

Proc II

DECISION



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

10901

FILE: B-189462 DATE: August 3, 1979

MATTER OF: Burns and Roe Tennessee, Inc.--
Request for Reconsideration]

DIGEST:

1. Prior decision is affirmed where protester submits no facts, arguments or points of law not previously considered and request for reconsideration reveals no error or fact of law in prior decision.
2. Where evaluators do not perceive proposed but unverified cost savings as deficiency, but speculative nature of proposed cost saving is later pointed out to selection official by Source Selection Advisory Council, agency may but is not required to reopen negotiations to enable offeror to attempt to support proposed savings.
3. Although evaluation scoring of proposals may have enhanced weight of one subcriterion beyond that indicated in solicitation, such deviation is not significant because non-selection of protester was due more to overall risk associated with its proposal than to evaluation of that subcriterion.

Burns and Roe Tennessee, Inc. (BRT), requests reconsideration of our decision in Burns and Roe Tennessee, Inc., B-189462, July 12, 1978, 78-2 CPD 57, denying its protest of an award to ARO, Inc. (ARO), DLG 02381 by the Arnold Engineering Development Center (AEDC), DLG 02382, Arnold Air Force Station, Tennessee. We held that the award of a cost-type contract to ARO, the incumbent contractor, was rationally founded and was consistent with the evaluation factors of the solicitation. Although we have reason to question the evaluation process at

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the initial stages we are unable to conclude that any discrepancy in the evaluation materially affected the selection. We therefore sustain our decision on reconsideration.

Protester's Objections

BRT challenges the evaluation of contractor change-over costs to the Air Force for personnel benefits owed incumbent's employees. The protester points out that the AEDC contract is the largest source of employment in the area and states its belief that ARO and its parent company have only limited ability to absorb personnel from the AEDC operation. It argues that only a small percentage of the incumbent's employees would not be retained by a new AEDC contractor and the actual liability to the Air Force would be less than estimated. In addition, BRT believes that possible union negotiation problems should not have been identified as a problem by the Source Selection Evaluation Board (SSEB) because of the firm's alleged extensive experience in union negotiations. BRT also disagrees with the Air Force's view that BRT's management team was untried. It states that these individuals have known each other for 20 years and "have worked together, each in his own discipline, on many projects within NASA" and that the president of BRT, a retired Air Force general, previously worked with one of the key persons proposed.

Finally, BRT disagrees with the Air Force's concern about BRT's failure to show precisely how it would achieve cost savings if awarded the contract. The protester points out that the Air Force recognized BRT's "excellent financial management system," and that in contrast the evaluators noted a "shortage of significant innovative approaches in the ARO proposal." BRT believes the Air Force or this Office should have inquired about proposed cost savings prior to reaching any conclusions.

For the most part BRT has presented no facts or arguments which were not previously considered. It has not specified any errors of law in our initial decision. BRT disagrees with the source selection decision that

was made and with the conclusions reached in our decision. As for BRT's contention that this Office should have inquired about proposed cost savings, it should be noted that it is not our function to evaluate proposals. We review procurements to determine whether an award or proposed award of a contract complies with statutory, regulatory or other legal requirements. Thus, our concern was with the validity of what the Air Force had done, and not with whether BRT could have better justified its proposed cost savings.

It is clear that the SSEB did not perceive BRT's proposed but unverified cost savings as a deficiency in its proposal negotiations. The record only shows that it was later in the selection process--after proposals had been evaluated, weaknesses pointed out, and best and final offers received--that the Source Selection Advisory Council (SSAC) became unconvinced of the proposed cost savings and pointed this out to the Source Selection Authority (SSA). While negotiations could have been reopened to explore this matter further with BRT, there was no requirement to do so under the facts of this case. See generally Electronic Communications, Inc., 55 Comp. Gen. 636 (1976), 76-1 CPD 15; 52 Comp. Gen. 198, 206 (1972).

Nevertheless, we consider the issues raised in the initial protest as significant, particularly in view of the long term incumbency of ARO. This, together with our desire to assure ourselves of the validity of the procurement process utilized, led us to perform an on-site audit review of the evaluation process. This review raised some questions concerning the evaluation by the SSEB. Although, as discussed below, the evaluation was inconsistent with the RFP in one respect we find no basis to conclude that the selection decision was affected by this deviation or that the selection process was otherwise tainted.

Our auditors discovered that the AEDC procurement files contained two sets of SSEB score sheets for BRT, the first set based on BRT's proposal to employ the incumbent's work force and the second set based on the detailed manning and "skill mix breakouts" furnished by

BRT in compliance with an Air Force request. BRT was scored higher on the first evaluation; ARO outscored BRT on the second evaluation.

This dual scoring resulting from the absence from BRT's initial proposal of sufficient manning data for SSEB evaluation. Apparently to facilitate the initial scoring, the SSEB chairman directed the evaluators to score the BRT proposal in the "manning" and "qualifications of personnel" categories on the basis of ARO's fiscal year 1977 manning allocations and then, after BRT responded to an Air Force request to clarify its intended manning allocations, to rescore the BRT proposal if the original scores were determined not to be valid. BRT's detailed manning breakdown was of concern to the SSEB evaluators; consequently, they did rescore the BRT proposal. Although the original SSEB instructions were to rescore only the "manning" and "qualifications" categories, the "understanding of the job" and "soundness of approach" categories were also regraded. Since proposed manning could impact in these other areas, the SSEB's reevaluation of those areas was appropriate as it is not improper to penalize an offeror in each evaluation category affected by a particular proposal deficiency. Iroquois Research Institute, 55 Comp. Gen. 787, 792-3 (1976), 76-1 CPD 123; see also Electronic Communications, Inc., supra; GTE/IS Facilities Management Corporation, B-186391, September 7, 1977, 77-2 CPD 176.

Thus, while our auditors noted that the mere existence of two sets of evaluation scores could allow an agency to influence the selection process by selecting the particular set to be used, we find there is a plausible basis both for the existence of the two disparate sets and for the Air Force's use of the second set since it was the second round of scoring that was more relevant to the details of what BRT proposed. In any event, it appears unlikely that the selection decision was significantly affected by the use of one set of scores rather than the other since the record shows that the SSEB's scoring was not a central concern of either the SSAC or the SSA.

Our audit findings also indicate that some scores on the draft evaluation score sheets had been changed. When asked, some evaluators could not remember whether they had made the changes, some stated they had approved the changes but others stated they had not changed the draft score sheets. Nevertheless, the final, official score sheets were signed by the original evaluators and we therefore must assume that the scores stated thereon accurately represented their final opinions.

The discrepancy between the RFP and the evaluation scoring concerns the weight given to manning. For several evaluation areas--Technical, Management and Support--the RFP listed manning as the least important of the evaluation subcriteria. However, this order of importance was not followed in the numerical scoring of the Support area. For many of the support tasks evaluated, the maximum attainable scores for manning were as high or higher than for at least one other sub-criterion which the RFP listed as being more important. This resulted from either the assignment of the same weight to manning as was assigned to other subcriteria or the use of a five-point raw score ceiling for the more important subcriterion (the first three evaluation factors--understanding the job, soundness of approach and qualifications of personnel--could be scored as only unacceptable or acceptable [with scores of either zero or five points] in 87 of the 120 tasks which were scored), while manning could receive a raw score of up to ten. (Manning could be scored as unacceptable to exceptional [zero to ten points] in 36 of the 40 tasks.) In addition, the SSEB translated its scores into narrative form which resulted in those tasks which were scored zero or five being described as "unacceptable" or "acceptable," respectively. Thus, an offeror's proposal which offered more than what was needed with regard to such tasks could be described as no better than "meets standards" while an exceptional score on the one to ten scale used for evaluating manning could have been described as "exceptional."

Upon receipt of the SSEB's report and scores, the SSAC conducted its own evaluations, revised the SSEB's scores to reflect its own independent evaluation and

applied relative weights as between the items being evaluated. It then color coded the scores using different colors for "exceeds standards/exceptional," "meets standards," "below standards" and "unacceptable." Although the SSA received the SSAC's color coded scores, the SSAC's separate narrative analysis, the SSEB's summary report to the SSAC and the proposals, he was not furnished the SSEB's numerical scores. It is unclear whether the SSA knew that a narrative evaluation and color coding of a task "meets standards" could represent the maximum score obtainable for a given task.

This evaluation method suggests that manning may have received greater emphasis in the Support area than reasonably could have been anticipated from the RFP's ranking of manning as the least important subcriterion. This discrepancy, however, becomes less significant when placed in perspective. The Support area itself was listed in the solicitation as third in order of importance of the five major criteria for evaluation. The SSEB's evaluations on the more important Technical and Management areas reflect no undue weight given to manning within those areas. Moreover, while the SSEB reported higher scores for BRT than for ARO in the Technical and Management areas, the SSAC did not agree that the BRT proposal was superior in those areas. Although our auditors suggest that the low scores assigned to BRT in the Support area could have influenced the SSAC to downgrade the BRT proposal in the Technical area, SSAC's proposal analysis report reflects more of a concern with the overall risk associated with the BRT proposal than with particular elements of manning. As discussed in our initial decision, the SSAC's primary concerns were that BRT's proposed management personnel had not previously functioned together as a team and that BRT's promised cost savings lacked specific backup. Accordingly, we find no legal justification for taking exception to the award on the basis of this evaluation deficiency.

We recognize that BRT does not agree with the SSAC's (and ultimately the SSA's) risk assessment, and we have considered whether certain risks associated with awarding BRT the contract were improperly overemphasized in the source selection process. Our audit findings indicate

that some factors associated with manning, in addition to being specifically evaluated and scored, were stated separately as risks. For example, inappropriate manning levels and skill mixes were considered indications of a lack of understanding the work or the lack of a sound approach to the job. As indicated above, it is neither unusual nor improper for a deficiency or weakness in one evaluation area to be reflected in other, related evaluation areas as well. Moreover, while other agencies might not have viewed the risks as the Air Force did, we again point out that selection officials must be permitted to exercise discretion in these matters. In reviewing bid protests it is the function of this Office to determine whether the selection was arbitrary without imposing our own discretionary judgment upon the procuring agencies. Our intensive review does not indicate that the selection was arbitrary; rather, we find that it was reasonable and essentially consistent with the solicitation.

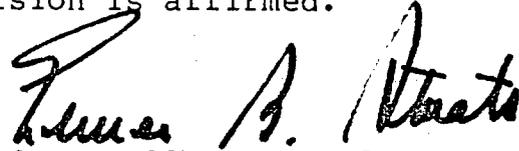
Our conclusion in this case should not be taken as an indication that an incumbent contractor is generally assured of continued awards. As a practical matter, of course, an incumbent contractor with a good performance record generally may have a significant competitive advantage over others and the procuring agency is not required to equalize competition in a particular procurement by considering the competitive advantages accruing to the incumbent. See, e.g., Houston Films, Inc., B-184402, December 22, 1975, 75-2 CPD 404. Consequently, a non-incumbent should not expect to "unseat" an incumbent contractor merely on the strength of its unsupported promises; rather, promises of cost savings and improved management techniques should be supported with specific information and examples of where such savings or techniques have been realized or applied successfully on other projects. While providing such information is no guarantee that a non-incumbent's promised performance will compare favorably with that of an incumbent's, it does offer the source selection official a basis upon which the non-incumbent could be chosen for award. BRT's proposal was found lacking in this regard.

Nonetheless, we think the Air Force would have done well to approach this procurement somewhat differently. Unlike the typical procurement, this one involved a competition for a contract which had been held (and awarded sole-source) by one firm for more than 25 years. It also involved a large contract--an average of \$100 million annually for three years plus two one-year option periods. The scope of the contract was such that an offeror would reasonably be expected to have to expend considerable time, effort, and money just to prepare a meaningful proposal. These somewhat unusual circumstances could have reasonably suggested to potential offerors that the Air Force was seeking and believed it could obtain viable alternatives to the incumbent, and that the traditional natural advantages of incumbency would not be a serious impediment to offerors willing to compete against the incumbent.

This was not the case, however, as the Air Force evaluation and selection process did indeed reward ARO's incumbency. In the evaluation phase, the RFP and SSEB insisted on detailed manning portrayals even though the incumbent was clearly in the best position to furnish that information. In the selection phase, the SSA was concerned with the risks involved in changing contracts and in relying on the unsupported promise of the one challenger to the incumbent to achieve cost savings. While, as we have previously stated, these concerns were within the SSA's discretionary authority, they did make it that much more difficult--if not impossible--for BRT to emerge as the winner. Under these particular circumstances, we believe the procurement process would have been better served had the RFP given potential offerors some indication of what it would take to unseat the incumbent, e.g., how much better than the incumbent's proposal a competitor's would have to be before the Air Force would be willing to risk changing contractors. Alternatively, we think the Air Force could have structured its evaluation scheme somewhat differently so that proposed manning would not have been evaluated in a way that could only aid the incumbent.

The fact remains, however, that the record does not establish that the selection of ARO was improper,

that there were any serious deficiencies in the selection process, or that our prior decision denying the protest was erroneous. That decision is affirmed.

A handwritten signature in black ink, appearing to read "James B. Stacks". The signature is written in a cursive style with a large, sweeping initial "J".

Comptroller General
of the United States