

DECISION



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

FILE: B-208871

DATE: August 22, 1983

MATTER OF: RCA Service Company

DIGEST:

1. Protest that contracting agency awarded contract after receiving notice of protest is denied because deficiency is procedural one that does not affect validity of award.
2. Contracting officer's determination, that competing proposals were substantially equal in quality despite point spread of 10.5 out of 100 given by evaluation panel and evaluation panel's recommendation that award be made to offeror of higher rated proposal, is not unreasonable. Point scores are only guides for decisionmaking and contracting officer was not bound by them. Contracting officer reasonably rescored proposals after reviewing evaluation panel members' narrative summaries and offerors' written responses to questions raised during negotiations and determined that point spread should have been significantly less.
3. Where contracting officer reasonably determined that competing proposals were substantially equal in quality, award based primarily upon cost savings to the Government was proper.
4. Protest that contracting agency did not correctly evaluate cost reasonableness of awardee's proposal and that awardee's proposed costs were unreasonably low in specific area is denied. Protester must bear burden of affirmatively proving its case, but protester has not carried burden here. Record reflects that contracting agency evaluated proposed costs and found them in line with national average for the type of work to be performed. Furthermore, record reflects that

awardee's and protester's proposed costs are similar in specific area in which protester alleges that awardee's costs were too low. Review reveals no basis to question cost reasonableness evaluation in other areas of proposals.

5. Protest that contracting agency improperly evaluated proposals by substituting "cost reasonableness" for "price advantage" criterion specified in RFP, though factually accurate, provides no basis for upsetting award. Protester was not prejudiced because its proposed costs were significantly higher than awardee's proposed costs and, if "price advantage" had been evaluated, awardee would have received more evaluation points rather than protester.

RCA Service Company (RCA) protests award of a cost reimbursement contract to Talley Educational Services, Inc. (Talley), by the Department of Labor under request for proposals (RFP) No. JC-RX-82-02 for the operation of the Cascades Job Corps Center, Sedro Woolley, Washington.

Essentially, RCA alleges that the contracting officer awarded the contract to Talley solely on the basis of its lower cost in contravention of the RFP which stated that the technical proposal submitted would be the most important factor in selecting the contractor. We deny the protest.

RCA charges that the contracting officer awarded the contract to Talley after RCA had filed its protest in our Office and served notice to that effect on the Department of Labor. However, a deficiency of this type is a procedural one which does not affect the validity of the award. Martin Tool and Die, Incorporated, B-208796, January 19, 1983, 83-1 CPD 70.

RCA's basic complaint is that the evaluation criteria set forth in the RFP were not followed. RCA contends that the contracting officer ignored the stated criteria and assigned cost a weight beyond what was proper for a cost reimbursement contract. RCA also contends that the contracting officer ignored financial information which showed that Talley's proposed costs were unreasonably low in

certain areas related to an arrangement between the Department of Labor and the State of Washington, the owner of the real estate used for the Cascades Job Corps Center, which gave the offerors little flexibility in the costs to be incurred in connection with certain real estate-related services and food services to be provided by the State to the contractor. The RFP advised offerors that these costs were to be considered as estimates and were to be used in pricing proposals.

Regarding evaluation of proposals, the RFP, in pertinent part, stated:

"Prospective offerors are advised that the selection of an offeror for contract award is to be made, after a careful evaluation of the proposals received, by a panel of specialists within the DOL/ETA. Each panelist will evaluate the proposals for acceptability with emphasis on the various factors enumerated below, assigning to that factor a numerical weight within the range shown for each of those factors. The scores will then be averaged to select an offeror or develop a list of offerors in accordance with Federal Procurement Regulations 29-3.805-50.

"The proposal will be evaluated with emphasis on the following factors:

<u>Criteria</u>	<u>Maximum Points</u>
1. Design of Program and Ability to Adhere to Regulations	0 to 10 points
2. Recruitment and Placement (including Corporate Hire)	0 to 5 points
3. Educational Training	0 to 15 points
4. Vocational Training	0 to 15 points
5. Residential Living/Support	0 to 20 points
6. Administrative Support Services	0 to 10 points

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| 7. Past Effectiveness | 0 to 10 points |
| 8. Quality of Staff | 0 to 5 points |
| 9. Price Advantage | 0 to 10 points" |

An evaluation review panel performed a comprehensive evaluation of all proposals. Based upon initial proposals, only Talley and RCA were determined to be in the competitive range. The panel gave RCA an initial score of 88.73 and Talley an initial score of 85.90. Discussions were held and best and final proposals were submitted. Based upon best and final scores of 93.2 for RCA and 82.7 for Talley, the review panel recommended that the contract be awarded to RCA, even though RCA's proposed costs were approximately \$945,000 more than Talley's.

Upon receipt of the panel's recommendation, the contracting officer determined that the review panel's evaluation summaries of the best and final proposals were deficient because they did not explain why Talley's best and final score was lower than its initial score. In the contracting officer's opinion, Talley's responses to questions raised during negotiations and its best and final offer did not detract from its original proposal and, therefore, its best and final "could not logically be scored lower than the original proposal." Therefore, the contracting officer reviewed each panel member's scoresheets and narrative evaluations. Whenever the best and final score differed from the initial score for a particular evaluation criterion, the contracting officer examined the panel member's narrative summary to see if the rationale to support the change was sufficient. When, in the contracting officer's opinion, the supporting rationale was not adequate, he rescored that particular item using the score which was given for the initial proposal. In this manner, the contracting officer determined that the best and final scores should have been 92 for RCA and 87 for Talley. The contracting officer determined that the proposals were "substantially equal in quality." Since Talley represented a savings of approximately \$945,000, the contracting officer concluded that award to Talley would be more advantageous to the Government and awarded the contract to Talley.

Although technical point ratings are useful as guides for intelligent decisionmaking in the procurement process, too much reliance should not be placed on them. Whether a given point spread between two competing proposals indicates a significant superiority of one proposal over another depends upon the facts and circumstances of each procurement. See Wheeler Industries, Inc., B-193883, July 20, 1979, 79-2 CPD 41, and cases cited therein. Even when point scores and technical evaluation ratings are indicative of the technical superiority of one proposal over another, selection officials are not bound by recommendations made by a technical evaluation panel. Bell Aerospace Company, 55 Comp. Gen. 244 (1975), 75-2 CPD 168.

Recognizing this, we have previously upheld source selection officials' determinations that technical proposals were essentially equal despite an evaluation point score differential of as much as 15.8 percent and despite an evaluation panel's recommendation that award be made to the offeror with the highest technical rating. Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 CPD 325. Award should not be based on the difference in technical merit score alone, but should reflect the procuring agency's considered judgment of the significance of that difference. 52 Comp. Gen. 358, 365 (1972). In other words, the selection official must determine what a difference in evaluation point scores might mean in terms of performance and what it would cost the Government to take advantage of it. Grey Advertising, Inc., supra. This does not mean that the weighted evaluation criteria are changed or ignored, since the importance of price is always accentuated when application of other factors do not, in the good-faith judgments of source selection officials, clearly identify one proposal as most advantageous to the Government. See Grey Advertising, supra, and cases cited therein; see also Timberland-McCullough, Inc., B-202662, B-203656, March 10, 1982, 82-1 CPD 222.

We find that the award was not inconsistent with the stated criteria and that the contracting officer's determination that the proposals were substantially equal was rationally based. Even if we use the best and final scores which were originally given by the evaluators before the contracting officer rescored the proposals (93.2 for RCA and 82.7 for Talley), the difference is only 10.5 on a scale of 100. Further, if we subtract out points given for "price

advantage," since both Talley and RCA received 8 points out of a possible 10 in this category, we arrive at a total, nonprice-related score of 85.2 for RCA and 74.7 for Talley on a scale of 90. In view of the cases cited above, we cannot find unreasonable the contracting officer's decision that the proposals of Talley and RCA were substantially equal technically and that this difference in quality was not worth the extra expenditure. Moreover, we have held that, where cost is assigned points as an evaluation factor along with other factors, the fact that a proposal receives the highest number of evaluation points does not in itself justify acceptance of the highest rated proposal without regard to estimated cost to the Government. See Timberland-McCullough, Inc., supra; Todd Logistics, Inc., B-203808, August 19, 1982, 82-2 CPD 157; Reliability Sciences, Incorporated, B-205754.2, June 7, 1983, 83-1 CPD 612. Even where the RFP evaluation factors indicated that award would be made to that offeror with the highest total point score, we have held that, before the contracting agency can award to the higher priced (or higher cost), technically superior offeror, the contracting agency is required to justify such award in light of the extra expenditure required. See Todd Logistics, Inc., supra; Timberland-McCullough, Inc., supra. Here, not only was the contracting agency unwilling to make such a justification for award to the higher priced offeror, but the contracting agency actually determined that award to the lower priced, essentially technically equivalent offeror was in the Government's best interest. In view of the technical equality of the offers, award to Talley at a cost savings of approximately \$945,000 was reasonable even though cost-related factors account for only 10 percent of the evaluation. In light of the fact that many of the evaluation panel members had already returned to their duty stations and a contract had to be awarded quickly to keep the Cascades Job Corps Center operating, we cannot find unreasonable the contracting officer's decision to revert to the initial proposal scores for areas in which his review of the evaluators' scoresheets and narrative discussions showed no reason for a change in score from initial to best and final offers.

RCA charges that the Department of Labor failed to consider cost reasonableness in its evaluation of proposals. RCA contends that Talley's costs were too low in several areas and, in particular, in areas associated with services to be provided by the State of Washington. The

Department of Labor responds that cost reasonableness was considered and that the contracting officer determined that Talley would be able to operate the Cascades Job Corps Center within the costs proposed. The Department of Labor points out that it has over 15 years of experience upon which it can draw to assess the reasonableness of costs proposed in connection with operating job corps centers. Furthermore, the Department of Labor states that the cost per corps member per year proposed by Talley was in line with the national average and that the quality of staff proposed by Talley was adequate to operate the Cascade Job Corps Center.

As part of our bid protest function, we will not conduct an independent investigation to determine the validity of a protester's assertions. Rather, it is the protester which must bear the burden of affirmatively proving its case. See ACMAT Corporation, B-197589, March 18, 1981, 81-1 CPD 206. RCA has not carried its burden of proof here. The only area of costs to which RCA points with specificity concerns those services to be provided by the State of Washington. While we are not at liberty to discuss Talley's line item estimates, our examination of these costs reveals no basis to question the realism of Talley's proposal. As the Department of Labor points out, the total costs proposed by Talley and by RCA for these line items are similar. We have no basis to question the Department of Labor's assessment in other areas and the protester has provided none. See ACMAT Corporation, supra.

Finally, RCA contends that the Department of Labor improperly substituted "cost reasonableness" for "price advantage" as a factor to be considered in the selection process contrary to the evaluation scheme stated in the RFP (quoted above). This issue arises out of a statement made by a Department of Labor representative at a conference held on this protest, to the effect that, even though the RFP states that "price advantage" will be a criterion for award, in actuality, "cost reasonableness" was considered by the evaluation panel.

RCA's argument, though factually accurate, provides no basis for upsetting the award to Talley. The Department of Labor has admitted that the RFP did not accurately notify

offerors that cost reasonableness rather than price advantage would be considered and reports that future solicitations will be corrected to state that "reasonableness of cost" will be an evaluation factor. Furthermore, the record shows that both RCA and Talley received scores of 8 out of a possible total of 10 for this criterion. Because Talley's total proposed costs were substantially below RCA's (approximately \$945,000 less), Talley would have received more points than RCA if price advantage had been evaluated as indicated in the RFP. Therefore, RCA was not prejudiced by the evaluation of cost reasonableness. See Solar Laboratories, Inc., B-179731, February 25, 1974, 74-1 CPD 99.

for *Larry R. Quinn-Cleave*
Comptroller General
of the United States