

**DOCUMENT RESUME**

08159 - [C3528622]

[Protest against Proposal Evaluation Procedures]. E-192070.  
December 14, 1978. 5 pp.

Decision re: General Research Corp.; by Robert F. Keller, Deputy  
Comptroller General.

Contact: Office of the General Counsel; Procurement Law IX.  
Organization Concerned: Department of Labor; Sterling Inst.  
Authority: 55 Comp. Gen. 1111, 56 Comp. Gen. 934. B-190178  
(1970).

A protester contended that its proposal was technically superior and that irregularities contaminated the proposal evaluation procedure. The agency determined that the original evaluation of proposals by the evaluation panel was not consistent with evaluation criteria or with the solicitation specifications, and its decision to convene a new panel was proper. A rational basis was shown for the agency's evaluation of the protester's proposal. The proposal was denied as was a claim for proposal preparation costs. (RRS)

**DECISION**

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

8622

FILE: B-192090

DATE: December 14, 1978

MATTER OF: General Research Corporation

## DIGEST:

1. Where agency reasonably determines that original evaluation of proposals by technical evaluation panel was not consistent with evaluation criteria and specifications of RFP, agency decision to convene new panel to insure fair and impartial evaluation of proposals is proper exercise of judgment.
2. Allegation of bias is not supported where record shows rational basis for agency's technical evaluation of protester's proposal.

General Research Corporation (GRC) protests the award of a contract to Sterling Institute (Sterling), under request for proposals (RFP) No. L/A 78-4, issued by the Department of Labor (DOL). GRC contends that its proposal was technically superior and that irregularities contaminated the proposal evaluation procedure.

The RFP in question sought technical and cost proposals for the furnishing of educational and career development services to DOL in support of several training programs for agency employees, including a professional and supervisory program. Offerors were permitted to propose on one or all programs. The RFP called for a cost-type contract and provided that the proposals would be evaluated on the basis of the following four technical factors:

- (1) Understanding
- (2) Approach and Methodology
- (3) Experience of the Offeror
- (4) Experience and Qualifications of Personnel to be Assigned to Project

Elsewhere in the solicitation, the above evaluation criteria were defined in greater detail and numerically weighted. The solicitation stated that cost would be given equal consideration with technical merit in determining the successful offeror.

Proposals were submitted by seven companies for the professional and supervisory program. These proposals were subsequently forwarded to an evaluation panel. The results of the evaluation indicated that the technical proposals of GRC and Sterling, the incumbent contractor, were both found technically acceptable, although GRC's proposal was rated significantly higher than Sterling's proposal in all four evaluation areas. Subsequent to a review of the evaluation report within DOL, the Director, Administrative Programs and Services, submitted the following memorandum to the Assistant Secretary for Administration and Management:

"A detailed review of the technical evaluation of the proposals submitted for support of the professional and supervisory program reveals several problems. The evaluation narrative indicates that the offerors were not all judged against the same criteria. To ensure fair treatment of all offerors and protect the integrity of the procurement process, it is recommended that a new panel be convened to re-evaluate the proposals."

A concurrent memorandum set forth apparent deficiencies in the evaluation report. In the agency report to our Office concerning this matter, DOL states as follows:

"The original technical evaluation report indicated that the panel did not evaluate all offerors against the same criteria. A review of the technical evaluation report by the contract negotiator revealed various difficulties with the report. Since the analysis of the technical evaluation report raised the possibility of a bias on the part of the panel, a re-evaluation by the same panel would not ensure equitable treatment of all

offerors. Therefore, [the Assistant Secretary for Administration and Management] concurred in the recommendation \* \* \* that a new panel be convened."

The second evaluation panel, while still awarding GRC the highest ratings in "understanding" and "approach and methodology", rated Sterling as technically higher overall, based primarily on the evaluation criterion, "experience of the offeror". Since Sterling's cost proposal was substantially lower than the cost proposed by GRC, Sterling was awarded the contract.

GRC protests the award to Sterling on the grounds that the first panel should not have been disbanded; that the convening of the second panel was prejudicial to it since at least one of the three panel members was aware of the rejection of the findings and subsequent disbanding of the first panel; and that as evidence of its bias, the second panel provided Sterling the opportunity to clarify technical aspects of its initial proposal, which was allegedly "nonresponsive" in the area of the number of seminars to be presented. GRC therefore requests that the procurement be carefully reviewed by our Office.

While our Office has been furnished the evaluation reports and other relevant exhibits concerning this protest, the agency considers these documents to be privileged and has not provided them to the protester. While we are therefore unable to reveal the numerical scoring and other details concerning the evaluation, our decision is based on a review of all the reports and exhibits.

The central issue presented by the protester is whether its proposal was evaluated fairly. With regard to GRC's first ground of protest, the agency admits that the disbanding of the first evaluation panel was "unusual". However, it contends that since the evaluation by the first panel was not consistent with the evaluation criteria and specifications, this action was necessary to insure a fair and impartial evaluation of proposals. Based on our review of the record, including the first evaluation report and the subsequent

memorandum detailing specific deficiencies therein, we are unable to conclude that the action taken was anything other than a reasonable exercise of judgment by the selection officials who have the primary responsibility of insuring fairness and equal treatment of offerors during the evaluation process and who are not bound by the recommendation of evaluation and advisory groups. Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 CPD 325.

Concerning the alleged bias of the second panel, we have held, that to establish the existence of the effect of bias, the record must show that there was no rational basis for the evaluation. Optimum Systems, Inc., 56 Comp. Gen. 934 (1977), 77-2 CPD 165. We will not consider a technical evaluation to be unreasonable merely because bias has been alleged; it must be demonstrated clearly that there is no rational basis for the evaluation for it to be considered unreasonable. Our review of the second evaluation report indicates that the evaluation was consistent with the specifications and evaluation criteria, that all proposals were subject to the same detailed technical examination, and that the evaluation reflected the reasoned judgment of the evaluators. Sterling, as the incumbent contractor, could reasonably be expected to be rated higher in experience than GRC.

Further, the fact that Sterling was provided an opportunity to clarify technical aspects of its proposal relating to the number of seminars to be held, after it had been determined to be in the "competitive range", does not indicate bias on the part of the agency. It is a well-established principle in negotiated procurements that discussions of deficiencies may be conducted with offerors within the competitive range so that they may be given an opportunity to correct the deficiencies and thereby fully satisfy the Government's requirements. Piasecki Aircraft Corporation, B-190178, July 6, 1978, 78-2 CPD 10. We cannot find that the opportunity afforded Sterling to correct deficiencies in its proposal concerning the number of seminars to be held was the result of anything other than the regular negotiation process.

In view of the above, the protest is denied. Further, since the record shows that the evaluation of proposals was reasonably founded, GRC's claim for proposal preparation costs must also be denied.

  
Deputy Comptroller General  
of the United States