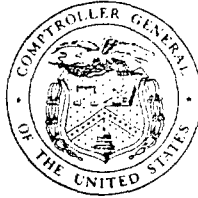


02-11

13481

**DECISION**



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

FILE: B-194785

DATE: April 21, 1980

MATTER OF: Automated Informational Retrieval  
Systems, Incorporated

CNG-01566

D 4437

A 9

DIGEST:

1. Review of record indicates that technical panel's evaluation of awardee's proposal is not unreasonable in areas of firm's litigation support experience and on-site microfilm processing capability.
2. Facts do not show that agency negotiator's revelation, during negotiations, of protester's unacceptable alternative pricing proposal prejudiced evaluation of protester's technical proposal. Protester's pricing proposal which complied with scheme required by RFP was not revealed.
3. Allegation that evaluation panel was not qualified to evaluate technical proposals is not matter for review by GAO in absence of allegation of fraud, bad faith, or conflict of interest.
4. Protester's concern that awardee will not be able to perform contract and its request that GAO monitor contract performance are matters of contract administration outside scope of bid protest function.

Automated Informational Retrieval Systems, Incorporated (AIRS), protests the award of a contract to NEC Micrographics, Inc. (NEC), under Request for Proposal (RFP) L/A 79-18 issued by the Department of Labor (Labor). The purpose of the contract is to provide microfilming services in support of Labor's civil suits against

[Protest Against Contract Award]

~~009925~~ 112094

Trustees of the Teamster's Central States Employee Benefits Funds (Marshal v. Fitzsimmons, et al.). Basically, the contractor's task is to reproduce on microfilm large numbers of documents to be used for litigation purposes.

AIRS alleges that several deficiencies occurred in the procurement of these services. AIRS believes Labor improperly evaluated NEC's technical proposal and improperly conducted negotiations which prejudiced AIRS. The protester also believes agency's technical evaluation panel members were unqualified. Finally, AIRS states that NEC is not capable of performing the contract satisfactorily and asks that we monitor NEC's contract performance. For the reasons discussed below, we find these contentions to be either without merit or not for consideration under our Bid Protest Procedures.

#### Evaluation of NEC

The RFP listed the following evaluation criteria with the corresponding points available for award on the basis of technical merit. The scores actually received by NEC are also set forth below.

<u>Factor</u>	<u>Possible Points</u>	<u>NEC</u>
A. Understanding of the Problem	15	12
B. Firm's Experience and Qualifications	25	24
C. Project Management	25	25
D. Technical Approach	<u>35</u>	<u>32</u>
	100	93

AIRS specifically questions the scores received by NEC for factors A, B and D. With regard to factor B, the firm's experience and qualifications, AIRS claims that DOL awarded NEC a high score (24 of 25 points)

despite "knowledge of the winning contractor's [NEC] prior poor performance on a Department of Justice contract." In this regard, AIRS cites a General Accounting Office letter Report No. GGD-78-83, B-188550, July 25, 1978, in which this Office states that NEC, under an Immigration and Naturalization Service (INS) contract, did not complete required work in a timely manner.

However, Labor asserts that it had no knowledge of our letter report until it received a copy from AIRS as part of this protest and, therefore, that it could not have been a factor in the technical evaluation process. Furthermore, the agency argues that the report's findings are not relevant to the instant technical evaluation and, at best, concern only the responsibility of NEC. The NEC contract which was the subject of our report concerned the microfilming and automation of the INS master alien location index file. As such, we believe the experience under that contract was not of the specific type required by the instant RFP's technical evaluation criterion which called for litigation support microfilming experience. Here, the agency rated NEC almost perfect in past experience because of its previous litigation support contract performances. To the extent that NEC's poor performance on the Justice contract concerns its general ability to perform, it is a matter of responsibility, and we no longer review an agency's affirmative determination of responsibility absent circumstances not present here. Central Metal Products, Incorporated, 54 Comp. Gen. 66 (1974), 74-2 CPD 64.

With regard to evaluation of NEC's understanding of the problem and technical approach, AIRS claims that NEC received high point scores for both factors despite its failure to propose any on-site microfilm processing capability. Our review of the record indicates that the RFP did not specifically require on-site processing but rather merely requested a discussion of any on-site capabilities as they related to a proposer's ability to assure that filming and processing could be accomplished preferably on the same day to insure completion within any court ordered time constraints. Since NEC's proposal did in fact mention on-site processing capabilities, NEC complied with the RFP's literal requirement for discussion of on-site film processing.

In this connection, we note that discussion of any on-site processing capability was only one of many areas involved in the evaluation of these two factors, and AIRS does not allege any other evaluation deficiencies with regard to these factors. In this regard, the determination of the relative merit of technical proposals is the responsibility of the procuring activity concerned which must bear the major burden of any difficulties encountered because of defective analysis. UCE, Incorporated, B-186668, September 16, 1976, 76-2 CPD 249, and cases cited therein. Therefore, the procuring activity's determination ordinarily will be accepted by our Office unless it is clearly shown to be unreasonable. METIS Corporation, 54 Comp. Gen. 612 (1975), 75-1 CPD 44; Human Resources Company, B-187153, November 30, 1976, 76-2 CPD 459. Here AIRS has not shown that the point scores awarded to NEC by the technical evaluation committee were unreasonable.

Finally, we point out that AIRS received the lowest technical rating and submitted the highest price of the four proposers submitting best and final offers. AIRS has alleged no deficiencies in the evaluation of the other two proposals rated ahead of it. Even if we were to agree with AIR's objections to the technical score awarded NEC, which we do not, AIRS would not be in line to receive award.

#### The Negotiation

AIRS alleges that during oral negotiations, a Labor contracting official improperly revealed AIRS's prices to the technical panel and made a statement to the effect that "the pricing was too high and totally unacceptable." AIRS maintains that this revelation "damaged" its technical standing because it adversely influenced the members of the technical panel against AIRS.

Labor admits revealing an AIRS alternative pricing proposal based on a fixed price per day for camera operators which did not comply with the pricing scheme required in the RFP and which the agency found to be

completely unacceptable. However, the agency asserts that its negotiator took great care not to reveal AIRS's pricing proposal which followed the pricing scheme of the RFP, that is a fixed price per fiche and per roll of film scaled according to the number of documents per filming session. Furthermore, Labor notes that in revealing the alternative pricing proposal the negotiator carefully stressed the fact that it concerned only the alternative pricing proposal and not the technical proposal.

AIRS does not contest this explanation of what transpired during the oral negotiations and we are not persuaded that any prejudice to AIRS occurred. In any event, AIRS's claim that its technical score was adversely affected by a price revelation is not borne out by the facts in this case which indicate that AIRS's technical score actually increased after the oral discussions in question.

#### Technical Evaluation Panel

AIRS maintains that the members of the evaluation panel did not understand the day-to-day operation of the microfilming business and therefore the evaluators were not qualified to judge proposals in the instant procurement.

Labor submits that its technical panel of three members was well-qualified. The panel consisted of the Project Director for the Litigation Support Project, the Acting Director for Special Investigations and the Assistant Administrator for Reports and Disclosure. Labor believes that this panel "was well balanced with persons who 1) had knowledge of the entire litigation support effort, 2) were concerned with the day-to-day implementation of the litigation support project and 3) had sufficient technical knowledge of the subject area."

In the absence of allegations of fraud, bad faith, or conflict of interest, our Office will not review the qualifications of technical evaluation panel members

of procuring agencies. This is because we consider the composition of a technical evaluation panel to be a matter primarily within the discretion of the contracting agency. University of New Orleans, B-184194, May 26, 1978, 78-1 CPD 401. Here, AIRS presents no reviewable allegation.

Contract Performance

AIRS's request that we monitor NEC's performance based on its concern that NEC will not adequately perform under the instant contract is a matter of contract administration and is outside the scope of our bid protest function. See, e.g., Black & Decker (U.S.), Inc., B-196406, December 26, 1979, 79-2 CPD 433.

Based on the foregoing, the protest is denied in part and the remainder is dismissed.



Acting Comptroller General  
of the United States