

DOCUMENT RESUME

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[Consideration of Untimely Protest]. B-187811. July 29, 1977. 7 pp.

Decision re: Genasys Corp.; by Robert F. Keller, Deputy Comptroller General.

Issue Area: Federal Procurement of Goods and Services (1900).

Contact: Office of the General Counsel: Procurement Law I.

Budget Function: General Government: Other General Government (806).

Organization Concerned: General Services Administration; System Development Corp.

Authority: Freedom of Information Act. 4 C.F.R. 20. 4 C.F.R. 20.2(b)(1). 55 Comp. Gen. 1315. 50 Comp. Gen. 565. 50 Comp. Gen. 390. 50 Comp. Gen. 411, 412. 50 Comp. Gen. 788. 50 Comp. Gen. 792. 56 Comp. Gen. 188. B-180262 (1974). B-180305 (1974).

The protester objected to an award, alleging deficiencies in the evaluations of the bids. Although the protest was filed late, it was considered because the protester was pursuing a Freedom of Information request for additional documents. Offerors need only to be informed of the factors and relative weights to be used in evaluations. None of the problems with the evaluation procedure used was severe enough to warrant disruption of the award. (Author/SC)

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DECISION



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

FILE: B-187811

DATE: July 29, 1977

MATTER OF: Genasys Corporation

DIGEST:

1. Where agency listed evaluation factors in descending order of importance with percentage of weights ascribed to each factor with notation that "maximum weight will not exceed" certain percentage and following receipt of proposals evaluation panel varies percentages of certain factors but factors remain in same order of importance, protest against such alteration is denied as offerors must only be informed of factors and relative weights, not precise numerical weights assigned to each factor and alteration as not radical departure from RFP's evaluation scheme.
2. Because of possible appearance of impropriety in procurement process, procuring agency should not review or scan technical or cost proposals prior to establishing final weights for evaluation factors.
3. Where predetermined distribution of points in evaluation of cost (lowest cost proposal received 4 points, next lowest 6 points and so on) is used by agency, protest that such distribution did not consider actual difference in costs is denied. While agency could have used more rationally founded method of evaluating cost, above-noted scoring scheme was not so prejudicial to protester as to require disturbing award as solicitation made clear cost was secondary to technical considerations and even giving protester maximum points under cost and no points to awardee does not alter ranking of proposals.
4. Evaluation of telecommunications and Federal accounting experience as subcriteria of "related corporate experience" is permissible without agency disclosing subcriteria to offerors as such subcriteria are sufficiently definitive of corporate experience in view of scope of procurement.
5. GAO considered comments by protester even though filed more than 10 working days after time allowed under 4 C.F.R. § 20.3(d) (1976) following receipt of agency report because protester was pursuing Freedom of Information Act request for additional documents; contract had been awarded and performance was proceeding.

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On September 8, 1976, the Office of Finance, General Services Administration (GSA), issued solicitation No. BC-100-BCM-01 for the design, programming, testing and implementation of an appropriated fund accounting system.

Four proposals were received and evaluated and, on October 26, 1976, award was made to System Development Corporation (SDC). Genasys Corporation (Genasys) has protested this award to our Office on various grounds, several of which GSA considers to have been untimely filed under our Bid Protest Procedures (4 C.F.R. part 20 (1976)).

The solicitation, in section "D" entitled "Evaluation Criteria," advised offerors, in part, of the following:

"* * * In this procurement cost will be considered secondary to quality.

"The proposal will be evaluated according to the following criteria which are listed in descending order of importance:

	<u>Weight Assigned in Evaluation Shall Not Exceed</u>
Personnel	50%
Technical Discussion and Approach	40%
Related Corporate Experience	30%
Cost	20% * * *"

On September 16, 1976, a preproposal conference was held with prospective offerors. During this meeting, an official of Genasys queried the contracting office regarding the evaluation criteria set forth in the request for proposals (RFP). He noted that the weights listed totaled 140 percent and asked whether they would be reduced to 100 percent and if so, when and how. GSA states that it responded that the figures listed were percentages and not points and that the stated percentages did not indicate the exact relationship between the factors and that they would be reduced to total 100 percent during the evaluation process. Genasys agrees with the above recollection except that Genasys states that the impression it obtained from the conference was that the relative weights would remain unchanged.

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Following receipt of the proposals, the evaluators scanned both the technical and cost proposals of the offerors prior to establishing the final weights for the evaluation criteria. GSA advises that it reviewed the technical proposals to see if they were generally responsive to the RFP and the cost proposals to determine if the proposed costs were below the \$500,000 which had been budgeted for the procurement. When it was evident that all proposals were under \$500,000, the following final weights were assigned:

Personnel	45
Technical Approach	30
Corporate Experience	15
Cost	10

If the weights of evaluation criteria in the RFP had been proportionately reduced to 100 percent, the following weights result:

Personnel	39.7
Technical Approach	28.6
Corporate Experience	21.4
Cost	14.3

Therefore, while the factors remained in the same order of importance, the interrelationship among the factors (i.e., the ratio) was altered from that shown in the RFP.

Genasys' first two bases of protest are that GSA did not establish the maximum value for each factor until after GSA had received and reviewed the proposals and that the relative weights of the factors were altered from those indicated in the RFP. GSA argues that these grounds were untimely protested to our Office as Genasys was advised of the manner in which the proposals would be evaluated at the September 16, 1976, conference. Since Genasys did not protest here until after the submission of proposals, GSA contends the protest is untimely under 4 C.F.R. § 20.2(b)(1) (1976), which requires protests based on alleged improprieties which are apparent prior to the closing date for receipt of initial proposals be filed prior to the closing date.

While the record before our Office shows that a discussion regarding the evaluation factors and their relative weights occurred during the preproposal conference, we do not find that it was clearly apparent what GSA intended to do with the factors prior to the closing date for receipt of initial proposals. Therefore, the protest is timely and we will proceed to consider the merits.

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Regarding the use of evaluation factors in negotiated procurements, we have held that offerors should be advised of the evaluation factors to be used in evaluating proposals and the relative weights of the factors. Further, once offerors are informed of the criteria against which their proposals are to be evaluated, it is incumbent upon the procuring agency to adhere to that criteria or inform all offerors of the changes made in the evaluation scheme. Group Operations, Incorporated, 55 Comp. Gen. 1315 (1976), 76-2 CPD 79. However, neither past decisions of our Office nor the applicable procurement regulations require the disclosure of the precise numerical weights to be used in the evaluation process. 50 Comp. Gen. 565 (1971).

In the RFP, offerors were advised of the four factors against which proposals would be evaluated and these factors were listed in order of descending importance with the caveat that the weight to be assigned a factor would not exceed a certain percentage (e.g., Personnel--50 percent). We have held that offerors must be informed of the broad scheme of scoring to be employed and that an appropriate method of disclosing the relative weights of the evaluation criteria is to list the factors in descending order of importance or priority. 50 Comp. Gen. 390, 411-412 (1970) and 50 Comp. Gen. 788, 792 (1971). Concerning the failure of GSA to establish the maximum value of each factor until after receipt of proposals, as noted above, an agency need not disclose the precise numerical weights of each factor to offerors and we find that the RFP adequately set forth the relative importance of the evaluation factors to inform offerors.

The second contention of Genasys in connection with the evaluation factors is that the weights given each factor were altered from those stated in the RFP. While the actual weight given each factor was changed following the receipt of proposals, the factors did remain in the same order of importance and none of the weights assigned exceeded those set forth in the RFP. We do not view these changes as such a radical departure from the evaluation scheme outlined in the solicitation to have required advice to all offerors of the change. See 50 Comp. Gen. 390, 412 (1970). Accordingly, the protest on the above basis is denied.

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While, as noted above, we find nothing objectionable in establishing the final weights to be given each evaluation factor until after receipt of proposals, we believe GSA should not have reviewed either the technical proposals or the price proposals prior to establishing such weights. While our review of the procurement has not revealed any favoritism towards one offeror over another, the scanning of proposals could give the appearance of impropriety which should be avoided in the competitive procurement process.

Genasys also protests the manner in which points were awarded under the evaluation category of cost. GSA evaluated cost by assigning 8 points to the lowest estimated cost proposal, 6 points to the next lowest, 4 to the next and 2 points to the highest cost proposal. GSA also awarded 2 points for the lowest cost per man-hour. Genasys received 8 points and SDC received 2 under the cost factor and Genasys also received the 2 points for lowest cost per man-hour for a total of 10 points under cost. Genasys argues that this predetermined point breakdown did not take into consideration the actual cost difference between the proposals and, therefore, further diminished the actual impact of cost on the evaluation. Genasys' proposed cost was \$258,000 and SDC's cost proposal was \$441,000. Genasys further argues that this predetermined point breakdown irrationality is clearly shown if the costs proposed by two offerors were only \$1,000 apart.

We believe that the predetermined distribution of points could have lessened the weight accorded cost in the evaluation scheme and that a more rationally founded method of evaluating cost should have been employed by GSA rather than mechanically ranking the cost proposals against a predetermined scoring scheme. However, we do not find it to have been so improper as to require disturbing the award. Here, since the RFP clearly indicated that technical considerations were of more importance than cost, and Genasys received the most points awarded under the cost evaluation, we do not believe it was so prejudicial as to render improper the award to SDC. Even dropping the 2 points awarded SDC under cost, SDC still had the highest ranked proposal, 90 points to 86 for Genasys.

Finally, Genasys argues that GSA altered the scope of the factors to be considered under the third rated category "related corporate experience" by considering factors not listed in the solicitation. The 15 points available under the experience category were broken down into two subcriteria with 8 points possible for telecommunications experience and 7 points for Federal Government accounting experience. Both SDC and Genasys received the maximum 15 points under this category.

Genasys contends that it was improper to evaluate telecommunications experience as offerors were not on notice that this sub-criteria would be considered. Genasys states that the fact that offerors were advised at the preproposal conference that the accounting system to be developed would be used in connection with the INFONET computer and telecommunications system was not, as GSA alleges, sufficient to alert offerors that telecommunications experience would be evaluated.

With regard to evaluation subcriteria, we have held that each subcriterion need not be disclosed so long as offerors are advised of the basic criteria and any subcriteria used by the agency in the actual evaluation are merely definitive of the basic criteria. Dikewood Services Company, 56 Comp. Gen. 188 (1976), 76-2 CPD 520. We find that the evaluation of both telecommunications and Federal accounting experience to be logical in the procurement of an accounting system which will be implemented via computer terminals located around the United States and linked by a telecommunications system. Accordingly, this basis of protest is denied.

As an alternative remedy to having the SDC contract terminated and an award made to Genasys, Genasys requests reimbursement of its proposal preparation costs. As we have found nothing legally objectionable in the award to SDC, there is no basis for further consideration of Genasys' claim for proposal preparation costs.

In connection with this protest, one procedural point has been raised by SDC's counsel regarding our Office's development of the record of the protest. SDC contends that our Office should not have considered the comments by Genasys in rebuttal to GSA's report on the protest because the comments were submitted more than 10 working days after Genasys' receipt of GSA's report. See 4 C.F.R. § 20.3(d) (1976). Our Office considered Genasys' comments, filed on May 6, 1977, following its receipt of GSA's report on February 28, 1977, because of several factors. Initially, GSA did not supply Genasys the supporting documents which it furnished our Office. Genasys requested these papers from our Office and, after checking with GSA as to the documents' release, they were forwarded to Genasys on March 7, 1977. Since GSA would not release all of the documents, Genasys filed a Freedom of Information Act request with GSA on March 18, 1977, and received some of the withheld documents on April 22, 1977. While Genasys appealed the denial of the request for further documentation, it filed comments with our Office on May 6, 1977.

Our Office granted Genasys' various extensions to file comments because it did not possess adequate information to respond to GSA's position. Further, the contract had already been awarded to

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EDC and performance was proceeding. Therefore, based on the above considerations, our Office considered the comments filed by Genasys. Unicare Health Services, Inc., B-180262, B-180305, April 5, 1974, 74-1 CPD 175.


Deputy Comptroller General
of the United States