

DOCUMENT RESUME

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[Reconsideration of Denial of Protest against Award of Contract on the Basis of Price]. B-187892. August 2, 1977. 4 pp.

Decision re: Computer Data Systems, Inc.; by Robert P. Keller, Deputy Comptroller General.

Issue Area: Federal Procurement of Goods and Services (1900).

Contact: Office of the General Counsel: Procurement Law I.

Budget Function: General Government: Central Personnel Management (805).

Authority: 10 U.S.C. 2304(g). B-179259 (1974). 55 Comp. Gen. 1111.

The protester requested reconsideration of a decision which held that where proposals are regarded as essentially equal technically, award of the contract on the basis of price was proper, even though the technical matters were weighted more heavily than price for evaluation purposes. When competing proposals are equal technically, technical evaluation criteria, no matter how heavily weighted, do not provide a meaningful basis for contractor selection, leaving price as the determinative factor. The prior decision was affirmed. (Author/SC)

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DECISION



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

Handwritten: H. O. Hall
P. No. 77

FILE: B-187892

DATE: August 2, 1977

MATTER OF Computer Data Systems, Inc. -- Reconsideration

DIGEST:

Prior decision holding that where proposals are regarded as essentially equal technically, award of contract on basis of price was proper, even though technical matters were weighted more heavily than price for evaluation purposes, is affirmed. When competing proposals are equal technically, technical evaluation criteria, no matter how heavily weighted, do not provide meaningful basis for contractor selection, leaving price as determinative factor.

Computer Data Systems, Inc. (CDSI), by counsel, has requested that we reconsider our decision denying its protest in Computer Data Systems, Inc., B-187892, June 2, 1977, 77-1 CPD 384.

The procurement involved was for the design, development, implementation and maintenance of various software systems. The solicitation provided that both technical and price considerations would govern award selection. With respect to price, the solicitation provided:

"Price will be given a weight equalling approximately one quarter of the total weight which will be assigned to the technical factors. Thus, price, while not controlling, will be an important factor in selecting a contract under this solicitation. The degree of its importance will increase with the degree of equality of proposals with regard to the other factors on which selection will be based."

The technical proposals were evaluated by a technical evaluation panel which ranked the top three offerors as follows:

<u>Offeror</u>	<u>Technical Score</u>
CDSI	99.5
PRC	96.0
CSC	93.8

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The panel then determined that the proposals were substantially equal technically. Subsequently, award was made to CSC, with that firm's low price being the determinative consideration.

We held that the award was proper. We stated:

"However, where an agency regards proposals as essentially equal technically, cost or price may become the determinative consideration notwithstanding the fact that in the overall evaluation scheme cost was of less importance than other criteria. The designation of cost or price as a subsidiary evaluation factor means only that, where there is a technical advantage associated with one proposal, that proposal may not be rejected merely because it carries a higher price tag. It does not mean that when technical proposals are regarded as essentially equal, price or cost is not to become the controlling factor. Analytic Systems, Incorporated, B-179259, February 14, 1974, 74-1 CPD 71; see Grey Advertising, Inc., supra, and cases cited therein. Indeed, under 10 U.S.C. 2304(g) (1970), price must be given appropriate consideration in the award of all negotiated Government contracts."

CDSI's request for reconsideration is based on the contention that our prior decision did not address the following three matters raised by the protest:

- whether the technical evaluation criteria specified in the solicitation were changed without notice to the offerors;
- that technical point ratings are considered only as guides for procurement decisions in circumstances where the terms of the solicitation do not specify otherwise and
- the effect of a solicitation section stating "* * * it is imperative to the successful accomplishment of these systems that the highest technical skills be employed."

The first two items apparently both refer to the relative weights assigned price and technical factors. By the first item, we understand CDSI to mean that the agency changed those weights when it made the selection decision on the basis of price. By the second item, we understand CDSI to mean that our various prior decisions stating that technical point ratings are useful guides for decision-making but do not mandate award to a particular offeror are only relevant to situations where the solicitation does not contain evaluation criteria which compel adherence to the results indicated by technical point scores.

We cannot agree with CDSI that the June 2, 1977 decision did not deal with these matters. In the portion of the decision quoted above, we specifically pointed out that when an agency regards competing proposals as being essentially equal technically, price may become the determining criterion notwithstanding the fact that technical factors are weighted more heavily than price. The reason, of course, is that when technical proposals are viewed as relatively equal, that is, when no one proposal is perceived as offering a distinct technical advantage, the technical evaluation does not provide any effective discriminator for source selection purposes. The fact that an agency may have used a numerical scoring scheme in performing the technical evaluation and assigned somewhat different scores to competing proposals does not mean that the higher rated proposal must be perceived as offering a technical advantage of any significance. See Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 CPD 325 and cases cited therein. Once the agency determines that a particular point spread in technical scores does not indicate the technical superiority of any one proposal, it is apparent that the technical evaluation criteria, no matter how heavily weighted vis-a-vis price, do not provide a meaningful basis for selection of a contractor. Under such circumstances, price obviously must become the determinative factor.

When that happens, there has been no departure from the stated evaluation factors which might have weighted technical considerations more heavily than price. As we said in the initial decision, "[t]he designation of cost or price as a subsidiary evaluation factor means only that, where there is a technical advantage associated with one proposal, that proposal may not be rejected because it carries a higher price tag." In other words, where a proposal is viewed as having a technical advantage over competing proposals (whether or not numerical evaluation scoring is utilized) under an evaluation scheme that weights technical matters as of primary importance, that technical advantage

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will be of relatively greater significance than will any differences in price. Where there is no technical advantage to a particular proposal, the practical effect is the virtual elimination of technical considerations as a source selection factor, regardless of the relative weight assigned to such considerations.

Thus, it was at least implicit in the original decision that we do not view the selection of CSC on the basis of price as representing a departure from the evaluation factors, nor do we view anything in the solicitation as requiring the agency to make its source selection decision on the basis of the technical scoring results.

With regard to CDSI's last point, that solicitation provision referred to was consistent with the evaluation criteria which established technical considerations as substantially more important than price. CDSI apparently refers to this provision in connection with its assertion that its proposal in fact was superior and that for the agency to ignore that superiority and award on the basis of price was contrary to the solicitation evaluation scheme. We found in the prior decision, however, that there had been no showing that the agency's "determination of relative technical equality was unreasonable." Therefore, we see nothing inconsistent between the referred to provision and the ultimate evaluation and source selection.

The prior decision is affirmed.


Deputy Comptroller General
of the United States