



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

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Matter of: The Futures Group International

File: B-270397.2

Date: May 16, 1996

Paul Shnitzer, Esq., and Mark D. Taylor, Esq., Crowell & Moring, for the protester.
Alan A. Pemberton Esq., Covington & Burling, for Management Sciences for Health,
an intervenor.

Anna Chytla, Esq., Agency for International Development, for the agency.

Jerold D. Cohen, Esq., Office of the General Counsel, GAO, participated in the
preparation of the decision.

DIGEST

1. Protest that a particular type of experience on the part of an offeror's key contract employee was a prerequisite for award is denied where the solicitation did not mandate such experience and where, contrary to the protester's arguments, the agency's actions during negotiations should not have led the protester to conclude that such experience was mandatory and to structure its offer accordingly.
2. Protest that solicitation funding requirement and related cost evaluation criterion were unfair is dismissed as untimely since it concerns apparent solicitation improprieties that should have been protested before proposals were due.
3. Protest that agency did not adequately justify selection of higher cost offeror is denied where such offeror overall received a higher evaluated cost score than did the protester; technical considerations were worth four times as much as cost considerations and the awardee's technical score was better than the protester's; and the selection official reasonably determined that acceptance of the higher cost offer was warranted given its technical advantages particularly with respect to the offeror's proposed key contract employee.

DECISION

The Futures Group International (TFGI) protests the award of a contract to Management Sciences for Health (MSH) under request for proposals (RFP) No. 521-95-005, issued by the Agency for International Development (AID). The solicitation sought offers for a cost-plus-fixed-fee contract to implement the Health Systems (HS) 2004 Project in Haiti. TFGI protests that the awardee's Chief of Party (COP)

lacks overseas experience as the COP of a large multisectoral health project, which TFGI contends was a prerequisite for the award. TFGI also protests that both MSH's and its own cost proposals were unfairly evaluated, and that the selection of MSH's higher-cost offer was improper.

We deny the protest.

BACKGROUND

The HS 2004 Project is intended to provide immediate support to the government of Haiti in reestablishing and restructuring essential health services throughout the country. The contract in issue concerns the first of the project's two-phase approach--the contract's objectives are to assist Haiti's Ministry of Public Health and Population in its health reform policy efforts; support direct service delivery; and support service to reinforce those two program components.

Technical Evaluation

The RFP, issued on May 23, 1995, listed 13 personnel positions, although it encouraged contractors to propose different mixes as capabilities permitted. The first position listed was the COP/Senior Health Administrator--the only individual specified as "key" (*i.e.*, essential to the work)--who was to provide guidance and direction for the project's implementation and for all contractor personnel; serve as key counterpart to the Haitian Ministry Project Coordinator; and act as contractor representative.

The RFP provided that proposals would be rated and ranked on the specified evaluation factors, and that the offerors' technical and cost scores would be used as guides in determining the proposal that was the most advantageous to the government. The technical evaluation was to constitute 80 percent of the offeror's score, and the cost evaluation, 20 percent. Offerors were advised that cost would become increasingly important as proposals approached technical equality, and might be the deciding factor between proposals approximately equal in technical merit.

The three technical evaluation factors were Quality and Responsiveness of Proposal and Technical Approach, worth a total of 35 points; Institutional Capabilities, worth a total of 16 points; and Personnel Capabilities, worth a total of 29 points. The Personnel Capabilities factor referenced the 13 listed personnel positions, and advised that AID would evaluate the offeror's "ability to provide the anticipated qualifications or another mix which is considered equal or better." The two subcriteria in the Personnel Capabilities factor that concerned the COP were:

"I. Qualifications of Senior Health Administrator, Health Policy Advisor, the Public Sector Financial Management Advisor and the HIS [Health Information Systems] advisor.

a. Type and number of years of relevant experience in integrated health project implementation and the provision of technical assistance to the public sector.

b. (for Senior Health Administrator) Type and number of years as team leader of a large, complex, multidisciplinary technical assistance effort in a developing country."

The first subcriterion was worth 6 points, and the second, 10 points.

AID received five proposals by the July 6 due date, which were evaluated by a technical evaluation committee comprised of three AID employees and two senior officials of the Haitian government. The average scores for the proposals submitted by MSH and TFGI were, respectively, [deleted] points--including an average of [deleted] points for the two COP-related subcriteria; and [deleted] points--including an average score of [deleted] for the COP-related subcriteria. The committee's July 16 evaluation summary states the following with respect to MSH's proposed COP, Mr. Paul Auxila:

"While the Chief of Party has corporate management experience, he has no long term overseas experience in managing large multidisciplinary technical assistance teams. Furthermore, Mr. Auxila appears to have very specialized experience in HIS, not in general public health management. Please provide additional information on Mr. Auxila's ability to manage large multidisciplinary teams and further justification for why he is an appropriate candidate for this position."

Regarding TFGI's proposed COP, [deleted], the summary states:

"The proposed candidate does not have prior experience as a Chief of Party managing large multisectoral public health teams in developing countries. She also has a predominant experience in the PVO [private voluntary organization] sector, not the public sector. The evaluation committee suggests that The Futures Group propose a candidate who has more experience in managing multisectoral public health teams in an overseas setting providing technical assistance to the public sector."

The contracting officer relayed the committee's concerns verbatim to the respective offerors on August 1.

MSH responded with additional information about Mr. Auxila's qualifications. TFGI responded with two alternatives for COP: TFGI would (1) revise the team structure, naming [deleted] COP, supported by several senior health advisors, or (2) maintain the original team structure but replace [deleted] with a candidate to be proposed later. TFGI also stated that [deleted--the second candidate] had served as COP for a multisectoral health project in [deleted], detailing [deleted] contributions to that and other efforts. In this respect, TFGI initially had proposed [deleted--the second candidate] as Director of Management Systems, charged with overseeing the project's major technical support systems.

The technical evaluation committee then reevaluated proposals. MSH's average score increased to [deleted]; the committee noted that the additional information MSH had furnished regarding Mr. Auxila did not substantially strengthen the firm's offer with respect to the COP. TFGI's average total score increased to [deleted], with some increase in the scoring for the two COP-related subcriteria. The committee rejected TFGI's offer of [deleted] as COP, however. The committee determined that [deleted--the second candidate] was not a "SENIOR Health Administrator" and did not have "demonstrated experience" to meet the RFP's express personnel requirement for the COP "to provide guidance and direction for all aspects of project implementation and all contractor personnel, to serve as key counterpart to the [Haitian Ministry] Project Coordinator particularly on issues of decentralization, and to serve as contractor representative in dealings with USAID." The committee reiterated its "desire for the offeror to propose someone who has had previous experience as a Chief of Party managing large multisectoral public health team in developing countries." In subsequent messages to the two offerors, the contracting officer did not mention the COP to MSH, and relayed the committee's COP concern almost verbatim to TFGI.

TFGI responded to the contracting officer's communication by offering yet another COP candidate, [deleted].

The technical evaluation committee and the contracting officer then interviewed the offerors' COP candidates, contacted references, and reevaluated the proposals. Based largely on an encouraging interview with MSH's Mr. Auxila and favorable input from his references, MSH received an average score of [deleted] points for the two COP-related subcriteria; MSH's total technical score was [deleted] points (up from [deleted]). The interview with TFGI's [deleted--the third candidate] was not as encouraging, nor were the references as favorable: TFGI received an average score of only [deleted] points for the two COP-related subcriteria,¹ and a total score of [deleted] points (down from [deleted]). The technical evaluation committee recommended award to MSH.

¹AID reports that TFGI was awarded [deleted] points for the two subcriteria.

Cost Evaluation

The RFP provided that the offeror's cost proposal would be analyzed based on five criteria, worth a total of 20 points, and for realism and reasonableness. The five criteria and the points available under each were:

- (1) total price (cost plus fixed fee, or cost alone if no fee were proposed): 12 points
- (2) total fee or profit, with the maximum awarded to proposals that did not include any profit: 2 points
- (3) direct labor costs: 2 points
- (4) indirect costs: 2 points
- (5) acceptance of and reasonableness of indirect cost ceilings rates: 2 points.

TFGI's cost proposal was awarded [deleted] of the 20 available points; MSH's cost proposal received [deleted] points.

Selection

The combined technical and cost scores, and the estimated costs, for the four competitive range offerors, were:

<u>Offeror</u>	<u>Tech. Score</u>	<u>Cost Score</u>	<u>Total Score</u>	<u>Est. Cost</u>
MSH	[deleted]	[deleted]	[deleted]	\$44,023,001
Offeror A	[deleted]	[deleted]	[deleted]	[deleted]
TFGI	[deleted]	[deleted]	[deleted]	[deleted]
Offeror B	[deleted]	[deleted]	[deleted]	[deleted]

The contracting officer concluded that award to MSH was in the best interests of the government.

PROTEST AND ANALYSIS

Chief of Party

TFGI protests that AID awarded the contract to an offeror that proposed a COP candidate who did not have long-term COP experience leading multisectoral health programs in developing countries, which TFGI maintains was a prerequisite for award. The protester argues that this "baseline requirement" is evidenced by AID's advice to TFGI that the offeror had to propose a candidate with long-term COP experience in a multisectoral technical assistance effort in a developing country. The protester notes that AID rejected TFGI's first candidate, [deleted], because she did not have COP experience, and rejected TFGI's second candidate, [deleted], because he lacked long-term experience. TFGI complains that the prerequisite "severely constrained the search and increased the cost of the defined candidate"; the protester further notes that its third candidate, [deleted], met all qualifications but the offer nevertheless was downgraded in the final evaluation with respect to the COP-related subcriteria. In contrast, TFGI complains, not only did AID not require that MSH's Mr. Auxila be replaced because he did not have COP experience, but MSH's score for the COP-related subcriteria increased throughout the evaluation.

TFGI argues:

"When, as here, an agency specifies mandatory technical features in its RFP and then insists upon those features during negotiations, offerors will interpret these mandatory requirements as prerequisites that had to be met to be eligible for any award. . . . When an agency determines to consider proposals as acceptable even if they only comply with a portion of the mandatory specifications, the agency should notify offerors of this determination by written amendment. . . . The fact that USAID did not notify TFGI of the relaxed requirement being applied to MSH means that the competition was conducted on an unequal basis. . . ."

AID points out that the RFP did not expressly require COP experience. AID further maintains that the agency did not require COP experience in the course of negotiations. AID argues:

"While the Committee indicated that prior Chief of Party experience was desirable, it never suggested that such a background was mandatory or required. . . . Indeed, the Committee stated that the weakness in TFGI's proposal could be remedied by any candidate with more overseas experience in managing multisectoral public health teams. . . . Although such experience is often acquired by individuals

who previously worked as Chiefs of Party, there are many other positions in the international public health sector that could provide comparable experience. . . ."

We do not agree with the protester that either the RFP, or AID during negotiations, established long-term COP experience in a multisectoral health effort in a developing country as a prerequisite for award so that either (1) MSH's offer could not be accepted because of Mr. Auxila's lack of experience in that regard, or (2) TFGI was misled into responding to a more restrictive requirement than was applied to MSH.

The RFP, by its terms, did not require the COP candidate to have the experience in issue. Nothing in the RFP's listing of personnel position so mandates, although the listing's preamble does require, generally, fluency in French and/or Haitian Creole, "relevant prior experience working in developing countries," and individuals who are sensitive and accommodating to cultural differences and who are good team members. Moreover, the first COP-related subcriterion, worth 6 points, identified the evaluation considerations not just with respect to the COP, but for 4 of the 13 listed personnel positions, the COP/Senior Health Administrator and 3 others. Offerors were advised that the evaluation committee, in considering those four candidates, would take into account the type and number of years of relevant experience--no specific experience was mandated. The second subcriterion, which focused on the COP directly, advised offerors that the committee would consider the candidate's experience "as team leader of a large, complex, multidisciplinary technical assistance effort in a developing country." Neither subcriterion expresses the mandate TFGI suggests.

With respect to the evaluation and AID's discussions with TFGI, AID did not reject TFGI's first offered candidate, [deleted], because she did not have a particular degree and type of COP experience; in fact, TFGI was awarded an average of [deleted] of the 16 points available under the two COP-related subcriteria. What the technical evaluation committee and the contracting officer did do, however, was identify to TFGI [deleted] weakness in terms of experience, and "suggest" that TFGI consider nominating "a candidate who has more experience in managing multisectoral public health teams in an overseas setting providing technical assistance to the public sector." That type of concern appears appropriate under the subcriteria, and there clearly is nothing wrong in an agency's advising an offeror of proposal weaknesses and how to improve its offer--a fundamental feature of discussions in a negotiated acquisition. See Federal Acquisition Regulation § 15.610.

Moreover, TFGI, in responding to that suggestion, could have endeavored to show AID that the committee was misreading [deleted] credentials, or that [deleted] in fact was a superior candidate in terms of experience. TFGI's decision instead to substitute [deleted], who did have COP experience, or a candidate to be named

later, was the offeror's choice, not a mandated change. While TFGI evidently read more into the technical evaluation committee's concerns than a suggestion about how to improve its offer, that reading is not supported by the committee's express comments as relayed to TFGI by the contracting officer.

The technical evaluation committee did expressly reject [deleted--the second candidate] as a candidate. We do not, however, believe that such rejection established a mandate for the COP experience in issue either.

First, it appears that TFGI itself knew that [deleted] might be unacceptable when it nominated him, despite his COP experience in [deleted], since it advised AID that it also proposed revising the team structure, with [deleted] being supported by several senior health advisors; TFGI further offered, as an alternative, to replace [deleted--the first candidate] with a to-be-named candidate.

More importantly, in rejecting [deleted--the second candidate] the committee, in its comments as related to TFGI by the contracting officer, essentially only found that [deleted], specifically, could not offer the precise capabilities required by the RFP of the COP/Senior Health Administrator: provide guidance and direction for all aspects of the project, serve as key counterpart to the Haitian Ministry Project Coordinator, and serve as contractor representative. Whereas the technical evaluation committee previously had "suggested" that TFGI "propose" a COP candidate with more public-sector related experience than [deleted], the committee here stated its "desire" that TFGI propose a COP candidate with previous COP experience managing a large team. That statement, in our view, essentially was a reaction to the nomination of an individual who was not acceptable irrespective of his COP experience, for reasons tied directly to the solicitation's express requirements. We think the most reasonable reading of the statement is not that the agency was changing RFP evaluation factors and RFP requirements, but rather that if TFGI were going to nominate for COP an individual who had COP experience, such experience should have been managing a large multisectoral team in a developing country. In sum, we do not agree that AID's rejection of [deleted] established COP experience of that sort as a prerequisite for award despite the lack of any such requirement in the RFP itself.

Finally, we see no basis to question the relationship of the COP evaluations to the two COP-related subcriteria. The subcriteria focused on type and relevance of experience, public sector technical assistance, and leadership capabilities with respect to complex overseas efforts. The evaluation of Mr. Auxila--particularly the interview and reference checks--established him as an excellent candidate in all respects. While AID recognized that [deleted--the third candidate] had certain highly relevant experience, the contracting officer, who participated in the interviews, reports:

"However, several of [deleted] responses raised questions about his management style. For example, he viewed the role of the contractor in a dominant fashion and minimized the function of the Haitian Ministry of Health. Some of [deleted] responses showed that he had difficulty with understanding output based financing even though the TFGI proposal specifically addressed this point. Moreover, when asked about his ability resolve conflicting situations, [deleted] provided a troubling answer. He stated that while serving as a Chief of Party in [deleted], he resigned from his position because he could not resolve various disagreements with the Government of [deleted] and the USAID Mission. Although he was the Chief of Party in charge of the project, he repeatedly blamed others for inability to resolve issues and did not take any personal responsibility."

One of the technical evaluators, speaking for the entire committee, adds that [deleted] "came across as having minimized the role of the [Haitian] Ministry of Health in implementing this project." The evaluator states that the interview "raised certain questions concerning his management style and his ability to handle conflict." In addition, two AID Missions that were contacted indicated that [deleted] "had difficulties in establishing effective working relationships, particularly with foreign governments."

The evaluation of proposals in a negotiated procurement must be both reasonable and in accord with the stated evaluation criteria. See Mobility Sys. and Equip. Co., B-261072, Aug. 8, 1995, 95-2 CPD ¶ 66. We see no basis to object to AID's evaluation in that regard.

Cost Evaluation

Cost was worth 20 of the 100 points available in the evaluation of proposals. For the first cost evaluation criterion--total price--TFGI, which proposed the lowest cost, was awarded [deleted], and MSH was awarded [deleted] points. The two offerors' scores for the other four criteria were

<u>Criterion</u>	<u>Points Available</u>	<u>TFGI Score</u>	<u>MSH Score</u>
Total fee/profit	2.00	[deleted]	[deleted]
Direct labor costs	2.00	[deleted]	[deleted]
Indirect costs	2.00	[deleted]	[deleted]
Indirect cost ceiling rates	2.00	[deleted]	[deleted]
Subtotal	8.00	[deleted]	[deleted]

Total inclusive of price evaluation	20.00	[deleted]	[deleted]
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The RFP required the contractor to provide a total of \$26.1 million in subgrants or subcontracts to health care providers to provide basic care, and for national programs in family planning, reproductive health, and other efforts. TFGI's proposed fee of [deleted]--for which the offeror received [deleted] points--included the cost to provide that subgrant/subcontract money. TFGI also, however, suggested in its best and final offer (BAFO) alternative funding or reimbursement approaches that would allow TFGI to reduce much of its fee. MSH proposed a fee of [deleted] for its part of the subgrant/subcontract effort, but no fee if it received payment through a letter of credit (LOC) arrangement. The LOC procedure permits a prime contractor to obtain fast repayment from AID of the money passed by subgrant/subcontract. Since the contracting officer decided to authorize payment by LOC, MSH's evaluated fee, for which it received [deleted] points, was only [deleted].

TFGI maintains that the related portion of its fee could have been eliminated had AID not required the contractor to provide the subgrant/subcontract money. TFGI further protests that it was not fair to accept a no-fee proposal from MSH. We dismiss TFGI's arguments as untimely.

As to the propriety of the requirement that the contractor provide the funding, our Bid Protest Regulations require that a protest of an apparent solicitation impropriety be filed before proposals are due. 4 C.F.R. § 21.2(a)(1) (1996). AID's RFP was clear as to the funding requirement. TFGI, however, did not protest the requirement and its ramifications until it lost the competition.

TFGI's protest also is untimely, and for the same reason, to the extent it challenges AID's decision to accept MSH's no-fee proposal. It should have been evident to TFGI from the inclusion of the funding provision in the RFP and the wording of the cost evaluation criterion for total price--"cost plus fixed fee or cost alone if no fee were proposed"--that a non-profit competitor might well receive 2 full points under that criterion. Moreover, the subject was addressed in an amendment to the RFP issued before initial proposals were due relaying a series of offeror-AID question and answer exchanges. One potential competitor complained that the RFP provision for the cost evaluation criterion in issue that maximum points would be awarded to a proposal that did not include profit "appears to penalize for-profit organizations or any other organization which charges a fee as opposed to an organization that does not charge a fee." AID responded that it believed the RFP provision reasonable. In fact, TFGI's own business proposal shows that the company knew that the requirement gave non-profit competitors the flexibility to offer no fee for providing the subgrant/subcontract funds based on LOC procedures whereas for-profits like TFGI did not have that option. In sum, TFGI clearly knew

the evaluation ramifications of the subgrant/subcontract requirement before submitting its initial proposal. Since TFGI waited until it lost the competition to protest the matter, the issue is untimely.²

TFGI also protests that in awarding TFGI only [deleted] of the 2 points available for reasonableness of indirect cost ceilings rates, AID misunderstood the firm's offer in that regard. In response, AID concedes that TFGI is correct, and should have received the full 2 points. TFGI's evaluated cost score thus should have been [deleted] points (instead of [deleted]), and its total score should have been [deleted] points (instead of [deleted]). The protest on this issue therefore is academic.

Selection

The RFP provided that the technical and cost point scores would be used as a guide in determining which proposal was most advantageous to the government, and that award would be made to the responsible offeror whose proposal, conforming to the solicitation, "is most advantageous to the government, the above technical and cost factors considered." (The RFP also described the award basis as the proposal with combined technical and cost considerations that offered "the greatest value to the U.S. Government.") TFGI protests that AID has not justified the decision to award to the higher cost offeror, MSH.

TFGI further argues that without the COP-related evaluation changes from the first to the third round of discussions, which TFGI maintains were unfair based on the COP-related protest issue discussed above, TFGI's technical score would have been so close to MSH's (TFGI calculates a [deleted] difference) that award to MSH at a higher cost could not have been merited. TFGI further argues that it should have received a higher cost evaluation score anyway, in that MSH should not have received [deleted] points for its no-fee proposal; MSH's [deleted] fee should have

²It is not clear whether TFGI also is protesting AID's evaluation of TFGI's offer inclusive of the full fee, as opposed to accepting TFGI's BAFO suggestions regarding alternative funding and reimbursement methods. In any event, TFGI's suggestions do not appear to reflect approaches accommodated by the RFP's language, so that they could not be accepted based on the solicitation as issued; AID's evaluation was consistent with the RFP provision, which TFGI should have protested before entering the competition, as discussed above. Further, TFGI did not mention that aspect of the evaluation to our Office until well after it appears the company knew that the evaluated cost of its offer included the full proposed fee. Our Regulations require that a protest of other than an apparent solicitation impropriety be filed within 14 days after the protester should have known its protest basis, 4 C.F.R. § 21.2(a)(2)--TFGI did not meet that filing requirement.

been considered under the 12-point total price evaluation criterion; and AID did not properly evaluate TFGI's proposal with respect to indirect cost ceilings rates. The protester's calculations, taken together, yield a higher total score for TFGI.

We think the contracting officer did adequately justify the award to MSH notwithstanding the [deleted] difference between MSH's estimated cost and TFGI's. In selecting MSH, the contracting officer noted the offerors' technical, cost, and total scores, and the estimated costs of their proposals. He stated that even though MSH's estimated cost was slightly higher than the lowest estimated cost (TFGI's), MSH's had been found to be the most reasonable; MSH's total fee and indirect cost estimates were the lowest of the competitive range offerors; and MSH had proposed no fee. He concluded that despite its cost, "based on the strong technical showing and the foregoing analysis . . . award to MSH is in the best interests of the Government. . . ." He continued by summarizing MSH's "key" technical advantages:

"MSH enhanced the quality of their technical approach in the area of output based financing, the vision and credentials of the Chief of Party (Paul Auxila), the Corporation's plan to manage its subcontractors and the internal consistency between the written proposal and the COP's vision as to the principal directions the project should take."

We recognize that this justification is not particularly extensive. Nevertheless, it does, in our view, reflect a reasoned decision that it was worth [deleted] to accept MSH's reasonable-cost offer in light of the firm's technical superiority overall, and particularly the capabilities of Mr. Auxila as the contractor's key person. The source selection official in a negotiated procurement has broad discretion in determining the manner and extent to which to make use of the technical and cost evaluation results; cost/technical tradeoffs may be made, and the extent to which one may be sacrificed for the other is governed by the test of rationality and consistency with the established evaluation factors. See Family Realty, B-247772, July 6, 1992, 92-2 CPD ¶ 6.

Moreover, we do not accept TFGI's calculations or their asserted ramifications. First, we see no reason to discount the third-round evaluation scores for the COP-related subcriteria since, as discussed above, we do not believe that MSH was improperly evaluated, or that TFGI was misled to its prejudice, regarding the qualifications for a COP candidate. Second, we have dismissed as untimely TFGI's protest on the LOC/no-fee issue. Finally, although we appreciate AID's concession about the evaluation of indirect cost ceilings rates--so that TFGI's cost score should have been [deleted] rather than [deleted] and its total score should have been [deleted] points rather than [deleted], in light of MSH's higher technical and total scores ([deleted]); AID's satisfaction with the reasonableness of MSH's cost; and AID's concerns about [deleted--TFGI's third candidate], we see no reasonable possibility on this record that such increase would have led to award to TFGI. In

this respect, TFGI has not contested AID's assessment of [deleted--the third candidate] except to point out that he had long-term COP experience of the sort TFGI deemed necessary.

The protest is denied.

Comptroller General
of the United States