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DECISION



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

*E. Pataki
Proc I*

FILE: 8-187052

DATE: February 15, 1977

MATTER OF: Executive Management Service, Inc.

SUMMARY:

1. Protest alleging omission of information from written minutes of preproposal conference which was apparent before closing date for receipt of initial proposals, not filed until after award of contract, is untimely and will not be considered because such protests must be filed prior to closing date.
2. Protest questioning propriety of evaluation of technical proposals is denied where record does not show unreasonableness, abuse of discretion, or violation of procurement statutes or regulations in agency's evaluation and ranking of proposals.
3. Protest against agency's refusal to provide post-award debriefing to unsuccessful offeror is denied; where protestor did not offer lower price than that of successful offeror, agency was not required by Federal Procurement Regulations § 1-3.103(b) to give protester a debriefing concerning the award.

Executive Management Service, Inc. (EMSI), protests the award of contract No. GS-00B-2150 by the Public Buildings Service (PBS), General Services Administration (GSA), to Coopers & Lybrand (C&L), for development of a budget process for PBS, resulting from request for proposals (RFP) No. PF-76-1.

The RFP prescribed the closing date of June 4, 1976, for receipt of proposals. GSA held a preproposal conference, attended by representatives of EMSI and C&L, on May 26, 1976; written minutes of the conference were issued on the following day to all prospective offerors represented at the conference.

The RFP reserved the right to award on the basis of initial proposals without discussion; stated that price would not be considered

B-187052

in the initial technical evaluation of proposals, but would be a factor in selecting the successful offeror; and provided that award would be made to the firm whose proposal was evaluated as "the most advantageous to the Government, price and other factors considered." Proposals were to be evaluated against the following weighted criteria set forth in the RFP:

B. EVALUATION CRITERIA AND WEIGHTING SCALE

Summary

**Maximum
Weights**

1. Plan for Organization and Accomplishment The factors to be considered:	40
a. understanding of problem and scope of work	
b. technical qualification of key personnel to be assigned to project	
c. soundness and feasibility of approach to problem	
d. development of plan showing understanding of interrelationships of tasks to be covered, products to be provided, and allocation of time	
2. Offeror's Experience and Quality of Project Team The factors to be considered:	30
a. company's experience in conduct of similar work of Government entities	
b. qualification of subject matter to be covered	
c. Previous record of meeting contract performance requirements and deadlines	
3. Price	<u>30</u>
	Total Weight
	100

Fourteen proposals were timely received, all of which were deemed to be qualified; they were independently evaluated against the above criteria by a panel of four PBS personnel. Price proposals were

B-187052

evaluated by the panel, which assigned the lowest priced proposal the maximum rating of 30 points. Each of the remaining proposals was divided into the lowest price, yielding an index valued between 0 and 1. These indexes were multiplied by the maximum pricing weight of 30, resulting in prorated ratings for each price proposal. The panel members' independent technical scores, average technical score, price proposal scores, and total proposal scores for C&L and EMSI were as follows:

Offeror	Individual Evaluations				Average Technical Score	Evaluated Price	Evaluated Price Score	Total Proposal Score
	#1	#2	#3	#4				
C&L	63	60	62	60	61.3	\$85,100	28	89.3
EMSI	50	40	47	41	44.5	\$137,756	17	61.5

The average technical scores ranged from 36.5 to 62; price proposal scores, from 12 to 30; and total proposal scores, from 49.5 to 89.3. C&L received the highest total evaluation score, and was awarded the contract on June 30, 1976. By letter of the same date, GSA advised EMSI of the award to C&L.

EMSI requested a debriefing concerning the award in a letter to GSA dated July 7, 1976. GSA responded to this request by letter of July 21, 1976, which states, in pertinent part:

"In our procurements we adhere strictly to the provisions of the Federal Procurement Regulations. These provisions do not require, in this circumstance, that we provide you a debriefing and it is not a FBS practice to do so. Since it is our policy to conduct procurements on a standard basis in accord with the Federal Procurement Regulations we must decline to provide you a debriefing." (Emphasis added.)

EMSI filed its protest with our Office on July 27, 1976, asserting that statements concerning the man-months required for the project made by FBS during the preproposal conference were not included in the written minutes of the conference, questioning the technical evaluation of its proposal, and objecting to GSA's refusal to provide a debriefing on the award. It was also suggested by EMSI that there is often an undercurrent of bias against small businesses in favor of the "Big Eight."

GSA takes the position that because the bases for EMSI's protest were apparent before the proposals were to be submitted, any protest on these grounds, in order to be timely, should have been asserted not later than the closing date for receipt of proposals, citing section 20.2(b)(1) of our Bid Protest Procedures, 4 C.F.R. Part 20 (1976). In regard to EMSI's assertion of an alleged omission from the preproposal conference minutes, we agree with GSA. The conference minutes were issued on May 27, 1976, and any omission from the minutes should have been apparent upon their perusal. Because EMSI's protest was filed after the closing date for receipt of proposals, this ground of the protest is untimely and will not be considered.

EMSI's second and third grounds of protest, however, concern the technical evaluation of its proposal. EMSI submits that, in the absence of evidence to the contrary, the firm finds it difficult to believe that C&L's proposal could match EMSI's proposal in the major evaluation-criteria areas of "Plan for Organization and Accomplishment" and "Offeror's Experience and Quality of Project Team." Although, as stated earlier, EMSI was advised by letter, dated June 30, 1976, that award had been made to C&L, the letter did not indicate the reasons why EMSI's proposal was not accepted. Subsequent to receipt of the notice of award, EMSI telephonically ascertained from GSA that C&L's price proposal was in the \$80,000 to \$85,000 range. There followed EMSI's attempts to learn the basis for the award by requesting the debriefing. EMSI's protest was filed with this Office within 3 working days of GSA's reply denying the request. Therefore, the remaining grounds of the protest were not apparent prior to the closing date for receipt of proposals; under these circumstances, it is our opinion that the protest on these bases is timely and these grounds will be considered on the merits.

EMSI initially questions the propriety of GSA's technical evaluation of its proposal. We have consistently maintained that it is not the function of this Office to evaluate proposals, and we have declined to substitute our judgment for that of contracting officials by independently determining which offeror in a negotiated procurement is entitled to the highest rating and the award. Our Office will question contracting officials' determinations concerning the technical merits of proposals only upon a clear showing of unreasonableness, abuse of discretion, or violation of procurement statutes or regulations. See, e.g., Group Operations, Inc., 55 Comp. Gen. 1315, 1318 (1976), 76-2 CPD 79; Shapell Government Housing, Inc. et al., 55 Comp. Gen. 839 (1976), 76-1 CPD 161; Applied Systems Corporation, B-181696, October 8, 1974, 74-2 CPD 195.

B-187052

Upon our review of the record, including the evaluation panel's scoring sheets and the C&L and EMSI proposals, we find no such showing in regard to GSA's determination that C&L's proposal was deserving of the award. EMSI's technical proposal was consistently rated below C&L's proposal. Assuming, arguendo, that EMSI's technical proposal was equal to C&L's proposal, had EMSI also received an average technical proposal score of 61.3, its overall rating would only have been 78.3, or eighth among the 14 offerors. We are, therefore, unable to conclude either that the evaluation of EMSI's proposal was unreasonable or that C&L should not have been selected for the award. There is also no evidence in the record to support EMSI's assertion that the "Big Eight" were favored.

EMSI additionally protests GSA's refusal to provide a debriefing on the award. In declining to debrief, GSA cited the fact that the Federal Procurement Regulations (FPR) "did not require, in this circumstance, that we provide * * * a debriefing * * *." (Emphasis added.) The controlling regulation, FPR 1-3.103(b) (June 1964, Circ. 1), states:

"(b) Promptly after making awards in any procurements in excess of \$10,000, the contracting officer normally shall give written notice to the unsuccessful offerors that their proposals were not accepted. Upon request, unsuccessful offerors whose offered prices were lower than those of the contractor which received the award shall be furnished the reasons why their proposals were not accepted; but in no event will an offeror's cost breakdown, profit, overhead rates, trade secrets, or other confidential business information be disclosed to any other offeror."

Furthermore, General Services Procurement Regulations (GSPK) § 5B-3.103 (b)(1) (1976 ed.), implementing the above-quoted regulation for PBS, provides:

"(b) Information regarding award of negotiated contracts. (1) In connection with negotiated contracts, only the names of successful offerors and the prices at which the awards were made shall ordinarily be publicly disclosed."

B-187052

From the foregoing, the phrase "in this circumstance" refers to the fact that EMSI was not an unsuccessful offeror whose offered price was lower than C&L's price. EMSI was, therefore, not entitled as a matter of right to a debriefing, nor was GSA required to grant one. Cf. Innocept, Incorporated, B-182193, December 24, 1974, 74-2 CPD 377.

In view of the above, we believe that the award to C&L was proper and, accordingly, the protest is denied.


Deputy Comptroller General
of the United States