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**DECISION**



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

[Protest of Evaluation Method]

FILE: B-196279

DATE: February 7, 1980

MATTER OF: Buffalo Organization for  
Social and Technological  
Innovation, Inc.

DIGEST:

1. In case of negotiated procurement, GAO will not substitute its judgment for that of procuring agency by conducting independent evaluation of proposals. GAO will only question agency determinations if shown to be arbitrary or in violation of procurement statutes and regulations.
2. Agency did not act arbitrarily when it reduced protester's technical score after second evaluation. Initial high score only means that protester's proposal is within competitive range and will be evaluated further upon submission of best and final offer.
3. Agency's evaluation of protester's proposed project staff is not rendered invalid merely because protester disagrees with evaluation.
4. Although agencies are required to identify major evaluation factors applicable to procurement, they need not explicitly identify various aspects of each which might be taken into account, provided such aspects are logically and reasonably related to or encompassed by stated evaluation factors.
5. Agency's requirement that successful contractor have full-time "Washington-based presence" is logically and reasonably related to stated evaluation factors. Moreover, protester was sufficiently informed of this requirement during negotiation process. Therefore, agency's reduction of protester's technical score because of failure to satisfy this requirement was not arbitrary.

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Buffalo Organization for Social and Technological Innovation, Inc. (BOSTI), protests the award of a contract to BioTechnology, Inc. (BioTechnology), under request for proposals (RFP) No. CPSC-P-79-1204 issued by the Consumer Product Safety Commission (CPSC). The purpose of the RFP is to obtain the services of a contractor who will prepare for CPSC use a specific number of safety hazard reports.

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BOSTI complains that: (1) the RFP contains more than one method of evaluation; (2) the method of evaluation ultimately chosen does not result in the "best buy" for the Government as CPSC claims; (3) if CPSC had properly evaluated BOSTI's best and final offer, BOSTI's proposal would have been found to be not only lowest in cost but technically superior as well; and (4) the major reason that BOSTI's proposal was not determined to be technically superior was because of the great importance CPSC placed on the successful contractor having someone based in Washington, D.C., on a full-time basis--an evaluation criterion, according to BOSTI, whose importance was not made clear in the RFP.

However, for the reasons indicated below, we find no legal basis to object to the conduct of this procurement.

CPSC received four proposals in response to the RFP. A technical evaluation was then conducted. All four proposals were found technically acceptable and were ranked as follows (maximum score: 100 points):

<u>Offeror</u>	<u>Score</u>
BOSTI	67
J.R.B. Associates, Inc.	64
BioTechnology, Inc.	60
Arthur D. Little, Inc.	59

However, the evaluation panel also concluded that each of the four proposals required clarification unless additional information was provided by the cost proposals (which had not been reviewed yet).

After the cost proposals had been evaluated, CPSC found it necessary to address seven written questions to BOSTI. The questions relevant to this protest focused on what CPSC perceived as a weakness in the statistical skills of BOSTI's project staff and the fact that BOSTI did not provide that someone would be working essentially full time at the CPSC office in Bethesda, Maryland.

In its best and final offer, BOSTI added two more members to its proposed staff in order to bolster its statistical capabilities and also added a third person to provide coordination of the Washington, D.C., task work. Concerning the need for a full-time staff member in Washington, D.C., BOSTI suggested an alternative.

CPSC believed that the successful contractor would have to station an analyst full time with CPSC so that he could review the In-Depth Investigation (IDI) reports stored at the Bethesda office and extract from them the information that the contractor would need to prepare the safety hazard reports. BOSTI, however, proposed to perform this function by: (1) a computer-to-computer hookup between BOSTI and CPSC (or by copying the CPSC data tapes, if this was more practical), and (2) having copies made of the narrative section of each IDI report. In doing this, BOSTI believed it would obtain all the information from the IDI reports that it would need to perform the contract.

In addition to the above, BOSTI also proposed to furnish the equivalent of a full-time staff member working on site at the Bethesda CPSC office by providing for the project's co-managers to be available in the Washington, D.C., area on an "as-needed basis." BOSTI had 12 trips to Washington, D.C., planned to provide for this service. Further, BOSTI maintained that it would have a "permanent presence in Washington" due to the amount of time its principals spent in Washington, D.C., in connection with other Government projects. These individuals, according to BOSTI, would be available on a regular basis at CPSC for any consultation that might be needed.

Based on the foregoing, BOSTI believed it had corrected all the deficiencies that CPSC had found in its proposal. However, after the best and final offers were evaluated, the four offerors were ranked as follows:

<u>Offeror</u>	<u>Score</u>	<u>Proposed Cost</u>	<u>Cost Per Technical Point</u>
BioTechnology, Inc.	60	\$228,310	\$3,805
BOSTI	50	\$205,013	\$4,100
J.R.B. Associates, Inc.	46	\$214,593	\$4,665
Arthur D. Little, Inc.	44	\$284,745	\$6,471

CPSC reduced the BOSTI score by 17 points because it did not believe that the additional members BOSTI proposed to add to its staff would overcome the weakness CPSC perceived in that staff's statistical capabilities. In addition, CPSC did not believe that BOSTI's proposed methods for extracting information from the IDI reports or for providing a Washington-based presence were adequate. As a result, BioTechnology's proposal was found to constitute the "best buy" for the Government, and BioTechnology was awarded the contract.

BOSTI, however, argues that CPSC did not properly evaluate its proposal. BOSTI believes that the RFP provides for more than one method of evaluation which in turn allows CPSC to award a contract which, contrary to CPSC's claim, does not result in the "best buy" for the Government. In BOSTI's opinion, the results of the technical evaluation show that all four proposals were technically acceptable and that all four offerors, therefore, could do a competent job for CPSC. This being so, BOSTI argues that cost should have become the controlling factor in determining who received the contract award. This would have resulted in BOSTI receiving the award since its offer was \$23,197 lower than BioTechnology's. BOSTI contends that CPSC manipulated the final technical point scores and relied heavily on a "cost per technical point" evaluation criterion in order to award the contract to BioTechnology. According to BOSTI, CPSC favored BioTechnology because BioTechnology is located in the Washington, D.C., area and could more easily provide the close coordination that CPSC considers to be so important.

Likewise, BOSTI believes that the reason it lost 17 points from its final technical score is because of the emphasis that CPSC places on the successful contractor having a full-time Washington-based presence. BOSTI maintains that what CPSC has actually done is apply a "hidden criterion" since nothing in the RFP specifically states that a contractor must have such a presence. Consequently, BOSTI sees an application of this hidden criterion as the only reason why after adding members to its staff (to bolster the alleged weakness in statistical capability) it should be penalized points for the makeup of its staff. Likewise, BOSTI believes that it is due to this hidden criterion that it was penalized the remainder of the 17 points. It argues that because of CPSC's overriding concern with a Washington-based presence, CPSC misinterpreted the feasibility of BOSTI's proposed methods for extracting relevant information from the IDI reports and for having its staff members available for consultation with the agency. BOSTI points out that it has successfully used similar methods in the past while performing contracts for both CPSC and other Government agencies.

Therefore, BOSTI argues that after a proper evaluation of its proposal, it will be apparent that it has offered the "best buy" for the Government and should be awarded the contract.

At the outset, we note that in resolving cases in which a protester, as here, challenges the validity of a technical evaluation, it is not the function of our Office to evaluate proposals in order to determine which should have been selected for award. The determination of the relative merits of proposals is the responsibility of the procuring agency since it must bear the burden of any difficulties incurred by reason of a defective evaluation. In light of this, we have held that procuring officials enjoy a reasonable degree of discretion in the evaluation of proposals and such discretion must not be disturbed unless shown to be

arbitrary or in violation of the procurement statutes and regulations. Industrial Technological Associates, Inc., B-194398.1, July 23, 1979, 79-2 CPD 47. Thus, our Office will not substitute its judgment for that of the procuring agency by making an independent determination. John M. Cockerham & Associates, Inc.; Decision Planning Corporation, B-193124, March 14, 1979, 79-1 CPD 180.

BOSTI has argued that the RFP contained more than one method of evaluation and that the one CPSC chose did not result in the "best buy" for the Government. We, however, do not agree that the RFP contained more than one method of evaluation. The RFP provided first for a technical evaluation and then a cost evaluation. It also stated that the "technical portion of the proposal will be the most important single consideration in the award of the contract." After the technical and cost evaluations, the RFP provided for a "Best Buy Analysis" stating:

"A final best buy analysis will be performed taking into consideration the following:

--Results of the technical evaluation

--Cost/Price Analysis

--Price/Cost Per Technical Point -  $\frac{\text{Total Price/ Cost}}{\text{(Final Technical Rating)}}$

--Lowest priced technically acceptable offeror

"The Government reserves the right to make an award to its best advantage, cost and other factors considered, based on the factors enumerated above."

BOSTI appears to interpret the above paragraph as allowing CPSC to consider either just one of the listed factors or any combination thereof in determining the successful contractor. However, we believe that the paragraph actually requires CPSC to take all the factors

into consideration when making its determination and that this is what it did. In other words, after evaluating the proposals in accordance with the stated factors, CPSC determined that BioTechnology's proposal offered the right combination of technical ability and reasonableness of price to make it the best buy for the Government. Under the circumstances, therefore, we find no basis to question the evaluation that was made in this case.

BOSTI has also argued that since its total price is \$23,197 less than BioTechnology, and since under the initial technical evaluation it was found to be competent to perform the contract, price should have become the controlling factor in this case. However, the RFP clearly states that the technical portion of the proposal will be the most important consideration for award, not price, and the record indicates that the proposals were evaluated in accordance with this stated preference for the proposal's technical approach. Therefore, CPSC was not required to award the contract on the basis of the lowest price offered to the exclusion of technical superiority.

BOSTI has indicated that it wishes our Office to make an independent evaluation of the proposals. However, as mentioned above, we do not substitute our judgment for that of the procuring agency and will only disturb the agency's decision if it is shown to be arbitrary or in violation of the procurement statutes and regulations. Industrial Technological Associates, Inc., supra; John M. Cockerham & Associates, Inc.; Decision Planning Corporation, supra. In light of this, we will not attempt an independent evaluation.

However, in effect, BOSTI has also argued that CPSC acted arbitrarily when it penalized BOSTI 17 points on its final technical evaluation. BOSTI claims that it was penalized these points because of CPSC's emphasis on a full-time Washington-based presence--a criterion which BOSTI claims was not set out specifically in the RFP. This type of allegation is subject to our review.

BOSTI indicates that it does not understand how it could possibly end up with a lower technical score after its best and final offer than before. At the least, BOSTI believes its score should have remained the same. However, merely because an offeror receives the highest score after an initial technical evaluation does not mean that the offeror's score is permanently fixed at that value. Rather, it only means that the proposal is to be included in the competitive range and will be evaluated further upon the submission of a best and final offer. See, e.g., The Ohio State University Research Foundation, B-190530, January 11, 1979, 79-1 CPD 15. Therefore, just because BOSTI's technical score changed after the final technical evaluation is not a basis to conclude that CPSC acted arbitrarily in regard to the BOSTI proposal.

More specifically, BOSTI disputes CPSC's decision to penalize it points for its project staff even though its best and final offer added new members to the staff in response to CPSC's criticism regarding the staff's statistical capabilities. However, CPSC explains its decision by stating that it did not think that two of the new staff members would have enough time to devote to the project because of their other duties. In this regard, we note that BOSTI's best and final offer does not indicate that these two persons would be employed on a full-time basis during the life of the project. In addition, CPSC also questions the qualifications of one of the three new staff members, arguing that she does not have the background to perform the work she is expected to do. BOSTI, on the other hand, contends that the additional staff members not only have the time to work on this project but the qualifications as well. However, the fact that a protester does not agree with an agency's evaluation does not render the evaluation arbitrary or illegal. K-MCC, Inc. Consultants, B-190358, March 10, 1978, 78-1 CPD 194. Therefore, merely because BOSTI disagrees with the CPSC evaluation does not render it invalid or provide any basis for our Office to disturb it.

BOSTI believes that the real reason for its reduced technical score is because of CPSC's desire to have the successful contractor maintain a full-time



CPSC with the same degree of service as any Washington-based presence.

Although agencies are required to identify the major evaluation factors applicable to a procurement, they need not explicitly identify the various aspects of each which might be taken into account. All that is required is that those aspects be logically and reasonably related to or encompassed by the stated evaluation factors. The Ohio State University Research Foundation, supra.

Here, while the RFP did not specifically state that a full-time Washington-based presence would be required, there were indications that such a requirement existed. Article XIII of the RFP informs the offerors that CPSC would provide them with work space at its Bethesda office as well as the base data required for performance of the task assignments. In addition, article XIII states that no items could be removed from the Bethesda office. The requirement in question appears to be logically and reasonably related to the stated evaluation factors. The evaluation criteria section of the RFP states that proposals will be evaluated in accordance with certain factors, among them the proposals' demonstration that the offerors have a clear understanding of the work to be performed. Yet, more importantly, when CPSC notified BOSTI of the deficiencies it had found in the BOSTI proposal, it questioned BOSTI's plans both for extracting information from the IDI reports and for having its personnel available in Washington, D.C., for consultation. CPSC stated in its letter:

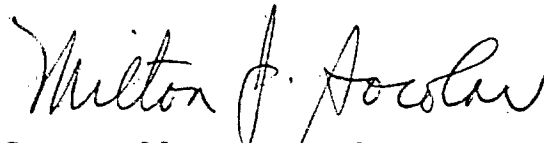
"The work is of such a nature that it will require an equivalent of a full time person working on site at the Bethesda, Maryland Office of CPSC."

Thus, prior to its best and final offer, BOSTI should have been aware of the requirement for a Washington-based presence.

We believe, therefore, that BOSTI was sufficiently informed of the importance that CPSC placed on a Washington-based presence. Nevertheless, BOSTI continued to propose alternate methods for satisfying this requirement. Clearly, CPSC did not find these methods adequate and, as a result, reduced BOSTI's final technical score. BOSTI disagrees with this decision; but, as mentioned above, this alone does not invalidate the agency's evaluation. K-MCC, Inc. Consultants, supra; Cf. E-Systems, Inc., B-191346, March 20, 1979, 79-1 CPD 192. Accordingly, in the absence of evidence that the agency acted arbitrarily or illegally, we need not consider this matter further.

In conclusion, we find that BOSTI's proposal was evaluated in good faith and in accordance with the evaluation criteria. Therefore, there is no basis for our Office to disturb the contract awarded to BioTechnology.

Protest denied.



For the Comptroller General  
of the United States