



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Hagler Bailly Consulting, Inc.

File: B-265708

Date: December 19, 1995

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DIGEST

Contracting officer reasonably selected higher technically rated, higher-cost proposal for award where he reasonably determined that proposal's technical advantages were worth the additional cost, and evaluation scheme provided that technical evaluation factors were more important than cost in determining the best value to the government.

DECISION

Hagler Bailly Consulting, Inc. (HBC) protests the award of a contract to Resource Management International, Inc. (RMI) under request for proposals (RFP) No. 492-95-07, issued by the United States Agency for International Development to provide technical assistance on an Energy Demand Side Management (DSM) project to the Government of the Philippines. HBC basically alleges that the evaluation was biased against the firm, and also challenges the cost/technical tradeoff.¹

¹We previously dismissed HBC's initial "information and belief" allegations challenging the evaluation, including the agency's alleged use of unstated evaluation factors, and HBC's supplemental allegations in this regard, since these allegations were not raised in a timely manner; they were raised in the firm's comments filed more than 10 working days after receipt of the agency's administrative report. See 4 C.F.R. § 21.2(a)(2) (1995).

We deny the protest.

In response to severe power shortages during the 1990s, the government of the Philippines is undertaking a program to improve the overall operation of the country's energy sector, particularly focusing on supply-side, or end-use, aspects for providing electricity. DSM principles and measures allow electric utilities and their customers to modify their electricity consumption patterns with respect to both the timing and level of electricity demand. According to the RFP, the objective of DSM activities is "to reduce utility capacity requirements with a corresponding decrease in total generation so that electricity services can be offered efficiently, effectively and at least cost." This DSM project will be funded using a portion of the agency's funding commitment to support the World Bank's Global Environment Facility.

The RFP contemplated the award of a cost-plus-award-fee, completion-type contract for a 3-year period. Under the RFP, the contractor will (1) validate DSM activity by assessing the potential of DSM activities in the Philippines; (2) provide technical assistance to establish DSM regulatory frameworks; and (3) establish a pilot program in the industrial sector to test findings, demonstrate tangible benefits, and establish proven and replicable models. The RFP described seven tasks, including the National DSM Assessment, requiring the contractor to describe electricity use by primary end-users (commercial, residential, and industrial) in order to provide load forecasting data based on customer consumption, and the Industrial DSM Assessment, requiring the contractor to develop a comprehensive database from which the design of an industrial sector program will be developed. The RFP explained that portions of some of the specific tasks have already been initiated or even partially completed, but emphasized that "[t]he intent of this contract is that there will not be a duplication of effort." Accordingly, the RFP stated that it would be the contractor's responsibility to review, incorporate, and/or utilize all ongoing or completed DSM task-related activities.

The RFP stated that the award would be made to the offeror whose proposal was deemed to represent the best value to the government, technical evaluation factors and cost considered. The RFP included the following four technical evaluation factors (and weights, on a 100-point scale): (1) technical approach (35 points); (2) team personnel qualifications (25 points); (3) corporate experience (25 points); and (4) management structure and approach (15 points). Cost was worth 20 points.² The RFP provided that the agency would not necessarily award a contract to the offeror proposing the lowest cost or to the offeror with the highest total combined evaluation score.

²The proposal of the lowest cost offeror would receive 20 points and the proposals of the other higher cost offerors would receive a proportionate share of 20 points.

Four firms, including HBC and RMI, submitted initial technical and cost proposals. Technical proposals were evaluated by the agency's technical evaluation committee (TEC), while cost proposals were reviewed by the contracting officer. The contracting officer included the proposals of HBC, RMI, and one other firm in the competitive range and subsequently conducted written discussions with each competitive range offeror. Following discussions, each competitive range offeror submitted a best and final offer (BAFO). The final scores for HBC and RMI were as follows:

	<u>Technical</u>	<u>Cost</u>	<u>Total</u>
HBC	83	20	103
RMI	94	15.2	109.2

The scores for the technical evaluation factors were supported by narratives of the strengths and weaknesses in each offeror's technical proposal.

In addition to RMI having the highest total combined evaluation score, the contracting officer concluded that RMI's proposal was clearly technically superior and worth its higher cost. Accordingly, the contracting officer awarded a contract to RMI.

HBC complains that because an initial technical evaluator had a prior, limited business relationship with RMI, the evaluation was biased against HBC.

Where a protester alleges bias on the part of a contracting official, the record must establish that the official intended to harm the protester, since contracting officials are presumed to act in good faith. Docusort, Inc., B-254852.2, Feb. 22, 1995, 95-1 CPD ¶ 107. Moreover, even where there is evidence of bias, this does not provide a basis for sustaining a protest unless the protester also demonstrates that the bias translated into action which harmed the protester's competitive position. Id.

There is no evidence of bias here. The record shows that one member of the initial three-member TEC simultaneously headed the Energy Efficiency Division of the Philippine Department of Energy. Pursuant to Philippine law, this office performs routine energy audit services (approximately 60 audits per year) for any industrial or commercial entity at standard, predetermined rates when private sources for such audits are not available or otherwise qualified. Several months prior to submission of its initial proposal under this RFP, RMI used this office's routine audit services in performing another contract. However, the head of the office receives no extra compensation when his office performs such routine services, and there is no evidence that the individual otherwise benefitted personally from the office's business relationship with RMI.

Further, the record shows that, while the individual in question evaluated initial proposals, he was not a member of the final TEC, due to a leave of absence because of a family medical emergency. The individual did not evaluate BAFOs and there is no evidence in the record which suggests that, after leaving the initial TEC, he played any further role in evaluating proposals or in making an award recommendation to the contracting officer. Moreover, the record shows that, in evaluating HBC's initial proposal, of the three members of the initial TEC, the individual in question assigned the highest technical score to HBC's proposal. It thus appears that HBC actually benefitted from this individual's participation on the initial TEC. We conclude that there is no basis for a finding of bias on the agency's part. See, e.g., Suncoast Scientific Inc., B-240689, Dec. 10, 1990, 90-2 CPD ¶ 468.³

HBC also challenges the contracting officer's cost/technical tradeoff decision which resulted in the award to RMI. HBC contends that the contracting officer had no reasonable basis for concluding that RMI's proposal was superior to HBC's proposal and therefore worth the cost premium.

In a negotiated procurement, an agency has the discretion to select a highly-rated, higher-cost proposal if doing so is reasonable and consistent with the evaluation scheme set forth in the RFP. Pacific Architects & Eng'rs, Inc., B-257431.7, Dec. 8, 1994, 95-1 CPD ¶ 202. We have upheld awards to higher-rated offerors with significantly higher proposed costs where it was determined that the cost premium was justified considering the significant technical superiority of the selected offeror's proposal. Id.

The record shows that in determining the proposal representing the best value to the government, the contracting officer not only considered RMI's highest total combined technical and cost score, but also explained why he believed the technical superiority of RMI's proposal justified the payment of a cost premium to RMI. In this respect, the contracting officer referenced in the negotiation memorandum the conclusion of the technical evaluators that RMI's proposal was

"clear, concise, and demonstrated a thorough understanding of the requirements of the project and of the DSM technical/financing problems/solutions in the Philippine context. RMI's technical proposal was found to be of higher quality than the other proposals, and is both innovative and practical. The proposal quality reflects RMI's clear

³In any case, since there has been no showing that HBC's proposal was negatively affected by any alleged bias--HBC has not shown that the evaluation conclusions were unreasonable--there would be no basis for sustaining the protest even if bias were evident. Docusort, Inc., supra.

perception of implementing an industrial sector DSM program in the Philippines."⁴

The contracting officer concluded that RMI's proposal was "the clearly technically significantly innovative and superior proposal [and] [was] worth the higher [cost] by delivering a higher quality end product."

In the agency report, the contracting officer furnished a declaration in which he elaborated upon the statement in the negotiation memorandum.⁵ Specifically, the contracting officer believed that RMI's demonstration program was designed for expeditious implementation, including accelerated development of energy end-use data through a customized model and complete and immediate use of existing Philippine models and databases. The contracting officer also believed that RMI's demonstration program could be used as the basis for implementing a successful industrial pilot program. In addition, the contracting officer was impressed with RMI's plan to establish a fund to finance future DSM projects and a public/private sector group to research and track consumer end-use and load issues. In contrast, while recognizing HBC's DSM experience, the contracting officer concluded that HBC's proposal was "generic," that is, did not address a DSM approach tailored to the Philippines but, rather, an approach which generally could be used in any developing country. The contracting officer further believed that although all proposals, including HBC's and RMI's, had shown an understanding that duplication of effort was not expected, RMI proposed a more effective and innovative approach than HBC for eliminating duplication of work and for incorporating previously completed assessments. Finally, the contracting officer determined that RMI's proposed subcontractor had strong DSM experience in the Philippines and would play a significant role in satisfying the project's objectives. On the other hand, the

⁴The RFP clearly contemplated consideration of an offeror's proposed approach to DSM in the context of the Philippines. In this regard, each of the seven tasks specifically described in the RFP expressly referenced the Philippines. Moreover, the most important evaluation factor--technical approach--required an offeror to demonstrate its "[g]eneral understanding of the services to be performed as indicated by proposal content, task discussions, and proposed approach to contract requirements [i.e., specific tasks]," and its "understanding of DSM technical and financial problems/solutions in the Philippine context."

⁵Contrary to HBC's assertion, while we generally give more weight to contemporaneous records than to those prepared after the fact, here, we conclude that the contracting officer's declaration is consistent with the contemporaneous evaluation and selection records; thus, there is no basis for according this declaration less weight than other documents in the agency report. Engineered Air Sys., Inc., B-254032.2, Nov. 23, 1993, 93-2 CPD ¶ 298.

contracting officer had some concerns with HBC's team's understanding of DSM in the Philippine context. We point out that the contracting officer's discussion reflects many of the narrative evaluation findings of the TEC which unanimously recommended RMI for award.

Although RMI's proposed cost was higher than HBC's (by approximately 24 percent),⁶ given the RFP's evaluation scheme, under which technical considerations were more important than cost, the contracting officer's specific determination that RMI's proposal was sufficiently technically superior to HBC's to warrant its higher cost provided a reasonable basis for the award to RMI.

The protest is denied.

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⁶Offerors were required to use two "plug" numbers (for training and commodities) in calculating their proposed costs. Even if the "plug" numbers are subcontracted from each offeror's proposed cost and cost scores are adjusted, RMI's total combined score remains higher than HBC's total combined score.

In the negotiation memorandum, the contracting officer also explains that RMI's proposed cost was determined reasonable vis-a-vis the government estimate, the proposed cost of the other competitive range offeror, and costs for the same or similar goods or services. In addition, the contracting officer noted several reasons (i.e., HBC's proposal was not tailored to the Philippines and most of its line items, such as proposed travel and per diem and other direct costs were "too conservative") why HBC's proposed cost was considered unrealistically low in comparison to RMI's proposed cost.