical score. Specifically, by memorandum to the contracting officer dated December 21, 1992, the TEC chairman reported the results of the BAFO evaluation as follows:

"[TMS'] technical score was reduced slightly because they took hours away from their single subcontractor, Arthur D. Little (ADL). The committee felt that a substantial portion of the technical strength of TMS's proposal came from ADL's contribution." (Emphasis added.)

In contrast, the source selection statement, dated January 19, 1993, stated:

"The TMS revised BAFO cost proposal showed that [TMS] reduced subcontractor A.D. Little's DPLH [direct productive labor hours] by 18 percent and moved the DPLH effort so that [TMS] would perform more of the effort in-house. The result of this redistribution of DPLH from subcontractor to [TMS] significantly increased the TMS technical score" (Emphasis added.)

Because of the inconsistency in the record regarding the effect of TMS' reallocation of labor, our Office conducted a hearing during which the TEC chairman and the contracting officer testified.³ The contracting officer testified that the inconsistency was the result of a clerical error in drafting the source selection statement. VT at 10:44. The contracting officer further testified that at no time was there any disagreement between the TEC and either himself or the source selection official regarding the effect of TMS' reallocation of direct labor in its BAFO. VT at 10:42-10:53.

The record supports the contracting officer's testimony in this regard. Other than the apparent inconsistency discussed above, there is no indication that either the contracting officer or the source selection official conducted any independent assessment of technical proposals that varied from the assessment conducted by the TEC; neither is there any indication of any disagreement between the TEC and either the contracting officer or the source selection official regarding the relative merits of the proposals. Rather, both the TEC chairman and the contracting officer testified that the source selection

³The contracting officer testified that he was the author of the source selection statement.

decision reflected the TEC's technical assessment. VT at 9:40; 10:42; 10:52-10:53. On this record, the apparent clerical inconsistency between the TEC's evaluation and the source selection statement provides no basis for sustaining TMS' protest.

TMS next asserts that it was improper for the agency to revise technical scores following oral discussions. Specifically, TMS complains that:

"FAR 15.610(c)(3) states that the purpose of discussions is to 'Attempt to resolve any uncertainty concerning the technical proposal' Scoring after orals would do nothing to advance this purpose. The offerors cannot be told of the scoring, and it therefore can do nothing to resolve uncertainties. The uncertainties which are to be resolved are with the offerors' proposals, not between the members of the TEC as the Agency suggests." (Emphasis in original.)

It is not clear why TMS is challenging the agency's rescoring of proposals following oral discussions since, as discussed above, TMS' technical score increased by 97.5 points (from 755 to 852.5) due to the rescoring, and EA's score increased only 7.5 points (from 835 to 842.5). On this record, we fail to see any prejudice to TMS. In any event, we find no merit in TMS' assertion that information obtained during discussions cannot provide a valid basis for the agency evaluators to adjust technical scores prior to receipt of BAFOs to more accurately reflect the evaluators' enhanced understanding of proposals based on the discussions.

Notwithstanding TMS' assertion that the rescoring after discussions was improper, TMS next argues that the procurement was fatally flawed because the source selection statement did not expressly reference the interim evaluation. TMS asserts that this omission constitutes a violation of FAR § 15.612(d)(1) which states: "The source selection authority shall consider any rankings and ratings, and, if requested, any recommendations prepared by evaluation and advisory groups."

At the hearing conducted in connection with this protest, the contracting officer testified that the documentation supporting the interim evaluation was, in fact, presented to the source selection official during the meeting at which EA was selected for award and that the source selection official reviewed that documentation along with the other documents supporting the procurement. VT at 11:03-11:12. Assuming that FAR § 15.612(d)(1) is applicable to this

procurement and that it required the source selection official to consider all preliminary evaluation scores along with final ratings and rankings,⁴ the record here adequately demonstrates that the source selection official reviewed and considered all of the TEC's ratings and rankings. VT at 11:03-11:12.

TMS next protests that award to EA was improper because "EA does not have the needed personnel . . . i.e., engineer analysts and other professionals, to perform work on the contract." TMS further complains that EA "may not" be performing the contract with the key personnel it identified in its proposal.⁵

Except for the two key personnel that offerors were required to specifically identify, the RFP did not call for offerors to identify the various individuals that would ultimately perform the contract. Rather, for each of the non-key labor categories, the RFP required that offerors furnish three resumes of individuals that were representative of the personnel to be provided. EA complied with this requirement. Further, after receiving TMS' protest, EA responded by noting that its proposal listed approximately 70 personnel on whom it intended to rely in performing this contract and that exhibit D of its proposal demonstrated that EA has over 600 technical and professional personnel on its staff. Accordingly, in its proposal, EA showed that it has more than adequate resources to perform this contract.

Regarding TMS' assertion that the key personnel proposed by EA "may not" be performing the contract, EA unambiguously responded:

"The same personnel who were mentioned and priced in the original proposal as key personnel were present when the BAFO and revised BAFO were submitted, and are present today and performing their jobs pursuant to the contract."

⁴Section 15.612 of the FAR applies to acquisitions conducted under "formal source selection" procedures. FAR § 15.612(a). At the hearing, the contracting officer testified that this acquisition was not conducted as a "formal source selection" as that process is defined in the FAR or DOE's acquisition regulations. VT at 11:03. As discussed above, we need not resolve this issue.

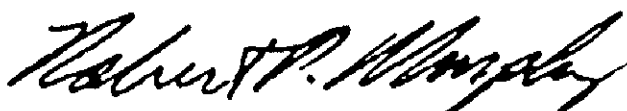
⁵The RFP listed two key positions for which offerors were required to propose specifically identified personnel. TMS' protest did not identify any specific individuals that EA allegedly proposed who are not currently performing under the contract.

Following receipt of EA's response to its protest, TMS provided no information contradicting EA's factual assertions. In any event, this portion of TMS' protest merely challenges the agency's affirmative determination of EA's responsibility and the agency's administration of the contract. Our Office will not review either of these issues, absent facts or allegations not presented here. 4 C.F.R. § 21.3(m)(1), (5) (1993); Specialty Plastic Prods., Inc., B-237545, Feb. 26, 1990, 90-1 CPD 228; King-Fisher Co., B-236687.2, Feb. 12, 1990, 90-1 CPD ¶ 177.

Finally, TMS protests that the agency "may have" disclosed evaluation information to the awardee after conducting oral discussions because some EA employees approached TMS officials seeking employment with TMS following those discussions. The agency responds that, contrary to TMS' speculative allegations, the evaluation results were carefully protected by the agency and, to its knowledge, no procurement information was disclosed outside the government.

TMS has offered no evidence to support its suggestion that the integrity of the evaluation process may have been compromised. Absent such evidentiary support, TMS' allegation is speculative and does not constitute a valid basis for protest. See, e.g., Technology, Inc., B-190534, Nov. 16, 1977, 77-2 CPD ¶ 379.⁶

The protest is denied.


 J. James F. Hinchman
 General Counsel

⁶TMS also protests that the agency did not conduct a proper cost realism analysis. In response, the agency provided its summary cost realism report along with its supporting item-by-item calculations and spreadsheets. Upon receipt and review of this information, TMS failed to identify any particular item wherein the agency's cost realism analysis was flawed. On this record, we consider TMS to have abandoned the issue and will not consider it. See, e.g., Heimann Sys. Co., B-238882, June 1, 1990, 90-1 CPD ¶ 520.