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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

B-219650

FILE:

DATE: December 2, 1985

InterAmerica Research
Associates, Inc.

MATTER OF:

DIGEST:

1. Where record shows that award decision was made by source selection official who disregarded technical evaluation panel point scores, GAO has no basis to conclude that allegedly biased technical evaluator had any affect on the award decision.
2. Source selection official has the ultimate responsibility for determining what, if any, significance to attach to the technical scores given offers by the technical evaluation panel. Source selection official properly could decide to disregard scores and base award selection on review of record.
3. Decision of source selection official to award cost-reimbursement contract to a higher cost, technically superior offeror is not objectionable where award on that basis is consistent with the RFP's evaluation criteria and the source selection official determined that the higher cost was justified because awardee proposed more senior staff time and found that the awardee's proposed staff, specifically the project director, was more technically qualified and experienced than the staff offered by competing offeror.

InterAmerica Research Associates, Inc. (InterAmerica), protests the award of a contract to SRA Technologies, Inc. (SRA), under request for proposals (RFP) No. 85-040 issued by the Department of Education (Education) for a study concerning "the refinement and field test of evaluation procedures for title VII bilingual education." InterAmerica argues that a member of the technical evaluation panel (TEP) was biased against the firm and that this panelist's bias resulted in the award to SRA. Second, InterAmerica asserts that Education's award to SRA was unreasonable and not consistent with the evaluation criteria under the RFP.

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InterAmerica argues that award should have been made to InterAmerica as the highest technically scored, lowest cost offer.

We deny the protest.

The RFP solicited a cost-reimbursement-type contract. The RFP provided for award to the offer "most advantageous to the Government, cost or price and other factors, specified elsewhere in this solicitation, considered." The RFP identified five specific evaluation criteria and the points allotted each criteria as follows: (1) soundness of technical proposal (20 points); (2) technical and managerial qualifications of the proposed project director (25 points); (3) technical qualifications of proposed staff (25 points); (4) plan for managing and coordinating all the tasks and products of the study (20 points); and (5) demonstrated corporate performance record in conducting similar and related studies (10 points). Under each factor, subcriteria and points assigned each subcriterion were also listed. The RFP further provided that technical considerations would be of paramount importance in award of the contract, but that award would be made to the offeror whose proposal represented "the combination of technical merit and cost most favorable to the government."

Five offerors responded to the RFP. The six members of the TEP evaluated and rated each proposal and then recommended a competitive range of four of the offerors. The contracting officer agreed with this recommendation and discussions were held with the four firms. Clarification questions concerning technical and business proposals were prepared and read to the firms over the telephone. Responses were submitted and the TEP members reevaluated and rescored the proposals. After this review, the TEP recommended further discussions with only SRA and InterAmerica, and this recommendation was accepted by the contracting officer.

Further questions concerning cost and technical proposals were read over the telephone to InterAmerica and SRA. The firms responded verbally to the questions and were asked to submit best and final offers (BAFOs). The BAFOs were reviewed and scored by the TEP. Although the TEP apparently had twice determined that InterAmerica and SRA were within the competitive range based on points, the record shows that the TEP was unable to make a recommendation for award. In fact, for each of the proposals,

three panelists concluded the offer was technically acceptable, while the other three panelists concluded it was technically unacceptable. Those panelists who believed that one proposal was technically acceptable found the other to be unacceptable. It is unclear from the record why after twice finding the two proposals in the acceptable range, the TEP could not agree that the two proposals were acceptable for award. Apparently the two proposals represented two different approaches to the study of bilingual education programs.

Because the TEP was deadlocked, the project officer, who was a TEP member and also chairman of the TEP, made a report to the contracting officer recommending award to SRA. He concluded that SRA was superior because of SRA's proposed staffing plan which provided a greater commitment of senior professional staff and because of the greater experience and better quality of the staff compared to InterAmerica's proposed staff. The project officer also stated that the SRA proposal represented a better value to the government, since, for comparable daily rates for senior staff, SRA was offering a better qualified senior staff for more hours, while InterAmerica's lower cost reflected a greater use of junior staff.

The record also indicates that the contract specialist (the contracting officer's representative during the pre-award procurement process), who reviewed the proposals, attended all panel meetings and participated in the negotiations with the offerors, also recommended to the contracting officer that award be made to SRA. In part, the contract specialist adopted the project officer's recommendation. However, with regard to cost, the contract specialist concluded that InterAmerica's proposal underestimated ground transportation costs by about \$14,500. In view of this finding and the uncertainty concerning estimating costs for a cost-reimbursement contract, the contract specialist believed that, since the RFP indicated technical factors would be paramount to cost considerations, the technical superiority of the SRA proposal was deemed to overcome the slight difference in costs.

The contracting officer as source selection official had no clear guidance from the TEP. After reviewing the record, and considering the project officer and contract specialist's views, the contracting officer concluded

that the project officer's recommendation represented a reasonable basis for award to SRA and was consistent with the criteria in the RFP. The contracting officer determined that SRA's proposal was superior technically and that the technical superiority of SRA's proposal justified award to SRA at its slightly higher proposed costs. Accordingly, the contracting officer awarded the contract to SRA.

InterAmerica's proposed cost including fixed fee was \$759,144, and SRA's proposed cost including fixed fee was \$815,753. The average of the six panelists' technical scores were 70.2 for InterAmerica and 68.2 for SRA.

InterAmerica initially argues that one of the TEP members was prejudiced against the firm, and that, had this evaluator been excluded from the TEP, InterAmerica would have been determined technically superior by a 3 to 2 vote of the TEP and, consequently, received the award. The agency contends that InterAmerica fails to establish bias on the part of the panel member or show that the participation of this person precluded "a fair and equitable review of its proposal."

We point out that InterAmerica is incorrect in its belief that "but for the biased evaluator," it would have received the award by a 3-2 vote of the TEP. An evaluation panel generally makes a recommendation to the source selection official as to the award of a contract based on its technical evaluation of the proposals. However, it is the source selection official who ultimately makes the award decision, and the selection official is not bound by the working level evaluators' findings. Bank Street College of Education, 63 Comp. Gen. 393, (1984) 84-1 C.P.D. ¶ 607. Thus, there is no support for InterAmerica's assertion that the exclusion of the allegedly biased evaluator necessarily would have resulted in an award to InterAmerica.

In any event, the contracting officer concluded that the TEP deliberations which included the allegedly biased evaluator were inconclusive and based his selection on the project officer's recommendation to award to SRA, not on the point scores per se. Since neither of these officials was the evaluator ~~allegedly~~ predisposed against InterAmerica, we have no basis to conclude that the allegedly biased evaluator had any effect on the award decision. Thus, while InterAmerica speculates as to the evaluator's bias, InterAmerica has not met its burden of showing actual bias which affected the award decision. PAE GmbH, B-212403.3 et al., July 24, 1984, 84-2 C.P.D. ¶ 94.

InterAmerica also asserts that the award to SRA lacked a rational basis and was not consistent with the RFP award criteria. InterAmerica argues that, since its offer was technically higher scored than SRA's and offered a lower proposed cost, it was entitled to the award under the RFP. InterAmerica points out that, even if the proposals were technically equal, under decisions of this Office, cost would be the determining factor and this would have resulted in award to InterAmerica as the low cost offeror. InterAmerica also asserts that the decision to award to SRA because of its allegedly better qualified staff and better staff mix were factors which had been included in the RFP, weighted and scored, and that the award decision on the basis of these criteria effectively assigns new scoring weights to these factors.

The agency points out that it is clear that the TEP, project director and source selection official did not think the two-point difference in the scores showed that InterAmerica was superior or equal to SRA's proposal. The agency argues that the scoring is imprecise and that averaging the raw scores of the six panelists "masks" the wide divergence of opinion within the TEP as indicated by the fact that three panelists ranked SRA ahead of InterAmerica and three ranked InterAmerica ahead of SRA. The agency further states that the TEP review was determined inconclusive since no consensus recommendation could be reached concerning the acceptability of the two offers. The agency states that the contracting officer as the source selection official reviewed the record and determined, based on the project director's report, that SRA's offer was technically superior to InterAmerica's, and that SRA's offer of more experienced and better qualified staff and greater senior staff time, compared to InterAmerica's proposed staffing, justified the additional cost for SRA's proposal and award to SRA. The agency asserts that the consideration of factors such as staff experience and quality and the award decision was consistent with the RFP evaluation and award scheme.

We have held that the selection official, here the contracting officer, is not bound by the recommendation of evaluators and, as a general rule, our Office will defer to such an official's judgment, even when the official disagrees with an assessment of technical superiority made by a working level evaluation board or individuals who normally may be expected to have the technical expertise required for such evaluations. Bank Street College of Education, supra. The selection decision and the manner in which such an official uses the results of the technical and cost evaluations and the extent, if any, to which one is sacrificed for the

other are governed only by the tests of rationality and consistency with established evaluation factors. Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 C.P.D. ¶ 325.

In considering protests such as this, we do not conduct a de novo review of the technical proposals or make an independent determination of their acceptability or relative merit. Cadillac Gage Co., B-209102, July 15, 1983, 83-2 C.P.D. ¶ 96. That is the function of the selection official who is to exercise informed judgment and sound discretion. Macmillan Oil Co., B-189725, Jan. 17, 1978, 78-1 C.P.D. ¶ 37. Our review is limited to examining whether the evaluation was fair and reasonable and consistent with the stated evaluation criteria. Cadillac Gage Company, B-209102, supra. We will question a contracting official's determination concerning the technical merits of proposals only upon a clear showing of unreasonableness, abuse of discretion or violation of procurement statutes or regulations. Bank Street College of Education, 63 Comp. Gen. 393, supra. The fact that the protester disagrees with the selection official's conclusion does not itself render the evaluation unreasonable. Kaman Sciences Corp., B-190143, Feb. 10, 1978, 78-1 C.P.D. ¶ 117.

The thrust of InterAmerica's protest in this regard is that the source selection official's decision to award to SRA lacked a reasonable basis because his evaluation was not consistent with the stated evaluation criteria. We disagree with InterAmerica and find that the award selection was reasonable and was in accord with the stated award selection factors.

Initially, we note that InterAmerica's reliance on the point scores as an indication of its alleged technical superiority is misplaced. In this connection, we have repeatedly stated that technical scores alone do not form a basis for the award of a contract. Numerical point scores, when used for proposal evaluation, are useful as guides to intelligent decisionmaking, but are not themselves controlling in determining award, since these scores can only reflect the disparate, subjective and objective judgments of the evaluators. Whether a given point spread between competing offers indicates the significant superiority of one proposal over another depends on the facts and circumstances of each procurement and, while technical scores, of course, must be considered by source selection officials, such officials are not bound by the scores. Thus, the

source selection official ultimately decides what, if any, significance is to be given the technical scores. Fox and Co., B-197272, Nov. 6, 1980, 80-2 C.P.D. ¶ 340.

With regard to the selection of SRA, we cannot say that the determination that SRA's offer was technically superior and worth the additional cost was unreasonable or inconsistent with the RFP factors for award. The source selection official found SRA's offer to be superior to InterAmerica's in several respects. First, he concurred with the project officer's finding that SRA offered a greater time commitment on the part of senior professional staff. The RFP provided that the senior staff should work at least 75 percent of their time on the project, and the subfactor, time commitment of key staff, was assigned 10 points (out of a possible 20 under the factor "plan for managing and coordinating all the tasks and products of the study"). Both firms were questioned on this point in discussions and SRA responded with a greater increase of senior staff time than InterAmerica. In this connection, the SRA BAFO contained a commitment of 1,054 senior staff-days out of 1,564 total professional staff-days compared with InterAmerica's offer of 882 senior staff-days out of 2,010 professional staff-days and thus supports the contracting officer's concurrence with the project director's findings. The project director also reported that the majority of InterAmerica's professional staff-days were for junior staff whose role was not precisely defined. We note that use of this finding by the source selection official to differentiate between proposals was not unreasonable since a subfactor required a plan for staff to accomplish defined tasks.

The source selection official also adopted the project director's finding that SRA offered a better technically qualified staff and proposed a more experienced staff than that offered by InterAmerica. The contracting officer found that, concerning the qualifications of the contractor's project director which was worth 25 points, the SRA project director had substantial experience managing and conducting a prior study to develop and review education models for education programs and was considered to be more experienced and more technically qualified than InterAmerica's proposed project director whose experience was more in the nature of monitoring, rather than managing, this type of work. Essentially, InterAmerica does not refute these specific findings, but rather contends that on the basis of the point scores, especially the average raw scores, it was rated technically superior. However, as previously noted, the award decision was not based on the point scores.

Finally, the record contains a cost analysis which supports the finding that SRA's use of more senior professional staff time than InterAmerica more than offsets SRA's higher total cost. The RFP provided that technical considerations would be paramount to cost. We further note that in awarding a cost-reimbursement contract, as in this case, the cost proposal generally should not be controlling, since advance estimates of cost may not be valid indicators of final actual cost, and the evaluation of cost proposal requires the informed judgment of agency procurement personnel. See Federal Acquisition Regulation, 48 C.F.R. § 15.605(d) (1984); Booz, Allen & Hamilton, B-213665, Sept. 24, 1984, 84-2 C.P.D. ¶ 329. In this case, the contracting officer determined that SRA's proposal was in fact technically superior and that this finding justified the award to SRA at its higher proposed cost.

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