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DECISION

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

FILE: B-216878 **DATE:** April 12, 1985

MATTER OF: AFL-CIO Appalachian Council, Inc.

DIGEST:

1. Protester's contentions that contracting officer provided awardee with improper financial assistance by awarding sole-source contracts to other contractors to do part of screening for which contract had been awarded and that awardee is receiving improper advance payments are not substantiated by the record.

2. Contracting officer did not treat offerors unequally by requesting a copy of a preaward audit performed in connection with a proposal submitted by the protester in another procurement while declining to require a preaward audit of the awardee. In any event, the regulations permit a contracting officer to require a preaward audit of one proposal while waiving the requirement with regard to another.

3. Agency requirement that contracting officer's selection of an awardee be reviewed at a higher level is proper.

4. Awardee's failure to perform up to the required level under the contract does not necessarily indicate that agency improperly evaluated the realism of awardee's price.

AFL-CIO Appalachian Council, Inc., protests the award to Women in Community Service, Inc. (WICS), of a contract for outreach screening services under request for proposals (RFP) No. 5-JC-912-05 issued by the Department of Labor, Office of Job Corps, Chicago, Illinois. The protester contends that the Job Corps provided the awardee with improper financial assistance, made improper loans to the awardee, and treated the two offerors in the competitive

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range unequally in declining to require a preaward audit of WICS. The protester also maintains that the agency's national office exercised improper influence over the contracting officer's selection of WICS. We deny the protest.

The Job Corps received three proposals in response to the RFP for screening services for the period of October 1, 1984, to September 30, 1985. After receipt of the best and final offers, the Job Corps scored the final proposals from the two offerors remaining in the competitive range as follows:

	Technical score	Unit price	Total price
AFL-CIO	94.1	$220	$564,225
WICS	91.2	203	519,594

The Job Corps selected AFL-CIO, the higher priced offeror, for award. In reaching this conclusion, the Job Corps noted AFL-CIO's satisfactory past performance record and stated that while WICS was a responsible offeror, it may not have the capacity to perform because of its other contracts with the Job Corps. This determination was submitted for approval to Labor's Employment and Training Administration (ETA) National Office. ETA returned the determination to the Job Corps, noting that it contained contradictory conclusions regarding WICS's responsibility and its capacity to perform and instructing the Job Corps to make its award selection on a sound and rational basis. the Job Corps reevaluated its selection based on ETA's advice and reversed its decision. The Job Corps chose WICS because it concluded that WICS was a responsible offeror, its offer was substantially equal to that of AFL-CIO, and priced lower.

AFL-CIO contends that the Job Corps provided improper financial assistance to WICS by proposing to let three $25,000 sole-source contracts to other contractors to do part of WICS's required screening work. AFL-CIO contends that this "bailing out" of WICS shows that the agency improperly concluded that WICS's price and financial capacity were adequate to perform the contract and gave WICS an unfair price advantage.

The agency states that while it considered adding funds on an interim basis to several existing contracts for the screening services because the delay in awarding the contract to WICS allowed that firm almost no startup time, it did not do so. In any event, even if the agency had decided to supplement other recruitment efforts to compensate for the late award date and lack of transition period, this would not have shown, in our view, that the selection of WICS was in any way improper.

AFL-CIO next contends that WICS is receiving improper advance payments under the contract. The protester argues that WICS's failure to indicate a need for advance payments in the statement of financial capacity submitted with its offer constituted a failure to disclose critical information as to WICS's ability to perform that directly related to the selection process. Although WICS requested advance payments on all three of its Job Corps contracts, including the contract which is the subject of this protest, the agency reports that it has not provided advance payments under the subject contract since the solicitation did not contain a clause providing for advance payments. The fact that the agency has approved advance payments under another of WICS's contracts is irrelevant to the protest.

Further, AFL-CIO argues that the contracting officer treated the two offerors unequally by requesting a copy of a preaward audit performed on another AFL-CIO proposal submitted in a different Job Corps region while declining to require a preaward audit of WICS's proposal. The agency points out that the contracting officer waived preaward audits for both offerors, pursuant to the Federal Acquisition Regulation (FAR), 48 C.F.R. § 15.805-5(a)(1) (1984). The agency did consider certain data in the existing audit on the other AFL-CIO proposal. We do not think that is equivalent to requesting a preaward audit. Even if the agency had waived the audit for WICS, but not for the protester, that fact by itself does not show that the agency acted improperly. The purpose of a preaward audit is to provide the contracting officer with information sufficient to permit a determination of the reasonableness of the proposed cost or price. FAR, § 15.805-5. A preaward audit may be waived if the contracting officer already has available to him adequate data on which to

base such a determination. Since the contracting officer could have sufficient information available to assess the reasonableness of one proposal while lacking adequate information to assess the reasonableness of another, it would not be improper for a contracting officer to require a preaward audit of one proposal, but not of another.

AFL-CIO next argues that if a preaward audit had been performed on WICS, that firm's lack of financial capacity would have been discovered. An offeror's financial capacity is addressed in a preaward survey, rather than a preaward audit. The purpose of a preaward survey is to gather information upon which to base a determination of responsibility, FAR, § 9.106-1, whereas the purpose of a preaward audit is, as we have noted, to provide information sufficient to permit a determination of the reasonableness of the proposed cost or price. FAR, § 15.805-5. Since the considerations set forth by AFL-CIO relate to WICS's financial ability to perform, matters relating to responsibility, and not to the reasonableness of its proposed price, they would not have been addressed in a preaward audit.

AFL-CIO maintains that ETA's National Office exercised improper influence over the contracting officer by rejecting his selection of AFL-CIO and requiring that he instead make award to WICS. The protester regards any requirement that the contracting officer's selection be reviewed at a higher level to be improper. Further, AFL-CIO maintains that since the final award selection was based solely on price, it cannot be justified. The record shows that ETA did not instruct the contracting officer to make award to WICS. Rather, it found the contracting officer's selection memorandum to be technically deficient in that it stated that WICS was a responsible offeror, but based the award to AFL-CIO on the ground that WICS lacked the capacity to perform the work. ETA instructed the contracting officer to revise his memorandum to reflect "a rational and technically sufficient basis for selecting whichever offeror [he chose]." In any event, we see nothing improper in the agency's requirement that the proposed award selection be reviewed by higher agency officials. Agency officials' authority to direct and supervise all agency functions necessarily encompasses the procurement operations,

including the evaluation of proposals and the award of contracts, of lower echelon agency components. Bank Street College of Education, B-213209, June 8, 1984, 84-1 CPD ¶ 607. Further, we do not agree with the protester that the final selection based on price was improper. Where, as here, the agency concludes that proposals are essentially equal technically, price may become the determinative consideration in making an award notwithstanding that, in the overall evaluation scheme, price was not an important factor. The Singer Company, B-211857; B-211857.2, Feb. 13, 1984, 84-1 CPD ¶ 177.

Finally, the protester contends that WICS is not performing up to the required level under the contract and this shows that the agency did not properly evaluate the reasonableness or realism of WICS's price as required by the solicitation. The agency's price analysts concluded that WICS's price was adequate to perform the contract. Such realism determinations are necessarily judgmental and, unless they are clearly unreasonable, we will not object to them. Ocean Data Equipment Division of Data Instruments, Inc., B-209776, Sept. 29, 1983, 83-2 CPD ¶ 387. Such determinations are based on the information available at the time of the evaluation and the fact that problems may arise during contract performance does not necessarily indicate that the price evaluation was not done properly.

The protester has made no showing that the agency's selection of WICS was unreasonable and we deny the protest.

for Seymour Efros
Harry R. Van Cleve
General Counsel