

**DECISION**



7422  
**THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548**

**FILE: B-191470**

**DATE: August 21, 1978**

**MATTER OF: Reza Seyyedín Art and Film Production**

**DIGEST:**

1. Protester's contention that since its proposal met all requirements of RFP it should have received highest technical rating is denied as GAO will disturb contracting officer's determination of technical merits of proposals only upon showing of unreasonableness, abuse of discretion or violation of procurement statutes or regulations, not here demonstrated. Successful offeror's proposal was consistently rated highest by evaluation panel and evaluation was conducted in accordance with listed evaluation factors.
2. There is no requirement to equalize competitive advantage of incumbent or past contractor where such advantage is not result of preference or unfair action by Government.
3. Contracting officer's determination that successful offeror's price was reasonable will not be disturbed unless fraud or bad faith is shown.

Reza Seyyedín Art and Film Production (Reza) has protested the award of a contract to Morgan-Burchette Associates, Inc. (MBA), by the Office of the Chief of Engineers, Department of the Army, under solicitation No. DACW73-78-R-0006.

The solicitation was for the provision of graphics and design work for four issues of "Water Spectrum" magazine, a periodical published by the U.S. Army Corps of Engineers on a quarterly basis.

The RFP contained the following evaluation factors by which the proposals would be judged:

"3. EVALUATION FACTORS. Selection of a contractor for award will be based on evaluation of proposals in accordance with the criteria listed below in descending order of importance:

(1) Creative approach

- (a) Display of eye-catching innovations in use of illustrations
- (b) Use of distinctive headline styles for titles of articles
- (c) Selection of type to match desired image

(2) Placement of Design Elements

- (a) Appropriate sizing and cropping of illustrations
- (b) Overall appearance of layouts
- (c) Functional use of type faces and sizes

(3) Cost"

Reza's first basis of protest is that its proposal should have received the highest technical rating because its proposal met all the requirements of the solicitation and the samples it submitted with its offer were of the best quality work possible.

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 technical rating and award. Our Office will question contracting official's 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 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.

Based upon our review of the record, including the evaluation panel's scoring sheets, we find no such showing in regard to the Army's selection of MBA for the award. MBA's proposal was consistently rated highest by all members of the evaluation panel and the evaluation was conducted in accordance with the stated criteria in the solicitation. Accordingly, this basis of protest is denied.

Reza also contends that the evaluation panel improperly used the samples of past work submitted by Reza with its proposal. Reza states that it was under the impression that the samples submitted would be used to judge an offeror's ability against the evaluation factors listed rather than comparing an offeror's past work with past copies of "Water Spectrum."

The Army has responded to this contention, in a supplemental report to our office dated July 31, 1978, by stating:

"The protestor argues that the Government deviated from the evaluation criteria contained in Part II, Section D of the RFP by comparing its past work with the current issues of Water Spectrum Magazine. That is simply not true. The evaluation panel consisted of the editorial staff of the Magazine. The criteria for evaluation, listed in descending order

of importance, was conscientiously applied to each proposal. It is recognized that the evaluation criteria contained in paragraphs 3.1 and 3.2 of the RFP are highly judgmental, and that the technical evaluation by the panel would necessarily be influenced by their personal experiences and attitudes towards the material. For this reason, a copy of a current issue of Water Spectrum Magazine was distributed with each copy of the RFP. By this procedure each offeror would have an idea of what the Government's editorial staff was pleased with, and each offeror had the opportunity to submit a proposal of comparable quality."

While the protester states that if it was aware of this procedure it would have submitted a "comprehensive layout" which would have demonstrated its ability to design an exact likeness of "Water Spectrum," we believe the solicitation left the decision of what to submit with a proposal up to the offerors. The solicitation advised, at section "J," that:

"[offerors were to] furnish information on their past experience in performing work or services similar to that specified herein along with any other information considered necessary to enable the contracting officer to evaluate his proposal in accordance with the evaluation factors in SECTION D."

Based on the above, we have no objection to the evaluation of the samples.

Reza further states that an offeror which had previously produced an issue of "Water Spectrum" would have an unfair advantage by being able to submit the past issue as a sample. Our Office has always recognized that an incumbent or past contractor may have a competitive advantage over other offerors. There is no requirement to equalize this advantage unless it is the result of a preference or unfair action by the Government. ENSEC Service Corp., 55 Comp. Gen. 656 (1976); 76-1 CPD 34. Such is not the case here.

Next, Reza argues that its cost proposal was \$11,392 as compared to MBA's cost of \$24,986 and that, therefore, the award was made at an unreasonable price for, as Reza contends, the same quality work.

The solicitation advised offerors that cost was the least important of the evaluation factors. Each offer was evaluated as to cost based on a formula under which the lowest cost proposal received, not Reza's, was multiplied by the maximum points allotted for cost (20 points) and that sum was divided by the actual cost proposal submitted. Using this formula Reza received 18.2 points and MBA received 8.3 points for the cost factor. Therefore, our Office has no objection as cost was considered in accordance with the stated criteria and award was made to the highest technically rated firm, albeit also higher priced than the protester. Kaman Sciences Corporation, B-190143, February 10, 1978, 78-1 CPD 117.

With regard to Reza's allegation that MBA's price was unreasonable, the Army advises that past procurements of these services were used as a guideline in deciding the reasonableness of cost. In a contract for one issue of the magazine awarded April 21, 1977, the cost was \$4,972 and in a procurement in August 1977, for two issues of "Water Spectrum," the cost was \$9,390. Based on these figures and the MBA cost proposal of \$24,986 for four issues, the contracting officer found the cost to be reasonable.

As contracting officers have broad discretion in determining the reasonableness of prices submitted, our Office will object to a contracting officer's finding only upon a showing of bad faith or fraud, which has not been made here. Hercules Demolition Corporation, B-186411, August 18, 1976, 76-2 CPD 173.

For the foregoing reasons, the protest is denied.

  
For The Comptroller General  
of the United States