



# Decision

**Matter of:** Occu-Health, Inc.; Analytical Sciences, Inc.  
**File:** B-258598.2; B-258598.3; B-258598.4  
**Date:** February 9, 1995

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Matthew S. Watson, Esq., for Hummer Associates, an interested party.  
Kenneth A. Lechter, Esq., Department of Commerce, for the agency.  
Sylvia Schatz, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

## DIGEST

1. Protests that the agency orally changed the basis for award during discussions with protesters--from "best value" to "low, technically acceptable"--and then failed to adhere to the changed award basis, are without merit.
2. Agency was not required to conduct discussions with the protester concerning corporate and employee experience where agency found the protester's technical and corporate experience acceptable--it was merely not as strong as the awardee's--and, in any case, had no reason to believe the protester had not provided all relevant past performance information, as required by the solicitation, or that the protester otherwise could make its proposal more competitive.

## DECISION

Occu-Health, Inc. (OHI) and Analytical Sciences, Inc. (ASI) protest the award of a contract to Hummer Associates under Department of Commerce, National Oceanic and Atmospheric Administration (NOAA) request for proposals (RFP) No. 52-DKNA-4-00066, issued as a small business set-aside for the operation of health units. The protesters primarily argue that discussions with the firms were misleading and not meaningful.

We deny the protests.

The solicitation, issued on March 30, 1994, sought proposals for a firm, fixed-price contract for a base year with 4 option years to provide the personnel, management, supervision, equipment, and supplies needed to operate health units serving NOAA employees in the Washington, D.C. metropolitan area. The RFP required offerors to submit separate technical, management, and cost proposals; the technical proposal was considerably more important than the management proposal, and the combined management/technical merit rating would be somewhat more important than cost. Evaluation of the technical proposals would be based on the following factors, in descending order of importance: (1) technical personnel; (2) medical programs; (3) technical approach; (4) training; and (5) policy and procedures manual. With respect to the technical personnel factor, offerors were required to provide resumes showing the technical capability and experience, in light of the specific personnel qualifications set forth in the statement of work, of a medical officer, a nursing supervisor, 6.25 occupational health nurses, and a medical secretary/receptionist.

Evaluation of the management proposals would be based on two factors, in descending order of importance: (1) corporate experience and capabilities, and (2) program management plan. The solicitation specifically stated that the quality and completeness of an offeror's related corporate experience in an industrial or occupational health environment for other agencies would be considered. The cost proposal was to be evaluated for realism. Award was to be made to the responsible offeror whose offer, conforming to the solicitation, was determined to be the most advantageous to the government, technical factors and cost considered.

Four proposals were received by the amended May 24 closing date; all of the proposals, including OHI's, ASI's, and Hummer's were included in the competitive range. Following oral technical and cost discussions with the offerors, revised proposals were requested and received. These proposals were evaluated and received revised management/technical ratings. Following issuance of amendment No. 003, which, among other things, reduced the total required level of effort (LOE) from 24,000 to 17,700

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<sup>1</sup>The RFP also contained a line item entitled "other direct costs," which required offerors to provide both fixed prices for certain items and reimbursable costs, not to exceed \$10,000, for x-rays, laboratory services, immunizations, and medical waste removal.

hours of direct labor, best and final offers (BAFO) were requested and received on August 31. The three relevant BAFOs were evaluated as follows:

	HUMMER	OHI	ASI
<b>TECHNICAL</b>	<i>Actual/Possible</i>		
Technical Personnel	245/250	235	220
Medical Programs	190/200	180	190
Technical Approach	150/150	135	135
Training	50/50	45	45
Policy & Procedures Manual	45/50	45	45
Sub-total	680/700	640	635
<b>MANAGEMENT</b>	<i>Actual/Possible</i>		
Corporate Experience	190/200	185	185
Program Management Plan	90/100	90	90
Sub-total	280/300	275	275
<b>TOTAL</b>	960/1000	915	910
PRICE (including options)	\$2,851,346	\$2,681,634	\$2,689,524

In comparing Hummer's and OHI's BAFOs, NOAA determined that although Hummer's price was approximately \$170,000 higher than OHI's, Hummer's BAFO represented the greatest value in light of its (1) highest overall merit rating, and (2) highest ratings under each technical and management factor, except the least important technical factor (policy and procedures manual) and the least important management factor (program management plan), under which Hummer and OHI received the same ratings. Hummer's BAFO was also rated a greater value than ASI's since, although ASI's price was approximately \$162,000 lower, Hummer's proposal was rated higher than ASI's under each technical and management factor except the second most important technical factor (medical programs) and the least important management factor, under both of which Hummer and ASI received the same rating. In making these tradeoffs, NOAA noted that the technical/management factors were more important than price under the RFP. After determining that Hummer's proposed costs were realistic, the agency awarded the contract to Hummer. These protests followed.

## DISCUSSIONS

## Alleged Changed Award Basis

OHI and ASI both argue that NOAA effectively changed the basis of award during discussions from "best value," as called for by the RFP, to "low cost, technically acceptable" by stating that award would be made to the offeror proposing the lowest price and repeatedly exhorting the protesters to lower their prices. OHI and ASI conclude that award to Hummer at a higher price was inconsistent with the modified basis for award. Alternatively, they argue that they were misled into believing that the basis for award had been changed, and that they were prejudiced as a result.

There was no basis for OHI and ASI to conclude that the basis for award had been changed. Even if, as alleged, the agency had orally indicated during discussions that award would be made based on low price (the agency has submitted three affidavits in which the agency personnel involved deny making such statements), offerors may not rely on such oral modifications to an RFP which are inconsistent with the written terms of the RFP absent a written amendment or confirmation of the oral modification. Rick Manning, B-257095, July 28, 1994, 94-2 CPD ¶ 50.

Further, notwithstanding the alleged statements by the agency during discussions, the record shows that the agency discussed not only the need for offerors to lower their prices,<sup>2</sup> but also numerous aspects of their technical proposals. The protesters both revised their technical proposals in response to these discussions, and these changes resulted in increases in their initial scores. This suggests that, contrary to their assertions, both offerors fully understood that technical quality remained a factor in the award decision. Further in this connection, although the protesters generally maintain that they were prejudiced by relying on the agency's statements, they have not specified any areas of their technical proposals where they reduced technical quality in order to reduce their prices (and their increased BAFO scores would suggest that they did not). There thus is no basis to find that there was a reasonable possibility that the protesters were prejudiced by the agency's alleged actions; such prejudice is an essential element of a viable protest. Winters Restoration, Ltd., 71 Comp. Gen. 367 (1992), 92-1 CPD ¶ 819.

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<sup>2</sup>With regard to the cost discussions, the record shows that although all offerors' initial prices were considered reasonable, they exceeded available funds. As a result, the agency did urge offerors to lower their prices during discussions.

## Meaningful Discussions

ASI argues that the technical discussions with the firm were not meaningful. The agency downgraded its BAFO under (1) the most important technical factor--technical personnel--due to ASI's failure to demonstrate the required training of its proposed medical officer and the training and experience of its proposed nursing supervisor; and (2) the most important management factor--corporate experience and capabilities--due to ASI's failure to specify the experience of three proposed senior executives in managing sites similar in size and scope to the current solicitation. ASI maintains that it should have been provided the opportunity through discussions to present additional information in these areas.

Where a proposal is considered to be acceptable and in the competitive range, the agency is not obligated to discuss every aspect of the proposal that receives less than the maximum possible rating. Specialized Technical Servs., Inc., B-247489.2, June 11, 1992, 92-1 CPD ¶ 510. ASI's proposal was rated acceptable under the two factors in question; the agency simply determined that its proposal was weak relative to ONI's and Hummer's. NOAA was concerned under the technical experience factor with "ASI's utilization of the many part-time nurses," which the agency believed would result in high turnover and additional costs related to the replacement and training of new personnel; the agency also found that ASI's proposed occupational health nurse lacked recent and relevant experience in occupational health, as required by the RFP.<sup>3</sup> Under the corporate experience and capabilities factor, NOAA determined that only one of ASI's prior government contracts was similar in dollar value to the current requirement. At the same time, NOAA considered as strengths the credentials of ASI's proposed medical officer and nursing supervisor, indicating they were "highly qualified," and ASI's experience on six current government contracts involving the operation of health clinics. Hummer's proposal received a higher overall technical rating based in part on the fact that all of the firm's proposed personnel had "outstanding credentials" and that Hummer had "extensive experience at other agencies" performing contracts that were similar in dollar amount to the current requirement.

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<sup>3</sup>NOAA states in its agency report that ASI's BAFO also failed to show its proposed medical officer had inadequate training in occupational health. However, nothing in the evaluation documents shows that ASI's BAFO was downgraded due to this concern. It thus appears to have had no effect on the award decision.

In addition, prior experience is an aspect of a proposal that is generally not subject to improvement (although sometimes experience may be appropriately supplemented through additional personnel, subcontracting, or additional detail about experience described in the proposal). See AWD Technologies, Inc., B-250081.2; B-250081.3, Feb. 1, 1993, 93-1 CPD ¶ 83. Although ASI asserts that it could have provided the agency with additional information about its proposed employees if asked, ASI has not identified what information it would have furnished. Further, given the specific RFP requirement for information on offerors' and their proposed employees' relevant experience, NOAA had no reason to believe the protester had not presented all significant experience information in its proposal. We conclude that NOAA was not required to raise ASI's experience weaknesses during discussions.

#### COST EVALUATION

ASI complains that the agency improperly "penalized" its cost proposal based on alleged weaknesses which were not part of the RFP evaluation scheme; NOAA found as a weakness, for example, that ASI had failed to provide a "cushion" in its direct labor rate for unexpected needs of the program. However, notwithstanding its concerns, the agency determined that the reimbursable costs proposed by ASI were realistic, and evaluated ASI's proposal based solely on the firm's proposed costs and fixed prices. Thus, any concerns the agency may have had did not affect ASI's evaluation or the award determination.

The protests are denied.

\s\ Paul Lieberman  
for Robert P. Murphy  
General Counsel