

Schatz



Comptroller General  
of the United States  
Washington, D.C. 20548

## Decision

**Matter of:** Vine, McKinnon & Hall

**File:** B-245164

**Date:** December 18, 1991

Donald D. Harmata, Esq., for the protester.  
Barbara G. O'Connor, Esq., and Barbara Linden, Esq.,  
Department of Justice, for the agency.  
Sylvia Schatz, Esq., David Ashen, Esq., and John M. Melody,  
Esq., Office of the General Counsel, GAO, participated in  
the preparation of the decision.

### DIGEST

Protest that agency improperly determined that technical proposals were substantially equal, instead of finding that protester's proposal was superior, is denied where record establishes agency reasonably determined that protester's proposal was not technically superior; agency therefore properly made award on basis of awardee's lower price.

### DECISION

Vine, McKinnon & Hall (VM&H) protests the Department of Justice's (DOJ) award of a contract to Peters Shorthand Reporting Corporation, under request for proposals (RFP) No. JRUSA-91-R-0028, for court reporting and transcription services for the U.S. Attorney's Office in Sacramento, California. VM&H, the incumbent contractor, contends that the agency erroneously evaluated technical proposals as being substantially equal so that price became the determining factor, rather than rating VM&H's proposal superior.

We deny the protest.

The solicitation, issued on March 15, 1991, required the successful offeror to perform recording and transcription services for grand jury proceedings, depositions, witness and agent testimony, returns of indictments and contempt proceedings. The statement of work (SOW) noted, for planning purposes, that the number of grand jury proceedings historically had averaged 102 per year; the solicitation established a maximum number of simultaneous proceedings of 3 on any 1 day. The solicitation contemplated award of a 1-year firm, fixed-unit-price requirements contract, with four 1-year options.

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Offerors were to submit separate technical and cost proposals. The technical proposals were to be comparatively evaluated on the basis of the following three factors, all of equal weight: (1) corporate experience; (2) personnel qualifications; and (3) technical approach. The RFP stated that between substantially equal technical proposals, price would be the determining factor in the award decision, and that between acceptable proposals with a significant difference in technical scores, price would be given approximately the same weight as technical factors. The award was to be made to the responsible offeror whose proposal conformed to the RFP and was in the best interest of the government, price and other factors considered.

Three firms submitted proposals by the initial closing date. After evaluation and receipt of requested clarifications, the Technical Evaluation Committee (TEC) concluded that all three firms were within the competitive range. The contracting officer then solicited and received best and final offers (BAFO). In the subsequent evaluation, Peters's BAFO received higher evaluation scores than VM&H's BAFO under the factors for corporate experience and personnel qualifications, and an equal score under the technical approach factor. Peters's overall technical score was 6.7 points higher than VM&H's (out of 100 available points). Peters's price also was lower than VM&H's.

After reviewing the evaluation results, which included the evaluators' point scores and narrative statements, the contracting officer determined that, although VM&H's technical score was slightly lower than Peters's, the firms' proposals were substantially technically equal. The contracting officer then reviewed each firm's price proposal for reasonableness and made award to Peters based on its low price. After its debriefing by the agency, on July 31, VM&H filed this protest with our Office.<sup>1</sup>

VM&H first contends that the technical proposals were not properly evaluated under the personnel qualifications factor. Specifically, VM&H claims that Peters's proposal

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<sup>1</sup>The agency requests that we dismiss VM&H's protest as untimely on the ground that VM&H possessed all the information necessary to formulate its protest by July 26, when it received written notification of the award to Peters, but did not protest until August 9, more than 10 working days later. 4 C.F.R. § 21.2(a)(2) (1991). The protest is timely, however, because it is based on information received for the first time during the July 31 debriefing and was filed within 10 working days of that date. See Intelcom Educ. Servs., Inc., B-220192.2, Jan. 24, 1986, 86-1 CPD ¶ 83.

should have been downgraded because the resumes of the court reporters that Peters proposed for the contract did not detail the reporters' education and work experience as required by the RFP. VM&H further alleges that Peters improperly submitted resumes for only 8 of the 28 reporters it proposed, contrary to the solicitation requirement for resumes for proposed reporters, and that this deficiency improperly was not reflected in Peters's score. VM&H also asserts that the evaluators improperly downgraded its personnel qualifications score on the basis that it proposed only 12 reporters to perform the contract. In this regard, VM&H notes that it specifically stated in its proposal that, if awarded the contract, it could increase capacity by adding reporters.

In reviewing protests challenging the propriety of a technical evaluation, we will not evaluate proposals anew and make our own determination as to their acceptability or relative merits, as the evaluation of proposals is the function of the contracting agency. Proprietary Software Sys., B-228395, Feb. 12, 1988, 88-1 CPD ¶ 143. Rather, we will examine the record in its entirety to determine whether the agency's judgment was reasonable and consistent with the evaluation criteria listed in the RFP. Pemco Aeroplex, Inc., B-239672.5, Apr. 12, 1991, 91-1 CPD ¶ 367. A protester's disagreement with the agency's evaluation is not itself sufficient to establish that the agency acted unreasonably. Correa Enters., Inc., B-241912, Mar. 5, 1991, 91-1 CPD ¶ 249.

We find that the agency's evaluation under the personnel qualifications factor was reasonable. The RFP called for submission of "resumes and other information for at least the number of reporters required for the contract." The solicitation specifically required the resumes to show the "education, background, accomplishments and other pertinent information" concerning the proposed court reporters; it also advised offerors to summarize the reporters' qualifications in an attachment to the RFP entitled "Personnel Schedule."

Although Peters did not submit a resume for each of the court reporters it proposed, this was not the requirement; the RFP required resumes and other information for "at least the number of reporters required for the contract." The term "at least" in this context indicates that resumes were required for fewer than all proposed reporters. While it is not clear how many reporters actually were "required for the contract," DOJ states that only three were required since the RFP provided for a maximum of three simultaneous hearings in a day, and VM&H apparently believed that no more than the 12 reporters it proposed were required. The record shows that Peters submitted resumes for 9, not 8, of the

28 court reporters it proposed, and, as required by the solicitation, summarized the qualifications of all of the reporters in its Personnel Schedule, as supplemented by information in its BAFO. In these circumstances, we think the agency reasonably determined that Peters had submitted the required resumes and other information, and that this information was adequate to evaluate its proposed personnel.

Peters's superior evaluation under the personnel qualifications factor was based on Peters's proposal of more full-time, regular employees who were qualified. Peters's Personnel Schedule indicated that 16 of its 28 proposed reporters had 5 or more years of court reporting experience. In contrast, VM&H proposed only 12 court reporters, 11 of whom had 5 or more years of court reporting experience. Further, while VM&H stated in its proposal that its proposed personnel consisted of independent contractors who would become available only on a per-task basis, Peters's proposal indicated that its personnel were regular employees, 20 of whom would be available on a full-time basis. Although VM&H may be correct that, in view of the limited number of simultaneous proceedings envisioned under the solicitation, its proposed 12 independent contractors, although not full-time employees, nevertheless could satisfy the agency's court reporting requirement, we think the agency reasonably concluded that the additional available reporters offered by Peters made Peters's proposal more advantageous than VM&H's in this area. Consequently, we believe the agency properly awarded Peters slightly more evaluation points in this area.


VM&H also contends that the agency's evaluation of corporate experience was not consistent with the stated evaluation factor. The solicitation required offerors to furnish a "listing of other commercial and/or government contracts held for the same or similar court reporting services. Special emphasis should be given to Grand Jury reporting experience." VM&H argues that Peters's proposal should not have received a higher score in this area because it was impossible to determine from the list of previous commercial and government contracts that Peters submitted with its proposal whether the court reporting services under those contracts were the "same or similar" to those required under the current RFP. VM&H also claims that since the solicitation indicated that special emphasis should be given to grand jury reporting experience, its proposal, which listed extensive grand jury reporting experience, should have received more points than Peters's proposal, which failed to list any grand jury reporting experience. VM&H further objects to DOJ's downgrading of its proposal in this area on the basis that it listed no previous government or commercial contracts for court reporting services; according to VM&H, the agency failed to take into consideration the fact

that, as indicated in its proposal, it has both commercial and governmental clients.

We find that the agency's evaluation of proposals under the corporate experience factor was proper. Peters's proposal listed seven specific government contracts it had performed, described the type of services performed under each of these contracts, and specified the length and total value of each contract, noting that 2 contracts extended over a 19-year period and totaled in excess of \$1,000,000 each. In contrast, VM&H's proposal failed to list any specific contracts. Instead, VM&H's proposal indicated that the firm's clients (60 percent of which are commercial, 20 percent federal government, and 20 percent state government) contracted for VM&H's services only on a "single" job basis, that the firm "has not previously executed contracts for the provision of all reporting needs of a particular client for a particular amount of time," and that it had "not been 'awarded' government or commercial contracts as contemplated" by the RFP. In other words, VM&H specifically stated it lacked long-term contracting experience. As for VM&H's grand jury experience, the evaluation in fact found this to be a strength of the proposal. We see nothing unreasonable in the agency's determination, in the final analysis, that Peters's superior prior experience with long-term government contracts was sufficient to offset VM&H's grand jury experience.

We find that the record supports DOJ's determination that VM&H's proposal was no more than technically equal to Peters's proposal. In these circumstances, between technically equal proposals, Peters's lower price properly became the determining factor in the selection of the awardee. Cajar Defense Support Co., B-239297, July 24, 1990, 90-2 CPD ¶ 76.

The protest is denied.

  
for James F. Hinchman  
General Counsel