



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Sociometrics, Incorporated

File: B-261367.2; B-261367.3

Date: November 1, 1995

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Paul E. Jordan, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. In procurement for personal services, where awardee's proposal received high ratings for its recruitment plan, alleged changes in awardee's proposed level of effort for recruiting did not require agency to downgrade awardee's proposal, where changes merely represented the deletion of direct labor hours which duplicated indirect hours already included, and which remained in the proposal.
2. In contract for personal services in which level of effort was set at time of award, agency cost realism evaluation reasonably was focused primarily on comparison of proposed labor rates of offerors.
3. Where protester's proposal was rated technically excellent, agency advised the protester of some, but not all, weaknesses in its initial proposal, and protester's responses in its best and final offer resulted in a higher technical score, the agency met its responsibility to conduct meaningful discussions; agency was not required to identify all elements of the proposal which received less than full evaluation credit.
4. Agency record sufficiently documented cost realism analysis and source selection decision which found that proposals were technically equivalent, thus making low cost the determining factor for award.

DECISION

Sociometrics, Inc. protests the award of a contract to Science Applications International Corporation, Environmental and Health Science Group (SAIC) under request for proposals (RFP) No. DAMD17-95-R-5007, issued by the Department of the Army, for personal medical services. Sociometrics alleges flaws in the agency's technical and cost evaluations and improprieties in its conduct of discussions.¹

We deny the protest.

The RFP sought proposals for provision of early intervention services for exceptional family members in schools for dependents of service members overseas. The services will include special educators and health care professionals such as nurses, therapists, and psychologists. The RFP contemplated the award of a cost-plus-fixed-fee contract for a 2-year base period with four 1-year options. Award was to be made to the offeror whose proposal represented the best overall value to the government. Technical factors were considered more important than cost, but the RFP advised that if offerors' technical competence were considered approximately the same, then cost could become paramount.

Proposals were to be evaluated on the basis of cost and four technical factors listed in descending order of importance: recruitment plan; factors/interview questions used for selection of applicants; ability to maintain a staff of highly qualified professionals, performing satisfactorily; and ability to provide on-site administrative support.

Seven offerors, including Sociometrics and SAIC, submitted proposals by the January 30, 1995, closing time. An initial evaluation eliminated all proposals from the competitive range except those of Sociometrics and SAIC. Both of these firms' proposals were considered technically excellent, with Sociometrics's scored at 88.76 (out of 100 possible) points and SAIC's scored at 89.38 points. In reviewing the proposals for cost realism, the evaluators compared the offerors' proposed costs with an independent government cost estimate (IGCE). From these evaluations, the agency developed technical and cost questions for use in discussions. Based on their responses to the discussion questions, each offeror's proposal score increased,

¹Sociometrics also alleged that the agency was biased against it, treated the offerors unequally, and conducted an auction. The agency report provided a detailed rebuttal explaining the absence of any bias, the equal treatment of all offerors, and the lack of an auction. The protester failed to respond to or rebut the agency's explanations. Under the circumstances, we have no basis to find any impropriety based on these grounds. D.E.W. Management Servs., Inc., B-246761; B-246761.2, Apr. 1, 1992, 92-1 CPD ¶ 334.

Sociometrics's to 89.36 points and SAIC's to 89.62 points. Each offeror submitted a best and final offer (BAFO). The agency analyzed the BAFO cost proposals (including comparison with the IGCE), offerors' responses to cost questions, and audit information on indirect rates. The agency concluded that both offerors' cost proposals were realistic and reflected sound judgment and comprehension of the contract requirements.

The contracting officer, as source selection authority (SSA), determined that the proposals were technically equivalent. Accordingly, he used proposed cost as the basis for making his award decision. Since Sociometrics's proposed cost for the base period and all options was approximately \$2 million higher than SAIC's, the contracting officer awarded the contract to SAIC for \$11,102,232 for the base period. After receiving notice of the award, Sociometrics filed this protest.

TECHNICAL EVALUATION

SAIC's recruitment plan, evaluated under the first (and most important) evaluation factor, received 27.2 out of a possible 30 points. SAIC's recruitment plan involved the use of several personnel, two of whom were tasked with primary responsibility for implementation of SAIC's recruitment program at a proposed level of effort of more than 2,000 hours for the base period. In its BAFO, SAIC did not change its recruitment plan, but in its cost proposal it reduced the direct hours for these employees by more than 1,000 hours, and did not explain the basis for the reduction. In reviewing SAIC's BAFO, the agency did not change SAIC's proposal score under the recruiting factor.

Sociometrics contends that the technical evaluation was flawed because the Army failed to re-evaluate SAIC's technical proposal despite this significant change in its proposed level of effort. According to Sociometrics, a proper re-evaluation would have lowered SAIC's proposal score, resulting in the agency finding Sociometrics's proposal to be superior and awarding the contract to Sociometrics.

We will examine an evaluation to ensure that it was reasonable and consistent with the evaluation criteria and applicable statutes and regulations. Information Sys. & Networks Corp., 69 Comp. Gen. 284 (1990), 90-1 CPD ¶ 203. Mere disagreement with the agency's evaluation does not render the evaluation unreasonable. Litton Sys., Inc., B-237596.3, Aug. 8, 1990, 90-2 CPD ¶ 115. Our review of the record here provides no basis for objecting to the evaluation of SAIC's recruitment plan.

First, the evaluation of the recruitment plan was not based solely on the level of effort of specific proposed personnel. Thus, a change in the level of effort for particular employees would not necessarily result in a reduced score under the recruitment plan factor. To the extent such changes could affect the score, while SAIC did not explain the change in direct hours proposed in its BAFO, it is apparent

that there was no intention to significantly reduce the recruiting effort. Although the number of direct hours for two employees was lowered, the number of proposed hours for other personnel, including the employee with most of the interviewing responsibilities, was increased significantly, with the net effect that the proposed effort for recruiting actually increased overall. Second, as explained by SAIC, the decrease in direct hours was simply done to rectify an attribution mistake in its initial proposal.² In its initial proposal, SAIC had proposed both direct and indirect hours for its recruiting personnel. By mistake, it had duplicated some direct hours in the indirect portion of its proposal. The "reduction" in hours was intended simply to delete the duplicated hours from the direct portion of the proposal. Since the overall level of effort increased, and there was no other indication that SAIC was changing its recruiting effort, the agency reasonably did not downgrade this aspect of SAIC's BAFO.

In any event, Sociometrics was not prejudiced by the agency's failure to re-evaluate SAIC's proposal in this regard. Sociometrics's revised and BAFO proposals also reflected significant, unexplained changes in the level of effort for various of its personnel, including recruiting personnel and the agency did not downgrade its proposal. For example, Sociometrics's proposed direct effort for recruitment personnel in its BAFO was approximately 17 percent lower than that proposed in its initial proposal. Sociometrics also eliminated, without explanation, an administrative position representing more than 7,000 hours. While Sociometrics argues that its revised and BAFO proposals provided full explanations, the record reflects otherwise. At best, the explanations simply identified the reductions, without stating why they were made. Where, as here, the agency evaluates both offerors' proposals on the same allegedly flawed basis, there is no prejudice, see FKW Inc. Sys.; ColeJon Mechanical Corp., B-235989; B-235989.2, Oct. 23, 1989, 89-2 CPD ¶ 370, and in the clear absence of prejudice, we will not disturb a contract award. American Mutual Protective Bureau, Inc., B-229967, Jan. 22, 1988, 88-1 CPD ¶ 65.

²As a separate protest ground, Sociometrics argues that the agency improperly conducted post-award discussions with SAIC by allowing it to explain the basis for its deletion of direct hours related to its recruitment effort. In the context of a bid protest, an agency is permitted to obtain post-BAFO, post-award clarifications from an offeror which do not provide an opportunity to revise or modify a proposal. Aquidneck Sys. Int'l, Inc., B-257170.2, Sept. 30, 1994, 94-2 CPD ¶ 122. Here, as part of the agency's response to the protest, SAIC simply provided an explanation of its apparent change in recruitment effort; it was neither provided the opportunity, nor did it attempt, to modify its proposal. Accordingly, this protest ground is without merit.

Sociometrics also contends that the agency should have rejected SAIC's proposal as technically unacceptable because it allegedly took exception to two provisions of the RFP. This allegation is based on a misinterpretation of both the solicitation and SAIC's proposal.

The first provision at issue, entitled "options," provides in part that the government has the right to increase or decrease the number of staff, labor categories, locations, and reporting dates, and that the cost of the contract will be adjusted. According to another provision, the level of effort was not to be set until contract award.³ In its proposal, SAIC observed that changes to the level of effort during contract performance could affect the amount of the fixed fee. Sociometrics argues that since the RFP contemplated changes as part of the statement of work, the amount of the fee could not be changed. Sociometrics is mistaken. The options provision on which it relies plainly contemplated the government's adjustment of costs based on changes in the level of effort. It does not state anywhere that the fee will not be adjusted. See Federal Acquisition Regulation (FAR) § 16.306 (fixed fee may be adjusted as a result of changes in the work).

The second provision concerns application of the Service Contract Act of 1965, 41 U.S.C. § 351, et seq. While contracts such as this one, which are performed outside the continental United States, are exempt from the act's provisions, the RFP incorporated by reference FAR § 52.222-41, which sets forth the requirements for compliance with the act. According to the agency, it included the provision to apply to personnel performing administrative work in the United States. SAIC's proposal identified various exemptions in the act which made it inapplicable to the contemplated contract. Sociometrics argues that since the provision was incorporated in the RFP, it applied notwithstanding the various statutory exemptions. Again, Sociometrics is mistaken. The RFP provision, FAR § 52.222-41(b), clearly states that the clause does not apply to contracts exempted by the statute or the Secretary of Labor. (Moreover, the protester's proposal similarly took exception to all RFP provisions which were not applicable to the type of contract awarded, which presumably would include the Service Contract Act.) These two provisions thus were not a basis for rejecting SAIC's proposal.

³In a separate protest ground, Sociometrics alleges that the agency improperly failed to apprise offerors of the level of effort it would use in evaluating proposals. However, it is plain from the terms of the RFP that the actual level of effort was not to be filled in until the time of award. Any protest by Sociometrics of this aspect of the solicitation is untimely. Protests of alleged solicitation improprieties, apparent on the face of the solicitation must be filed no later than the closing time for receipt of proposals. 4 C.F.R. § 21.2(a)(1) (1995).

COST REALISM EVALUATION

Sociometrics alleges that the agency's cost realism analysis was either nonexistent or flawed. Primarily, Sociometrics contends that the analysis did not include sufficient consideration of the offerors' direct labor rates and did not normalize the offerors' costs to account for the different levels of effort proposed.

The purpose of a cost realism analysis under a level-of-effort, cost-type contract is to determine the extent to which the offeror's proposed labor rates are realistic and reasonable. ERC Env'tl. and Energy Servs. Co., Inc., B-241549, Feb. 12, 1991, 91-1 CPD ¶ 155. In this regard, an agency is not required to conduct an in-depth cost analysis or to verify each and every item in conducting its cost realism analysis. Rather, the evaluation of competing cost proposals requires the exercise of informed judgment by the contracting agency involved, since it is in the best position to assess the realism of cost and technical approaches and must bear the difficulties or additional expenses resulting from a defective cost analysis. Since the cost realism analysis is a judgment function on the part of the contracting agency, our review is limited to a determination of whether an agency's cost evaluation was reasonably based and not arbitrary. General Research Corp., 70 Comp. Gen. 279 (1991), 91-1 CPD ¶ 183; The Warner/Osborn/G&T Joint Venture, B-256641.2, Aug. 23, 1994, 94-2 CPD ¶ 76. In order to establish the unreasonableness of an evaluation, it is not enough that the protester merely disagrees with the agency's judgment or that the protester can point to alternative methodologies available to the agency. Payco Am. Corp., B-253668, Oct. 8, 1993, 93-2 CPD ¶ 214.

We have reviewed the Army's cost realism analysis and find it unobjectionable. Prior to discussions, the agency compared SAIC's and Sociometrics's proposed labor rates and other costs with the agency's IGCE, which was based on historical costs for similar contracts, government estimated professional positions, and equivalent government salaries for professional categories. During discussions, the agency asked both offerors detailed cost questions covering the basis for inclusion and calculation of certain costs, appropriateness of the proposed level of certain allowances, reimbursements and other costs, and market survey information. The evaluators used the offerors' responses in determining whether the costs were realistic for the work to be performed, reflected the offerors' understanding of the requirements, and were consistent with the different elements of the technical proposal. The evaluators also reviewed the offerors' BAFOs.

While both BAFO proposal costs were well below the IGCE, the agency ultimately determined that the estimate was overstated. It based this determination on its finding that the offerors' proposals, responses to cost questions, and BAFOs provided adequate independent information to find both realistic as to cost. For example, during discussions, SAIC provided substantial historical cost data,

including market survey information on labor rates. In addition, the agency obtained audits of the offerors' indirect rates, including overhead, fringe benefits, and general and administrative expenses. A Defense Contract Audit Agency audit concluded that SAIC was financially stable and financially capable of performing the contract. The audit found no violations of cost accounting standards or applicable regulations. The contracting officer, as the SSA, also conducted an independent examination of the proposals and found only slight differences in all of the cost elements, including labor rates. Based on these various analyses, the agency determined that the costs proposed in the BAFOs were realistic and sufficient to perform the required services. Accordingly, the agency did not adjust the costs proposed by either offeror. We believe the agency's cost analysis was sufficient to determine the realism and reasonableness of the proposed costs.

Sociometrics maintains that the agency should have had an audit conducted on the offerors' direct labor rates, observing that for two professional labor categories, SAIC's labor rates were significantly below Sociometrics's. The agency explains that because the offerors' labor rates were very close and the product of competitive bidding, it did not believe it was necessary to have those rates audited. Instead, it relied on a comparison of the offerors' rates and sought additional information to support those rates which it questioned. In this regard, while SAIC's rates for two labor categories were lower than those proposed by the protester, SAIC provided market survey information which supported the rates. An agency may rely on information contained in offerors' cost proposals in performing a cost evaluation without seeking additional independent verification of each item of proposed costs, since the extent to which proposed costs will be examined is generally a matter for the agency to determine. See Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 CPD ¶ 325; Radian, Inc., B-256313.2; B-256313.4, June 27, 1994, 94-2 CPD ¶ 104.

Sociometrics also contends that the agency should have "normalized" the offerors' cost proposals because each proposed a different level of effort, that is, the number of hours that each employee would be "on the job." While each offeror proposed a man-year of 2,080 hours, Sociometrics argues that its real level of effort was 2,000 hours per employee (2,080 hours minus 80 hours for holidays), while SAIC's real level of effort was less than 2,000 hours because it subtracted all leave in addition to holidays from the 2,080 hour man-year. According to Sociometrics, had the agency used the same level of effort for both offerors, it would have found that Sociometrics's proposed cost was lower than SAIC's.⁴

⁴Sociometrics originally argued that the agency should have considered that its higher number of hours represented a greater level of effort; that is, that since Sociometrics's personnel would be working longer than SAIC's, the agency should
(continued...)

The protester's argument appears to be based on a faulty premise. It is evident that both offerors' proposals contain costs for 2,080 hours per employee, per man-year, and the RFP sets the number of professional employees. This being the case, there would be no meaningful difference between each proposal's "level of effort" which could have been normalized. Rather, since the level of effort was not to be set until the contract was awarded and would be the same for SAIC or Sociometrics, then regardless of the level of effort proposed by the offerors, it was only necessary for the agency to determine that the labor rates were realistic and which offeror's rates were low. It would have served no purpose to apply the rates to a standardized number of hours. The agency report illustrated this by applying the offerors' direct rates to the level of effort hours set by the contract. The comparison established that Sociometrics's costs were approximately 11 percent higher than SAIC's costs in the base period. Further, Sociometrics's mere identification of another method of determining cost realism does not render the agency's methodology unreasonable. Payco Am. Corp., supra.

Sociometrics has submitted its own normalized comparison of its and SAIC's costs, which indicates that SAIC's costs were higher. First, it subtracted each offeror's burdened costs for the professional personnel from the BAFO submitted by each offeror. It then calculated a new burdened cost for each offeror's professional personnel based on the same number of hours for each. In one calculation Sociometrics increased SAIC's hours to the protester's level, and in another it decreased its hours to SAIC's level. It then added in the remaining proposed costs from the BAFO. In both cases, Sociometrics's costs were lower than SAIC's. However, Sociometrics's methodology is plainly flawed. Sociometrics failed to consider that the proposals already contain charges for all 2,080 hours per employee

⁴(...continued)

have considered the difference in technical effort and the effect on cost. Subsequently, Sociometrics realized that its level of effort also was less than 2,000 hours--and in fact, was lower than SAIC's--because it too provided various forms of leave for its employees. Sociometrics then changed its argument to maintain that its proposal contains excess labor hours representing the difference, and contends that the agency should have adjusted for the excess hours in its evaluation. This argument is untimely. The protester was aware of the extent of the agency's cost evaluation as of June 16, when it received the agency's report. It did not raise this issue until August 21, more than 10 working days later. 4 C.F.R. § 21.2(a)(2).

even though each employee will not be "on the job" for every hour. Thus, when it normalized SAIC's hours upward, it effectively double counted a significant number of hours already costed in SAIC's proposal. Similarly, when it normalized its own hours downward, it effectively eliminated a significant number of hours costed in its own proposal.⁵

MEANINGFUL DISCUSSIONS

Sociometrics argues that the agency failed to provide it with meaningful discussions because the agency failed to advise it of all weaknesses identified by the evaluators. According to Sociometrics, had it been allowed to address these weaknesses, its revised proposal would have had a higher score than SAIC's, and it would be entitled to the contract award.

Agencies are required to conduct meaningful discussions with all competitive range offerors. Stone & Webster Eng'g Corp., B-255286.2, Apr. 12, 1994, 94-1 CPD ¶ 306. In order for discussions to be meaningful, contracting officials must advise offerors of deficiencies in their proposals and afford offerors an opportunity to revise their proposals to satisfy the government's requirements. Id. However, the agency is not obligated to discuss every aspect of an acceptable proposal that receives less than the maximum score. Id.; Veco/W. Alaska Constr., B-243978, Sept. 9, 1991, 91-2 CPD ¶ 228.

Here, the agency conducted meaningful discussions with the offerors. Sociometrics's initial proposal was evaluated as technically excellent. The evaluators were concerned with relatively few issues in Sociometrics's technical proposal and thus asked only two technical discussion questions. Instead, the agency focused its discussions on cost issues. The protester's technical responses to the questions it was asked increased its score by .60 points and its cost responses satisfied the evaluators' concerns. Although the awardee was asked more technical questions, its responses resulted in a smaller increase in its technical score. While the protester identifies a number of weaknesses identified by various evaluators, the fact remains that its proposal received between 84 and 93 percent of the available points on 16 of the 17 evaluation factors and subfactors. Its lowest score, 81 percent of the available points, was for a subfactor under the least important evaluation factor. In view of its overall high scores, we believe that

⁵Another reason for discounting Sociometrics's calculations is the uncertainty as to which level of effort is appropriate for Sociometrics. While the protester based its calculations on a 2,000-hour man-year, it has also argued that its level of effort is less than 2,000 hours.

Sociometrics was not entitled to discussions which would essentially have been designed to permit it to achieve a perfect score in all areas. (We also note that Sociometrics does not offer any explanation of how it would have improved its score under any of the factors where weaknesses were identified.)

SOURCE SELECTION DOCUMENTATION.

Sociometrics contends that the record does not contain sufficient documentation to support the source selection decision.

In a negotiated procurement, agency selection officials have broad discretion in determining the manner and extent to which they will make use of the technical and cost evaluation results in making cost/technical tradeoffs. General Servs. Eng'g. Inc., B-245458, Jan. 9, 1992, 92-1 CPD ¶ 44. A source selection official's judgment must be documented in sufficient detail to show it is not arbitrary. KMS Fusion, Inc., B-242529, May 8, 1991, 91-1 CPD ¶ 447. The official's failure to specifically discuss the cost/technical tradeoff in the selection decision does not affect the validity of the decision, if the record shows that the agency reasonably made its determination. See McShade Gov't Contracting Servs., B-232977, Feb. 6, 1989, 89-1 CPD ¶ 118. The fact that the explanation was not contained in the contemporaneous evaluation record does not provide a basis to disregard it in our review. See Allied-Signal Aerospace Co., Bendix Communications Div., B-249214.4, Jan. 29, 1993, 93-1 CPD ¶ 109.

The record here contains the offerors' proposals, detailed technical evaluations, discussion questions, and proposal revisions, all of which support the technical scores given each proposal. The contracting officer, as the SSA, reviewed these documents and reasonably determined that the proposals were technically equivalent. As provided in the evaluation criteria, the basis for award then became cost. The record contains a detailed IGCE, the offerors' cost proposals and support for their costs, cost discussion questions which were based on the evaluators' thorough review of the proposals, the offerors' discussion responses, and BAFOs. While the details of the cost realism analysis are not spelled out in a contemporaneous document, the contracting officer has explained the details of the analysis in the agency report (see discussion above). From our review of the record, we are satisfied that the agency performed an adequate cost realism analysis which included comparison of labor rates, audits of indirect rates, and an

assessment of whether the offerors could perform the contract at the proposed costs. Accordingly, we have no basis to object to that analysis, or to the agency's selection decision, on the basis of a lack of adequate documentation.

The protest is denied.

Comptroller General
of the United States