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The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: American Express Bank Ltd.

File: B-228910

Date: November 16, 1987

### DIGEST

Protest challenging technical evaluation of proposal on ground that evaluation panel improperly relied on undisclosed evaluation factor is dismissed as academic where, after protest was filed, contracting agency reevaluated proposal based solely on the evaluation factors set out in the solicitation. Challenge to reevaluation is denied since there is no indication the it was based on undisclosed evaluation factor protester alleged was used by initial evaluation panel. Use of same evaluation panel to conduct both evaluations is not sufficient to call into question the validity of the reevaluation where there is no evidence of bias, bad faith or other improper conduct on the part of the evaluators.

### DECISION

American Express Bank Ltd. protests the award of a contract to Merchants National Bank of Indianapolis under request for proposals (RFP) No. MDA903-88-R-1000, issued by the Army for military banking services. We dismiss the protest in part and deny it in part.

According to the Army, the military banking program was created in 1942 to allow American financial institutions to offer banking services similar to those offered in American banks to military personnel and Department of Defense civilians stationed overseas and their dependents. The RFP, issued on January 20, 1987, called for offers to provide the personnel, supplies and equipment necessary to operate military banking facilities in specified locations overseas. Offers under the RFP could be submitted on any combination of five line items, each covering a specified geographic area. Only two firms, American Express and Merchants, submitted initial proposals by the May 14 due date.

The RFP called for award of a cost-plus-fixed-fee contract to the responsible offeror whose offer was determined to be the best overall response, defined as the technically superior proposal with a realistic estimated cost. Section M-3 set out three evaluation factors, two regarding technical considerations and one regarding cost and fee, as follows:

"(a) All technical proposals received will be evaluated in accordance with the evaluation factors listed below in descending order of relative importance.

"(1) Offeror's ability to efficiently handle all aspects of military banking operations. Significant areas would include, but are not limited to, customer service, account penetration, staffing, methods of operation, and expertise in managing foreign currencies.

"(2) Offeror's inclusion of innovative ideas that may improve services or decrease costs or both as detailed by plans or proposals to improve the quality, economy, or efficiency of the military banking program and the cost implications of those plans or proposals.

"(b) Total estimated cost and proposed fee by [line item]. . . ."

The RFP also specified that the first evaluation factor--ability to handle military banking operations--was worth more than the other two factors together, and thus was the most important of the three factors.

After a review of the initial proposals, the evaluation panel prepared a position paper for each offeror to establish a basis for discussions. Discussions with the offerors then were held in both June and July, with each round followed by the submission of best and final offers (BAFOs). On August 11, the Army called for a third round of revised BAFOs, to be submitted by August 13. The Army later decided that further discussions were required regarding the management fees proposed by the offerors. Discussions on that topic were held with Merchants in mid-August; American Express declined the opportunity for further discussions. Both offerors then submitted their final BAFOs before the August 20 due date.

Based on the final BAFOs, the evaluation panel gave Merchants a higher score than American Express on each of the three evaluation factors in the RFP (ability to operate the program, innovation, and cost/fee); Merchants' total score was approximately 25 percent higher than American Express' score. By memo dated August 20, the panel recommended that award be made to Merchants based on its higher score. Following a debriefing on its proposal by the chairman of the technical evaluation panel on August 28, American Express filed its protest with our Office on August 31.

American Express challenged the evaluation performed on its proposal in August, arguing that it was based on an evaluation factor, "United States retail banking experience," that was not specified in the RFP and was not disclosed to American Express during negotiations. American Express based its contention on a statement made at the August 28 debriefing by the chairman of the technical evaluation panel that "[a]s a wholesale bank, [American Express] does not have the focus independent of contract resources needed to remain current in the retail banking industry." As further support for its argument that retail banking experience was used as an evaluation factor, American Express referred to several technical subfactors set out in the evaluation guide developed by the technical evaluation panel. For example, with regard to "customer service," listed in the RFP as one of the significant areas to be considered in connection with the most important technical factor, the panel's evaluation guide set out four subfactors to be considered, including the:

"[a]bility to survey new services in the retail banking industry to determine which are appropriate for the [military banking program]."  
(Emphasis added.)

Further, since the evaluation guide listing the subfactors used by the evaluation panel was not disclosed to American Express until the Army's report on the protest, American Express in its comments on the report supplemented its protest with the contention that it was improper for the Army to rely on the subfactors in the evaluation guide which related to retail banking without disclosing them to the offerors.

The Army takes issue with each objection American Express raises to the August 20 evaluation of its proposal. The crux of the Army's position is that the record of the evaluation shows that American Express' low score relative to Merchant's score under the principal technical factor--ability to handle all aspects of military banking

operations--was based not on American Express' lack of United States retail banking experience, but on weaknesses in its ability, as a wholesale bank, to remain current in the retail banking industry. Further, the Army states that in the course of its legal review of the procurement after the protest was filed, it questioned the use in the August 20 evaluation of certain subfactors (unrelated to the allegedly undisclosed "retail banking" factor on which American Express bases its protest) which were not set out in the RFP. As a result, the evaluation panel was directed to reevaluate both proposals based solely on the factors set out in the RFP. Under that reevaluation, dated September 30, Merchants again received a higher total score than American Express, although the difference between the scores was reduced from 25 to 15 percent.

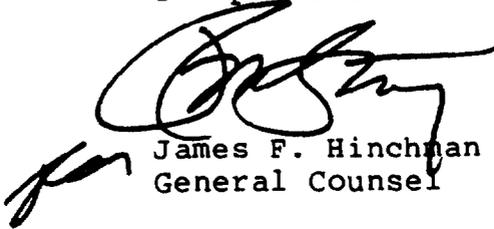
To the extent that American Express challenges the August 20 evaluation of its proposal, we find that the protest is academic and dismiss it since that evaluation was superseded by the September 30 reevaluation and thus no longer forms the basis of the Army's decision to make award to Merchants. See OEA, Inc., B-226971, May 20, 1987, 87-1 CPD ¶ 530.

While in describing the relief it sought in its initial submission, American Express itself listed a reevaluation of proposals based on the evaluation factors in the RFP as one means of satisfying its objections to the August 20 evaluation, American Express now argues that the reevaluation cannot cure the alleged defects in the August evaluation because it was performed by the same evaluation panel. We do not agree that the use of the same panel, standing alone, taints the reevaluation, and in the absence of any evidence of bias, bad faith or other improper conduct on the part of the evaluators, we see no basis to question the objectivity of validity of the reevaluation and we deny this aspect of the protest.

Further, we deny the protest to the extent that American Express objects to the reevaluation on the ground that, like the August evaluation, it improperly was based on an undisclosed evaluation factor or subfactors relating to retail banking experience. The Army states and the record shows that the reevaluation was based solely on the evaluation factors set out in the RFP; there is no indication that "United States retail banking experience," the alleged evaluation factor on which American Express bases its protest, was used. Since there is no evidence that the Army's alleged reliance on retail banking experience as an

evaluation factor recurred in the September 30 reevaluation,  
and since American Express raised no other objections to it,  
we see no basis to challenge the reevaluation.

The protest is dismissed in part and denied in part.



James F. Hinchman  
General Counsel