

DECISION**THE COMPTROLLER GENERAL
OF THE UNITED STATES**

WASHINGTON, D. C. 20548

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FILE: B-180440; B-132740

DATE: July 10, 1974

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MATTER OF: Stephen J. Hall & Associates; Thomas N.
Anderson, Jr.; Cunningham, Short, Berryman
and Associates, Inc.

DIGEST:

1. Offeror's disagreement with contracting officer's determination that successful offeror is responsible provides no basis for GAO considering matter, since no fraud has been alleged or demonstrated.
2. Offeror, whose proposal scored 91.7 points during evaluation but was \$25,000 higher than successful offeror's proposal which was evaluated at 90.3 points, is advised that when point scores are so close that proposals are considered of equal merit, price is proper factor on which to base award selection.
3. Whether superiority of particular proposal is worth higher price or whether Government's needs can be fulfilled by lower rated, lower priced proposal is for determination by contracting agency, therefore, GAO does not object to award to offeror whose proposal was evaluated highest notwithstanding higher price than that of protester's proposal; furthermore, award to offeror whose proposal was high technically and low in price is also not subject to objection.

The Small Business Administration (SBA) issued request for proposals (RFP) 406-MA-74-1 on October 12, 1973, for management and technical assistance to be rendered to individuals or enterprises pursuant to section 406 of the Economic Opportunity Act of 1964 (42 U.S.C. 2906(b)). SBA divided the country into 10 regions for performance. Offerors could only submit proposals for the region in which the offeror's main office was located.

The RFP stated that proposals would be evaluated on a point system, with a maximum of 50 points to be awarded in each of the following categories:

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- "1. Quality, experience and capability of staff offeror intends to assign to this project.
- "2. Previous experience and effectiveness in performing services, indicated by prior work and demonstrated by ability to deal effectively with individuals and enterprises eligible to be served."

These two evaluation factors were further defined by each of five tasks to be performed: accounting; Government contracts; specialized services; feasibility studies; and production, engineering and technical. The 50 points for each of the two major factors were divided among the five tasks based on the estimated requirements for each task in a region.

The Solicitation Instructions and Conditions (Standard Form 33A) of the RFP stated in paragraph 10(a) that:

"The contract will be awarded to that responsible offeror whose offer conforming to the solicitation will be most advantageous to the Government, price and other factors considered."

Protests have been filed with our Office against the awards which were made in three of the regions.

Stephen J. Hall & Associates (Hall) protests the award to Sites & Company, Inc. (Sites), for Region X on the bases that Hall had the highest score following the evaluation of proposals and, for numerous reasons, that Sites is nonresponsible.

The record shows that Hall's proposal was given 91.7 points and Sites score was 90.3 points. However, the price of Hall's proposal was \$185,474 as compared to Sites' price of \$160,000. SBA determined that due to the closeness of the evaluation scores, the proposals were equal as regards technical considerations and therefore award was made to Sites with price as the controlling factor.

Our Office has stated that where two proposals are evaluated to be of equal merit, price can properly become the determining factor in the award process. In such a situation, we have held that a lower price represents an advantage to the Government that should not be ignored. 50 Comp. Gen. 246 (1970). Therefore, we have no objection to the award to Sites.

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Hall also contends that Sites is nonresponsible and that SBA accepted statements in Sites' proposal without making an independent inquiry as to the firm's experience, the quality of its staff and other factors which were considered in the evaluation.

Section 1-1.1204-1(a) of the Federal Procurement Regulations states that the signing of a contract by a contracting officer shall be deemed to be an affirmative determination of the contractor's responsibility with respect to that contract. Therefore, Sites was determined to be a responsible offeror by the contracting officer.

The determination of a proposed contractor's responsibility is largely within the discretion of the contracting officer. The contracting activity must handle the day-to-day administration of the contract and bear the brunt of any difficulties experienced by reason of the contractor's lack of ability. If, pursuant to the applicable regulations, as here, the contracting officer finds the proposed contractor responsible, we do not believe the finding should be disturbed except on the basis of fraud. No fraud having been alleged or demonstrated, we find no basis to question the contracting officer's determination. B-181076, June 5, 1974.

The award of the contract for Region III to Decision Sciences Corporation (DSC) has been protested by Thomas N. Anderson, Jr. A review of the evaluation of proposals for Region III shows that DSC had the highest evaluation total scored (93.5 points) and its price was \$98,165 while Anderson's proposal was evaluated at 43.5 points and priced at \$90,765. The Region IX award to Omega Research Associates (Omega) has been protested by Cunningham, Short, Berryman and Associates, Inc. (Cunningham). Omega's offered price was \$224,626 and its proposal scored 84.0 points during evaluation and Cunningham's proposal received 75.5 points and its price was \$253,360.

SBA states that the awards in both of these regions were made to the offerors whose proposals received the highest evaluated scores and after it was determined that the prices were fair and reasonable.

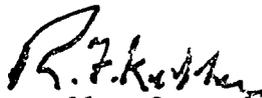
In regard to Anderson's protest, the fact that his proposal was lower in price did not require award to his firm. We see nothing arbitrary or improper in either the evaluation that was

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made or in the decision to award to a higher-priced, higher-rated offeror. It is well established that award may be based on factors other than price, and that the procuring agency may determine whether the superiority of a particular proposal is worth a higher price or whether the Government's needs can be satisfied by a lower rated proposal at a lower price. 50 Comp. Gen. 110 (1970); B-178295(3), October 18, 1973.

Since the proposal of Cunningham was rated lower and priced higher than the proposal of Omega, the above reasoning applies even more forcefully to Cunningham's protest.

For the foregoing reasons, the protests are denied.


Deputy Comptroller General
of the United States