

Carson

PLI 14523

**DECISION**



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

Aug 8, 1980

FILE: B-196433

DATE: 196433

MATTER OF: Monchik-Weber Associates, Inc.

DLC 050572

**DIGEST:**

1. Protester has not met burden of proving conflict of interest on part of evaluation team leader where only evidence, allegations that team leader on several occasions stated that he had unusually high-paying job offers from awardee, is contradicted. Furthermore, elimination of team leader from scoring of proposals would have left competitors in same relative position.
2. Protester has not proved allegations of technical transfusion based on protester's own receipt of information about procurement and reference in awardee's last best and final offer to database management system proposed by protester where there is reasonable explanation for citation of particular system and protester's own receipt of "improper leaks" does not necessarily mean that other competitors were privy to such information. Allegation is timely where there is no evidence that protester learned of specific basis of protest more than 10 working days prior to raising issue.
3. Contention that four rounds of best and final offers requested by agency resulted in one-sided auction for benefit of awardee is without merit where requirement for each additional round was reasonable and all offerors were afforded opportunity to amend proposals.

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[Protest Against Contract Award]

4. Offeror's advice to noncontracting official of mistake in pricing of proposal does not constitute actual notice to contracting officer of error. Contracting officer is not on constructive notice of error where substantial increase in price is noted but, upon further investigation, is tied to at least six different items in offer, and decrease in price on only other offer is accompanied by significant technical changes not present in protester's offer, leading contracting officer reasonably to conclude that increase was not result of error. Absent either actual or constructive notice of error, contracting officer has no duty to verify offer.
5. Solicitation and evaluation plan which reflect and provide for relative scoring of proposals and use of scores as guides to decision makers comply with requirement in delegation of procurement authority for such action.
6. Contemplated implementation of annuity role in first year of contract for development and implementation of retirement information system does not require re-opening of competition where only evidence shows that option to implement annuity function at some unspecified date was included in original solicitation. Consideration of such changes are matters of contract administration.

Monchik-Weber Associates, Inc. (Monchik-Weber), protests the award of a contract by the Office of Personnel Management (OPM) to Booz-Allen & Hamilton, Inc. (Booz-Allen), for the development and implementation of a "Retirement Interface Processing System" (RIPS).

We do not consider the protest to have merit.

On March 2, 1979, OPM issued a request for proposals for the RIPS which contemplated, in broad terms, the provision of computer hardware, software

and support services for the immediate conversion of limited applications currently operating on another smaller system, the implementation of a document and case control system (DCCS) and the phased implementation of other applications such as text-processing, etc., over the balance of the system's 6-year projected life. Amendment No. 5, issued prior to the receipt of initial proposals, advised prospective offerors that cost and technical factors, including the DCCS and personnel qualifications, would be of equal importance in the evaluation of proposals. The four proposals received by the May 7, 1979, deadline were first considered by an initial screening team to ascertain their compliance with the mandatory requirements of the solicitation on a pass-fail basis. Proposals satisfactorily meeting all of the mandatory requirements were then appraised and scored by a technical evaluation team, resulting in an initial technical score of 90 (out of 100) for Monchik-Weber and 34 for Booz-Allen. These scores were later revised upwards to 93 and 57 points, respectively, after the first round of negotiations and best and final offers. Three additional rounds of best and final offers were submitted during which Booz-Allen's technical evaluation score increased to 82 while Monchik-Weber's score remained unchanged. Each offeror's cost score was based on the application of a formula:  $\text{Lowest overall cost/Cost of proposal being evaluated} \times 100 = \text{Points Awarded}$ . Booz-Allen's cost score was 97 and its total score 179; Monchik-Weber's cost score was 70 and its total score was 163. The General Services Administration approved the proposed award to Booz-Allen on September 26, 1979, and the contract was awarded on that date.

Monchik-Weber challenges the fairness of the procurement and alleges numerous improprieties in its conduct. In our discussion below, we will group together these arguments which Monchik-Weber believes are indicative of bias in the procurement and treat independently each of the other issues.

#### BIAS

6. Monchik-Weber's contention that the procurement was biased in favor of Booz-Allen is based on several premises: first, Monchik-Weber contends that OPM's

evaluation team leader had a conflict of interest which influenced the evaluation of proposals; second, Monchik-Weber asserts that there were improper communications between OPM and Booz-Allen which resulted in the technical transfusion of information contained in Monchik-Weber's proposal to Booz-Allen; and, third, Monchik-Weber relies on its first two premises coupled with OPM's four requests for best and final offers to support an assertion that OPM conducted a one-sided auction for the benefit of Booz-Allen. We will treat each of these in turn.

#### Conflict of Interest

Monchik-Weber's contention that OPM's evaluation team leader had a conflict of interest is based principally on statements alleged to have been made by the team leader on more than one occasion to the effect that he had an \$80,000 job offer from Booz-Allen. This remark is first attributed to the team leader by an official of Monchik-Weber's proposed subcontractor, apparently an instructor at a local university, and is reported to have first occurred in the context of a casual instructor-student conversation about career goals during a course attended by the team leader. The team leader reportedly was considering further graduate study. One of the team leader's coworkers reported hearing a similar statement about a job offer for \$60,000. Booz-Allen denies that any such job offer was ever made as does the team leader who also denies making the statements in question. The team leader does concede, however, that on occasion he has indicated that he would like to work in private industry.

As further evidence of the team leader's conflict of interest and bias, Monchik-Weber also stated that it understands that during the course of OPM's investigation of Monchik-Weber's charges of conflict of interest, OPM investigators received a sworn statement to the effect that at least one evaluation team member was told prior to final evaluation that the team leader wanted Booz-Allen to be given a rating of 82 in the final evaluation, which was in fact Booz-Allen's final technical score.

We think these allegations are, at best, doubtful evidence of a conflict of interest. Monchik-Weber's own reliance on these allegations is open to question. The record amply demonstrates that Monchik-Weber and/or its subcontractor (1) was aware of the participation of the team leader in the procurement; (2) knew of these alleged statements concerning a job offer as early as July 1979; and (3) knew that Booz-Allen was "creeping up" in its technical score during evaluation. In these circumstances, we think that had Monchik-Weber itself actually given any credence to these purported remarks, it would have brought them to the attention of OPM officials. This leaves us with a record which establishes clearly only that the alleged statements might or might not have been made and, if made, were of dubious credibility. Furthermore, if the evaluation team leader's scoring of the proposals is omitted from the overall evaluation, Booz-Allen still remains the highest scored offeror, leaving these offerors in the same relative competitive position.

In the circumstances, the record here establishes only tenuously the possibility of a conflict of interest; we do not regard this as sufficient to impugn the objectivity of OPM's evaluation of these proposals. See Science Management Corporation, B-193256, April 15, 1979, 79-1 CPD 237.

#### Technical Transfusion

The assertion that OPM improperly disclosed information from Monchik-Weber's proposal to Booz-Allen is predicated on two underlying bases: first, Monchik-Weber relies on its own receipt of information from OPM personnel concerning other proposals to support its conclusion that Booz-Allen must also have been the recipient of such information, and, second, Monchik-Weber suggests that it could not be coincidence that in its last best and final offer Booz-Allen offered to substitute for its own approach the OPM-preferred database management system, Model 204, proposed by Monchik-Weber. We do not think that Monchik-Weber's arguments establish clearly that OPM improperly disclosed Monchik-Weber's approach to Booz-Allen.

Before proceeding to the merits of this contention, we must respond to an assertion by Booz-Allen that Monchik-Weber's allegation of technical transfusion is untimely under our Bid Protest Procedures, 4 C.F.R. part 20 (1980). In this connection, Booz-Allen asserts that Monchik-Weber's own submissions in support of this contention reveal a history of improper disclosures to Monchik-Weber about which the protester should have complained at the time they were made.

We are of the view that Monchik-Weber's argument is more narrow than styled by Booz-Allen. Monchik-Weber's complaint is that OPM improperly advised Booz-Allen of Monchik-Weber's specific database approach concerning which Monchik-Weber would have had no basis to protest until it learned that Booz-Allen had mentioned Model 204 in its proposal. Monchik-Weber's more general allegations of improper disclosures are merely supporting material for this complaint rather than independent bases for protest.

We find nothing in the record which would lead us to conclude that Monchik-Weber knew of this basis for protest more than the 10 working days allowed prior to raising the question under our Bid Protest Procedures. Resolving any doubts as to timeliness in favor of the protester, we find this issue to be timely. Werner-Herbison-Padgett, B-195956, January 23, 1980, 80-1 CPD 66.

In considering the merits, we note at the outset that the reference to Model 204 in Booz-Allen's last best and final offer, characterized by Monchik-Weber as an offer to switch systems, strikes us as something less. Commercially available database management systems span a broad range of complexity and capability ranging from relatively uncomplicated index-sequential systems to highly complex systems combining several different philosophies in one package; as a general rule, only a limited portion of this spectrum is appropriate for any given application. Amendment No. 8 to the RFP, which solicited the last round of best and final offers, required accelerated implementation of some functions and delayed the implementation of others. Booz-Allen viewed these changes, coupled with an enhanced availability of newer model IBM 4300-series mainframes,

as requiring changes to its originally proposed system architecture to which Booz-Allen responded in its last offer. Regarding Model 204, in this context, Booz-Allen's last best and final offer states:

"Reconsideration of the decision to use the ADABAS and Complete packages. The introduction of a fully distributed architecture may be better served by other DBMS and Telecommunications packages such as Model 204. For pricing purposes, we are still including our original ADABAS approach. Clearly, the extended DCCS development cycle will permit us to 'fine tune' the final technological decision during the DCCS design process."

Given the considerations outlined in Booz-Allen's last best and final offer, we consider merely prudent Booz-Allen's suggestion that it would reevaluate its selection of the ADABAS database management system and do not regard its citation of Model 204 as a potential alternative necessarily to be indicative of knowledge of Monchik-Weber's approach. Furthermore, we disagree with Monchik-Weber's reasoning that it necessarily follows from its own receipt of information concerning the procurement that Booz-Allen was also privy to such information. Monchik-Weber has offered no evidence that any competitor other than itself sought out and obtained these disclosures and we consider this insufficient to attribute such activities to Booz-Allen. In any event, the Booz-Allen offer stated it was based upon the ADABAS approach and its rating remained unchanged despite the reference to Model 204. Therefore, Booz-Allen gained no advantage by citing this other system.

We are very concerned, however, about the nature and extent of the information to which Monchik-Weber claims to have been privy. In an affidavit submitted in support of Monchik-Weber's protest, the president of a proposed subcontractor to Monchik-Weber states that he "received substantial information including specific technical scores achieved by the competitors after proposal submission and each proposal modification." In this same affidavit, this individual states

that he was told by "sources" that Booz-Allen's final proposal included a reference to Model 204 and also indicates that "we" got "specific indications" that all of the competitors were in the same price range. We believe that providing a competitor with information identifying a price range and specific technical scores comes perilously close to conducting a prohibited auction, although we note that Monchik-Weber does not appear to have used this information to its advantage. We are by separate letter bringing this matter to the attention of OPM's Inspector General.

#### Auction

Monchik-Weber asserts that OPM's multiple requests for best and final offers, coupled with the above discussed "flagrant leaks of information," amounted to a one-sided auction for the benefit of Booz-Allen. We think Monchik-Weber's charge is unfounded, a point which can best be explained through a brief synopsis of this part of the competition.

1. First Best and Final Offers: Monchik-Weber's proposal was not acceptable because it contained a liquidated damages clause for cancellation and Monchik-Weber had been given conflicting advice during negotiations; OPM determined it to be in the best interest of the Government to reopen negotiations to resolve ambiguities.
2. Second Best and Final Offers: All vendors, including Monchik-Weber, were ineligible for award for a variety of reasons. Determined to again reopen negotiations to cure these deficiencies.
3. Third Best and Final Offers: Proposed costs far in excess of budgetary limits necessitated rethinking of program. Some applications postponed until later in systems life, while other less expensive applications were selected for acceleration. Decisionmaking extended evaluation time beyond first mandatory delivery date. Additional funding sought.



4. Last Best and Final Offers: Requested offers on restructured requirement. Booz-Allen selected as awardee.

We have no quarrel with any of these requests for best and final offers and find no evidence that Booz-Allen was provided any opportunity to upgrade its proposal that was not afforded to all of the competitors. In these circumstances, we can ascertain no basis for a conclusion that OPM's multiple requests for best and final offers represented preferential treatment of Booz-Allen.

The burden is on protesters to present the information and evidence necessary to substantiate their cases. Courier - Citizen Company, B-192899, May 9, 1979, 79-1 CPD 323. In view of our conclusions above concerning the premises underlying Monchik-Weber's assertion of prejudice in the procurement, we cannot say that the protester has satisfied its burden of proof on this question.

#### CLAIM OF ERROR

In commenting on the OPM's report to our Office on the protest, Monchik-Weber suggests that it first learned from the report that OPM had failed in its cost evaluation to give any consideration to a \$1.28 million error in Monchik-Weber's final offer about which OPM knew or should have known. In this connection, Monchik-Weber asserts that OPM should have recognized that there was an error in its final offer because it contained an increase of approximately \$1.6 million over its prior offer, whereas Booz-Allen's final offer was lower by \$1.3 million than its previous best and final offer, and the difference between the two proposals jumped from \$270,000 to almost \$3 million. In these circumstances, Monchik-Weber argues that OPM was on constructive notice of the error and should have sought verification from Monchik-Weber of the amount of its offer. Monchik-Weber states that OPM's failure to seek verification is compounded by the fact that Monchik-Weber discovered its error within 2 days of submitting its final offer and immediately communicated it by telephone to Dr. Gary Nelson, an Associate Director of Compensation at OPM, because "he seemed to be in charge of the

entire procurement." MonchikWeber asserts that OPM therefore knew of the error and should have considered it in the cost evaluation. OPM responds that: (1) Monchik-Weber's allegation of an error in its offer is untimely under our Bid Protest Procedures, 4 C.F.R. part 20 (1979), and that if Monchik-Weber knew of the error, it should have advised the contracting officer, not Dr. Nelson who is not and never has been a contracting official; and (2) the contracting officer did notice the increase in Monchik-Weber's last offer, but identified it as being associated with at least six different cost items which led the contracting officer to believe that it was not the result of an error. These items included personnel costs, management fees on equipment not previously included, higher equipment maintenance costs, and increases in hardware costs and changes in hardware.

Since Monchik-Weber did not know until after receipt of the agency report that the claim of error was not considered, and it protested promptly thereafter, the protest in this regard is timely.

The solicitation provided that offerors were to contact only the issuing office "in connection with any aspect of this requirement prior to contract award" and required that all correspondence relating to the solicitation be directed to that office. The contracting officer's address and telephone number were prominently identified in the solicitation.

We have previously held that advice to a noncontracting official of a suspected error does not constitute actual notice to the contracting officer. Wolverine Diesel Power Company, 57 Comp. Gen. 468 (1978), 78-1 CPD 375. By electing not to comply with the clear statement of the solicitation as to whom such notice should be directed, we think Monchik-Weber assumed the risk that its advice of an error might never be communicated to the contracting officer. Furthermore, we do not believe that the contracting officer can reasonably be charged with constructive knowledge of the alleged error in Monchik-Weber's proposal and, therefore, no verification of Monchik-Weber's offer was required. As noted above, the contracting officer did recognize the discrepancy between the two competitors' treatments of their

best and final proposals, but associated Monchik-Weber's increased costs with numerous different items in its proposal; at the same time, Booz-Allen proposed significant hardware changes which would lower its costs. Given this information, we cannot say that the contracting officer was not reasonable in concluding that there was no need to verify Monchik-Weber's offer. See Aydin Energy Systems, B-192965, September 6, 1979, 79-2 CPD 180, aff'd, January 24, 1980, 80-1 CPD 68.

#### DELEGATION OF PROCUREMENT AUTHORITY

The delegation of procurement authority to OPM by the General Services Administration required that OPM's solicitation "should neither explicitly provide for a precise numerical evaluation formula, nor for award to the proposal receiving the highest total weighted score. It should provide for relative weights with scores only as a guide to the decision makers." Monchik-Weber states that "A review of the solicitation will show that this limitation was not observed." We disagree.

The evaluation criteria for this procurement are stated in amendment No. 5 to the solicitation. These criteria identify by assigning points out of a total of 200 the relative weight to be accorded to each of the major evaluation factors and provide that scores are to be used as guides for determining the successful offeror. OPM's evaluation plan echoes these criteria. We believe OPM's evaluation criteria complied with its delegation of procurement authority as, we note, apparently so did the General Services Administration which approved the eventual award of the contract.

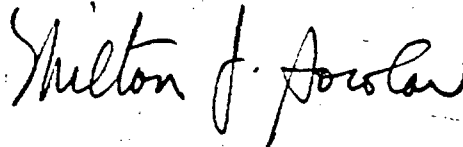
#### CHANGE IN CONTRACT

In its report to our Office, OPM answered an earlier argument made by Monchik-Weber by commenting that changes were being contemplated in Booz-Allen's contract in order to implement sooner one of the functions to be assumed by the system. Monchik-Weber now argues that OPM is awarding a contract different from that contemplated by the request for proposals and that all offerors should be given an opportunity to compete for this new requirement.

In addition, Monchik-Weber has requested that our Office undertake an investigation to verify its allegation of bias. While, as Monchik-Weber points out, we have on occasion independently investigated certain aspects of protests, see, e.g., Informatics, Inc., 57 Comp. Gen. 217 (1978), 78-1 CPD 53; and Gardner Machinery Corp., B-185418, September 5, 1978, 78-2 CPD 221, it is the general rule that we will not conduct investigations to verify protester's allegations. See Alaska Associates, Inc., B-196360, February 20, 1980, 80-1 CPD 149; Kamex Construction Corporation, B-196346, February 20, 1980, 80-1 CPD 148; Courier - Citizen Company, supra. We do not think that the evidence in the record before us warrants the conduct of an investigation as part of our consideration of this protest, particularly since OPM has conducted its own investigation.

The protest is denied.

Last, since Monchik-Weber has failed to show that the agency was arbitrary and capricious in its actions, its claim for proposal preparation costs is denied.



For the Comptroller General  
of the United States