

DECISION



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

PL1/3
30380

FILE: B-214634 **DATE:** February 7, 1985

MATTER OF: Technical Services Corporation

DIGEST:

1. Protest against assigning four times as many evaluation points to technical factors as to cost factors is denied where protester fails to show that agency's conclusion that the higher cost of a technically superior offer would be more than offset by the increased savings expected from such an offer lacked a reasonable basis.
2. Protest that agency conducted discussions with offerors, thus rendering the award on the basis of initial proposals improper, is denied where contracting agency either withdrew request to offerors for additional information before they had an opportunity to respond or protester was not competitively prejudiced by any discussions it may have had with agency.
3. Protest that agency improperly considered whether personnel proposed by offerors had experience in breakout reviews when evaluating proposals in procurement for breakout reviews is denied where solicitation listed personnel qualification as an evaluation criterion and requested offerors to submit in this regard information concerning the experience of proposed personnel. Although solicitation did not identify experience with breakout reviews as an evaluation criterion, agencies need not identify the various aspects of stated evaluation criteria which may be taken into account if, as here, such aspects are reasonably related to the stated criteria.

031167

4. Protest that in evaluating proposals agency improperly considered whether proposals indicated experience with certain types of spare parts which the agency expected to ask the contractor to evaluate under any contract is denied where solicitation listed personnel qualifications as an evaluation criterion and requested offerors to submit in this regard information about the experience of the proposed personnel and where the solicitation also set forth the types of spare parts expected to be evaluated under the contract.
5. Protest that agency misled offerors by stating in the solicitation that cost was an important factor which should not be ignored when undisclosed evaluation scheme assigned only 20 percent of available evaluation points to cost and when 25 percent was assigned to only one of the technical factors is denied. Solicitation need only advise offerors of the broad scheme of scoring to be employed and give reasonably definite information concerning the relative importance of evaluation factors. Here, solicitation listed the technical factors in descending order of relative importance and indicated that cost, while significant, nevertheless was of secondary importance to the technical factors.
6. In reviewing an agency's technical evaluation, GAO will not evaluate the proposal de novo, but will instead examine the evaluation to ensure that it had a reasonable basis. Protest against agency evaluation is denied where the protester failed to carry its burden of showing that the evaluation was unreasonable.
7. Protester fails to prove bias against it in evaluation of proposals where it advances no more than supposition in support of the allegation and where the evaluations were

either reasonable or, if unreasonable, any errors were in the protester's favor and protester thereby suffered no competitive prejudice as a result.

8. Where the solicitation, in describing the relative importance of cost vis-a-vis technical factors, in effect notified offerors that the agency had predetermined the tradeoff between technical merit and price, then the evaluation point scores were to be controlling unless selection officials determined that, notwithstanding a difference in the technical scores of the proposals, there were no significant differences in their technical merit, in which event price would become the deciding factor.
9. Protest that agency made award in a negotiated small business set-aside without allowing offerors at least 5 working days in which to protest size status of apparent successful offeror is denied where contracting officer determined that award must be made without delay in order to protect the public interest and protester does not allege that awardee was other than a small business.
10. Agency's failure to submit an administrative report responding to the protest in a timely manner, i.e., within 25 working days, does not render invalid the otherwise proper award.

Technical Services Corporation (TSC) protests the award of cost-reimbursement-plus-fixed-fee contracts to DHD, Inc., and Resource Consultants, Inc. (RCI), under request for proposals (RFP) No. N00393-84-R-1422, issued by the Department of the Navy for in-depth technical reviews (full screen breakout reviews) of the possibility of procuring on a competitive basis certain aeronautical spare parts. TSC alleges that the awards were improperly made on the basis of initial proposals, without affording offerors an opportunity to submit best and final offers, and under

B-214634

evaluation criteria other than those set forth in the solicitation. TSC also challenges the technical evaluation of the proposals and the cost-versus-technical tradeoff made by the Navy. We deny the protest.

The solicitation required the contractor selected by the Navy to provide a full screen breakout review for aeronautical spare parts selected by the Navy's Aviation Supply Office (ASO). Full screen reviews, as described in the solicitation, include a determination as to whether the available technical data on a spare part is sufficient to permit its competitive procurement, a determination as to the economic feasibility of completing an inadequate data package, the completion of the data package where practicable, and the consideration of the cost effectiveness of undertaking a breakout or competitive procurement of the part. In addition, the contractor was required to review the breakout screening procedures being used by ASO and to determine whether categories of items managed by ASO should be removed from competitive procurement.

The amended RFP divided the work to be performed into two lots. Each lot consisted of an anticipated level of effort of 49,244 man-hours of direct labor during a base period from the date of award through September 30, 1984, and a further 49,244 man-hours under an option to extend the contract an additional 12 months. Lot I was to be awarded on an unrestricted basis; Lot II was designated a 100-percent small business set-aside.

The solicitation provided that award would be made to that responsible offeror whose offer was most advantageous to the government, price and other factors considered. The RFP listed in descending order of relative importance Personnel Qualifications, Technical Approach, Management Approach and Corporate Experience as the criteria to be applied in evaluating the technical proposals. The precise numerical weight assigned to each evaluation criterion was not disclosed. As for cost, the solicitation indicated that:

"The evaluation of the contractor's costing/fee proposals shall be of secondary importance to the evaluation of technical

proposals in making the award under this solicitation.

"Although cost is of secondary importance, it is an important factor and should not be ignored. The degree of its importance will increase with the degree of equality of the proposal in relation to the other factors on which selection is based. . . ."

Under the evaluation scheme adopted by the Navy, proposals could receive a maximum of 80 points for technical factors, including 25 for the qualifications of the proposed personnel, 23 for the technical approach, 17 for the management approach, and 15 for corporate experience. An additional 20 points were assigned to cost.

The Navy received five proposals for Lot I and four for Lot II. Although TSC submitted proposals for each lot, as well as an alternate proposal for a combined award of both lots, and submitted resumes for personnel sufficient to perform the work under both, it failed to indicate which personnel would work on Lot I and which would work on Lot II. Accordingly, by letter of September 7, 1983, the contracting officer requested TSC, "[f]or the purposes of clarifying the technical proposal," to specify which personnel would be assigned to which lot. TSC was "required to respond" by February 8.

By letter of February 8, TSC designated the personnel among those for which it had submitted resumes which would be assigned, if TSC received a contract for either lot. TSC did not allocate its personnel between the two lots, but instead assigned the same personnel to Lot I as it assigned to Lot II. Nevertheless, the contracting officer determined that TSC should be allowed to assign the same personnel to both lots because a small business such as TSC might not be awarded Lot I, which was not a small business set-aside.

However, both TSC and DHD, which had likewise furnished the same resumes for Lot II as were furnished for Lot I, submitted alternate proposals based upon a combined

award of both lots. Accordingly, on February 14, the contracting officer wrote DHD and TSC to inform them that:

"In the event you desire to be considered for an award for both lots, it is required that you allocate your total number of personnel over Lots I and II. If you do not wish to be considered for award of both lots, then your proposals will be evaluated as submitted."

On the same day that the February 14 letter was made available for pickup by TSC and DHD, the Navy telephoned TSC to ask that it not respond to the letter yet. On the following day contracting officials called TSC to withdraw the letter, instructing TSC to ignore it and rebuffing TSC's attempt to explain its proposal. TSC was informed that "in order not to prejudice anyone" the question raised in the letter would be deferred until technical discussions. We understand that the letter to DHD also was withdrawn.

The Navy in fact found that it had insufficient time to conduct subsequent discussions with offerors. A goal of competing 25 percent of purchases made for the fiscal year ending September 30 had been established. As of February 24, ASO had a backlog of 5,850 full screen breakout reviews requiring completion prior to May 1, with an additional 5,500 required to be completed by September 30. Since the contract was expected to account for one-third of the total full screen reviews, the Navy determined that reaching the goals for competitive procurements would be seriously jeopardized if awards were not made by March 1. Accordingly, the Navy made award based upon an evaluation of the initial proposals.

As indicated below, DHD's proposals received the highest point scores for both lots while RCI's proposals received the second highest scores.

B-214634

Lot I:

<u>Contractor</u>	<u>Technical Points</u>		<u>Cost Points</u>	<u>Total</u>
	(Raw)	Normalized ^{1/}		
DHD	(76.80)	80.00	(\$3,079,643) 11.59	91.59
RCI	(70.66)	73.60	(\$2,111,030) 16.91	90.51
VSE, Inc.	(69.40)	72.29	(\$2,004,026) 17.81	90.10
TSC	(63.65)	66.30	(\$1,784,416) 20.00	86.30
Roosz-Allen & Hamilton	(65.84)	68.58	(\$3,370,333) 10.59	79.17

Lot II:

DHD	(76.80)	80.00	(\$3,079,643) 11.59	91.59
RCI	(70.64)	73.55	(\$2,111,030) 16.91	90.46
TSC	(63.73)	66.36	(\$1,784,416) 20.00	86.36

2/

After satisfying himself as to the reasonableness of the prices and costs proposed by DHD and determining that the greater cost of its proposal reflected a technical superiority which would likely result in offsetting cost savings, the contracting officer made award to DHD for Lot I. Since DHD proposed to use the same personnel for Lot II as were proposed for Lot I, and since the urgency of the procurement precluded further negotiations, the contracting officer determined that DHD's proposal for Lot II was no longer acceptable and accordingly made award to RCI for that lot. TSC thereupon filed this protest with our Office.

^{1/} Scores are "normalized" by giving the highest ranked proposal in an area the maximum number of points available in that area and the other proposals a fraction of the maximum score for each area in the same proportion as to the offers' raw scores. See SETAC, Inc., 62 Comp. Gen. 577 (1983), 83-2 C.P.D. ¶ 121.

^{2/} A fourth proposal for Lot II was found technically unacceptable.

Failure to Request Best and Final Offers

TSC characterizes the information requested in the Navy's February 7 and 14 letters as essential to any determination of the acceptability of TSC's proposals. It contends that substantive written and oral discussions occurred between the Navy and TSC and that the Navy's subsequent failure to request best and final offers and the making of award on the basis of initial proposals was, given such discussions, therefore improper.

Award may be made on the basis of initial proposals, without discussions, where it can be clearly demonstrated from the existence of adequate competition that acceptance of the most favorable initial proposal without discussions would result in a fair and reasonable price, provided that the solicitation advises offerors of the possibility that award might be made without discussions, and provided that award is in fact made without discussions. Discussions occur if an offeror is afforded an opportunity to revise or modify its proposal or when the information requested and provided is essential for determining the acceptability of the proposal. Clarifications are inquiries to eliminate minor uncertainties or irregularities. While an agency may request "clarifications" when award is made on the basis of initial proposals, when it conducts "discussions" it must afford all offerors in the competitive range the opportunity to submit revised proposals. See Emerson Electric Co., B-213382, Feb. 23, 1984, 84-1 C.P.D. ¶ 233; see also Alchemy, Inc., B-207338, June 8, 1983, 83-1 C.P.D. ¶ 621 (discussions versus clarifications); Defense Acquisition Regulation (DAR) § 3-805.1, reprinted in 32 C.F.R. pts. 1-39 (1983).

We note that although contracting officials characterized the information they were seeking in the February 7 letter as merely a clarification of TSC's proposals, the Navy admits that the contracting officer now believes that TSC was given an opportunity to revise its proposals and that, therefore, the letter and TSC's response could be viewed as constituting discussions. Nevertheless, whether discussions or clarification then occurred, we fail to see how TSC suffered any competitive prejudice from the

B-214634

Navy's action. Cf. Lou Ana Foods, Inc., B-209540, Mar. 21, 1983, 83-1 C.P.D. ¶ 278; ABA Electromechanical Systems, Inc., B-188735, Nov. 28, 1977, 77-2 C.P.D. ¶ 411. The solicitation required offerors to submit resumes of the personnel with which they intended to perform the contract. Offerors were instructed to detail the experience and availability of the personnel and to identify the solicitation requirement to which they related. By identifying which employees would work on which lot, TSC did no more than address the requirements of the solicitation.

As for the February 14 letters, the Navy withdrew its request for information before TSC and DHD had an opportunity to respond and contracting officials thereafter rebuffed TSC's attempt to supply the information. Further, not only do we question whether discussions occurred in these circumstances, but, even if the Navy had considered the information TSC had attempted to convey, we again see no prejudice to TSC. The urgency of the procurement prevented consideration of TSC's alternate proposal, in regards to which the information had been requested.

Selection of Evaluation Criteria

TSC argues that, given the type of work required, contracting officials abused their discretion in assigning only 20 percent of the available evaluation points to cost.

Selection officials are relatively free to determine the manner in which proposals will be evaluated so long as the method chosen provides a rational basis for any source selection and the actual evaluation comports with the established evaluation criteria stated in the solicitation. SETAC, Inc., supra, 62 Comp. Gen. at 586, 83-2 C.P.D. ¶ 121 at 9-10. TSC has failed to show that the Navy lacked a rational basis for considering technical factors to be four times as important as cost indicated above. The Navy has concluded that the higher cost of a technically superior proposal can be more than offset by the increased savings to be realized from award on that proposal since the increased level of production and higher quality of reviews expected from a technically

superior offeror would likely lead to a larger number of cost-saving competitive procurements.

Disclosure of Evaluation Criteria

TSC alleges that contracting officials in their evaluation of proposals considered evaluation criteria other than those set forth in the solicitation.

The RFP listed "Personnel Qualifications" among the evaluation criteria and required in this regard that technical proposals address:

"Experience: The degree to which the experience cited in the resumes submitted satisfy the minimum experience identified in Section C for the two levels of Equipment Specialists and Engineers to be made available.

"Initial Availability: The contractor should have available sufficient Equipment Specialist and Engineer personnel who are qualified to perform the task at the time of contract award."

The evaluation submitted by the technical evaluation team indicated that:

"the major grading differences were in the critical areas of personnel experience and availability . . . Personnel experience was rated based on SOW [statement of work] minimum requirements including direct breakout and Inventory Control Point (ICP) experience. In addition to educational requirements and a general technical background, it is essential that direct breakout and/or ICP experience be documented for a grade of excellent. Due to the size, scope and short duration of the contract, a grade of excellent for personnel availability equates to fully qualified personnel documented to be available at time of

contract award. Personnel meeting minimum SOW requirements, but with little breakout/ICP experience were not considered fully 'qualified to perform' and could not be rated as excellent."

DHD's technical proposals were rated as excellent in regards to the qualifications of the personnel it proposed and received the maximum of 25 evaluation points for this category. RCI's proposals were considered "good" in this regard and received 19.16 points.

On the other hand, although TSC's proposals were rated as "excellent" in regards to technical approach, management approach and corporate experience, the qualifications of the personnel it proposed were described as only "average" and its proposals given only 11.25 points for this category. The evaluation team explained that its evaluation was based upon two factors:

"(a) Personnel Experience - Average

TSC personnel are rated as average because 50 percent of the junior equipment specialists lack direct breakout experience. Additionally, none of the onsite management or supervisory personnel have ICP experience and breakout experience is rare. The four commodity managers (excellent organization) lack breakout experience, and although very qualified supervisors and technicians, they will need much training in order to be effective and innovative in the breakout arena. The majority of the senior ES's [equipment specialists] are rated good or excellent.

"(b) Personnel Availability - Average

It is extremely difficult to tell when the TSC people will be available for work. The management staff and key personnel should be available immediately but full operations may take three weeks. With the lack of direct ICP and or breakout experience this workforce will not be qualified to perform the task at the beginning of the contract as directed in the SOW."

TSC argues that consideration of its breakout experience was improper because that subfactor was not mentioned in the solicitation.

While agencies are required to identify the major evaluation factors applicable to a procurement, they need not explicitly identify the various aspects of each which may be taken into account, provided that such aspects are reasonably related to the stated criteria. See Information Management, Inc., B-212358, Jan. 17, 1984, 84-1 C.P.D. ¶ 76. The solicitation listed personnel qualifications as an evaluation criterion and requested offerors to submit in this regard information concerning the experience of the personnel with which they proposed to perform breakout reviews. Whether that experience was in performing breakout reviews, the very object of the procurement, was reasonably related to the experience and qualifications of the personnel proposed and thus properly considered by the Navy. United Food Services, Inc., B-211117, Oct. 24, 1983, 83-2 C.P.D. ¶ 476; Genasys Corp., 56 Comp. Gen. 835 (1977), 77-2 C.P.D. ¶ 60.

TSC likewise argues that consideration of Inventory Control Point (ICP) experience was improper since ICP experience was not listed as an evaluation criterion.

The Navy indicates that the phrase as used by the evaluation team referred to "experience relatable to data review for the type of material ASO buys (as an Inventory Control Point)" The solicitation identifies the type of material for which ASO will request breakout reviews. Whether the experience of the proposed personnel related to data review for such material was reasonably related to the stated evaluation criteria and thus properly considered by the Navy.

TSC further contends that the solicitation failed to inform potential offerors of the true relationship between cost and technical factors, arguing that describing cost as "an important factor . . . [which] should not be ignored" was misleading when the Navy had in fact only assigned 20 percent of the available evaluation points to cost and when 25 percent of the available points were assigned to personnel qualifications, only one of several technical factors.

Although a solicitation must advise offerors of the broad scheme of scoring to be employed and give reasonably definite information concerning the relative importance of the evaluation factors, the precise numerical weight to be used in evaluation need not be disclosed. See Bendix Corp., B-208184, Sept. 16, 1983, 83-2 C.P.D. ¶ 332. Here, the solicitation indicated the relative importance of the evaluation factors by listing the technical factors in descending order of relative importance and by indicating that cost was of secondary importance to the technical factors. As for the warning that cost was an important factor which should not be ignored, 20 percent is a significant percentage, and such a warning cannot reasonably be interpreted as a representation that cost will necessarily be allocated more than 20 percent of the available points where the solicitation also cautioned that cost was of secondary importance. Further, we are aware of no requirement that under these circumstances the solicitation must reveal the relative weight accorded cost vis-a-vis each individual technical factor, as opposed to merely informing offerors of its relative weight vis-a-vis the technical factors as a whole.

Application of Evaluation Criteria

Not only does TSC challenge the Navy's selection and the adequacy of its disclosure of evaluation criteria, it also challenges the application of those criteria.

TSC initially objects to the technical evaluation team penalizing TSC's technical proposals for allegedly not indicating that personnel would be immediately available upon award of the contract. TSC denies that the solicitation imposed any requirement that all of TSC's proposed personnel be available on the first day of the contract, pointing to the language in paragraph L-1281, "STAFFING LEVELS," of the solicitation which warns that:

"It is understood and agreed that the rate of manhours per month may fluctuate in pursuit of ASO's technical objective provided such fluctuation does not result in the utilization of the total manhours of effort prior to

the expiration of the term hereof. All personnel may not be required for actual performance for months after award of contract. The Government will not reimburse the contractor for any personnel until such personnel are actually performing under this contract."

TSC also indicates that it was informed by contracting officials that the government would only reimburse the contractor for personnel effectively and productively employed. TSC interprets the above as recognition that all of the proposed personnel could not be effectively employed on the first day of the contract period.

TSC finds corroboration for that conclusion in paragraph No. 4.0, "Work Site," which, as amended, provides that:

"This contract shall be performed within (15) fifteen miles of the Aviation Supply Office Compound. If the contractor is required to lease a facility within this area, rental costs shall be reimbursed in accordance with DAR 15-205.34."

TSC contends that this provision clearly envisions the possibility that an awardee might have to lease new facilities in order to comply and maintains that "it would be completely irrational to employ a total work force prior to establishment of a work site."

In any case, argues TSC, it in fact satisfied any requirement for immediate availability since it submitted resumes indicating that the proposed employees were immediately available.

The Navy, on the other hand, cites the description of initial availability in the solicitation, that the "contractor should have available sufficient . . . personnel . . . to perform the task at the time of contract award," as evidence that the solicitation required the contractor to have his workforce available and ready to

work on the first day of the contract. The Navy explains that TSC's proposals were penalized for failing to meet this requirement because TSC proposed a 30-day startup or phase-in plan according to which TSC would only be ready "to accept initial data packages at the beginning of the third week after contract award" and the proposed buildup of personnel would continue into the fourth week after contract award.

The solicitation clearly stated that the contractor should have available at the time of contract award the personnel to perform the work required under the solicitation--i.e., to accept data relevant to certain spare parts selected by ASO and to review the possibility of procuring such parts competitively. We agree with the Navy in viewing clause L-1281 as merely a warning that the government would only pay the contractor for personnel productively employed and not as releasing the contractor from the requirement of immediate availability. In effect, the Navy required the contractor to bear the risk of any fluctuations in the Navy's needs, forcing the contractor to have available sufficient personnel to meet peak demand on day one of the contract, but denying the contractor reimbursement if such personnel were in fact not needed.

In reviewing an agency's technical evaluation, we will not evaluate the proposal de novo, but will instead only examine the evaluation to ensure that it had a reasonable basis. In addition, the protester bears the burden of showing that the agency's evaluation was unreasonable. Essex Electro Engineers, Inc.; ACL-Filco Corp., B-211053.2, B-211053.3, Jan. 17, 1984, 84-1 C.P.D. ¶ 74.

TSC has failed to demonstrate that the Navy was unreasonable in determining that TSC's proposal did not meet the requirement of immediate availability as defined in the solicitation. While the personnel proposed by TSC may have been immediately available to TSC, as indicated on the resumes, nothing in TSC's proposal indicates that they were available at the time of contract award immediately to begin data reviews. On the contrary, under TSC's proposed startup plan, TSC would begin to accept data packages only at the beginning of the third week after award.

TSC further objects to the Navy's evaluation of proposals on the ground that alleged discrepancies between the technical evaluation team's narrative descriptions of the proposals and the resulting point scores for those proposals demonstrate unacceptable prejudice against TSC. In particular, TSC objects to assigning RCI 19.16 points for personnel qualifications even though RCI's proposal was criticized by the evaluation team for proposing too few junior personnel, thus raising the possibility that overtime might be required, and for proposing to fill two engineer positions with nonengineers. TSC contrasts the 19.16 points assigned to RCI in this regard with the 11.25 points received by TSC. TSC also alleges that it was unfair to assign 12.5 points to DHD for corporate experience when the evaluation team found that DHD lacked direct corporate experience in breakout analysis and when TSC, which the team considered to have excellent corporate experience and which claims to have extensive corporate breakout experience, only received 15 points.

The protester has the burden of proving bias, and unfair or prejudicial motives will not be attributed to procurement officials on the basis of inference or supposition. See Martin-Miser Associates, B-208147, Apr. 8, 1983, 83-1 C.P.D. ¶ 373.

TSC has failed to demonstrate that the point scores given for the qualifications of the proposed personnel were biased or even without a reasonable basis. It would appear that in assigning a score to RCI's proposal for personnel qualifications, the technical evaluation team in fact took into account the deficiencies which were identified in the narrative portion of the evaluation and cited by TSC. RCI received only 19.16 of 25 points available in this regard even though the evaluation team otherwise found 70 percent of RCI's proposed personnel to be excellent and found the initial availability proposed by RCI to be excellent. That TSC received only 11.25 points appears to reflect the evaluation team's reasonable conclusion that the lack of direct breakout experience in the personnel proposed by TSC and TSC's unwillingness or inability to begin breakout reviews until the third week after the contract were serious deficiencies in a procurement to meet an urgent requirement.

As for the points assigned for corporate experience, TSC received the maximum number of points available while DHD received 16.7 percent less because of its perceived lack of direct breakout experience. The technical evaluation team explained the amount of the penalty as resulting from the team's conclusion that although DHD lacked direct breakout experience, this deficiency would be offset by the value of DHD's excellent automatic data processing (ADP) experience in performing the data evaluation required under the contract. Moreover, the evaluation report also indicated in regards to DHD's "Corporation Qualification," a subcriterion under management approach, that the personnel proposed by DHD, which were rated as "excellent in direct experience," would compensate for some of DHD's corporate inexperience.

Although TSC contests the relevance of this experience, we need not resolve the dispute since the Navy now indicates that the statement in the evaluation report that DHD lacked direct breakout experience was erroneous. DHD in fact stated in its proposals that under a contract with the Naval Air Systems Command:

"Life Cycle cost analysis, cost comparative analysis, source qualification, reverse engineering and specification development were performed [by DHD] as part of the Breakout function that was required in this contract."

Accordingly, any mistakes in the Navy's evaluation of corporate experience cannot be said to have resulted, on balance, in net competitive prejudice to TSC. See Martin-Miser Associates, B-208147, supra, 83-1 C.P.D. ¶ 373 at 11; see also Lou Ana Foods, Inc., B-209540, supra, 83-1 C.P.D. ¶ 278 at 3.

Cost-Technical Tradeoff

TSC objects to the tradeoff made by the Navy between cost and technical factors. It alleges that TSC's technical proposals were essentially equal to those submitted by DHD and that DHD proposed an unreasonably high

B-214634

price. Accordingly, concludes TSC, award on Lot I should have been made on the basis of TSC's lower priced proposal.

The solicitation, in describing the relative importance of cost vis-a-vis the technical factors, in effect notified offerors that the agency had predetermined the tradeoff between technical merit and price. Therefore, under these circumstances, the point scores were to be controlling unless source selection officials determined that, notwithstanding a difference in the technical scores of the proposals, there was no significant difference in their technical merit, in which event price would have become the deciding factor. Cf. Eaton-Kenway, B-212575.2, June 20, 1984, 84-1 C.P.D. ¶ 649 (solicitation listed evaluation criteria in relative order of importance and advised that award would be made on a numerical formula). Here, contracting officials found that DHD's higher technical scores, approximately 13 points, or over 20 percent, higher than TSC's raw technical scores, reflected a significant technical superiority. Given the previously discussed deficiencies in TSC's proposals, we do not believe that TSC has demonstrated that contracting officials abused their discretion in finding a significant technical difference between TSC's and DHD's proposals. See Sperry Flight Systems, B-212229, Jan. 19, 1984, 84-1 C.P.D. ¶ 82.

Other Allegations

TSC maintains that the Navy's disregard for proper procedures is further evidenced by the Navy's failure to give unsuccessful offerors 5 working days prior to award in which to challenge the size status of the apparent successful offeror for Lot II, the small business set-aside, and by the Navy's failure to submit the administrative report responding to this protest in a timely manner.

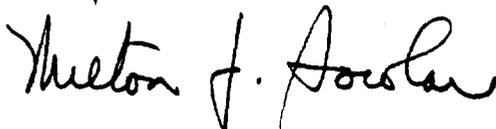
While a contracting officer generally should not make award prior to the deadline for submitting a size status protest set forth in the notice to unsuccessful offerors, a deadline which usually should be 5 working days plus a reasonable time for the notice to reach the unsuccessful offerors, nevertheless, award may be made before such time

B-214634

where the contracting officer determines in writing that award must be made without delay in order to protect the public interest. DAR, §§ 1-703(b)(1) and 1-703(b). The contracting officer here made such a determination. In any case, TSC has not alleged that RCI was other than a small business and thus that TSC suffered identifiable competitive prejudice from the agency's actions.

As for the agency's failure to submit an administrative report in a timely manner, we note that although we request agencies to submit a complete report to our Office as expeditiously as possible, generally within 25 working days, 4 C.F.R. § 21.2(c) (1984), failure to do so has no bearing on the validity of an otherwise proper award. See Creative Electric Inc., B-206684, July 15, 1983, 83-2 C.P.D. ¶ 95.

The protest is denied.

for 
Comptroller General
of the United States