



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

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Matter of: Biospherics Incorporated

File: B-278508.4; B-278508.5; B-278508.6

Date: October 6, 1998

Steven L. Briggerman, Esq., and Grace Bateman, Esq., Seyfarth, Shaw, Fairweather & Geraldson, for the protester.

Alan S. Weitz, Esq., Greenstein DeLorme & Luchs, P.C., for Logistics Applications Inc., an intervenor.

Michael Colvin, Department of Health & Human Services, for the agency.

Linda S. Lebowitz, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protests are sustained where there is no documentation of the agency's evaluation of final revised proposals, that is, there is no information in the record regarding proposal strengths and weaknesses after discussions, and as a result, the reasonableness of the agency's evaluation upon which the award decision was made cannot be determined.

DECISION

Biospherics Incorporated protests the award of a contract to Logistics Applications Inc. under request for proposals (RFP) No. AHCPR-98-0001, issued by the Agency for Health Care Policy and Research (AHCPR), Department of Health & Human Services, for the operation of a publications clearinghouse. Biospherics challenges the agency's evaluation of proposals and the agency's selection decision.

We sustain the protests.

The RFP, issued on June 5, 1997 as a small business set-aside, contemplated the award of a cost-plus-fixed-fee contract for the base period and four 1-year option periods. RFP § L.2., at 62. The RFP described warehousing and distribution (fulfillment) tasks and automated call center and database management function tasks. The RFP required the contractor to store and distribute AHCPR publications; to maintain and manage AHCPR's automated mailing/inventory control systems; and to manage the storage and shipping of AHCPR exhibits.

The RFP stated that the "Government reserves the right to make an award to the best advantage of the Government, cost and other factors considered." RFP § M.1.A., at 80. The RFP contained the following technical evaluation factors and respective weights: (1) understanding the problem--25 points; (2) technical approach--25 points; (3) management plan--20 points; (4) key personnel--20 points; and (5) facilities--10 points. RFP § M.2.A.--E., at 81-82. The RFP stated that a peer review technical committee would consider offerors' proposals in light of these technical evaluation factors and make a recommendation concerning the technical acceptability/unacceptability of each proposal. RFP § M.2., at 81. Offerors whose proposals were determined technically acceptable would then be evaluated for past performance, weighted at 25 points, based on the firm's performance under existing and prior contracts for similar services. RFP § M.2.F., at 82. The RFP stated that technical proposals would receive paramount consideration in the selection of the awardee. RFP § M.1.A., at 80. Cost would only become a significant factor if two or more proposals were determined approximately technically equal. Id.

Three firms, including Biospherics and LAI, submitted proposals by the amended closing date of July 11, 1997. Under the prior contract, LAI was the prime contractor performing the warehousing and distribution tasks, and Biospherics was LAI's subcontractor performing the call center and database management tasks. For the current procurement, LAI submitted a proposal to basically perform all required tasks, and Biospherics submitted a proposal as the prime contractor teamed with another firm which would serve as a subcontractor for the warehousing and distribution tasks. The three proposals were evaluated by a peer review panel made up of six individuals. This panel determined that two proposals, including that of Biospherics, were technically acceptable, and that LAI's proposal was technically unacceptable. Following discussions with Biospherics and the other offeror and the submission of revised proposals, the agency awarded a contract to Biospherics.

LAI subsequently protested to our Office, contending among other things that the peer review panel was biased because two of the six reviewers were former employees of Biospherics and had failed to disclose in their conflict of interest certificates their prior employment relationships with Biospherics. The agency took corrective action by convening a new peer review panel to reevaluate proposals. Our Office dismissed LAI's protest as academic in light of the agency's corrective action.

The agency's new peer review panel, made up of three individuals,¹ convened on

¹This panel consisted of a registered nurse with a Ph.D. degree who teaches nursing theory and research and is a freelance technical writer; an individual who is a freelance editor/writer, owns his own publications company, and teaches

(continued...)

March 23, 1998. This panel reviewed the three technical proposals as initially submitted, that is, none of the offerors was permitted to revise its proposal at this time. All three proposals were determined technically acceptable. The panel then considered the project officer's evaluation of each offeror's past performance which was based on questionnaires completed by references listed in each offeror's proposal. As relevant to these protests, Biospherics and LAI received the following scores:

	Biospherics	LAI
Technical	[deleted]	[deleted]
Past Performance	[deleted]	[deleted]
TOTAL	[deleted]	[deleted]

Technical scores were supported by narratives of the strengths and weaknesses in each offeror's technical proposal. At this time, the proposed cost of Biospherics was [deleted] than LAI's proposed cost [deleted].

The proposals of Biospherics and LAI (as well as that of the third offeror) were included in the competitive range. Following discussions with each competitive range offeror, which focused on technical and cost issues, the offerors submitted final revised proposals. The agency made no adjustments to the technical scores of any of the offerors, and therefore, as relevant to these protests, the final scores for the revised proposals of Biospherics and LAI remained as reflected in the above chart. The agency produced no documentation reflecting an analysis of the offerors' revised proposals. With respect to cost, the Biospherics proposed cost now was [deleted] than LAI's proposed cost. The agency selected LAI as the most advantageous offeror since it submitted the highest technically rated, [deleted] proposed cost proposal.

¹(...continued)

college-level mass communications and communications studies; and an individual who owns his own company dealing with corporate communications. The protester contends that the selection of these individuals for the panel demonstrates the agency's bad faith. While these individuals may not have had direct publications clearinghouse experience, Biospherics has presented no evidence that these individuals lacked the competence and skills necessary to reasonably evaluate proposals. In fact, we agree with the agency that the collective expertise of these individuals in the areas of communications, publications, health services research, and information technology provided relevant and appropriate background for them to be able to reasonably evaluate proposals.

Biospherics challenges the agency's evaluation of its proposal, contending that its proposal should have been rated technically superior to LAI's proposal. Biospherics further challenges the agency's decision to award a contract to LAI as a technically superior offeror.

In reviewing protests against allegedly improper evaluations, it is not our role to reevaluate proposals. Rather, our Office examines the record to determine whether the agency's judgment was reasonable and in accord with the RFP's stated evaluation criteria. Engineering and Computation, Inc., B-261658, Oct. 16, 1995, 95-2 CPD ¶ 176 at 2-3. In order for us to review an agency's selection determination, an agency must have adequate documentation to support that decision. Arco Management of Washington, D.C., Inc., B-248653, Sept. 11, 1992, 92-2 CPD ¶ 173 at 3. While adjectival ratings and point scores are useful as guides to decision-making, they generally are not controlling, but rather, must be supported by documentation of the relative differences between proposals, their weaknesses and risks, and the basis and reasons for the selection decision. FAR §§ 15.608(a)(3), 15.612(d)(2) (June 1997); Century Env'tl. Hygiene, Inc., B-279378, June 5, 1998, 98-1 CPD ¶ 164 at 4; Engineering and Computation, Inc., *supra*, at 3.

Here, the record is devoid of any documentation of the agency's evaluation of final revised proposals. There is no indication of an analysis of the revised proposals, no information in the record regarding proposal strengths and weaknesses after discussions, and no discussion as to why the strengths and weaknesses from the initial evaluation remained the same.² In the absence of such documentation, we are unable to determine the reasonableness of the agency's evaluation upon which the selection of LAI for award was made.

In responding to these protests, the agency states:

The [Biospherics] proposal, as amended [by its final revised proposal], was considered improved (though no rescoring was performed), but not enough to be considered technically equal with LAI. The judgment of the source selection official that LAI's proposal was superior was not based on a numerical rescoring, but rather on a comprehensive look at the final results of the technical, cost and past performance evaluations.

Agency Report, letter dated August 17, 1998, at 1-2.

In view of the inadequacy of this conclusory statement that LAI's proposal was technically superior to Biospherics' proposal, we asked the agency to point out

²The materials provided to Biospherics as part of its debriefing included a statement of the strengths and weaknesses resulting from the initial evaluation.

where the record documented a "comprehensive look at the final results of the technical, cost and past performance evaluations." The agency responded, again with conclusory statements, in a letter dated August 27, 1998:

The Source Selection Memorandum (Tab Q) represents the "comprehensive" assessment of the three major factors of cost, technical and past performance. Before preparing this document, the contract specialist had a comprehensive discussion with the project officer, during which the relative technical strengths and weaknesses of the offerors were reviewed. Also covered in that discussion was the weight to be afforded to estimated cost and past performance. This oral discussion was not reduced to writing directly except, as mentioned above, as it is reflected in the Source Selection Memorandum. As the contracting officer has stated in her most recent submission, Biospherics would not have been selected for award even if its technical merit had been considered equal to LAI's (which was not the case), since LAI was more highly ranked in both estimated cost and past performance.

The record shows that the agency's source selection memorandum consisted of a chronology of the procurement; a listing of the technical evaluation factors; the technical, past performance, and total scores for each offeror; the offerors' proposed costs before and after discussions; a statement that all three proposals were included in the competitive range because the three offerors submitted technically acceptable proposals and were determined capable to perform the RFP requirements; a statement repeating that the RFP required paramount consideration to be given to technical quality rather than cost, unless the proposals were determined essentially technically equal; and the contracting officer's statement that the proposal of LAI scored highest for the technical evaluation factors and past performance and represented the best value (highest technical score and [deleted] proposed cost).

The source selection memorandum, however, contained no discussion of the results of the evaluation of the Biospherics and LAI revised proposals after discussions. In the absence of such narratives, we cannot discern the basis for the agency's conclusion that LAI's proposal was technically superior to that of Biospherics or, in other words, that the Biospherics proposal was, essentially, technically inferior to LAI's proposal.

In sum, the evaluation and source selection record furnished to our Office--numerical scores and a blanket determination of acceptability, no post-discussion narratives, and the source selection memorandum which contains no explanation of how the revised proposals affected the initial evaluation--is insufficient for our Office to determine the reasonableness of the agency's evaluation of proposals and

the reasonableness of the agency's selection decision. See, e.g., Labat-Anderson Inc., B-246071, B-246071.2, Feb. 18, 1992, 92-1 CPD ¶ 193 at 5-8.

We recommend that the agency, in accordance with the applicable FAR provisions, reevaluate the proposals, document its evaluation, and make a new selection decision. If after reevaluation the agency believes further discussions with offerors are warranted, it may reopen discussions and request another round of revised proposals. If the agency decides that LAI is no longer in line for award, the agency should terminate the award to LAI and make another award. We also recommend that Biospherics be reimbursed its costs of filing and pursuing the protests, including reasonable attorneys' fees. Bid Protest Regulations, 4 C.F.R. § 21.8(d)(1) (1998). Biospherics should submit its certified claim, detailing the time expended and costs incurred, directly to the contracting agency within 60 days of receipt of this decision. 4 C.F.R. § 21.8(f)(1).

The protests are sustained.

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