

*McArthur*



The Comptroller General  
of the United States

Washington, D.C. 20548

# Decision

**Matter of:** National Medical Seminars Tempharmacists

**File:** B-233452

**Date:** February 22, 1989

## DIGEST

Award to a higher-priced, technically superior offeror was not improper where the solicitation specifically advised offerors that technical factors were significantly more important than cost, and the agency's decision that the offer was worth the slight price premium was not unreasonable.

## DECISION

National Medical Seminars Tempharmacists (NMST) protests the award of contract No. DADA01-89-D-0009 by the Letterman Army Medical Center, Presidio of San Francisco, California. The protester objects to the award of a contract to a higher-priced offeror.

We deny the protest.

On July 1, 1988, the agency issued request for proposals (RFP) No. DADA01-88-R-0029 seeking offers for a fixed-price requirements contract for outpatient pharmacy technician services for a period of 1 year, with three 1-year options. The RFP provided that the agency would make award to the offeror whose proposal was "technically most acceptable and has the lowest overall cost to the government." For award purposes, the RFP listed the following evaluation criteria in descending order of importance: management factors, including standards used to determine pharmacy technician quality; quality control plan; references; performance factors, including accessibility of management (responsiveness); recruiting procedures; and price, including option years.

Three offerors, including NMST and the awardee, Relief Pharmacists, submitted initial proposals. Two technical evaluators scored initial proposals on a scale of 100 points. The two evaluators gave scores of 94 and 95 to the protester and scores of 93 and 85 to Relief Pharmacists;

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the protester lost points under performance factors mostly because its proposal indicated that management personnel were available only during regular business hours, while the awardee lost points under management factors for not outlining its quality control procedures.

The agency issued letters on August 10 requesting all three offerors to clarify portions of their proposals and to submit best and final offers by August 31. NMST was asked to clarify its offer in several areas including accessibility of management. Relief was asked to clarify its offer regarding proposed standards for pharmacy technician quality. Only one evaluator reviewed the best and final offers. In its best and final offer, Relief Pharmacists submitted more information on its standards used to determine pharmacy technician quality, resulting in that evaluator raising his scoring of the awardee's proposal by 13 points to 98 points. In its best and final offer, NMST offered to make its management available 24 hours a day. However, the evaluator, who had personal knowledge of the contractor's performance and was in fact a reference listed by the protester in its offer, scored the protester low for accessibility of management because of his difficulties in contacting the protester's management under the current contract and the offeror's failure to provide any indication of how it would address the accessibility problem. The evaluator did increase his scoring of the protester's proposal by 1 point, from 95 to 96 points. For the 4-year period of the contract, the protester was \$4,660 lower than the awardee, \$132,516.80 for NMST versus \$137,176 for the Relief Pharmacists.

On September 12, the agency notified the protester that award had been made to Relief Pharmacists which the agency concluded had submitted the technically superior offer. NMST filed a protest with the agency on September 27, objecting to the higher cost award. On October 18, the agency denied the agency-level protest by letter, on the basis that Relief Pharmacists had received a higher technical score than the protester and that the solicitation had provided that cost was the least important evaluation factor. NMST filed this protest with our Office on November 3.

The agency points out that the solicitation provided for award to other than the lowest cost offeror and in fact made cost the least important of five evaluation factors. The agency argues that under such circumstances, it is not obligated to make award to the lowest cost offeror but that by selecting a contractor based on an assessment of the relative desirability of proposals, the agency has

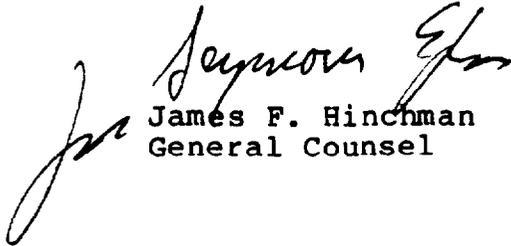
discretion to select a more highly rated technical proposal if so doing is in the government's best interest. See Diversified Contract Services, Inc., B-228168.3, May 17, 1988, 88-1 CPD ¶ 463. We agree.

In a negotiated procurement, there is no requirement that award be made on the basis of the lowest cost. Agency officials have broad discretion in determining the manner and extent to which they will make use of the technical and cost evaluation results. Cost/technical tradeoffs may be made, and the extent to which one may be sacrificed for the other is governed only by the test of rationality and consistency with the established evaluation factors. Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 CPD ¶ 325. The judgment of the procuring agency concerning the significance of the difference in the technical merit of offers is accorded great weight. Asset, Inc., B-207045, Feb. 14, 1983, 83-1 CPD ¶ 150. We have consistently upheld award to offerors with higher technical scores and higher costs so long as the result is consistent with the evaluation criteria and the procuring agency has determined that the technical difference is sufficiently significant to outweigh the cost difference. Battelle Memorial Institute, B-218538, June 26, 1985, 85-1 CPD ¶ 726.

The record indicates that the agency's determination was in accord with the RFP's stated evaluation criteria under which technical factors were significantly more important than cost. Here, award was based upon the awardee's higher technical score--98 of 100 points, versus 96 of 100 points for the protester. While our Office consistently has held that numerical point scores are useful only as guides for intelligent decision-making and are not generally controlling for award because they often reflect the disparate, subjective judgments of the evaluators, Bunker Ramo Corp., 56 Comp. Gen. 712 (1977), 77-1 CPD ¶ 427, the record shows that here the points reflect a meaningful difference in the two proposals. The RFP statement of work indicates that the pharmacy technician works in support of the pharmacist at the medical center outpatient pharmacy and his duties include vital pharmacy tasks including reading doctor's prescriptions and retrieving and preparing medicine for dispensing. The agency reports that, under prior contracts, it experienced difficulty in contacting management to handle prompt replacement of the pharmacy technician where there was an unexpected absence, and to expedite resolution of work performance problems. The agency points out that the inability to arrange for prompt replacement of an absentee worker or to quickly resolve a performance problem affects the medical center's pharmacy department services. The contracting officer simply based his decision to award

to the higher rated firm, notwithstanding the protester's minimal cost advantage, because the evaluation of the two offerors showed that the awardee's proposal was superior with regard to accessibility of its management. We find this decision was not unreasonable.

We deny the protest.



James F. Hinchman  
General Counsel