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DECISION

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

FILE: B-187601

DATE: February 24, 1977

MATTER OF: Systems Engineering Associates Corporation

DIGEST:

1. Allegation that technical proposal did not receive sufficient credit in evaluation is not supported since technical determinations are function of procuring activity and such determination was not shown to be in bad faith, unreasonable or in violation of procurement regulation or statutes.
2. Protest that RFP did not adequately apprise offerors of relative weight of evaluation factors filed after award is untimely under Bid Protest Procedures which require that protest based upon alleged improprieties apparent or face of solicitations be protested prior to closing date for receipt of initial proposals.
3. Requirement for discussions with all offerors in competitive range was satisfied by affording all offerors opportunity to revise proposals with submission of best and final offers since it has not been shown that determination not to engage in technical discussions was arbitrary or unreasonable, or that such discussions would have had significant impact on competition.
4. Protest that award should have been made to lowest priced offeror is denied since RFP clearly apprised that award would be made to most advantageous proposal, price and other factors considered. Award to highest ranked offeror, considering both technical and cost factors, was proper.

The Naval Regional Procurement Office, Philadelphia, Newport Division (NRPO), issued request for proposals (RFP) N00140-76-R-6514, for naval architectural, marine engineering and other support services. The Systems Engineering Associates Corporation (SEACOR) was one of four firms that submitted a proposal. SEACOR protests the award to

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M. Rosenblatt & Son, Inc. (Rosenblatt), because SEACOR submitted a lower cost, technically acceptable proposal.

Section D15 of the RFP provided the following with regard to the evaluation factors to be applied to the proposals:

"Factors which will be given consideration in the awarding of the contract are listed below, in descending order of importance:

1. Cost
2. Contractor's Engineering Design Capability
3. Contractor's Engineering Drawing Control Program.

"The first factor listed above is of greater importance than either of the other two factors, but is less important than the last two factors combined.

"Any contract resulting from this solicitation will be awarded to that responsible offeror who is fully responsive to this solicitation, who meets minimum requirements set forth in Section F hereof and whose offer is most advantageous to the Government, cost and other factors set forth above considered."

The technical proposals were evaluated separately from the cost proposals. The results of the technical evaluation were:

	<u>Eng. Design</u>	<u>Eng. Drwg. Control</u>	<u>Total</u>
Rosenblatt	27	25	52
J. J. Henry	23	25	48
SEACOR	24.5	18.0	42.5
Wales/Hunt	10	12	22

The proposed prices and their numerical evaluation score, plus total were:

	<u>Cost</u>	<u>Score</u>	<u>Total Score</u>
Rosenblatt	\$258,996	40.71	92.71
J. J. Henry	\$227,204	43.00	91.00
SEACOR	\$234,376	43.00	85.50
Wales/Hunt	\$260,300	40.50	62.50

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Based upon the above, the contracting officer determined that only the top three rated proposals comprised the competitive range. Since the three proposals evidenced no major technical shortcomings, best and final offers were requested without conducting technical discussion. Revised prices and scores were:

	<u>Revised</u>	<u>Revised Score</u>	<u>Final Total Score</u>
Rosenblatt	\$254,548	39.90	91.90
J. J. Henry	\$227,288	43.00	91.00
SEACOR	\$226,760	43.00	85.50

Award was made to Rosenblatt as that offeror offering the most advantageous proposal to the Government, price and other factors considered.

SEACOR maintains that: 1) it was not given sufficient technical evaluation credit; 2) Rosenblatt was accorded too much credit for its cost proposal; 3) the RFP did not adequately apprise offerors of the relative weights of the evaluation criteria; 4) SEACOR was not made aware of any weaknesses in its technical proposal; 5) SEACOR was the lowest price technically acceptable offeror and should have received the award on that basis.

With regard to the first two allegations, it is within the discretion of the procuring activity to make technical judgments and evaluations, not our Office. System Innovation & Development Corp., B-185833, June 30, 1976, 76-1 CPD 426. Our Office will not substitute its technical opinion absent a showing of bad faith or that the determination was made without a reasonable basis, or violated procurement regulations or statutes. Decision Sciences Corporation, B-183773, September 21, 1976, 76-2 CPD 260. Although SEACOR disagrees with the point scores assigned to the technical aspects of its proposal, it has not provided any argumentation indicating the agency's evaluation was erroneous. With regard to the contention concerning Rosenblatt's cost proposal, the record indicates that Rosenblatt's cost proposal, as well as the others, was scored in accordance with the weight specified in the RFP and the specific point score assigned to cost in the evaluation plan developed prior to the receipt of proposals. Since SEACOR has not alleged that the award decision was motivated by bad faith and the record indicates that the evaluation was based upon the reasoned judgment of the evaluators, we are unable to object to the evaluation results.

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Concerning the third point, our Bid Protest Procedures (4 C.F.R. part 20 (1976)), require that protests based upon alleged improprieties apparent on the face of a solicitation must be filed prior to the closing date for receipt of initial proposals. Since SEACOR's protest was not filed until after the award had been made, it is untimely on this point and will not be considered on its merits.

Next, SEACOR notes that no technical discussions were conducted to point out weaknesses in its technical proposal. 10 U.S.C. § 2304(g) (1970) requires that discussions be conducted with all offerors in the competitive range, price and other factors considered, with certain exceptions not applicable here. Our Office considers that discussions have taken place if an offeror is afforded the opportunity to revise its initial proposal, either in terms of price or technical approach. Group Operations, Incorporated, B-185871, July 26, 1976, 76-2 CPD 79. Where discussions are undertaken, they must be meaningful. However, not all inferior aspects of an otherwise technically acceptable proposal need be discussed. Whether a given inadequacy must be discussed is determined by the nature of the inadequacy and the impact that its disclosure would have on the competitive process. Dynalectron Corporation, B-184203, March 10, 1976, 76-1 CPD 167. Furthermore, the content and extent of discussions is a matter of judgment primarily for determination by the agency and not subject to question by our Office unless clearly arbitrary or without a reasonable basis, provided that the discussions held do not operate to the prejudice of any other offeror. 52 Comp. Gen. 161 (1972). From our examination of the evaluations we are unable to conclude that the determination not to conduct technical discussions was clearly arbitrary or without a reasonable basis. We do not believe SEACOR's response to our Office concerning its disagreement with the agency's evaluation indicates discussions would have had a significant impact on the competition. Since all three offerors in the competitive range were afforded the opportunity to submit revised proposals in response to the call for best and final offers, we believe the requirement for discussions was satisfied.

As for SEACOR's final contention, the RFP clearly apprised offerors that award would be made on the basis of the most advantageous offer, price and other factors considered. This comports with the requirements of 10 U.S.C. § 2304(g) (1970) and implementing Armed Services Procurement Regulation § 3-805.2 (1976 ed.). Award is not required to be made to the lowest price offeror in a negotiated procurement.

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In this case, award to the highest rated offeror, price and other factors considered, was not improper.

Accordingly, the protest is denied.

R. K. 1/1/42
Acting Comptroller General
of the United States