

# DECISION



## THE COMPTROLLER GENERAL OF THE UNITED STATES

WASHINGTON, D. C. 20548

FILE: B-220050 DATE: January 9, 1986  
MATTER OF: Consolidated Group

### DIGEST:

1. Source selection official has the ultimate responsibility for determining what, if any, significance to attach to the technical and cost scores given offers by the source evaluation board. Source selection official properly could decide to disregard scores and base award selection on review of record.
2. Decision of source selection official to award contract to a higher cost, technically superior offeror is not objectionable where award on that basis is consistent with the RFP's evaluation criteria and the source selection official adopted the source evaluation board's determination that the higher cost was justified because awardee's proposed approach of strong, centralized management overseeing numerous local subcontractors entailed less performance risk than protester's proposed approach of using large specialized subcontractors managed by new, untried organization.
3. List of proposed subcontractors required by solicitation was not intended for evaluation purposes, but related to contract administration and the offeror's responsibility, that is, its ability to perform. Therefore, agency evaluators were not required to downgrade proposal for failure to list subcontractors.
4. Protest allegation that agency evaluators failed to downgrade proposal because firm does not have necessary experience required by solicitation is denied. Solicitation provision which required that "[t]he offeror's [stated] competence and experience . . . demonstrate his ability to handle general merchandise plus one of the three categories of conveyances: vehicles, aircraft, or watercraft" merely

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required that the offeror's competence and experience as stated in its technical proposal show its capability to perform specified work, and agency evaluators determined that offeror had such capability.

5. Protest that technical score was reduced in evaluation of revised best and final offer even though agency did not change technical requirements and offeror did not change its technical approach or capabilities from its initial proposal is rejected where revised best and final offer did not respond to perceived deficiencies regarding personnel and capability, and agency evaluation of these issues was fair and reasonable and consistent with evaluation criteria.
6. Protest that certain cost assumptions in evaluating offerors' cost proposals unfairly narrowed margin between protester's and awardee's cost score is rejected where the agency evaluators presented a reasonable basis for their use of these cost assumptions and, in fact, protester was not adversely affected by use of these assumptions.
7. Where protester raises new ground of protest in its comments to the agency report and the ground was known more than 10 working days prior to the submission of the comments, the new ground of protest is untimely and will not be considered.

Consolidated Group (Consolidated) protests the award of a contract to Northrop Worldwide Aircraft Services, Inc. (Northrop), under request for proposals (RFP) No. CS-85-34 for the management of seized and forfeited property handled by the United States Customs Service (Customs). Consolidated asserts that award by Customs to Northrop was unreasonable and not consistent with the evaluation criteria under the RFP and that award should have been made to Consolidated as the highest rated offeror.

We deny the protest in part and dismiss it in part.

The RFP solicited a cost-plus-award-fee contract. Offerors were to submit separate technical and business (cost) proposals containing information specified by the RFP. The RFP provided for award to the offeror which

"provides the quality/cost relationship that is the most advantageous to the government." The RFP identified three specific technical evaluation criteria and the listed maximum number of points a proposal could receive for each criteria, as follows: (1) understanding - 15 points; (2) capability - 35 points; and (3) approach - 30 points. In addition to the maximum of 80 points for technical factors, the RFP assigned 30 points as the maximum score a proposal could receive for cost.

The Source Evaluation Board (SEB) found four proposals to be in the competitive range. The initial technical ranking of these proposals was as follows: National Systems Management Corp. (National) (75.25 points), Consolidated (72.25 points), Boeing Services International, Inc. (Boeing) (70.50 points), and Northrop (67.25 points). The SEB then gave each firm in the competitive range the same list of questions concerning technical and business issues and had each firm make an oral presentation to the SEB. The SEB then reevaluated and rescored the proposals, but the technical rankings remained the same.

Customs requested best and final offers from the four firms. Offerors were instructed that business proposals in the best and final offers should be revised from a total cost basis to a unit cost for each work category and should respond to any issues which were noted in an audit conducted of each proposal by the agency.

All four firms submitted best and final offers. The best and final offers were reviewed by the SEB, and no changes occurred in the technical ratings. However, in the process of source selection, additional questions arose concerning each offeror's capability to perform. Consequently, negotiations were reopened in order to clarify specific points regarding corporate capabilities, use of subcontractors, qualifications of core management, and ability to accommodate changes in workload. Each firm made another oral presentation to the SEB regarding these issues and then submitted revised best and final offers.

The final numerical scoring for each offeror was as follows:

<u>Offeror</u>	<u>Technical Score</u>	<u>Cost Score</u>	<u>Total Score</u>
Consolidated	65.50	30.00	95.50
Northrop	67.00	24.60	91.60
Boeing	73.75	14.80	88.55
National	67.75	16.90	84.65

Despite the fact that Consolidated received the highest score, the SEB recommended to the source selection official that award be made to Northrop primarily because Northrop's proposed approach of strong, centralized management entailed less risk than Consolidated's proposed approach. The source selection official followed the recommendation of the SEB and selected Northrop for award.

#### SOURCE SELECTION OFFICIAL DECISION

Consolidated first asserts that the award to Northrop lacked a rational basis and was not consistent with the RFP award criteria. Consolidated argues that, since its offer received a higher score than any of the other offers, it was entitled to the award under the RFP. Consolidated points out that some discretion in selection would be permissible if the technical superiority of one offer warrants the additional cost but, since the Consolidated and Northrop offers were essentially equal technically, cost should be the determining factor and this would have resulted in award to Consolidated as the low cost offeror. It also asserts that the decision to award to Northrop because Northrop's offer entailed less risk involved consideration of a factor which was not included in the RFP as a basis for evaluation.

We have held that, as a general rule, our Office will defer to the source selection official's judgment. Bank Street College of Education, 63 Comp. Gen. 393 (1984), 84-1 C.P.D. ¶ 607. The selection decision and the manner in which such an official uses the results of the technical and cost evaluations and the extent, if any, to which one is

sacrificed for the other are governed only by the tests of rationality and consistency with established evaluation factors. InterAmerica Research Associates, Inc., B-219650, Dec. 21, 1985, 85-2 C.P.D. ¶ \_\_\_\_.

In considering protests such as this, we do not conduct a de novo review of the technical proposals or make an independent determination of their acceptability or relative merit. Cadillac Gage Co., B-209102, July 15, 1983, 83-2 C.P.D. ¶ 96. That is the function of the selection official who is to exercise informed judgment and sound discretion. Macmillan Oil Co., B-189725, Jan. 17, 1978, 78-1 C.P.D. ¶ 37. Our review is limited to examining whether the evaluation was fair and reasonable and consistent with the stated evaluation criteria. Cadillac Gage Co., B-209102, supra. We will question a selection official's determination concerning the technical merits of proposals only upon a clear showing of unreasonableness, abuse of discretion or violation of procurement statutes or regulations. Bank Street College of Education, supra. The fact that the protester disagrees with the selection official's conclusion does not itself render the evaluation unreasonable. Kaman Sciences Corp., B-190143, Feb. 10, 1978, 78-1 C.P.D. ¶ 117.

The thrust of Consolidated's protest in this regard is that the source selection official's decision to award to Northrop lacked a reasonable basis because the basis for the decision was not consistent with the stated evaluation criteria. We disagree with Consolidated and find that the award selection was reasonable and in accord with the stated award selection factors.

Initially, we note that Consolidated's reliance on the point scores as an indication of its alleged superiority is misplaced. Numerical point scores, when used for proposal evaluation, are useful as guides for intelligent decision-making. Unless a solicitation sets forth a precise numerical formula and provides that a contract will be awarded to the offeror whose proposal receives the highest number of points, award need not be made on that basis. Troy State University, B-212274.2, Aug. 15, 1984, 84-2 C.P.D. ¶ 182. Here, there was no such statement that the highest scored offeror would be awarded a contract. Offerors were specifically advised that:

"Although numerical ratings may be used as a guide in contractor selection, the right is reserved to select a contractor who may not have the highest numerical rating (technical and cost combined)."

Thus, while the numerical scores, of course, must be considered by the source selection official, the selection official ultimately decides what, if any, significance is to be given the scores.

With regard to the selection of Northrop for the award, we cannot say that the determination that Northrop's offer was technically superior and worth the additional cost was unreasonable or inconsistent with the RFP factors for award. The source selection official concurred with the SEB's conclusion that Northrop's offer was superior to Consolidated's because Northrop's offer involved less risk than Consolidated's offer. Customs reports that risk was a particular concern because, for the first time, Customs was attempting to establish overall management of seized property at the national level. Customs believed that, while property management on the national level has the potential for increased revenue, risk existed in this national-level approach by increasing the potential for large-scale fraud and abuse, amplification of errors, and inefficiencies in operations due to the expanded administrative overhead.

The SEB examined the offerors' proposed methods of approach in order to determine which approach would most likely reduce the risk of these potential problems occurring. The record supports the SEB view that Consolidated is a recently formed joint venture composed of two firms--one which has experience in the criminal justice system and the other which is a liquidator of general merchandise--that proposed to manage large, specialized subcontractors for particular items such as cars and art works for each area of operation. The SEB found that Northrop was a large firm with 28 years of experience in government contracting and it proposed to provide centralized management oversight. The SEB concluded that there would be less risk of administrative difficulties if the contract was performed by Northrop, a large, experienced contractor which offered strong, centralized management.

Consolidated states that there is no risk involved in contracting with Consolidated because the firm offered an alternative proposal under which it would run the project on a no cost basis, and it offered to post a performance bond of any amount to insure performance. It further states that there is actually more risk in contracting with Northrop because Northrop's proposed approach is similar to Customs' current approach which has lost money and Northrop has no experience in performing government contracts concerning property management. Consolidated notes that it has performed many property management contracts in the private sector.

Consolidated has not shown unreasonable the agency's finding that a strong, centralized management overseeing numerous subcontractors, such as that offered by Northrop, would reduce the risk involved in this new effort. Customs explains that a similar approach by Customs to that proposed by Northrop was not profitable because the management of seized property was not Customs' primary mission and its personnel were not suited for these duties. Customs further points out that a contractor having sole responsibility for these duties, on the other hand, could reasonably be expected to perform more efficiently and to be profitable using this approach.

Furthermore, the record indicates that Consolidated did not offer a no-risk, no-cost proposal. Consolidated's initial business proposal indicated that the total cost of its system for each option year would be at no cost and would result in a net profit for Customs. However, in Consolidated's subsequent modification prepared in response to the revised costing instructions, the only mention of a no-cost offer was in Consolidated's cover letter which stated that Consolidated proposes to perform at no cost and with the highest net profit to the government. Other than this statement, Consolidated's best and final offer does not contain a no-cost proposal and the cover letter to the best and final offer stated that the agency "should consider the old assumptions and/or costs to be superseded by the new." Thus, contrary to Consolidated's claim, there is no indication that Consolidated submitted an alternative no-cost proposal that the SEB should have considered. As to the performance bond offered by Consolidated, a performance bond merely guarantees that a firm will perform a contract and, if the contractor defaults and fails to complete the contract, that the surety will complete the contract or pay damages up to the limit of the bond. The bond does not provide any motivation to perform efficiently or economically and it does not guarantee against the other risks expressed by Customs. We also note that Consolidated has not shown that its more decentralized approach addresses concerns such as the potential for amplification of errors.

The selection of a contractor which can best perform a contract involves a choice between methods of operation and the acceptance of a certain level of risk. The agency has decided that it cannot afford the risk that Consolidated's method of operation poses, and Consolidated has not shown that the decision not to select Consolidated's proposal because it represented greater risk than Northrop's in this

particular procurement situation is unreasonable. See Laser Photonics, Inc., B-214356, Oct. 29, 1984, 84-2 C.P.D. ¶ 470.

We note that the use of the degree of risk to differentiate between proposals was not unreasonable since the element of risk is clearly related to the evaluation criteria of capability and approach. Under the criterion of capability, an "[o]fferor [was required to] demonstrate his ability to handle the magnitude and scope of the work involved," while under the criterion of approach, an "[o]fferor [was required to] indicate approach for carrying out the elements of this contract." While technical evaluations must be based on the stated evaluation criteria, the interpretation and application of such criteria often involve subjective judgments. Thus, we will not object to the use of evaluation factors not specifically stated in the RFP where they are reasonably related to the specified criteria. Our concern in considering an objection to the use of an evaluation factor not specifically stated in the RFP is whether it is so reasonably related to the specified criteria that the correlation is sufficient to put offerors on notice of the additional criteria to be applied. National Biomedical Research Foundation, B-208214, Sept. 23, 1983, 83-2 C.P.D. ¶ 363. Applying this standard, we find no basis for objecting to the evaluation of the risk of performance problems because the degree of risk present is clearly related to the approach used and the ability of the firm to perform the contract.

Finally, with regard to the selection official's decision, Consolidated is correct in stating that cost should be the determinative factor if two proposals are rated technically equal. However, it is permissible to award the contract to other than the lowest cost offeror if the RFP so provides and the source selection official's decision to do so is reasonable and consistent with the established evaluation scheme. Schneider, Inc., B-214746, Oct. 23, 1984, 84-2 C.P.D. ¶ 448. The RFP provided that:

"Cost will not be so controlling as to preclude award to an offeror whose costs of performance are higher if the technical superiority of the offer warrants the additional cost involved in the award of a contract to that offeror."

The source selection official agreed with the SEB recommendation that, despite Northrop's and Consolidated's having essentially equal technical scores, Northrop's proposal was, in fact, technically superior to Consolidated's due to the proposed method of approach. As discussed above, the record provides a rational basis for the decision that Northrop's proposal was technically superior. Accordingly, under the RFP, Customs was not required to award the contract to Consolidated as the lowest cost offeror.

#### TECHNICAL EVALUATION OF NORTHROP'S AND CONSOLIDATED'S PROPOSALS

Consolidated asserts that Northrop should have been downgraded in certain areas and that Consolidated was improperly downgraded in other areas and, consequently, its proposal should have been regarded as technically superior to Northrop's. In this connection, Consolidated states that Northrop's proposal should have been downgraded because Northrop failed to list its proposed subcontractors as required by the RFP and because Northrop's only relevant experience is managing aircraft, which is only 1 percent of the Customs inventory.

With regard to the requirement to list subcontractors, the solicitation referred to subcontractors twice. First, in a section entitled "Contract Administration Data," the solicitation provided that the offeror's proposal shall identify all subcontracts/consultant arrangements proposed for this effort. This obviously relates to contract administration and, generally, such information need not be provided until after the contract is awarded. Second, in the section entitled "Instructions, Conditions, and Notices to Offerors," the solicitation specified information required for proposed subcontracts. However, a list of subcontractors was not required in the section entitled "Evaluation Factors for Award," nor were subcontracts discussed in those parts of the instructions section which advised offerors what to include in their technical and business proposals. Thus, in our view, the solicitation did not require subcontractor information for purposes of

evaluation, but rather solicited the information for reviewing the manner in which an offeror proposed to perform and would actually perform, which are matters of responsibility and contract administration, respectively. See Linde Construction, B-206442, Mar. 17, 1983, 83-1 C.P.D. ¶ 271. Under these circumstances, the agency did not act improperly in not downgrading Northrop for failing to list its subcontractors. Furthermore, we note that the SEB recognized that Northrop did not list its proposed subcontractors. The SEB was satisfied by the firm's plan to initially utilize contractors currently providing services to Customs, if they could meet standards established by Northrop and had a record of satisfactory past performance, and to later consolidate its subcontract operations to the extent economically feasible.

As to Northrop's alleged lack of relevant experience, Consolidated points to the solicitation requirement that in the technical proposal "[t]he offeror's competence and experience will demonstrate his ability to handle general merchandise plus one of the three categories of conveyances: vehicles, aircraft or watercraft" and argues that this provision established a threshold requirement of experience which Northrop failed to meet because it has no experience in general merchandise. Consolidated, however, has misinterpreted this solicitation provision. This provision does not require previous experience in handling general merchandise; it merely requires that the offeror demonstrate that its competence and experience, which apparently may be in personal property management and/or other areas, will enable it to handle general merchandise plus one of the three listed categories of conveyances. The agency evaluators determined that Northrop is able to handle general merchandise and at least one of the listed categories, and Consolidated has not shown that this was an unreasonable determination. Thus, we find that Northrop's proposal was evaluated reasonably and in accordance with the evaluation criteria.

Consolidated also asserts that its technical proposal was improperly downgraded. First, it states that its technical score was reduced from its initial point score on the basis of its revised best and final offer even though the agency did not change the original technical requirements or the scope of work and Consolidated did not change its technical approach or capabilities or present any new

information in its revised best and final offer. Consolidated argues that the reasons given for reducing its technical score were not rationally related to the evaluation criteria or its project organization or design.

Initially, the fact that a proposal is downgraded during the evaluation process is not improper even though the concerns brought out in the final evaluation of the protester's proposal existed in its initial proposal. The evaluators apparently expected that in presentations and revisions, Consolidated would remedy the deficiencies in its proposal; however, in the evaluators' view, Consolidated did not correct its deficiencies. See C.D. Systems, Inc., B-217067, Apr. 5, 1985, 85-1 C.P.D. ¶ 396. As long as the agency evaluation was fair and reasonable and consistent with the evaluation criteria, we will not substitute our judgment for the agency's finding that Consolidated's proposal was less acceptable than it was when initially evaluated. Electronic Data Systems Federal Corp., B-207311, Mar. 16, 1983, 83-1 C.P.D. ¶ 264.

The reductions in Consolidated's technical score were in the criterion of capability, primarily for the firm's failure to propose a definite replacement for project manager for operations and the firm's failure to adequately answer questions relating to managerial, capability and operational skills in its revised best and final offer. As to the project manager, Consolidated states that its proposed manager would be available to perform the contract and that it offered to present backup candidates to the SEB for every managerial position. However, Consolidated never presented a definite replacement whose credentials the evaluators could examine to assure themselves that Consolidated could capably perform the contract in the event the proposed manager was not available. On this record, Customs' concern was reasonable since the project manager is the most significant position in terms of overall daily operational responsibility, and the proposed project manager was offered another position during the evaluation process and, therefore, it was entirely possible that he would not be available to perform the contract for Consolidated.

The other basis for downgrading Consolidated's technical score was Consolidated's failure to adequately answer questions relating to capability. We think the record reasonably supports the agency's finding that Consolidated's final offer did not adequately address the

agency's concern regarding Consolidated's capability. The SEB examined the capabilities of the joint venture and of the proposed personnel to provide successful personal property management.

As to general capability, the SEB concluded that Consolidated failed to satisfactorily present itself as one entity that Customs could deal with on all aspects of the project. The record indicates that the evaluators considered this a major problem because Consolidated as a newly formed organization did not have a performance record and, therefore, its capability was unknown and that only one member of the joint venture had any experience in personal property management. The record further indicates that the evaluators were concerned that Consolidated was to be managed by a variety of committees, but the relationships and accountability of these committees were not clearly stated, and that Consolidated did not present evidence that its organization has proven, institutionalized management systems for directing, organizing, staffing, and controlling the project. These factors led to the conclusion that the overall organization did not demonstrate prior experience in personal property management as an organization. The evaluation documents also indicate that the committees and project staff assembled by Consolidated largely included individuals who had never worked together.

With regard to individual experience, the evaluators found that more than half of the personnel offered did not have directly related experience and that those with experience were to serve on management committees and not in management roles on the project staff. In its final presentation, Consolidated did not present any additional information which changed these judgments and, thus, for these reasons, Consolidated's capability score was reduced.

Consolidated contends that the alleged problems in its logistics and management do not exist and that, in previous stages of the evaluation process, it had answered all of the questions raised by the SEB. It stresses that, as a joint venture, its capability must be evaluated as an entity and, as an entity, it has the required capabilities. Consolidated acknowledges that one member of its joint venture does not have experience in personal property management, but points out that its other member is vastly experienced. It also contends that the members of its committees are qualified and the relationship between its committees and the lines of authority is clear and that these committees cover usual corporate functions.

The SEB considered the fact that Consolidated is a joint venture and the experience of its member organizations. However, in assessing the general capabilities of the offeror, the SEB examined not only the components of the joint venture, but also the entity itself: its organization and staff. The SEB found, for example, that none of the individuals filling the four key positions on the project staff were experienced in personal property management. In this connection, the SEB specifically noted that if Consolidated's proposed project staff had offered more personnel from the experienced member of the joint venture in key positions, the evaluation of the firm's capability would have been different. Thus, the SEB did consider Consolidated as a joint venture, and its evaluation of the capability of the firm and its individual personnel has not been shown to be unreasonable.

Despite the fact that the SEB had originally rated Consolidated's proposal highly, the failure of the firm to provide a definite replacement for the project manager and to adequately address certain managerial issues raised in discussions provided a reasonable basis for finding the proposal less acceptable than when it was originally considered.

Consolidated also complains that the change in cost proposal instructions adversely affected its rating. It states that the change, in addition to comparing proposals on a unit-cost basis instead of on a total-cost basis, instructed offerors to use certain cost assumptions in preparing these proposals. Consolidated asserts that the assumptions did not accurately reflect its technical approach and were highly biased in favor of Northrop's multisubcontractor approach and, as a result, although it remained the low offeror, the margin between its cost score and Northrop's was reduced.

The SEB explains that it was unable to determine the best price under the initial evaluation of cost proposals because each offeror made assumptions or interpretations which made uniform comparison of proposals impossible. Our review of the cost proposals supports this position. Therefore, the request for cost proposals with more specific details appears to be reasonable. We also note that our review of the costs proposed by Northrop and Consolidated indicates that the number of points received for cost by Northrop was, in fact, less under the revised cost

instructions than it would have received under the evaluation of its initial cost proposal. Therefore, contrary to its assertion, Consolidated was not prejudiced by the change.

In this connection, we note that, as to the cost assumptions and also the changes in technical scores and the ultimate selection of Northrop, Consolidated has suggested that Customs was biased and its actions were all a pretext designed to justify award to Northrop. The protester has a heavy burden of proving bias on the part of evaluators or the selection official, and unfair or prejudicial motives will not be attributed to those individuals on the basis of inference or supposition. Kelsey-Seybold Clinic, P.A., B-217246, July 26, 1985, 85-2 C.P.D. ¶ 90. Consolidated suggests bias based upon the fact that changes were made during the evaluation process. We do not find any merit in its speculation in this regard. We have found that all of the agency's actions were reasonable and consistent with the evaluation criteria.

Finally, in its comments on the agency's report, Consolidated contends for the first time that no new information was requested for submission with revised best and final offers and that it was not in the government's best interest for agency evaluators to reopen negotiations after the initial best and final offers were received. Consolidated argues that the reopening of negotiations was in violation of Federal Acquisition Regulation, § 15.611(c) (Federal Acquisition Circular 84-5, April 1, 1985).

Protest arguments not raised in a protester's initial submission must independently satisfy the timeliness requirements of our Bid Protest Regulations, 4 C.F.R. part 21 (1985). Where the protester supplements its original timely protest with a new ground of protest in its response to the agency report more than 10 working days after the basis for the new argument should have been known, the new ground is untimely. See Radionic Hi-Tech, Inc., B-219116, Aug. 26, 1985, 85-2 C.P.D. ¶ 230. Consolidated was aware that the agency was reopening negotiations in July 1985. Since we received Consolidated's comments on October 20, the new ground is clearly untimely and will not be considered. 4 C.F.R. § 21.2(a)(2).

The protest is denied in part and dismissed in part.

*for* *Seymour G. Green*  
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