

**DECISION**



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

**FILE:** B-207936

**DATE:** April 15, 1983

**MATTER OF:** Set Corporation

**DIGEST:**

1. Protest contending due date for submission of best and final offers allowed insufficient time for preparation and shipment of such offers is untimely under GAO Bid Protest procedures since protest was filed after the closing date.
2. GAO will not review competing technical proposals to determine their relative merits because the function of GAO is not to make its own determinations as to the relative merits of proposals but to examine the record and apply a standard of reasonableness to the agency's determinations.
3. Protest objecting to the lack of specific questions during discussions with respect to its proposal which contained no major deficiencies is denied since the record shows protester was notified of nine areas which the evaluators believed could be improved and under the circumstances such notification constituted meaningful discussions as required by the regulations.

Set Corporation protests the award of a contract to Res-Care, Inc. under request for proposals (RFP) No. R8-82-S-49 issued by the Forest Service, Department of Agriculture. The RFP solicited proposals to conduct an educational program at the Lyndon B. Johnson Civilian Conservation Center, Franklin, North Carolina. Set contends it was given insufficient time to submit its best and final offer, that discussions were inadequate, and that the procurement was "managed" in such a fashion as to justify award at a higher price to the incumbent contractor. The protest is dismissed in part and denied in part.

I. Time Available for Submission of Best and Final Offers

After initial proposals were evaluated, Set was informed by the Forest Service that its proposal was within the competitive range, that written discussions were being conducted and that best and final offers must be submitted 12 days from the date of the letter. Set received the letter 6 days later and although it submitted its best and final offer on time, it objects to having less than 3 working days to prepare and ship its best and final offer.

Set's allegation that insufficient time was allowed for the submission of its best and final offer is untimely under our Bid Protest Procedures, 4 C.F.R. § 21.2(b)(1) (1983). These procedures require that protests based on alleged improprieties that do not exist in the initial solicitation but which are subsequently incorporated into the solicitation must be protested not later than the next closing date for receipt of proposals. Allegedly insufficient response time for submission of best and final offers involves the type of impropriety contemplated by this requirement. PSI Associates, Inc., B-200839, May 19, 1981, 81-1 CPD 382. As Set was aware of the short response time 6 days prior to the due date and did not protest until after submission of its best and final offer, its protest in this respect is untimely and will not be considered on its merits.

II. Proposal Evaluation

At the outset, we believe it is essential to establish our role in protests concerning the evaluation of technical proposals. We will not, as Set requests, review Set's proposal and that of the awardee to compare their relative technical quality. Our function is not to evaluate proposals and make our own determinations as to their acceptability or relative merits, but to examine the record and apply a standard of reasonableness to the agency's determinations. A.T. Kearney, Inc., B-205898.2, February 28, 1983, 83-1 CPD 190. In this respect, agency evaluators have considerable discretion in making the determination as to which proposal has the greater merit and we therefore will not question the agency's judgment unless it is shown to lack a reasonable basis, was an arbitrary abuse of discretion or

was otherwise in violation of procurement statutes or regulations. Art Services and Publications, Incorporated, B-206523, June 16, 1982, 82-1 CPD 595. We find no reason to question the award after reviewing the record on this basis.

Set objects to the lack of specific questions regarding its proposal such as were asked during the previous year's procurement. Set also contends that there were significant differences between the evaluation of its technical proposal and that of Res-Care in two areas, (1) similar experience and (2) special training capabilities and resources. Set argues that such factors discriminate against new offerors because the incumbent contractor has an inherent competitive advantage in such areas. We find these objections to be without merit.

The Federal Procurement Regulations (FPR) § 1-3.805 (a) (1964 ed.), with certain exceptions that are not relevant here, require that written or oral discussions be conducted with all responsible offerors who submitted proposals within a competitive range. While the FPR does not delineate the nature and extent of the discussions required, it has been our position that these discussions must be "meaningful" within the context of the procurement at hand. In other words, the word "meaningful" is a flexible concept that must relate to the specific procurement involved, and what are "meaningful discussions" in one procurement may not be considered "meaningful" in the context of another. See GTE Sylvania, Inc., 57 Comp. Gen. 115 (1977), 77-2 CPD 422. In this respect, we recognize that, as in the evaluation of the proposals, the extent of the discussions necessary to be considered "meaningful" is essentially a matter of the negotiator's judgment which we will not question unless we find the judgment to have been unreasonable. Id. Thus, in some instances, we have agreed that a request for best and final offers that gives offerors the opportunity to revise their initial proposals is a "meaningful" discussion. See BDM Corporation, B-201291, June 26, 1981, 81-1 CPD 532. We think that the request for best and final offers in this procurement met that test.

For example, the RFP allocated 100 points to technical factors, 85 points to price, and stated that award would be made to the responsible offeror within the competitive range whose offer met all requirements and was determined to be most advantageous to the Government. The record shows that Res-Care received 82.7 points for its technical proposal and 70.77 for its price for a total of 153.47 points. Set received 58.7 points for its technical proposal and 74.65 for price for a total of 133.35.

Set's initial proposal was found to be technically acceptable and it was sent a letter asking for best and final offers; the letter listed nine areas in which its proposal could be improved. (The Forest Service had previously pointed out the same areas to Set by telephone.) The nine areas listed were quoted directly from the evaluation factors set forth in the RFP; certain of these listed areas also contained brief comments. We believe that in this procurement the letter was sufficient to alert Set to those portions of its proposal that the agency evaluators believed could be improved. These were not major deficiencies; they were portions of the proposal that were not as good as they could have been. In this circumstance, we believe the agency was under no obligation to discuss every aspect of a proposal which received less than maximum scores. See ADP Network Services, Inc., B-200675, March 2, 1981, 81-1 CPD 157.

We also find no evidence that the agency improperly "managed" the evaluation. The record shows that Res-Care's proposal received the maximum score for experience in similar and related fields. Its proposal reflected its incumbency in the program being competed and experience with similar contracts with five Job Corps centers, two other learning centers for those needing special education, and a health center. While Res-Care's proposal did not receive maximum points for special training capabilities and resources, it did describe the capabilities and resources of its other training programs which were available to this program and was given a higher score than the proposal of Set in this regard. Set's proposal indicated a great deal of training experience but it had experience only with two Job Corps centers, one of which the evaluators considered to be unrelated to the work required by

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this project. Our review reveals no reason upon which to object to the scoring of these proposals on this basis. An incumbent contractor generally has a competitive advantage when a program is recompeted; however, an agency is not required to compensate for such an advantage unless it results from preference or unfair action by the Government. Colorado Research and Prediction Laboratory, Inc., B-199755, March 5, 1981, 81-1 CPD 170; aff'd on Reconsideration, May 11, 1981, 81-1 CPD 369. There is no indication here of such a preference or unfair action.

Since technical quality was worth more than price in proposal evaluation--100 points for technical, 85 for price--and since Res-Care's \$197,731 price was only 5 percent higher than Set's price of \$187,473, but Res-Care's technical score was 40 percent higher, the award to Res-Care was consistent with the evaluation criteria and therefore is not subject to objection.

The protest is denied.

*for* *F. H. Barclay, Jr.*  
Comptroller General  
of the United States