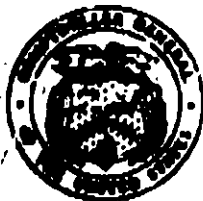


5242

Eerling
P. P. #2

DECISION



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

FILE: B-190298

DATE: January 31, 1978

MATTER OF: Telecommunications Management Corp.

DIGEST:

1. Where solicitation established price as substantially less important than technical factors in evaluation of proposals, award of negotiated fixed-price contract to lower priced, lower scored offeror is not improper where agency regards competing proposals as essentially equal technically, thereby making price the determinative criterion for award.
2. Agency report on protest filed within 25 working days is within guidelines of GAO Bid Protest Procedures, which anticipate that report will be filed within that time period.

Telecommunications Management Corp. (TMC) protests the award of a contract to Rockville Consulting Group, Inc. (RCGI) for a study to evaluate the effectiveness and efficiency of the cable TV program of the Office of Minority Business Enterprise under solicitation No. 7-36549 issued by the U.S. Department of Commerce (Commerce) on August 8, 1977. TMC's primary contention is that Commerce ignored the evaluation criteria of the request for proposals (RFP) in making the award to RCGI.

The record shows that fixed-price proposals were received from three firms by the August 27, 1977, closing date established in the RFP. Of the proposals received, those submitted by TMC and RCGI were initially determined to be technically acceptable. After discussions were conducted with these two firms, on September 13, 1977, TMC and RCGI submitted their best and final offers at \$56,640 and \$47,249, respectively.

The technical proposals were evaluated by the Technical Proposal Evaluation Committee (Committee) with the result that TMC's proposal received a higher numerical score (78 out of 85 points) than RCGI's proposal (56 points). However, the Committee determined that either firm could adequately accomplish the study and therefore deferred to the Procurement Division for the final selection, "based on the best price and other Procurement Division staff concerns." The

B-190298

price evaluation resulted in TMC's proposal receiving an additional 29 points, for a total of 107 points, and RCGI's proposal receiving an additional 35 points, for a total of 101 points. Notwithstanding the fact that TMC's proposal received the higher number of points, on September 26, 1977, the contract was awarded to RCGI, the lower priced, lower scored offeror. TMC timely protested this action to Commerce and to our Office.

The RFP provided as follows with respect to award and evaluation of offers:

"EVALUATION OF OFFERORS

"By use of numerical and narrative scoring techniques, proposals will be subjectively evaluated against the evaluation factors specified below.

"Award will be made to that offeror (1) whose proposal is technically acceptable and (2) whose technical/cost relationship is the most advantageous to the Government; and who is considered to be responsible within the meaning of Federal Procurement Regulations 1-1.12. Cost will be a significant factor in the award decision, although the award may not necessarily be made to that offeror submitting the lowest estimated cost. Likewise, award will not necessarily be made for technical capabilities that would appear to exceed those needed for the successful performance of the work.

<u>FACTOR</u>	<u>POINTS</u>
1. Timely delivery of Draft Report..... (Assurance of ability to deliver draft report)	5
2. Technical Approach.....	20
3. a. Offeror must submit a proposal that is technically responsive and achievable.....	10
b. Soundness of Evaluation Methodology for evaluation.....	10

B-190298

<u>FACTOR</u>	<u>POINTS</u>
3. Experience and Competence of Personnel.....	30
a. Quality of Personnel Assigned.....	15
b. Personnel Experience with Similar Evaluation Tasks and Projects.....	15
4. Experience and Competence of Proposing Firm.....	30
a. Specific related past evaluation experience.....	20
b. Adequate staff size and avail- ability to perform the task by completion date.....	5
c. Plan developed for the overall management of the evaluation.....	5
5. Price/Cost.....	35
Total Criteria Points	120"

TMC asserts that the contracting officer arbitrarily disregarded the evaluation criteria set forth in the RFP in awarding the contract to RCGI, because price was allowed to become the determining factor in award selection. TMC's position is that price was already included as a factor in the evaluation scheme and therefore TMC should have received the award since its proposal received the "highest combined evaluation score." In this connection, TMC refers to our decisions in Dynalectron Corporation, B-187057, February 8, 1977, 77-1 CPD 95, and Genasys Corporation, 56 Comp. Gen. 835 (1977), 77-2 CPD 60, as establishing the validity of its protest.

We do not believe the cases cited by TMC compel the conclusion urged by the protester that "the subject contract award must be deemed improper by the GAO, and not allowed to stand." Dynalectron Corporation, *supra*, dealt with a situation where although the solicitation specified 3 main evaluation

B-190296

factors (listed in descending order of importance as technical, management, and financial) with 12 sub-criteria, the evaluation of best and final offers was made on the basis of only 6 of the subcriteria, weighted disproportionately to the evaluation scheme set forth in the solicitation. We held that the evaluators improperly departed from the evaluation scheme selected. In Genasys Corporation, supra, we found the weighting system used in evaluation to be unobjectionable, even though the ratio between the evaluation factors was changed from that indicated in the RFP, because the order of importance of the factors was retained and because the individual factor weights did not exceed the ceilings listed in the RFP. In essence, both cases merely stand for the well-established proposition that "once offerors are informed of the criteria against which their proposals are to be evaluated, it is incumbent upon the procuring agency to adhere to those criteria or inform all offerors of changes made in the evaluation scheme." 56 Comp. Gen. at 838.

That proposition arises out of the nature of the negotiated method of procurement. Since negotiation, unlike formal advertising, permits multiple evaluation factors, meaningful competition can be attained only if offerors are notified of these factors and given some reasonable information as to their weights. These factors and weights must be used in the actual evaluation. It would not be proper to induce an offer representing the highest quality and then to reject it in favor of a materially inferior offer on the basis of price. Signatron, Inc., 54 Comp. Gen. 530 (1974), 74-2 CPD 368; Charter Medical Services, Inc., B-188372, September 22, 1977, 77-2 CPD 214. Similarly, it would not be proper to select a materially higher cost offer on the basis of quality where the solicitation places major emphasis on cost or price. The point is that offerors should be given as good an idea as is reasonably possible - considering the subjectivity and uncertainty involved - of the basis for the competition.

In many cases, while the relative weights assigned to the various evaluation factors are set forth in the solicitation, the precise weights of--or, where a point scoring system is used, the maximum points allocated to--

B-190298

each factor and/or subfactor are not indicated. In such cases, award need not be made to the offeror whose proposal receives the highest number of evaluation points, since point scores need not determine the outcome of a competitive source selection, but are merely guides for decisionmaking by source selection officials whose job it is to determine whether technical point advantages are worth the cost that might be associated with that higher-scored proposal. See Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 CPD 325 and cases cited therein.

On the other hand, where a solicitation sets forth the relative weights of evaluation criteria, including price, in the form of a precise numerical evaluation formula, and provides that the awardee is to be selected on the basis of the high score, the relative values of price and technical factors have been built into the formula, so that in effect the trade-off between cost and technical considerations is made when the evaluation formula is adopted rather than after the technical evaluation is completed. Therefore, if the source selection official, who is not bound by the scoring of the evaluation panel, see, e.g., Grey Advertising, Inc., *supra*, agrees with the scoring, the highest scored acceptable proposal should be selected for award. See Hansa Engineering Corporation, B-187675, June 13, 1977, 77-1 CPD 423.

In the instant case, we do not believe the award was contrary to the evaluation criteria set forth in the RFP. The evaluation section of the RFP established technical factors as worth some 85 points while price was worth 35 points, but did not state that award would be based on the highest point score attained by an offeror. Rather, the RFP stated that award would be made on the basis of a technically acceptable proposal offering the most advantageous technical/cost relationship.

Moreover, despite the higher technical score given the protester's proposal, the evaluators determined in effect that both proposals were essentially equal technically. Although the discretion to make such a determination is not unlimited and any such conclusion must be supportable, see Charter Medical Services, Inc., *supra*, that determination does not appear to be unreasonable in this case. In these circumstances, cost necessarily became the

B-190298

determinative criterion, and the fact that it did so does not mean that there was a change in the stated evaluation criteria. See Computer Data Systems, Inc., B-187892, June 2, 1977, 77-1 CPD 384, aff'd on reconsideration August 2, 1977, 77-2 CPD 67; Bunker Ramo Corporation, 56 Comp. Gen. 712 (1977), 77-1 CPD 427, aff'd on reconsideration B-187645, August 17, 1977, 77-2 CPD 124; Bell Aerospace Company, 55 Comp. Gen. 244 (1975), 75-2 CPD 168. "In any case where cost is designated as a relatively unimportant evaluation factor, it may nevertheless become the determinative factor when application of the other, more important factors do not, in the good faith judgments of source selection officials, clearly delineate a proposal which would be most advantageous to the Government to accept." Bunker Ramo Corporation, supra, 56 Comp. Gen. at 718. As we said in Computer Data Systems, Inc., 77-1 CPD 384, supra:

"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."

Thus, we find no merit to the protester's principal contention.

TMC also complains about the time it took Commerce to submit a report on the protest to this Office in view of the fact that performance of the protested contract was scheduled to be essentially completed three months after award. Our Bid Protest Procedures, 4 C.F.R. Part 20 (1977) anticipate that in most cases a report on a protest will be filed within 25 working days, 4 C.F.R. §20.3(c). Our records

B-190298

indicate that the report was submitted within 25 working days after Commerce's receipt of our request for a report.

The protest is denied.

R. J. Kellin
**Deputy Comptroller General
of the United States**