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Comptroller General
of the United States
Washington, D.C. 20548

24324

Decision

REDACTED VERSION

Matter of: International SOS Assistance, Inc.
File: B-245571.5
Date: January 26, 1993

Robert A. Mangrum, Esq., and Grace Bateman, Esq., Seyfarth, Shaw, Fairweather & Geraldson, for the protester. William L. Walsh, Jr., Esq., William Craig Dubishar, Esq., and J. Scott Hommer, III, Esq., Venable, Baetjer and Howard, for MEDEX Assistance Corporation, an interested party. Robert Sonenthal, Esq., Agency for International Development, for the agency. Behn Miller, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that technical evaluation panel failed to adhere to solicitation's technical evaluation factors which required comparative assessments of technical proposals is denied where record shows that panel carefully determined strengths and weaknesses of each technical proposal and provided source selection official with thorough evaluation and relative ranking of each proposal.
2. Protest challenging source selection official's determination that protester's and awardee's proposals are essentially technically equal is denied where contracting officer reasonably determined that technical evaluation panel's conclusions did not reflect a significant difference in the technical proposals.
3. Agency properly awarded contract for medical evacuation services to the low-priced offeror where the contracting officer reasonably found that the awardee's and the protester's technical proposals are essentially equal.

'The decision issued on January 26, 1993, contained proprietary information and was subject to a General Accounting Office protective order. This version of the decision has been redacted. Deletions in text are indicated by "[DELETED]."

DECISION

International SOS Assistance, Inc. (SOS) protests the award of a contract to MEDEX Assistance Corporation under request for proposals (RFP) No. AID/W/MS-91-01, issued by the Agency for International Development (AID) for emergency medical evacuation (medevac) services insurance. SOS protests that the award is improper because AID allegedly failed to evaluate proposals in accordance with the stated evaluation factors.

We deny the protest.

BACKGROUND

The RFP

The RFP was issued on October 12, 1990, and contemplated the award of a requirements contract, under which, for a flat fee per person, the contractor would provide emergency medevac services insurance for 5,700 AID employees located overseas.

The RFP required offerors to submit separate technical and cost proposals, and stated that award would be made to the offeror whose "combined technical and cost factors promise the greatest value" to the government. In this regard, section M.2 of the solicitation, "EVALUATION FACTORS FOR AWARD," provided that the following technical and cost factors would be evaluated "in decreasing order of importance":

"A. Proposal

Proposal demonstrates understanding of AID's medical evacuation needs and indicates clearly how the offeror will provide quality medevac services worldwide.

"B. Contractor Capability

Demonstrated ability to provide medical evacuation of a similar nature and technical requirements with experience specifically addressing the Latin American, Asia/Near East and African countries where [AID] operates.

"C. Cost - Premium arrangement including escalation/deescalation formula that represents the best value to the government."

Section M.1 also advised offerors that each technical proposal would be "scored by a technical evaluation committee" and that the "technical criteria are presented by major category, in relative descending order of importance so that offerors will know which areas require emphasis in the preparation of the proposals."

The technical proposals were required to include a "detailed discussion of the offeror's capabilities," a description of its "approach to providing medical evacuation coverage," and a "detailed description of [the] services to be provided, benefits, and procedures to be followed." Each offeror was also required to describe its "background, experience and qualifications," with "(s)pecial note . . . of services provided on similar policies, including documentation with reference to names, addresses, contract numbers, and telephone numbers of recent clients."

With regard to price, offerors were required to submit three fixed premium rates--a monthly and annual "individual" rate, and an annual "family" rate--for a 2-year base period, and an escalation/deescalation formula from which to calculate premium rate adjustments for 3 option years. In this regard, the solicitation provided that "[e]valuation of the initial rate, as well as Year 3, 4, and 5 rates based on application of the proposed formula, will be important in evaluation of proposals."

The 1991 Evaluation

By the initial January 4, 1991, closing date, five offerors had submitted proposals. Each offeror's technical proposal was then referred to an agency technical evaluation panel (TEP) for review. After eliminating the proposal of one offeror as technically unacceptable, the TEP conducted several rounds of technical discussions with the four remaining offerors, including SOS and MEDEX. By memorandum dated May 9, the TEP provided the contracting officer with a relative ranking of the four technical proposals; however, by memorandum dated June 4, the TEP revised this evaluation by stating that "the [TEP] finds the four firms . . . technically acceptable without restriction as submitted." As a result of the June 4 memorandum, the contracting officer decided to use price as the basis for award, and selected MEDEX.

On September 9, upon receiving notification of the contracting officer's decision, SOS filed a protest with this Office challenging the selection of MEDEX for award; in its protest, SOS alleged that the agency had disregarded the

evaluation criteria in selecting MEDEX. AID subsequently decided to reevaluate the technical and cost proposals. As a result of this corrective action, SOS withdrew its protest.

The 1992 Evaluation

On January 7, 1992, a new 3-member TEP¹ was convened to perform the reevaluation; additionally, a new contracting officer was tasked to make the selection decision. At this meeting, each TEP member was given a copy of the four proposals which had been determined conditionally acceptable for further discussions. The TEP decided that because no numerical ratings or points were specified in the RFP, the panel would use an adjectival rating scheme of "excellent, good, satisfactory, fair or poor" to evaluate the proposals, with the strengths and weaknesses to be identified or discussed.

On May 4, the panel reconvened to discuss their individual ratings of each proposal. With regard to the merits of the technical proposals, each panel member provided adjectival ratings for each offeror, together with its ranking relative to the other offerors. After discussion of the individual members' evaluations, the panel agreed that the relative ranking of proposals was as follows: SOS, MEDEX, Company A, and Company B.

In its May 18 memorandum to the contracting officer, the TEP explained the relative ranking as follows. First, the TEP summarized the "strengths" and "weaknesses" of each proposal. Next, the TEP advised the contracting officer that the SOS and MEDEX proposals were technically superior to the other two proposals; in this regard, the TEP specifically stated:

"None of us felt comfortable with [Company B's] proposal and could not recommend them for an award; they would be marginal at best. [Company A] could probably perform but was not in the same league with SOS and MEDEX."

¹The new TEP consisted of (1) the Director of AID's Procurement Policy and Evaluation Staff, (2) the Chief of AID's Accounting Division, and (3) the Assistant Inspector General for Resource Management.

Finally, the TEP advised the contracting officer that notwithstanding its relative ranking of the SOS and MEDEX proposals, it "would recommend award to either SOS or MEDEX." In this regard, the TEP stated:

"SOS was rated highest by two of the three evaluators and seemed to better demonstrate both its experience and understanding of the requirement. Also, SOS has the management systems in place that give us confidence that they can perform well beginning with inception of the contract. MEDEX has the potential to perform well but appears to be reaching i.e., its experience is not as broad and the relationship with Wright and Co. is unproven. However, MEDEX was rated [No.] 1 by one evaluator and [No.] 2 by the other two evaluators. In sum, both of these proposals are acceptable from a technical standpoint; price should be factored into any final decision to award."

The Contracting Officer's Evaluation

Upon receiving the TEP's May 18 technical evaluation, the contracting officer concluded that the TEP had recommended that a price/technical tradeoff be conducted--that is, that he should determine whether the higher technical rating for SOS warranted its higher price. However, the contracting officer was concerned by the TEP's reference to technical acceptability and could not ascertain the basis for SOS's higher technical rating from the TEP's May 18 findings. Accordingly, by memorandum dated August 17, the contracting officer asked the TEP to clarify the results of its technical evaluation:

"If the proposals of MEDEX and SOS are of equal technical quality, or if the proposals, in the TEP's consideration, are so close in quality (as) to be indistinguishable from each other (i.e., there is no technical difference), this needs to be clearly and distinctly stated. If there are differences in the proposals' quality, these need to be discussed, so that relative values for the proposals can be determined."

By memorandum dated August 25, the TEP responded to the contracting officer's request. Since SOS and MEDEX were the only offerors remaining after receipt of best and final offers (BAFO),² the TEP limited its discussion to these two

²Because Company B was not recommended for award, the contracting officer did not solicit a BAFO from that firm. By
(continued...)

technical proposals. With regard to the distinction between the SOS and MEDEX technical proposals, the TEP stated:

"On a grade school system we are looking at the difference between a solid B versus a B-, bearing in mind that anything above a C is more than satisfactory. The proposals are not equal, nor are they indistinguishable from each other, SOS is somewhat better but MEDEX has offered a solid proposal. We have discussed the strengths and weaknesses of each proposal in the May 18 memorandum and it supports the above standings, particularly when read in context with the other two proposals evaluated. . . . [W]e recommended award to either SOS or MEDEX with price being factored in as the third evaluation [criterion]. While SOS has systems in place to show that they can perform, MEDEX has put together a proposal that demonstrates that they can also perform."

Upon receiving the TEP's supplemental evaluation, the contracting officer was still not satisfied with the TEP's explanation of the results of the technical evaluation. Specifically, although the TEP had "indicated that the SOS proposal was somewhat better than that submitted by MEDEX . . . [t]he TEP was unable to articulate what made the SOS [proposal] better than that submitted by MEDEX." Accordingly, the contracting officer decided to conduct his own independent review of the technical proposals.

The contracting officer reviewed the proposals themselves, the 1992 TEP findings, and the 1991 TEP's technical evaluation data. Based on this review, the contracting officer concluded that there was no basis for the TEP's relative ranking of the MEDEX and SOS proposals; specifically, the contracting officer found that there was "[no] significant difference in the technical worth of the proposals as they relate to proposed performance of this service." Since the contracting officer determined that the SOS and MEDEX proposals were technically equivalent, he decided to make the award decision on the basis of price.

During the 1991 evaluation, in an effort to clarify any misunderstanding regarding the application of each offeror's proposed escalation/deescalation rate formula, the agency had decided to require each offeror to complete three separate 5-year cost matrixes which clearly indicated each

²(...continued)

letter dated June 26, the contracting officer requested BAFOs from SOS, MEDEX, and Company A. Prior to the July 31 BAFO due date, Company A withdrew its offer.

offeror's proposed costs for a "best" (Matrix No. 1), "average" (Matrix No. 2), and "worst" (Matrix No. 3) 5-year scenario.

The three premium rates proposed by SOS were substantially higher than those proposed by MEDEX; SOS's annual individual premium was [DELETED] percent higher than MEDEX's proposed rate; SOS's monthly individual premium was [DELETED] percent higher than MEDEX's proposed premium, and SOS's family premium was [DELETED] percent higher than MEDEX's fee.¹ Based on these figures, the contracting officer concluded that the agency would save [DELETED] for each of the first 2 contract years by awarding to MEDEX.

The contracting officer then compared the SOS and MEDEX evaluation matrixes; except for the "worst case" matrix, the contracting officer found that MEDEX substantially underpriced SOS on each matrix. Since MEDEX was the lowest priced offeror, and since the contracting officer concluded that MEDEX was technically equal to SOS, the contracting officer selected MEDEX for award. On September 18, after being informed of the award, SOS filed this protest.

PROTESTER'S CONTENTIONS

SOS argues that the agency failed to follow the RFP's evaluation factors in selecting MEDEX for award. According to SOS, instead of determining the relative technical merit of each proposal, the TEP instead reviewed each proposal merely for technical acceptability. In the alternative, SOS contends that the contracting officer misconstrued the TEP's findings and improperly concluded that there was no significant difference between the SOS and MEDEX proposals.

DISCUSSION

The TEP's Evaluation

SOS first argues that the TEP ignored the RFP evaluation scheme and recommended an award to either SOS or MEDEX solely on the basis of price, without regard to the relative technical merits of the proposals. According to SOS, even though the RFP evaluation scheme stated that technical merit was more important than price--and that the two primary evaluation factors, "Proposal" and "Contractor Capability," would be evaluated in descending order of importance--the relative technical merits of each proposal were overlooked.

¹In its July 9, 1992, BAFO, MEDEX lowered its offered premium rates from those set forth in its 1991 cost proposal.

SOS contends that rather than making the required comparative assessments of each proposal's technical merit, the TEP merely reviewed the proposals for technical acceptability.

The TEP clearly performed a comparative assessment of each proposal's technical merit. As discussed above, in performing its evaluation of each proposal, the TEP took the following steps. First, each TEP member individually scored each proposal under a five-tiered adjectival rating scheme. Next, each TEP member presented his relative ranking--and technical assessments--of the four evaluated proposals to the other TEP members. Finally, after discussing discrepancies in their individual ratings and rankings, the TEP members summarized their conclusions into a consensus ranking, and listed the strengths and weaknesses of each proposal which supported the proposals' relative ranking.

Notwithstanding this approach, SOS relies on the following language in the TEP's May 18 evaluation summary to conclude that the TEP nonetheless reduced its comparative findings to a technical acceptability rating:

"In sum, both of these proposals are acceptable from a technical standpoint; price should be factored into any final decision to award."

Given the rest of the May 18 memorandum accompanying this recommendation, and the comparative findings spelled out in this document, we find SOS's interpretation of this statement to be unreasonable. Taken in context, the TEP's reference to technical acceptability was merely a recommendation to the contracting officer to perform a price/technical tradeoff; the TEP was simply advising the contracting officer to balance the technical merits of each proposal against the proposed prices.

The Contracting Officer's Selection Decision

SOS alternatively argues that the contracting officer improperly determined that the SOS and MEDEX proposals were technically equal. Specifically, SOS contends that its proposal should have been rated technically superior by the contracting officer since both the 1991 and 1992 TEPs ranked the SOS proposal as the top technical proposal. SOS also contends that the contracting officer's determination was flawed since SOS was "undoubtedly the most technically qualified company to perform the specified services."

While a TEP's technical rankings and descriptive ratings must be considered by source selection officials in making a selection determination, they are not bound thereby; rather, source selection officials must determine if they agree that

the technical ratings are indicative of technical superiority and what the difference may mean in contract performance. Arthur D. Little, Inc., B-243450, July 31, 1991, 91-2 CPD ¶ 106.

Here, as noted above, when the contracting officer received the TEP's August 25 memorandum, he was unable to ascertain the basis for the TEP's decision to rate SOS higher than MEDEX on technical merit. Accordingly, the contracting officer decided to review the proposals, the 1992 TEP documentation, and even the 1991 TEP evaluation data. Based on this review, summarized in a September 3 memorandum to the file, the contracting officer concluded that the SOS and MEDEX proposals were technically equal; in this regard, the contracting officer summarized his determination as follows:

"The TEP was unable to articulate what made the SOS [proposal] better than that submitted by MEDEX or to justify the higher price proposed by SOS. In reviewing all the technical evaluations performed by the two technical panels and the proposals, I could find [no] significant difference in the technical worth of the proposals as they relate to proposed performance of this service."

Although the TEP ranked SOS ahead of MEDEX, the TEP's May 18 and August 25 evaluation memorandums reasonably support the contracting officer's position. We think it is evident from both memorandums that despite its relative ranking of the proposals, the TEP in fact concluded that both proposals were considered excellent with only minor differences between them. This conclusion is most apparent from the TEP's August 25 memorandum--intended to clarify the findings set forth in the TEP's May 18 evaluation memorandum--wherein the TEP describes the SOS proposal as only "somewhat better" than the MEDEX proposal--"the difference between a solid B and B-, bearing in mind that anything above a C is more than satisfactory." Had the relative differences between the SOS and MEDEX proposal been more apparent, we think the TEP would have so stated. Thus, the 1991 and 1992 TEP evaluations do not establish that the contracting officer wrongly found both proposals to be essentially equal.

SOS also contends that the contracting officer's determination was unreasonable because the protester's proposal was in fact technically superior to MEDEX's. In reviewing protests against allegedly improper evaluations, we examine the record to determine whether the agency's judgment was reasonable and in accord with the evaluation criteria listed in the solicitation. Abt Assocs., Inc., B-237060.2, Feb. 26, 1990, 90-1 CPD ¶ 223. Here, we find the contracting officer's decision to be reasonable and consistent with the RFP's evaluation criteria.

With respect to the first technical evaluation factor, "Proposal," offerors were required to clearly describe: (1) coverage, (2) access to coverage, (3) the medical decision process, (4) monitoring, and (5) an explanation of the extent to which evacuation and repatriation benefits are included in the coverage payment.

For the most part, the services proposed by SOS and MEDEX are identical. Each firm provides complete medevac services and covers the full costs of such evacuation; each firm proposes to use the same insurance agent to provide access to coverage.⁴

The only differences between the SOS and MEDEX proposals regarding the "Proposal" factor are as follows. [DELETED.]

The protester has not demonstrated how these differences warrant a finding that SOS is technically superior in the "Proposal" category--nor do we see any basis for such a conclusion in the record. First, as indicated above, [DELETED]. In sum, we find that the record reasonably supports the contracting officer's conclusion that the proposals are technically equivalent under the "Proposal" evaluation factor.

The second technical evaluation factor, "Contractor Capability," requires "[d]emonstrated ability to provide medical evacuation of a similar nature and technical requirements with experience specifically addressing the Latin American, Asia/Near East, and African countries where AID operates."

The MEDEX proposal demonstrates that [DELETED].

With regard to medevac experience, a comparison of the MEDEX and SOS proposals indicates that MEDEX--which was organized in 1977 and has been providing medevac services since 1988--does not have the 16 years of medevac experience which SOS has; however, [DELETED].⁵ [DELETED].

In concluding that MEDEX and SOS were technically equivalent under the "Contractor Capability" factor, the contracting officer determined that MEDEX's volume of recent medevac missions--combined with its 4 years of general experience--counterbalanced SOS's general experience advantage. In its comments on the agency report, SOS does not challenge this finding. Based on our review of the record, we think each firm's respective experience advantages--set forth above--

⁴[DELETED].

⁵MEDEX's proposal indicates that [DELETED].

could reasonably be interpreted as demonstrating essentially equal technical merit; accordingly, we find no basis to object to the contracting officer's determination that MEDEX and SOS are essentially equal in the "Contractor Capability" technical category.

In summary, the record clearly shows that the contracting officer carefully considered the relative merit of the MEDEX and SOS proposals under each technical evaluation factor. Notwithstanding the different technical strengths which the MEDEX and SOS proposals exhibit, as discussed above, we find that the record reasonably supports the contracting officer's technical equivalence determination.

CONCLUSION

Where, as here, technical proposals are determined to be essentially technically equal, the only discriminator for award selection is evaluated cost or price. See Science Applications Int'l Corp.; Dep't of the Navy--Recon., 71 Comp. Gen. 481 (1992), 92-2 CPD ¶ 73; General Research Corp., 70 Comp. Gen. 279 (1991), 91-1 CPD ¶ 183; Applied Mathematics, Inc., 67 Comp. Gen. 32 (1987), 87-2 CPD ¶ 395. Since MEDEX offered the lowest evaluated price--a finding which SOS does not challenge--the contracting officer properly selected MEDEX for award.

The protest is denied.

James F. Hinchman
General Counsel