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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20540**

FILE: B-205865

(DATE: August 10, 1982

MATTER OF: Blurton, Banks & Associates, Inc.

DIGEST:

1. In reviewing protests against allegedly improper evaluations, GAO will examine the record to determine whether the judgment of the evaluation team was reasonable and in accord with listed criteria, and will consider whether there were any violations of procurement statutes and regulations.
2. Government is not required to compensate for the advantage of an incumbent contractor, resulting in higher ratings on experience and capacity, unless it has somehow contributed to this advantage.
3. When agency is seeking creativity and innovation, it need only advise offerors that this will be considered in evaluating proposals, and it is not required to discuss innovative approaches of one offeror with others.
4. No matter how capable or innovative an offeror may be, if its proposal does not include information permitting evaluation on this basis, offeror runs the risk of proposal's being eliminated from competition.
5. When differences in cost have been factored into evaluation formula along with experience, capacity, and innovation, a decision that a higher total point score indicates that one proposal is significantly superior to others is within the discretion of the contracting agency.

6. Agency practices in other procurements do not affect the propriety or impropriety of a protested award.

Blurton, Banks & Associates, Inc. protests the award of a contract for surveying and mapping services by the New Orleans District, Corps of Engineers, to Vernon F. Meyer and Associates, Inc. The protester alleges that the award was improper because, although the proposals were very close in total number of evaluation points, its price was an estimated \$582,570 less than the accepted offer, and therefore was most advantageous to the Government. We deny the protest.

Background:

By way of background, Blurton, Banks indicates that the Corps of Engineers originally intended to use Architect-Engineer selection procedures for the services in question, and in early 1981 negotiated with it on this basis. In April 1981, the protester states, the Corps advised it that action was being deferred for six months due to fiscal uncertainty; however, in June 1981, the Corps announced that regulations now required competitive selection for surveying and mapping services that did not have to be performed by licensed engineers.

Blurton, Banks asserts that its selection for negotiation under the Architect-Engineer procedures, where cost is not considered in determining the most qualified and capable firm, is evidence of the fact that it also should have been selected in the subsequent competition.

The protester cites half a dozen other Districts, including Memphis, St. Louis, and Mobile, in which it believes the Corps of Engineers has conducted procurements for similar services and made award to the lowest priced offeror under evaluation criteria which also included experience and capability. The firm further alleges that the awardee improperly was given credit for experience and capacity obtained by virtue of its incumbency on other surveys in the New Orleans District.

The Corps of Engineers responds that under request for proposals DAC# 29-81-R-0179, experience, capacity,

and price were to be accorded 90 percent of the points in evaluation. Although precise weights were not announced in the solicitation, as established by a board independent of the evaluators, they were as follows:

Experience	36 Points
Capacity	30 Points
Price	29 Points
Innovative Ideas	5 Points

In determining the number of points to be given each offeror for price, the lowest was to receive the maximum and other offerors were to receive a percentage of that number, determined by their relationship to the lowest offer.

Using this formula, the Corps awarded Blurton, Banks a total of 88.3 evaluation points and Meyer 91.4. Their estimated prices for the one-year, indefinite quantity with options contract were \$1,479,130 and \$2,061,700, respectively. One other firm ranked higher than Blurton, Banks (88.8 points) and another tied it; both, however, were even higher-priced than the awardee. The Corps' award to Meyer was made on December 9, 1981, and Blurton, Banks' protest to our Office followed.

Allegedly Improper Evaluation:

In reviewing protests against allegedly improper evaluations, our Office will not substitute its judgment for that of evaluation team members, who have considerable discretion. Rather, we will examine the record to determine whether the judgment of the evaluation team was reasonable and in accord with listed criteria, and we will consider whether there were any violations of procurement statutes and regulations. Quest Research Corporation, B-203167, December 10, 1981, 81-2 CPD 456.

In this case, we have reviewed the proposals of both Meyer and Blurton, Banks, as well as the initial and final evaluation sheets for those proposals. We cannot conclude that the point scores awarded were either unreasonable or based on criteria other than those listed in the solicitation.

For experience, Meyer received 35.6 points and Blurton, Banks received 32 points; for capacity, the

former received 30 and the latter 27.3 points. The Corps noted that Blurton, Banks had performed similar work for the Memphis and Vicksburg Districts, and that the experience of the firm's key personnel and staff was excellent; however, it also noted that resumes were provided only for five party chiefs, and minimum qualifications for other proposed staff members were not included in the proposal. Blurton, Banks' number of personnel, equipment, and facilities were considered adequate.

Meyer's higher rating was due in part to experience and excellent performance on other contracts in the New Orleans District, and evaluators specifically noted that some personnel working on a current contract would be available for the new contract. While it appears that Meyer thus had the advantages of an incumbent contractor, we have often stated that the Government is not required to compensate for such advantages unless it has somehow contributed to them. See Colorado Research and Prediction Laboratory, Inc., B-198755, March 5, 1981, 81-1 CPD 170.

Blurton, Banks, as the lowest priced offeror, received a full 29 points in the price category, compared with Meyer's 20.8 points. On the other hand, Blurton, Banks received a 0 for innovative techniques, since it did not address this topic in its proposal. Meyer received the maximum 5 points in this category, primarily because of its proposed use of a computer to reduce turn around time on field problems; according to Meyer's proposal, one crew, using National Geodetic Survey computer methods, would provide instantaneous results to the District. In addition, the firm proposed to have survey parties work four 10-hour days, saving per diem and mileage costs as well as expediting completion of work on some delivery orders.

Blurton, Banks states that it did not include any innovative techniques in its proposal because the solicitation did not specifically define the scope of work required. The firm indicates that during discussions it advised the Corps that it had used such techniques in the Memphis District, and would also use them on the New Orleans project. (In its protest, Blurton, Banks does not identify these techniques, and it is not clear whether it did so during discussions.) The protester acknowledges that the awardee and other offerors did propose methods that are relatively new in surveying and suggests that if the Corps wanted them employed, it should have listed them in the solicitation.

When an agency is seeking creativity and innovation, in our opinion it is sufficient to advise offerors that this will be considered in evaluating proposals. An agency is not required to discuss--and in fact may be prohibited from discussing--innovative approaches of one offeror with others. See generally Development Associates, Inc., B-203938, October 9, 1981, 81-2 CPD 296.

In addition, it was incumbent on Blurton, Banks to identify and specifically discuss any innovative techniques being used in another District which it believed could be applied to the new contract. No matter how capable-- or innovative--an offeror may be, if its proposal does not include information permitting evaluation on this capability, it runs the risk of losing the competition. See Informatics, Inc., B-194926, July 2, 1980, 80-2 CPD 8. In view of the fact that there was only a 3.1 point difference between the proposals of Meyer and Blurton, Banks, the 0 for innovative techniques in the latter's evaluation became crucial.

As for the more than half a million dollars difference between the two proposals, under the Corps' evaluation formula, this difference was factored in and weighed in relation to experience, capacity, and innovation. If the 3.1 point spread had related solely to the evaluation of technical proposals, we would expect the Corps to further justify choosing the higher-priced one, since it would appear that they had been ranked as essentially equal. Here, however, the Corps assigned a numeric value to the lowest price and gave Blurton, Banks the maximum possible score; this score did not outweigh Meyer's higher score on other evaluation criteria. Under these circumstances, the decision that the higher total point score indicated that Meyer's proposal was significantly superior was within the discretion of the Corps of Engineers. See Bell & Howell Corporation, B-196165, July 20, 1981, 81-2 CPD 49.

Other Bases of Protest:

We do not find Blurton, Banks' arguments regarding its selection by the Corps for negotiation under Architect-Engineer procedures or the allegation that other Districts have followed a practice of awarding to the lowest priced offeror relevant. The record contains no information on these procurements, and in any event what has been done in other procurements does not affect the propriety

of the award to Hoyer. Cf. Hexxxx International Corpora-
tion, B-192034, September 22, 1978, 78-2 CPD 219.

The protest is denied.

Sheldon J. Fowles
for Comptroller General
of the United States