

DECISION



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

10,624

FILE: B-193057

DATE: June 29, 1979

MATTER OF: Franklin Institute Research
Laboratories

DL602001

DIGEST:

1. Deciding whether difference in point scoring is significant, or whether technical proposals are essentially equal involves exercise of judgment by agency. Evaluation record supports agency determination that spread of six points between top two proposals is not significant and that proposals are substantially equal.
2. Where two offerors are considered technically equal and differential between acceptable offerors' cost estimates is slight prudence dictates that detailed cost analysis be made of each proposal and that a contemporaneous record of analysis be made and kept.
3. Record does not show that meaningful cost analysis was made where agency does not explain \$2940 difference between offerors' estimate of same direct cost element but maintains that both estimates are "deemed reasonable" and there is evidence of questionable "normalization" analysis of one proposal. GAO recommends that agency again evaluate two proposals using more comprehensive cost realism analysis and award remainder of term to protester if its offer is determined to be low.

Franklin Institute Research Laboratories (Franklin) protests the award of a contract to Informatics Incorporated (Informatics) on September 29, 1978, under request for proposals (RFP) No. WA 78-C256 issued by the Environmental Protection Agency (EPA). The RFP, which was issued on June 14, 1978, contemplated a cost-plus-fixed-fee, level-of-effort contract to provide information support for EPA's Office of Noise Abatement and Control.

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CONCLUSION THAT AWARDEE'S Bid Cost ANALYSIS WAS

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Franklin complains that the award should not have been made to Informatics on the basis of its low cost estimate since Franklin received the highest technical score and the cost difference was slight. Franklin also contends that EPA failed to perform a proper cost analysis.

We agree with EPA's actions regarding the technical evaluation. However, we find that a proper cost analysis was not made and sustain the protest on that basis.

The RFP provided that technical proposals were to be point scored in three general categories; technical capabilities; skills and equipment and directly related experience. Cost proposals were not to be point scored but the RFP indicated that if there were no significant technical, financial or management differences cost could be the determining factor.

Of the nine proposals received on the July 24 closing date, five, including Franklin's with a technical score of 92 and a cost estimate of \$91,612 and Informatics' with a technical score of 86 and a cost estimate of \$97,172, were included in the competitive range. After discussions were held with those five firms, best and final offers were received on September 28. Both Franklin and Informatics retained their respective scores of 92 and 86 while Franklin's cost estimate was reduced to \$91,098 and Informatics' estimate reduced to \$88,040. EPA considered Franklin and Informatics to be substantially equal from a technical standpoint, and awarded the contract to Informatics based on its lower cost estimate.

Franklin asserts that by virtue of its higher score its proposal was technically superior to the Informatics proposal and should have received the award. The agency replies that despite the disparity in scoring there was no significant difference between the technical proposals and notes that both offerors were either above average or superior in "just about each evaluation category." The protester remains unconvinced, asserting that EPA must substantiate its position by an analysis of the evaluation and a review of the evaluators' comments. Franklin also objects to the fact that the technical evaluation documents were not made available to it.

Although the protester was not given all the evaluation documents, they have been made available to this Office. We have often held that we may properly consider restricted documents such as technical evaluations not furnished the protester. Systems Research Laboratories, Inc.--Reconsideration, B-186842, May 5, 1978, 78-1 CPD 341. The documents substantiate EPA's position that both firms received either above average or superior ratings in substantially all categories. In only one of the 15 rating categories, that of access to audiovisual materials, did Informatics receive a rating of "adequate." Further, in a memorandum entitled "Selection of Contractor" the contracting officer indicates that Informatics' proposal "meets all of Government's requirements." In a memorandum prepared by one of the evaluators for the purpose of conveying the conclusions of the evaluation panel to the contracting officer, both Informatics' and Franklin's proposals are classified as "extremely responsive." There is no mention of a deficiency in Informatics' proposal while minor weaknesses in Franklin's proposal are discussed.

Deciding whether a given difference in point scoring is significant, or whether the technical proposals are essentially equal despite the difference in point scoring, involves the exercise of judgment and discretion on the part of the contracting agency. SEMCOR, B-188807, November 28, 1977, 77-2 CPD 413. The final merit of proposals is determined from a review of technical evaluation narratives, adjective ratings, and other relevant information in addition to point scores. Marine Management Systems, Inc., B-185860, September 14, 1976, 76-2 CPD 241.

In the present case, we have reviewed all the available data and we conclude that EPA had a reasonable basis to determine that a spread of six points in the scoring of the two highest ranked acceptable proposals was not significant and that the proposals were essentially equal.

Franklin argues that EPA failed to conduct the type of cost analysis required by the Federal Procurement Regulations (FPR) and our decisions and contends that to the extent an analysis was performed, it was illogical

and arbitrary. The protester states that the cost analysis performed by the contracting officer consisted solely of a comparison of Informatics' and Franklin's cost estimates, while FPR § 1-3.807-2 (1964 ed. amend. 103) and our decisions such as University Research Corporation, B-186311, August 26, 1976, 76-2 CPD 188, require that a "should cost" determination be made based on comparisons with previous costs incurred by the offerors under prior contracts, prior estimates of other offerors, a current cost estimate from other possible sources or prior estimates from historical sources. FPR § 1-3.807-2(c) provides:

"Cost analysis is the review and evaluation of a contractor's cost or pricing data * * * in order to form an opinion on the degree to which the contractor's proposed costs represent what performance of the contract should cost * * *. It includes the appropriate verification of cost data, the evaluation of specific elements of cost, and the projection of these data to determine the effect on prices of such factors as:

- '(i) The necessity for certain costs;
- '(ii) The reasonableness of amounts estimated for the necessary costs;
- * * * * *
- '(iv) The basis used for allocation of overhead costs * * *."

Further, the regulation states that, where possible, a cost analysis should include the comparison of an offeror's estimated costs with those items listed above by the protester.

EPA maintains that its analysis was broad enough to satisfy the requirements of the regulation and sufficiently accurate to enable it to correctly determine that Franklin's performance would be more costly.

The record of EPA's cost analysis is somewhat confusing as it consists of two descriptions of the initial cost analysis which differ in certain aspects and a supplemental analysis.

The first description is contained in the contracting officer's statement included in the initial report submitted to this Office by EPA. In that statement, the contracting officer explains that a detailed cost analysis was conducted which revealed that the approximately \$3,000 difference between Informatics' and Franklin's cost proposals was centered in several direct cost areas: (1) long distance telephone calls, (2) subscription costs and (3) travel expenses.

The contracting officer indicates that Franklin's estimate of \$2,600 for long distance telephone calls as compared to no estimated costs for Informatics was due to the fact that Franklin is located in Philadelphia, whereas Informatics is based in metropolitan Washington and could contact EPA by local telephone. Further, the contracting officer states that Franklin proposed \$3,000 for subscription costs while Informatics only proposed \$60 because as the incumbent, Informatics already possessed the needed subscriptions. The contracting officer also considered the lack of travel expenses in Franklin's cost proposal unrealistic as some "face-to-face" contact was deemed necessary for contract performance.

Finally, the statement notes that an analysis of Informatics' cost proposal showed that it provided 4,160 technical hours, which equaled the Government level-of-effort estimate contained in the RFP and revealed that Informatics' proposal was based on current "costs and cost center rates" as accepted by the EPA Cost Review and Policy Office.

Although the contracting officer did not prepare a contemporaneous cost analysis memorandum, the overall evaluation documents do reveal that some additional consideration was given to Franklin's technical level-of-effort estimate. One memorandum expresses concern that Franklin's costs may be higher than estimated as

it proposed only 3,690 hours while another memorandum mentions that Franklin's cost estimate is questionable because only 4,070 hours of technical effort were proposed.

The issues raised by the protest as well as the discrepancy in the treatment of technical hours led EPA to perform an additional, after the fact, cost analysis of the Informatics and Franklin proposals. This analysis primarily consists of a detailed comparison of estimates contained in the two cost proposals. It seems to verify the references in the contracting officer's statement to direct cost variances in the telephone, subscription and travel cost estimates.

More significantly, this supplemental analysis indicates that although the initial analysis "normalized" Franklin's cost proposal by adding the cost of 470 hours of technical effort to the protester's level-of-effort estimate, only 90 hours were needed to bring Franklin's estimate in line with the Government estimate. Despite this error, EPA concludes that the proper offeror was chosen because the difference in direct costs including telephone, subscription and consultant costs still results in Informatics being the lowest cost offeror.

After considering the previous two versions of the cost analysis, we requested that the contracting officer provide this Office with a detailed reconstruction of his original analysis. In this reconstruction, the contracting officer states that he verified the overhead, general and administrative and labor rates proposed by both offerors with files retained by the cost review branch of EPA and with the Defense Contract Audit Agency. He also checked Informatics' direct costs with those incurred under its prior contract with EPA for these services and compared Franklin's costs with those in other Franklin proposals. Also noted was the lack of travel costs proposed by Franklin.

Finally, the contracting officer states that he analyzed the professional level-of-effort proposed by each firm and noted that while Informatics proposed 4,160

hours, Franklin only proposed 3,690 hours. Although the contracting officer indicates that Franklin proposed 300 hours of "free lance" labor and 80 hours of consultant time, he did not classify the "free lance" labor as professional effort. Accordingly, he added only the 80 hours of consultant time to Franklin's estimate and concluded that Franklin's proposed level of effort was 3,770 hours, 390 hours short of the Government estimate.

There is no explanation why this reconstruction makes no mention of the subscription and telephone costs, which figure prominently in the contracting officer's original statement and the supplemental cost analysis. Also unexplained is the lack of reference in the contracting officer's original statement to any verification of Franklin's overhead rates, direct costs or level-of-effort estimate. Also the record contains no explanation of the discrepancy between the statement in the supplemental analysis that 470 hours were used to "normalize" Franklin's proposal and the statement by the contracting officer in his reconstruction that he found the Franklin proposal to be 390 hours short of the Government estimate.

The protester insists that the record shows that an adequate cost analysis was not conducted and urges that we ignore the supplemental analysis and subsequent reconstruction as after the fact rationalizations entitled to no weight. Also, Franklin urges to the extent any analysis was performed, it was erroneous.

The lack of any contemporaneous memoranda regarding the cost analysis makes it difficult for our Office to assess its adequacy. Although the protester urges that we ignore the contracting officer's reconstruction and the supplemental analysis, since that reconstruction, along with the contracting officer's initial statement, constitutes the only evidence of the initial evaluation, it must be considered. The supplemental analysis may not be considered as evidence of the initial cost analysis but may be considered as evidence on the issue of whether that cost analysis, if improper, prejudiced the protester.

Franklin specifically challenges EPA's finding that its \$2,600 estimate for long distance telephone calls was due to Franklin's Philadelphia location. Franklin notes that it has three offices in the Washington, D.C. area and that it has direct telephone lines to this area, the cost of which are included in overhead. The protester explains that the \$2,600 estimate is comprised of telephone costs related to the accomplishment of various tasks under the contract and are not related to Franklin's location. The protester contends that Informatics will have to incur similar expenses.

EPA has not specifically responded to Franklin's argument. However, we note that the contracting officer's reconstruction, which was submitted after this issue was raised, omits the long distance telephone estimate as a reason for his conclusion that Franklin's proposal represents a higher cost approach.

Further, Franklin disputes EPA's view that its estimate of \$3,000 for subscription costs as compared to \$60 for Informatics was due to Informatics' incumbency. The protester explains that the \$3,000 was not for subscriptions but for the purchase of documents which any contractor, including an incumbent, will have to purchase to perform the contract.

Again, EPA has not specifically responded, but it has not included this item in its reconstructed cost analysis.

The protester also disagrees with EPA's assessment that its failure to include a cost estimate for travel expenses is unrealistic. Franklin states that it intends to travel to Washington, D.C. for meetings but argues that its representatives will travel with its courier who makes weekly trips to Washington, D.C. Franklin does not believe that these trips will involve the need for overnight accommodations.

In this instance, the contracting officer included his doubts about Franklin's lack of an estimate for travel costs in his reconstruction.

Finally, Franklin strongly objects to EPA's conclusion that its professional level of effort estimate was insufficient. Franklin notes that in its initial proposal it included a total professional staff effort estimate of 4,140 hours but was informed during discussions that EPA did "not understand the need for 200 hours of director's time." In response to this concern, Franklin reduced these hours, which are included in professional effort, so that its total proposed effort was correspondingly reduced to 4,070 hours. Franklin questions the propriety of EPA's suggesting that its professional level of effort may be too high in a particular area and then penalizing Franklin for reducing its estimate. Franklin also objects to EPA's "normalizing" the protester's proposed level of effort to conform with the RFP estimate of 4,160 hours in the face of the statement in the RFP that "the level of effort estimate is provided for [the offeror's] information. An offeror's proposal shall reflect his own best estimate of the effort required."

The contracting officer's reconstruction does include a description of the method used to "normalize" Franklin's professional level-of-effort estimate. Although the record contains no explanation for EPA's questioning of Franklin's proposed hours for its director, we note that it is not necessarily inconsistent for an agency to view an offeror's proposed level-of-effort as too high in a particular category while viewing the total level-of-effort proposed for all categories as too low.

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FPR 1-2.807-2(a) stresses that the method and degree of cost analysis is dependent on the facts surrounding the particular procurement and pricing situation and we have held that an agency's evaluation of competing cost proposals involves the exercise of informed judgment which this Office will not disturb, even where the record does not provide a full explanation or rationalization for cost differences between proposals, if it is supported by a reasonable basis. Grey Advertising, Inc., 55 Comp. Gen. 1111, 1133 (1976), 76-1 CPD 325. However, a cost realism determination cannot be permitted to

stand when it appears that there has been little or no meaningful analysis, particularly where contractor selection ultimately depends on that cost realism determination. See Joule Technical Corporation, B-192125, May 21, 1979, 58 Comp. Gen. ____, 79-1 CPD ____.

In this case, we are unable to determine that a meaningful cost analysis was ever made or that an appropriate analysis would not have resulted in award to Franklin. It is clear from EPA's submissions that the contracting officer viewed Franklin's proposal as more costly than Informatics' proposal and "considerably higher" if technical man-hours "were added to bring their proposal up to the same level as *** Informatics." The record, however, does not clearly provide support for that view, rather, it suggests the possibility that the contracting officer's conclusion was arrived at too hastily.

For example, there is no satisfactory explanation from the contracting officer regarding the \$2940 difference in proposed subscription costs. The record contains only that officer's initial statement and the protester's response that the difference cannot be related to incumbency. The contracting officer has furnished neither a rebuttal to the protester's position nor explained why there otherwise is a basis for the difference. Certainly, if the protester is correct, then a proper cost realism determination would result in an upward revision to Informatics' proposal costs; if, on the other hand, the contracting officer's ready acceptance of Informatics' \$60 figure as realistic is based on his recent experience with that firm's performance, then a proper cost evaluation should result in a downward revision to Franklin's proposed costs since we would not expect that EPA would fund the purchase of documents not necessary for contract performance. The contracting officer, however, reports only that both offerors' direct cost figures were "deemed reasonable." Moreover, we have some doubt as to the propriety of EPA's "normalizing" Franklin's level-of-effort estimate by merely adding enough hours to equal the estimate contained in the

RFP when the RFP specifically states that the estimate is to be used only as a guide. No analysis was made as to whether Franklin's level of effort may have been adequate. The technical evaluation, however, which resulted in a higher score for Franklin than for Informatics, suggests that Franklin's proposed level of effort was not a major concern. Obviously, if the cost differential represented by proposed subscription costs and the normalization of the protester's proposal disappears, the perceived cost advantage of the Informatics proposal also vanishes.

We think much of the problem here arises from EPA's ready reliance on what appeared in the competing proposals in lieu of performing a detailed cost analysis. While we recognize that much less in the way of analysis might be necessary when the realism of an incumbent contractor's proposal is being evaluated than might be the case for proposals of non-incumbents, we believe that in a case such as this, where two offerors are considered technically equal and the differential between those acceptable offerors' cost estimates is slight, prudence dictates that a detailed cost analysis should be made of each such proposal and that a contemporaneous record of that analysis be made and kept. Here there is no such record, and it appears that such an analysis was not made. As a result, we cannot determine that EPA reasonably found the Informatics proposal to be lower in estimated costs. Consequently, we are recommending that EPA again evaluate the two proposals on the basis of a more comprehensive cost realism analysis and, on the basis of that evaluation, either affirm the award to Informatics or terminate that contract and award to Franklin for the remainder of the contract term.

By letter of today, we are advising the Administrator, Environmental Protection Agency of our recommendation. This decision contains a recommendation for corrective action to be taken. Therefore, we are furnishing copies to the Senate Committees on Governmental Affairs and Appropriations and the House Committees on Government Operations and Appropriations in accordance with section 236 of the Legislative

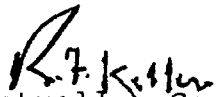
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Reorganization Act of 1970, 31 U.S.C. § 1176 (1976), which requires the submission of written statements by the agency to the Committees concerning the action taken with respect to our recommendation.

The protest is sustained.


Acting Comptroller General
of the United States