

Ahearna



Comptroller General  
of the United States

102538

Washington, D.C. 20548

REDACTED VERSION\*

# Decision

Matter of: Frank Beach & Associates, Inc.

File: B-260720

Date: July 17, 1995

Robert Martin, Esq., Simon, Turnbull & Martin, for the protester.  
Richard S. Gordon, Esq., Carr, Goodson & Lee, for Technical Resources International, Inc., an interested party.  
Lafayette N. Johnson, Esq., Federal Emergency Management Agency, for the agency.  
M. Penny Ahearn, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

## DIGEST

1. Agency's downgrading of protester's proposal on basis that it indicated script review and approval process contrary to solicitation requirement was reasonable.
2. Agency was not required to conduct discussions with protester concerning proposed project manager's past experience where (1) manager's experience was evaluated outstanding--it was merely less than the most desirable similar experience requested in the solicitation, and (2) in any case, the agency had no reason to believe that the protester had not provided all similar experience or that the protester could otherwise improve its rating in this area.
3. Agency's rejection of protester's alternate proposal without discussions was reasonable where solicitation expressly prohibited alternate proposals.

\*The decision issued on July 17, 1995, contained proprietary information and was subject to a General Accounting Office protective order. It was released to the parties admitted to the protective order. The parties have agreed that this decision should be released in its entirety.

064366/154977

---

**DECISION**

Frank Beach & Associates, Inc. protests the evaluation of its primary proposal, rejection of its alternate proposal, and the resulting award of a contract to Technical Resources International, Inc. (TRI) under request for proposals (RFP) No. EMW-95-R-3000, issued by the Federal Emergency Management Agency (FEMA) for satellite transmitted videoconferencing support and production services on FEMA's Emergency Education Network (EENET).

We deny the protest.

**BACKGROUND**

The RFP contemplated award of a time-and-materials, indefinite quantity contract with fixed-labor rates. Technical proposals were to be scored based on the following evaluation factors and possible points<sup>1</sup>:

- |   |           |
|---|-----------|
| 1. Demonstrated understanding of the scope of work  | 15 points |
| 2. Experience                                       | 25 points |
| 3. Past performance/project organization management | 20 points |
| 4. Key personnel                                    | 30 points |
| 5. Creativity                                       | 10 points |

The solicitation also provided for technical adjectival ratings--fails, meets, exceeds. The RFP further requested offerors to submit their approach and methods for performing three described work scenarios. Offerors were advised that the evaluation under technical factors 1, 3, 4, and 5, above, would be based "to a great extent" on their scenario submissions.

Offerors were required to provide fixed rates for required labor categories for the base period and 4 option years. Offerors were also requested to cost out the three RFP-provided work scenarios for the base period. The solicitation advised that cost would be evaluated for realism and most probable cost to the government.

In the source selection decision, technical merit was of greater importance than cost; however, if there were "no significant technical or financial and management differences," cost could be the determining factor.

---

<sup>1</sup>The RFP also set forth technical subfactors and their possible points.

In connection with alternate proposals, the RFP instructions provided that "[a]lternate proposals are not solicited, are not desired, and shall not be evaluated." Additionally, in connection with "deviations/exceptions," the RFP instructions provided that:

"The offeror will fully explain any deviations, exceptions or conditional assumptions taken with respect to this part of the RFP. Any exceptions taken to the specification shall have amplification and justification in order to be evaluated. Such exceptions will not, of themselves, automatically cause a proposal to be termed unacceptable. A large number of exceptions, or one or more significant exceptions not providing any obvious benefit to the government may result in rejection of such proposal(s) as technically unacceptable. Highlight exceptions in the margin of the proposal where they appear in the text."

In response to the solicitation, FEMA received five offers, including Beach's and TRI's, the only relevant ones here.<sup>2</sup> Beach submitted two proposals--one in accordance with the specifications and another consisting of "alternative" scenarios. The agency determined that it could not consider Beach's alternative proposal, based on the RFP prohibition against alternate proposals, and thus evaluated only Beach's primary proposal. Written discussions were held and best and final offers (BAFO) received. Beach submitted revised BAFOs for both its primary and its alternative proposals. Beach's primary BAFO proposal was evaluated with a score of 93 out of 100 points at a cost of \$228,511.52; TRI's BAFO was evaluated with a score of 97 points at a cost of \$213,665. FEMA made award to TRI on March 1, 1995, as the offeror "who had both the technically superior proposal and the lowest cost proposal."

#### PRIMARY PROPOSAL

Beach argues that evaluations, and related discussions in some instances, were unreasonable and inadequate in five areas where the firm's proposal was downgraded a total of 6 points. The protester contends that its proposal should have earned at least 5 of the 6 points for a total technical score of 98 points, which would have been sufficient to overtake TRI's 97 points. According to the protester, it was prejudiced by the alleged improper scoring, since the

---

<sup>2</sup>Two of the other proposals were rated as "fails" and dropped from the competition and a third was rated as "meets" with a comparatively low score of 59.

RFP advised that technical merit would be considered of greater importance than cost.

In reviewing an agency's evaluation of proposals, we consider whether it was reasonable and in accord with the stated evaluation criteria. Information Sys. & Networks Corp., 69 Comp. Gen. 284 (1990), 90-1 CPD ¶ 203; Systems Research Labs., Inc., B-246242.2, Apr. 21, 1992, 92-1 CPD ¶ 375.

Our review of the six challenged points indicates that for three of the points evaluations and/or discussions were clearly reasonable. We discuss these areas--subfactors 2(c) and 4(a)--below. (We need not decide the merits of Beach's challenge to the remaining 3 points, since even if the evaluation for those points was unreasonable, the firm's resulting score of 96 points would be insufficient to overtake the awardee's higher technical score of 97 points and its lower offered cost.)

Under the experience factor, subfactor 2(c) required "demonstrated experience of capability to perform program support material development functions." At issue in the evaluation of this area is the statement of work's (SOW) requirement (VI(C)(3.1)) regarding script approval, which provided that "scripts and related materials that have been submitted by presenters" for each event "should be approved by [FEMA's] CDM [content design manager] regarding content and format, prior to review by contractor."<sup>3</sup> (Emphasis added.) The SOW further provided that the FEMA project officer (PO) has final review and approval authority of all elements of each event prior to broadcast.

Initially, under subfactor 2(c), Beach's proposal was scored with 2 of 5 possible points and a "meets" adjectival rating. In the evaluation narrative under strengths was the comment "[o]fferor has demonstrated experience in this area" and under weaknesses was the comment, "[o]fferor need[s] to be aware that their materials are not always best, and that FEMA still has final approval of presenters and audience materials." After evaluation of Beach's BAFO, the firm's point score was increased to 3 points with an adjectival rating of "exceeds". The narrative comment for the improvement in scoring indicates that it was based on areas not at issue here, but that the offeror "still d[id] not understand that FEMA has final approval of all materials."

---

<sup>3</sup>The CDM is from the FEMA division sponsoring the video broadcast and "will be responsible for the video broadcast content" and will "control" it.

Beach argues that its proposal was erroneously downgraded in this area since it in fact indicated in its proposal an understanding that FEMA has final approval of all materials. As evidence of this understanding, the protester cites the following excerpt from its response to discussion questions<sup>4</sup>:

"Once the PO and CDM have signed off on the redraft and recommended changes, we propose that our producer work directly with the presenters (or their script writers) to prepare final scripts. Final scripts would then be approved by the PO and CDM. NOTE: This process repeats as many times as necessary to achieve *final* approval of all scripts from the PO and CDM."

FEMA responds that Beach's proposal was reasonably downgraded in this area because the protester suggested altering the RFP requirement for script approval by the CDM prior to review by the contractor. In this regard, the agency cites the following excerpt from Beach's proposal:

"We've noted in FEMA's RFP for this contract that the desired procedure for script review is first to the CDM, then to the PO, then to this contractor. We would like to suggest--though not to present this as an 'exception'--that the script review/revision process might move along faster if WE reviewed the script first, formulated our analyses in keeping with the limited questions above, then forwarded our analysis through the PO, [to] the CDM, [then] to the presenter."

The agency further cites the following excerpt from Beach's BAFO<sup>5</sup>:

"We propose that the first draft scripts come from the presenters to the [l]ine [p]roducer *before* they are approved or revised by the PO and CDM. We call this our 'weighing in' process. Our review of scripts should precede the PO's and CDM's because we look at *fundamentals*."

The evaluation under subfactor 2(c) was reasonable. While the specific reason for the downgrading of Beach's proposal

---

<sup>4</sup>This was in response to discussion question no. 1 which asked, "Describe your understanding of the script creation and flow for EENET [Emergency Education Network] productions?"

<sup>5</sup>This was in response to discussion question no. 1 above.

may not have been entirely clear from the evaluation narrative (which speaks of final FEMA script approval), during the course of this protest the agency has made it clear--as supported by the record--that Beach's proposal was downgraded due to the firm's "proposed" review of scripts prior to approval by FEMA's CDM, which was contrary to the RFP requirement that scripts be approved by the CDM prior to review by the contractor. The record of the quoted portion of Beach's BAFO clearly indicates a script approval process contrary to the RFP. In its protest comments, Beach has not rebutted the agency's position on this weakness. Consequently, we have no basis to question the downgrading of the firm's proposal in this area.

Under the key personnel factor, subfactor 4(a), project manager, the RFP required the following:

"A minimum of 5 years experience in managing projects within time and resource limits of similar scope and complexity; to include a variety of video training and/or production credits in areas similar to those set forth in the Statement of Work." (Emphasis added.)

In this regard, the RFP's SOW included detailed requirements for EENET broadcast events.

Beach's initial proposal was rated 9 out of 10 possible points and "outstanding" under this subfactor. In the evaluation narrative under strengths was the comment "[j]udging from Mr. Widner's [Beach's proposed project manager's] experience, he has had vast experience in producing and managing many 'firsts' and some very large videoconferences." Under weaknesses was the comment "[i]t is unclear if any of Mr. Widner's productions were 'on going' over the intense broadcast requirements of EENET." The final evaluation narrative of this subfactor states that there was "no change in this element."

Beach argues that its proposed project manager's resume, included in its proposal, clearly indicated "complex" experience, which related to FEMA's evaluated concern regarding the "intense" EENET broadcast requirements. According to the protester, if the indicated experience was insufficient, FEMA should have requested further information during discussions.

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.

Beach's proposed project manager was rated outstanding overall. The agency simply found, as a relative matter, that Beach's project manager's experience was less than the most desirable similar experience, *i.e.*, EENET experience. Our review of Beach's proposed project manager's resume confirms the agency's evaluation; there is no specific indication that any of the experience listed was with EENET broadcast requirements.<sup>6</sup> As Beach's proposed project manager was rated with outstanding experience, and merely less desirable than the optimal experience, FEMA was not required to raise this matter during discussions.

In any case, prior experience is an aspect of a proposal that is generally not subject to improvement; agencies thus are not always obligated to discuss weaknesses identified in past experience. See John Brown U.S. Servs., Inc., B-258158 et al., Dec. 21, 1994, 95-1 CPD ¶ 35. Here, Beach does not state how it would have eliminated the agency's concern, see Specialized Technical Servs., Inc., supra, and given the RFP requirement for information on the project manager's past experience "similar to [that] set forth in the Statement of Work," *i.e.*, EENET experience, the agency had no reason to believe that the protester had not already presented its proposed project manager's most relevant past experience.

#### ALTERNATE PROPOSAL

Beach also argues that its "alternative" proposal was improperly rejected as a prohibited alternate proposal without discussions; Beach maintains that its alternative proposal should have been considered under the RFP's deviation/exception provision. The protester contends that its alternative BAFO, which was lower priced than the awardee's, could have been improved in quality had discussions been held.

The agency properly refused to consider Beach's alternative proposal. Although Beach characterizes its alternative as merely presenting deviations/exceptions to the RFP requirements, which were permissible under the RFP, those deviations/exceptions were presented in addition to--that is, as an alternative to--the firm's primary proposal. As such, they constituted an alternate proposal.

---

<sup>6</sup>Although Beach's proposed project manager's resume indicates experience in 1980 with administration of a project "which eventually became PSSC's [Public Service Satellite Consortium] 'National Satellite Network' (the service through which FEMA produced its initial EENET programs)," there is no indication whether this experience actually involved the EENET broadcast requirements.

The deviations/exceptions were not insignificant; they related to Beach's proposed approach itself. In this regard, the cost proposal listed costs for three "alternative" scenarios, different from the primary scenarios. Further, the technical proposal, while listing the alternatives under a heading "Deviations/Exceptions," included subheadings "Doing More with Less" and "A Different Approach." Beach's proposal narrative even stated that:

"Here we present a different look at how to staff, produce, rehearse and air the three scenarios. These approaches achieve significant cost effectiveness (through the reduction of labor, cost for technical services, housing and meals) while delivering a superior product."

The alternatives presented by Beach also were not set forth in the manner the RFP specified for deviations/exceptions; they were not "amplifi[ed]" and "justifi[ed]" or "highlight[ed] . . . in the margin." We conclude that the agency properly declined to evaluate, or include in the discussions process, the alternatives presented in Beach's proposal.

The protest is denied.

Robert P. Murphy  
General Counsel