

DECISION



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

FILE: B-209243

DATE: May 2, 1983

MATTER OF: Andover Data Services, Inc.

DIGEST:

1. GAO will question a procuring agency's assessment of the technical merit of proposals only upon a clear showing of unreasonableness, abuse of discretion, or violation of procurement statutes or regulations.
2. Slight inaccuracies in the comments made by agency evaluators do not provide a basis for sustaining a protest where correction of the inaccuracies would not significantly alter the relative standing of the protester and awardee.
3. When protester has suffered substantial losses and has poor ratio of assets to liabilities, evaluators reasonably may award higher point score to financially stable offeror. While financial condition generally relates to offeror's responsibility, in appropriate circumstances it may be used to compare relative merits of technical proposals. In future, however, procuring agency must fully justify such use.
4. Procuring agency may award contract to offeror whose technical superiority outweighs additional cost to the Government if determination is reasonable and offerors are adequately apprised of the relative values of technical and cost criteria.
5. Contract may be awarded without discussions if offerors are apprised of this possibility and there is adequate competition to ensure that the award is at a fair and reasonable price.
6. GAO is aware of no requirement that a procuring agency inspect facilities of an offeror responding to a request for proposals.

Andover Data Services, Inc. protests the National Credit Union Administration's award of a contract for data entry services to Dynamic Data Processing, Inc. Andover contends that under request for proposals NCUA-R-82-001, the agency had no reasonable basis for awarding a fixed price requirements contract to any firm other than Andover, the offeror with the lowest cost proposal. We deny the protest.

Evaluation Method:

First, Andover questions the Credit Union Administration's basis for finding Dynamic's proposal superior to its own. The solicitation in this case set forth evaluation factors and their relative weights, according 70 points to technical merit and 30 to cost. Source selection committee members, three heads of data processing at the Credit Union Administration, evaluated proposals independently, making comments in addition to assigning point scores to each of eight offerors; results were combined to produce the following totals for the two most highly rated proposals:

	Andover	Dynamic	Total possible points
Customer references	14	13.7	15
Ability to accommodate NCUA workload as well as backup capability	34.7	37.7	40
Financial condition of company	6*	15	15
Cost	<u>30</u>	<u>24.64</u>	<u>30</u>
Total	84.7	91.04	100

*Although the agency report shows that Andover received only 5 points for financial condition, the evaluation sheets indicate that the correct number is 6. This is consistent with totals in the agency report.

Specifically, Andover argues that the Credit Union Administration's method of evaluating customer references was inconsistent. In assessing its ability to accommodate the agency's workload and to provide backup capability, Andover continues, one evaluator incorrectly described the size of its operations and another incorrectly assumed that it had no courier service. Andover also questions the assessment of its financial condition.

In reviewing allegations such as Andover's, we will question a procuring agency's assessment of the technical merits of a proposal only upon a clear showing of unreasonableness, abuse of discretion, or violation of procurement statutes or regulations. Holmes and Narver, Inc., B-206138, January 11, 1983, 83-1 CPD 27; Marine Research, Inc., B-206271, October 29, 1982, 82-2 CPD 380. However, we will not reevaluate the proposal in question, and the fact that a protester does not agree with an agency's evaluation does not itself render the evaluation unreasonable. Frank E. Basil, Inc.; Jets Services, Inc., B-208133, January 25, 1983, 83-1 CPD 91.

Andover received a total of 14 points for customer references, even though it received 15 points each on questionnaires submitted by two of the firms it had listed for this purpose. The evaluation of references, the record indicates, was based not only on questionnaires, but also on the fact that Andover submitted only two from Federal agencies, one of which was not current. Apparently because of this, one evaluator gave Andover 12 points on this criterion. The other two evaluators each gave Andover 15 points, resulting in an average of 14. We see no inconsistency here.

As for size of its system, at least one evaluator noted what Andover considers a key point, that the firm offered 3 systems with 52 data entry terminals. We therefore do not find this an evaluation deficiency.

We find that one evaluator did incorrectly comment that Andover's proposal made no mention of pickup/delivery services, since the proposal specifically stated that Andover hand-carried all source documents. Another evaluator characterized Andover's operation as having a "sole backup" in New York; Andover argues that because each of its three systems located in Maryland are independent of each other, they are its "first line" of backup, while an additional six systems, located in New York, provide a "second line."

It does not appear that correction of these slight inaccuracies would significantly alter the offerors' relative scores. Andover received a total of 34.7 points for its ability to accommodate NUCA's workload, whereas Dynamic received 37.7. The 3-point difference is attributable to the fact that while the solicitation required the contractor's facilities to be located in the Washington, D.C. metropolitan area, Andover's proposal indicated that, in case of system failure or overload, source documents would be sent to New York for processing. On the other hand, all of Dynamic's backup capability is located in the Washington, D.C. area. Several evaluators made special note of the fact that Dynamic offered excellent local backup. We therefore find that evaluators had a reasonable basis for preferring Dynamic's backup operation and for concluding that it was better able to meet the agency's workload than Andover.

A more significant difference was in evaluation of offerors' financial condition. Andover received a score of 6, whereas Dynamic received 15 points. Evaluators' comments reveal that Andover had suffered a substantial loss during 1981 and that its asset/liability ratio was less than 1. On the other hand, Dynamic's financial condition was perceived as very strong. Although Andover questions the ability of technical evaluators to judge its financial condition, it does not question the figures used in arriving at the point scores. Rather, the firm admits that financial condition was its "weak spot," but it argues that it should get credit for surviving "during the worst time in American history."

Andover has not protested the use of financial condition as a point-scored evaluation criterion. We note, however, that financial condition generally is considered an element of responsibility. Our Office has stated that in a negotiated procurement, matters normally relating to responsibility may, in some cases, be used to judge technical acceptability. Anderson Engineering and Testing Co., B-208632, January 31, 1983, 83-1 CPD 99. Responsibility-type criteria, like other technical evaluation criteria, are appropriately used when a contracting agency wishes to determine the relative merits of individual proposals. Such assessments obviously differ from responsibility determinations, which are made after proposal evaluation and which are concerned with whether an offeror has the minimum capacity to do the required work. Design Concepts, Inc., B-184754, December 24, 1975, 75-2 CPD 410. Factors

that may have been considered in technical evaluations include understanding, organization, technical experience, knowledge, managerial skills, equipment, facilities, and the like. See, e.g., Electrospace Systems, Inc., 58 Comp. Gen. 415, 425 (1979), 79-1 CPD 264.

It is rare, however, to see financial condition used as an evaluation criterion. We will not object to its use here since Andover did not protest this point and since, on the record before us, we cannot conclude that NCUA had no legitimate need to compare the relative financial condition of offerors or that its conclusion that Dynamic deserved a substantially higher point score than Andover for this criterion was unfounded. In our opinion, however, agencies should not need, generally speaking, to make a comparative evaluation of competing offerors' financial condition. It therefore should continue, in most cases, to be an element in determining responsibility; its use as a technical evaluation factor is to be discouraged, and any future use for other than for responsibility determinations should be fully justified by the contracting agency.

Cost Considerations:

Andover challenges the accuracy of the Credit Union Administration's conversion of proposed costs to evaluation points. The difference between Andover and Dynamic's proposed prices, \$423,809 and \$516,046 respectively, for a base and two option years, is \$92,237. This figure is 17.87 percent of Dynamic's proposed price. Since 17.87 percent of 30, the maximum possible points, is 5.36, Andover's score of 30 and Dynamic's score of 24.64 reasonably reflect the difference between offerors.

Andover also contends that the award should have been made to the technically acceptable offeror with the lowest cost proposal. However, in a negotiated procurement there is no requirement that award be made on this basis. Bell Aerospace Co., 55 Comp. Gen. 244, 256 (1975), 75-2 CPD 168. Rather, a procuring agency has the discretion to select a highly rated technical proposal if doing so is in

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the best interest of the Government and consistent with the evaluation scheme set forth in the solicitation. Development Associates, Inc., B-205380, July 12, 1982, 82-2 CPD 37.

In this case, there was a 3-point difference between Andover's and Dynamic's scores on ability to accommodate workload and backup capacity and a 9-point difference between their scores on financial condition. We believe it was reasonable for evaluators to conclude that Dynamic's 12-point lead in the considerably more important areas of workload and financial condition offset the difference in proposal costs. Additionally, since the evaluation was consistent with the guidance provided in the solicitation, we do not object to the award on this basis.

Site Visits and Request for Best and Final Offers:

Andover's final contention--that the Credit Union Administration was obligated to conduct site visits and to make a request for best and final offers--is also without merit.

We have held that a contract may be awarded on the basis of initial proposals if offerors are apprised of this possibility and there is adequate competition to ensure that the award is at a fair and reasonable price. See Tiernay Manufacturing Company, B-209035, December 20, 1982, 82-2 CPD 552; Art Services and Publications Incorporated, B-206523, June 16, 1982, 82-1 CPD 595. In this case, eight offerors responded to the solicitation; their prices for the 3 years on which proposals were evaluated ranged up to \$691,055. We therefore find that there was adequate competition, and an award for \$516,046 does not appear to be unreasonable. Moreover, the solicitation in this case incorporated paragraph 10(g) of Standard Form 33-A, so that offerors were adequately apprised of the possibility that a contract might be awarded without discussions.

As for site visits, we are aware of no requirement that a procuring agency inspect facilities of an offeror

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responding to a request for proposals. Edwin G. Toomer, B-201969, September 29, 1981, 81-2 CPD 262; Reconsideration of National Biomedical Research Foundation Protest, B-177959, August 12, 1974, 74-2 CPD 88.

The protest is denied.

for *Milton J. Fowler*
Comptroller General
of the United States