

**DECISION**



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

**FILE:** B-206100; B-206202      **DATE:** August 3, 1982

**MATTER OF:** J. Rose Corporation

**DIGEST:**

1. Complaints concerning evaluation criteria used by housing authorities to evaluate proposals for turnkey construction of public housing are untimely because they involve improprieties apparent on the face of the solicitations but were not filed before the closing dates set for receipt of proposals.
2. In a negotiated procurement, award is not required to be made solely on the basis of cost or price, and absent a showing that the evaluation was not conducted in conformance with the evaluation system provided for in the solicitation, an award is not improper simply because it was made to a higher priced offeror.

J. Rose Corporation complains about the rejection of its offers to design and construct housing for the elderly in response to solicitations issued by the Lehigh (Pennsylvania) County Housing Authority and the Housing Authority of the City of Pottsville, Pennsylvania. Both projects are being developed under the turnkey method of public housing construction pursuant to annual contributions contracts between the housing authorities and the Department of Housing and Urban Development (HUD). We dismiss the complaints in part and deny them in part.

J. Rose contends that the proposal evaluation criteria used by the housing authorities (which are prescribed by the HUD Housing Handbook) place unreasonable emphasis on "aesthetics" while durability, ultimate

intended usage, value, and price play an insignificant role in the evaluation. J. Rose asserts that the use of such criteria allows for too much subjectivity in awarding evaluation points, and does not provide adequate safeguards against favoritism on the part of the evaluators. J. Rose also alleges that the inclusion in the Lehigh County solicitation of the amount budgeted for the project was improper because it encouraged offerors to price their offers to take advantage of the full amount available. In addition, J. Rose argues that the selection for award in each case of a more costly proposal over a less costly one was improper since either proposal will result in a building with the same salient characteristics and which will serve the same purposes.

HUD argues that J. Rose's complaints are untimely insofar as they concern the proposal evaluation criteria used by the housing authorities because the evaluation systems were explained in each of the solicitations, but J. Rose did not file its complaint in either instance until well after the closing date for receipt of proposals had passed. We agree. In order to be considered timely, complaints such as this, which involve improprieties apparent on the face of a solicitation, must be filed prior to the closing date for receipt of proposals. Caravelle Industries, Inc., 60 Comp. Gen. 414 (1981), 81-1 CPD 317. For the same reason, we also consider J. Rose's complaint regarding the inclusion in Lehigh County's solicitation of the amount available for the project to be untimely.

J. Rose argues that we should consider its complaint about the evaluation factors because it presents issues "significant to procurement practices or procedures." The quoted phrase refers to an exception to the timeliness standards of our Bid Protest Procedures at 4 C.F.R. § 21.2(c) (1982), under which we will consider an untimely issue that is of widespread interest or that goes to the heart of the competitive procurement process. See Brodart, Inc., B-195208, March 5, 1980, 80-1 CPD 173.

Our Bid Protest Procedures apply to our consideration of complaints concerning direct Federal procurements and thus are not literally applicable to our review of procurements by recipients of Federal assistance. See Urban Transportation Development Corporation, Ltd., B-201939, August 7, 1981, 81-2 CPD 107. While we believe that the application

of a similar significant issue exception to our timeliness requirements for grant complaints would be warranted under the appropriate circumstances, we are not persuaded that such an exception should apply here.

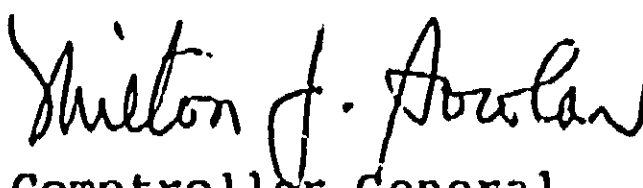
J. Rose chose to participate in this procurement without contesting the allegedly objectionable evaluation factors. Instead, it was only after learning that it had not been selected for award--evidently because it decided to emphasize elements of the project other than those that the solicitation indicated should be emphasized--that J. Rose complained about the solicitation's approach. Under such circumstances, we are particularly reluctant to consider an untimely complaint on the merits. See Dataproducts New England Inc.; Honeywell, Inc.; Tracor Aerospace, B-199024, January 9, 1981, 81-1 CPD 16. The significant issue exception must be exercised sparingly so that our timeliness standards do not become meaningless. See Brodart, Inc., supra. We cannot conclude that J. Rose's complaint warrants our consideration under this exception.

Nevertheless, for J. Rose's information, we point out that we have not objected to the use of negotiated turn-key construction contracts in the context of direct Federal procurement. See, e.g., 51 Comp. Gen. 129 (1971); Claude E. Atkins Enterprises, Inc., B-205129, June 8, 1982, 82-1 CPD \_\_\_\_. Further, it is well settled that the selection and weights of the criteria to be used in evaluation of proposals are within the broad discretion entrusted to agency procurement officials. Augmentation, Inc., B-186614, September 10, 1976, 76-2 CPD 235. Finally, subjectivity necessarily is an inherent part of the evaluation process in any negotiated procurement. In fact, the use of evaluation criteria and numerical scoring is merely an attempt to quantify what are essentially subjective judgments about the relative merits of various proposals. See Interscience Systems, Inc.; Cencom Systems, Inc., 59 Comp. Gen. 438 (1980), 80-1 CPD 332. In part for that reason, we do not object to evaluators' judgments unless they are shown to be unreasonable, see Spectrum Leasing Corporation, B-205781, April 26, 1982, 82-1 CPD 383, or motivated by bias. See Man-Craig, Inc., B-202432, September 29, 1981, 81-2 CPD 263.

We find J. Rose's complaint about the selection for award of a higher priced proposal to be without merit. The award of a negotiated contract need not be made to the

offeror proposing the lowest cost or price unless the solicitation indicates otherwise. Price Waterhouse & Co., B-203642, February 8, 1982, 82-1 CPD 103. In these cases, proposals were to be point scored based on a number of specified factors, of which price was only one. In the Lehigh County procurement, price was worth 32 points out of a total possible score of 100; in the Pottsville procurement it was worth only 10 points out of a possible 84. The offerors selected for award by the grantees in each case received significantly higher total scores than did J. Rose as a result of the proposal evaluation, and there is nothing in the record to indicate that the evaluations were inconsistent with the evaluation schemes provided in the solicitations.

The complaints are dismissed in part and denied in part.

*for*   
Comptroller General  
of the United States