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DECISION



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

FILE: B-206274

DATE: May 20, 1982

MATTER OF: CompuServe Data Systems, Inc.

DIGEST:

Even where agency improperly evaluated cost proposals and protester's cost proposal, if evaluated properly, is the highest scored offer, award to other offeror was proper where awardee's proposal remained the lower priced of the two essentially equal proposals technically.

CompuServe Data Systems, Inc. (CDS), protests the Immigration and Naturalization Service (INS) award of a contract to National Data Corporation (NDC) under request for proposals (RFP) No. CO-13-81.

The INS contract provides for teleprocessing services to support the INS Naturalization and Citizenship Case Tracking System and the Deportation Docketing System. CDS protests INS's failure to consider a prompt-payment discount offered by CDS. CDS also challenges INS's decision to add certain costs to CDS's best and final offer--\$10,000 for a disk connect which CDS argues was not a requirement in the original schedule of items to be evaluated and \$5,000 for storage which CDS contends it offered at no charge. We deny the protest.

CDS contends that, under the evaluation scheme, award had to be made to the highest scored offeror. Both INS and CDS agree essentially that the following evaluation results if CDS's discount offer is considered. CDS's figures are as follows:

	<u>NDC</u>	<u>CDS</u>
Technical	119.25	124.00
Benchmark	110.00	114.00
Cost	160.00	153.65
	<u>389.25</u>	<u>391.65</u>

Further, if the \$15,000 CDS contends INS erroneously added to its cost is deducted, CDS's point superiority would be increased.

Specifically, CDS argues that the solicitation required evaluation of CDS's offered discount. Primarily, CDS relies on the fact that Standard Form block 16 of the RFP permitted insertion of a prompt-payment discount and that the General Services Administration (GSA) Basic Agreement, incorporated by reference in the RFP, provided for solicitation and evaluation of prompt-payment discounts.

INS contends that a conscious decision was made not to evaluate any offered prompt-payment discounts and that it was an oversight that the discount section was not annotated that offered discounts would not be considered in the cost evaluation. INS states it knew it could not take advantage of such discounts due to the time required to validate payment invoices.

We solicited the views of the General Services Administration (GSA) on this case, since INS issued the RFP under a GSA delegation of authority. GSA advises that, irrespective of INS's intent, the RFP can be reasonably interpreted as having solicited for prompt-payment discounts and further indicated that the offered discounts would be evaluated. We agree.

Block 16 of the RFP clearly provided for insertion of prompt-payment discounts. Furthermore, as GSA points out, its basic agreement, incorporated by reference "with the same force and effect as if set forth in the full text" contains a discount provision which provides that,

"for the purpose of bid evaluation, any prompt payment discount which is eligible (i.e., for a period of 20 days or more) for consideration in the evaluation of offers will be applied directly to the price offered."

CDS offered a 5 percent discount for prompt payment within 20 days and thus made an eligible offer which should have been considered.

In any event, INS contends that point totals were not the determinative criteria for award and that price was the determinative factor because the CDS and NDC offers were essentially equal technically. INS advises

that its technical evaluation team determined that the spread of 8.75 points between the technical proposals did not suggest CDS's proposal was superior to NDC's proposal. Further, the contracting officer states that the "marginal point difference does not indicate any superiority." Therefore, INS states that even if the discount is considered, and CDS's other allegations were valid, and the \$15,000 added to CDS's proposal is deducted, award to NDC was proper. We agree with INS.

RFP amendment No. 2 provided that "point scores of the benchmark test, the price proposal and the technical evaluation will be added to determine the firm with the highest review score for award." The solicitation also contained the following language regarding award:

"* * * The contract will be awarded to that responsible offeror whose offer conforming to the solicitation will be most advantageous to the Government, price and other factors considered."

The meaning of the language in amendment No. 2 is not entirely clear. Nevertheless, the term "review score for award" in the amendment, read in conjunction with the above-quoted language, indicates to us that the sum of the three elements to be evaluated, that is the total point scores, would not necessarily control the selection of the awardee. The ranking of offers according to the point scores would be a guide to the contracting officer for the determination of which offeror would be awarded the contract rather than obligating INS to award to the highest scored offeror. The use of the word "review" as an adjective indicates to us that the point scores were to be reviewed by the contracting officer when deciding on the selection. The award would not automatically be made to the highest scored offeror.

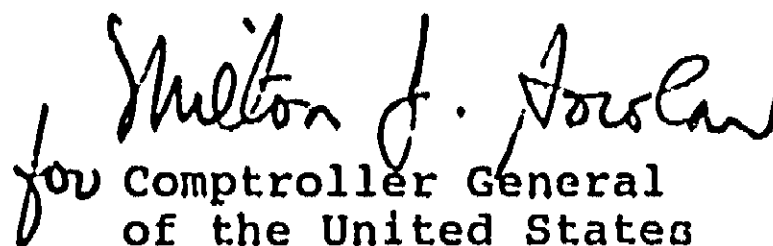
It is well settled that where an agency regards proposals as essentially equal technically, cost or price may become the determinative consideration in making an award notwithstanding the fact that in the overall evaluation scheme, cost was of less importance than other evaluation criteria. See Lockheed Corporation, B-199741.2, July 31, 1981, 81-2 CPD 71, affirmed, B-199741.3, October 26, 1981, 81-2 CPD 338. Price or cost, no matter how it is weighted in the evaluation scheme, becomes the determinative

factor in awarding the contract absent explicit justification for awarding to a higher priced offeror. See Computer Data Systems, Inc., B-187892, June 2, 1977, 77-1 CPD 384, affirmed, August 2, 1977, 77-2 CPD 67, and cases cited therein.

The record of the technical/benchmark evaluation indicates that both NDC and CDS were judged equally capable of providing the desired level of support to INS. The record further indicates that the CDS proposal costs, deducting the discount, and assuming CDS's other allegations are correct, would have been approximately \$1,009,703.70; whereas, NDC's proposal cost remains low at \$983,291.

Thus, even when CDS's discount is considered, and the \$15,000 is also deducted from CDS's cost proposal, NDC's offer remains the lowest cost proposal of two essentially equal technical proposals. Under these circumstances, award to NDC as the low cost offeror was not unreasonable.

We deny the protest.


for Comptroller General
of the United States