

DECISION



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

FILE: B-205776

DATE: September 20, 1982

MATTER OF: CSR, Incorporated

DIGEST:

1. Protester contends, citing several events that occurred during the procurement, that the agency's procurement action was designed to ensure that the protester would not receive the award. After considering the agency's explanation of why each of the cited events occurred and after reviewing the RFP, the proposals, the technical evaluation reports, and the reasons for the selection of the awardee, GAO finds no basis to conclude that the agency's actions were designed to preclude award to the protester.
2. GAO finds that the RFP adequately advised offerors that while technical excellence was the most important factor in selecting the successful offeror, cost was also a factor. Further, GAO has no basis to object to the procuring agency's selection of the awardee because the awardee's substantial cost advantage outweighed the protester's slight technical advantage.

CSR, Incorporated protests the award of a contract to Circle/Physician Placement, Inc. (Circle), under request for proposals (RFP) No. HSA 240-BCH3-2(1) GJG issued by the Department of Health and Human Services (HHS) for certain management and support services for specific HHS conferences. CSR, the incumbent contractor, contends, pointing to several events during the procurement, that HHS wanted to keep CSR from receiving the award. CSR also contends that, under the RFP's evaluation criteria, CSR should have been selected for award.

HHS reports that CSR was treated fairly and HHS explains why each of the events cited by CSR took place. HHS also reports that following the RFP's selection plan, award was properly made to Circle. We deny the protest in part and dismiss it in part.

The RFP contemplated a cost-plus-fixed-fee contract for providing logistical management and support services for four multiregion orientation conferences and 13 inservice conferences for HHS health professionals in 10 regions. The RFP stated that "paramount consideration shall be given to the evaluation of technical proposals, as well as price, in the award of a contract." The RFP advised that technical proposals would be scored on the basis of 100 total points, divided as follows: problem (15 points); approach (20 points); personnel (30 points); facilities (5 points); and demonstrated capability (30 points). With regard to the demonstrated capability factor, the RFP stated that the proposal must include information about the offeror's past experience.

In May 1981, HHS received 10 timely proposals in response to the RFP. HHS convened an evaluation panel to score the technical proposals. The panel reported in June 1981, that CSR submitted a perfect proposal without weaknesses and CSR's proposal was assigned 100 points, that one other offeror (not Circle) was marginally acceptable at 66.75 points, and that the remaining offerors (including Circle) were technically unacceptable with scores ranging from 39 to 11.25 points. HHS reports that the contracting officer expected the scoring of technical proposals to be closer because (1) several offerors had successfully performed similar work for HHS, (2) several offerors, in a recent competitive procurement for very similar services, received technical scores in the high 80's and 90's, and (3) the prospect of three such qualified offerors submitting markedly inferior proposals in this procurement seemed extremely remote. Moreover, the contracting officer considered the attainment of a perfect score by an offeror to be improbable. From these circumstances, the contracting officer was alerted that the technical evaluation could be improper and biased in favor of CSR. After thoroughly considering the panel's report and noting that the individual

evaluator's scoresheets contained numerous blank spaces, too many general statements, and too few specific statements, the contracting officer determined that the panel's comments did not sufficiently justify the range of low scores. In this regard, HHS reports that the Chief of the Administrative Services Branch wrote a lengthy memo to the contracting officer detailing the inadequate justification for the scoring contained in the panel's June report and recommending that the contracting officer convene a new panel or request the first panel to prepare a better report. The memo stated that in the event of a protest the scoresheets could be revealed and the scoring would look arbitrary. The contracting officer elected to request the panel reevaluate the proposals and more adequately explain the scoring.

The panel reported again in August 1981, that CSR's proposal was the highest rated at 93.66 points and this time certain weaknesses in CSR's proposal were noted; the panel made almost no changes in its evaluation of the other proposals. The contracting officer again concluded that the panel was not responsive to her request and that the panel's findings were not adequately supported and that the panel had again failed to adequately document, in narrative form, the strengths and weaknesses of each offeror.

The contracting officer, therefore, adopted the other option suggested by the Chief of the Administrative Services Branch and requested that a new panel be convened to evaluate technical proposals by adequately documenting in narrative form the strengths and weaknesses of each proposal. A new panel was convened and in October 1981, the panel reported that CSR's proposal was the best at 68 points, another offeror's proposal was second at 63 points, Circle's proposal was third at 60 points, and the remaining scores ranged from 58.6 to 31 points. Unlike the two reports from the first panel, however, the scores were accompanied by a narrative explaining the evaluated strengths and weaknesses of each proposal. This technical evaluation satisfied the contracting officer and the technical scoring and cost evaluation was used to determine the competitive range, which was composed of the four highest rated proposals including CSR's and Circle's.

The contracting officer used the evaluated weaknesses in technical proposals as the basis for oral discussions with offerors in the competitive range. For example, the contracting officer told Circle that it made incorrect assumptions regarding reservations and the use of HHS regional office staff, that Circle needed to elaborate on proposed logistical support, that Circle needed to clarify how scheduling problems would be resolved, and that Circle needed to elaborate on staff capability in managing logistics for conferences.

Best and final offers were received and evaluated. The technical review panel concluded that CSR's responses did not add or detract from its initial technical proposal, so the panel did not change CSR's score of 88.3 points. The panel similarly concluded that the second rated offeror did not change its initial rating of 63 points. The panel reported, however, that Circle, initially third technically rated, had clarified, and changed its proposal convincing the panel that Circle's score should be raised to 85 points. The panel concluded that while Circle was a comparatively new corporate entity, Circle's relevant staff experience at least equaled that of CSR and that Circle's proposed use of staff time and resources would be much more efficient than CSR's. The panel also stated that if there were staff time overruns, Circle would absorb the loss; however, the panel recommended that more staff time be added and budgeted rather than depending on Circle to absorb the loss. The best and final offers were as follows:

	<u>Technical points</u>	<u>Cost-plus- fixed-fee</u>
CSR	88.3	\$323,988
Circle	85.0	\$241,144

On December 4, 1981, the contracting officer decided to award to Circle but asked Circle to revise its best and final offer to add more staff time. On December 10, 1981, Circle submitted a revised best and final offer, in which Circle stood firm in its position that its proposed staffing was appropriate but Circle

states that it made a limited concession to the review panel by allocating an addition of less than \$1,000 for extra part-time conference staff. The same day, CSR filed a protest here alleging that evaluation of its proposal was improper and that the RFP's selection criteria were changed without notice. On December 24, 1981, the contracting officer determined that it was improper to permit only Circle to revise its proposal and the contracting officer notified Circle that the revised best and final offer would not be considered. On December 28, 1981, Circle stated that it would undertake the work based on its original best and final offer.

At that point, the contracting officer decided to reopen negotiations with CSR and Circle and permit revised best and final offers from both firms. Then, on January 6, 1982, the contracting officer received a copy of a second letter from CSR to our Office, supplementing CSR's protest. In the letter CSR detailed a scenario of what CSR believed had occurred throughout the procurement. From that description, the contracting officer concluded that CSR, the incumbent contractor, must have received information from HHS personnel concluding that HHS intended to make award to another firm offering a lower total cost. HHS reports that, due to the extent of the improper disclosures to CSR, the contracting officer had no confidence that the competitors could compete on an equal basis if negotiations were reopened; since the contracting officer thought that the rejection of Circle's revised best and final offer corrected the improper request to have only Circle submit a revised best and final offer, the contracting officer determined that award could properly be made based on evaluation of initial best and final offers. In selecting Circle for award, the contracting officer was aware of the panel's view that Circle had understated staff time and related costs by about \$1,000, according to Circle's second best and final offer. It appears that the contracting officer considered these facts in her selection of Circle. Later, the contracting officer received permission to award notwithstanding the protest. On January 25, 1982, award was made to Circle.

CSR essentially contends that this procurement action was designed to ensure that CSR would not receive this contract award. In support of this contention, CSR cites the HHS process of evaluating initial proposals, where HHS personnel, who had worked closely with CSR as the incumbent contractor, twice scored CSR's technical proposal near perfect while finding all but one other proposal to be unacceptable. CSR notes that only when HHS personnel less familiar with CSR's work evaluated proposals did CSR's relative margin of technical superiority decrease. In this regard, we note that while only one of the three evaluators on the second panel had also worked closely with CSR while CSR was the incumbent contractor, the scores awarded by each of the three evaluators were almost identical with respect to both CSR's and Circle's proposals. CSR views the three scorings by the two panels as open efforts to downgrade CSR's proposal. Further, CSR argues that, according to the questions raised by the evaluators, they did not fully understand CSR's proposal.

Regarding the evaluation of best and final offers, CSR finds it impossible that any other firm could be rated as good technically as CSR, the incumbent contractor doing an excellent job. Moreover, CSR is amazed that a new firm with no relevant corporate experience could be rated almost as high as an incumbent contractor, like CSR. In this regard, CSR states that, while the procurement was pending, Circle attempted to hire one of CSR's employees, indicating to CSR that Circle did not have the experienced staff necessary for the work. We note that Circle denies trying to hire one of CSR's employees. Further, CSR views the narrative accompanying the evaluation of best and final offers as substantially similar in quality to the prior two narratives accompanying the evaluations of initial proposals; CSR implies that the contracting officer must have relaxed her high standards for supporting narratives when Circle closed the point spread between itself and CSR. CSR believes that the improvements in Circle's best and final proposal did not warrant the large increase in score given by the evaluators; if warranted, CSR argues that the changes constituted an improper substantial rewrite of Circle's initial proposal.

CSR points to (1) certain comments in the December 1981 report from the technical panel reflecting improvements in areas of Circle's proposal, and (2) the October 1981 report from the technical panel and observes that Circle's score should only have been raised to 78.3 not 85 points. CSR also notes that it was not until the April 20, 1982, memorandum from the panel chairman that other elements of Circle's score were adjusted to produce a total of 85 points. From this, CSR concludes that the more contemporaneous December 1981 report is more credible than the April 1982 explanation of the error in the December 1981 report.

CSR raises three additional points: (1) while CSR learned information forming its basis of protest from HHS personnel, CSR contends that its action was not improper because CSR was only trying to find out whether it was treated fairly; (2) CSR notes that after award, HHS reduced from 13 to 12 the number of insertions conferences and for another conference HHS did part of the work for Circle without a corresponding adjustment in the total projected cost of the work; and (3) CSR states that without following usual procedures, the HHS contracting officer determined that next year its requirement for this work will be satisfied under the Small Business Administration's (SBA) 8(a) program--in January 1981, Circle submitted an application to the SBA to be considered eligible for the 8(a) program.

In response to CSR's contentions, HHS reports that the procurement was conducted fairly and that the evaluations accurately reflect the relative technical excellence of the proposals evaluated. HHS concludes that, in accord with the RFP's selection criteria, award was properly made to Circle. In support, HHS provided our Office with available data on all evaluations, the complete proposals of Circle and CSR, and five separate reports responding in detail to each of the matters raised by CSR.

Our analysis begins with an examination of each event cited by the protester. First, with regard to the evaluation of initial technical proposals and the

contracting officer's rejection of the first evaluation conducted by the first panel, we recognize that the contracting officer has broad discretion concerning the amount of detail that she would deem necessary in order to (1) advise unsuccessful offerors why they were excluded from the competitive range, and (2) conduct meaningful discussions with offerors selected for the competitive range. While technical evaluators may know which proposals are the best and why, their views are worthless unless they are effectively communicated to the contracting officer. Here, the contracting officer knew from personal experience with at least three non-incumbent vendors that they could do the work and the contracting officer reasonably, in our view, was alerted that all three could not have submitted poor quality proposals. With that knowledge and knowing that our Office carefully scrutinizes visibly narrow competitive ranges, we can understand why the contracting officer rejected the first evaluation because the panel's explanation of the scoring was incomplete, too general in part, and lacking specific reasons for the assigned numerical scores. We cannot conclude that her action was unreasonable or outside her broad discretion in this area.

With regard to the second scoring by the first panel, we note that the contracting officer gave the panel explicit instructions as to what details she needed and the panel had a lengthy memo describing the format in which the report should be. From the contracting officer's perspective the panel took about 1 month to merely reformat the first report without being responsive to the contracting officer. In our view, the second scoring by the first panel did not add enough to effectively respond to the contracting officer's request. Faced with this second inadequate report, the contracting officer effectively had the following options: (1) give the panel one more chance; (2) do it herself without technical advice; or (3) convene a new panel that may be better able to communicate its views to the contracting officer. We have no basis to object to the rejection of the first two options as unacceptable in favor of the third option.

Second, while only one member of the second panel was as familiar with CSR's work as the members of the first panel were, the members of the second panel were

able, in the contracting officer's view, to successfully articulate the reasons for the scores assigned to the technical proposals and to state the perceived strengths and weaknesses of the proposals. See University of New Orleans, B-184194, May 26, 1978, 78-1 CPD 401 (composition of technical evaluation panels is within the procuring agency's discretion); Ads Audio Visual Productions, Inc., B-190760, March 15, 1978, 78-1 CPD 206 (protester has the burden of showing that evaluators are not qualified). The record contains no evidence to suggest that the members of the second panel were not qualified or that HHS abused its broad discretion in the composition of the second panel. Further, we note that there are substantive differences between the first and second panels reports and we cannot conclude that the contracting officer abused her discretion by accepting the report of the second panel.

Third, CSR's concern--that the second panel of evaluators did not understand CSR's initial proposal--seems to be academic because CSR had the opportunity in its best and final offer to explain to the evaluators the portions of CSR's proposal that were, in CSR's view, misunderstood by the evaluators.

Fourth, regarding the final technical score of Circle's best and final offer, the December 1980 report states that Circle's final technical score was 85 points but the precise areas of improvement combined with Circle's initial scores add to only 78.3 points. We are persuaded that HHS evaluators intended to score Circle's proposal at 85 instead of 78.3 points because, in our view, the narrative portion of the December 1981 report (stating that in key areas Circle and CSR were considered to be technically equal) adequately supports the higher point score. See Goodyear Aerospace Corporation, B-202722, July 24, 1981, 81-2 CPD 59. Our view is confirmed by the April 1982 explanation by the panel, indicating that there were other areas of improvement in Circle's proposal and that one of the improved areas mentioned in the December report showed (because of a typographical error) fewer points than Circle earned. Further, in our view, Circle's response (in its best and final offer) to HHS's specific concerns did not constitute an improper rewrite of

Circle's initial proposal. Compare Sexwrite International, Ltd., B-187197, October 8, 1976, 76-2 CPD 325.

Fifth, we find that the RFP's demonstrated capability factor was not limited to the offeror's corporate experience on similar projects but reasonably included relevant experience of each offeror's proposed personnel. See Skyways, Inc., B-201541, June 2, 1981, 81-1 CPD 439. In this regard, we are not persuaded that Circle tried to hire one of CSR's employees or that such an event would necessarily lead to the conclusion that Circle did not propose an adequately experienced staff. Further, we do not find it impossible that a new corporate entity, like Circle, could be rated nearly as good technically as CSR, the incumbent contractor. After taking into consideration the relevant experience of Circle's proposed personnel in providing the type of management and support services for conferences similar to the ones involved here, we find it entirely reasonable that nonincumbent vendors could have (and apparently do have) personnel as qualified and experienced as the then incumbent contractor. To eliminate any reasonable doubt, we have reviewed the evaluations of initial proposals, the memorandum of discussions with offerors, the evaluation of best and final offers, and we concur with HHS's determination that Circle's best and final offer successfully responded to the concerns expressed by HHS during the discussions, justifying the increase in Circle's final technical rating. See Development Associates, Inc., B-203938, October 9, 1981, 81-2 CPD 296.

Sixth, relative to the three additional points raised by CSR, we find no need to address whether CSR acted properly in obtaining information about the then ongoing procurement because our views on that subject will not affect the outcome of this protest. Further, we note that there was no postaward reduction from 13 to 12 inservice conferences and while HHS assisted Circle in distributing mailings for one conference that was necessary because award could not be made in time for Circle to timely handle that work. Naturally, HHS will realize a slight reduction in the projected costs since it will not have to reimburse Circle for costs of distributing those mailings. In any event, this is

a matter of contract administration, which we do not consider under our bid protest function. Also, whether the HHS contracting officer followed the usual procedure in determining to use the SBA 8(a) program next year to satisfy this service requirement is not germane to our resolving CSR's instant protest. Accordingly, the sixth aspect of CSR's protest is dismissed.

In sum, we do not find that HHS's procurement actions were designed to preclude award to CSR.

Next, CSR contends that, under the RFP's selection criteria, technical excellence was the paramount consideration, rather than cost. Thus, CSR argues that cost was not an evaluation factor. CSR concludes that even using HHS's scoring, CSR had the better technical proposal, so CSR was entitled to award. CSR also argues that, even if cost was a factor, Circle's lower cost did not justify award to Circle because cost could only be considered if both proposals were technically equal, which they were not, in CSR's view.

In response, HHS reports that, under the RFP, cost was a proper factor to consider in making the award and that HHS determined that CSR's slight technical advantage (88.3 versus 85.0) was not worth the wide disparity in proposed costs (\$323,988 versus \$241,144). Further, we note that HHS concluded that Circle's staff was at least as capable as CSR's, and that Circle's more efficient proposed use of its staff reasonably explained Circle's proposed number of manhours. We also note that HHS in effect concluded that Circle's underestimated staff time was insignificant (worth less than \$1,000).

In our view, the RFP adequately advised offerors not only that technical excellence was the most important factor but that cost was also a factor. See Bayshore Systems Corporation, B-184446, March 2, 1976, 76-1 CFD 146. Therefore, we conclude that HHS properly considered cost as a factor in selecting the successful offeror. Moreover, we find that the evaluation panel's narrative sufficiently explained its conclusion that while overall CSR's technical proposal was slightly superior to Circle's, key aspects of both technical proposals were at least equal. With that explanation and the slight difference in point scores, we have no

basis to object to HHS's determination that Circle's substantial cost advantage outweighed CSR's slight technical advantage. See Development Associates, Inc., supra. Accordingly, we find no merit in this aspect of CSR's protest.

Protest denied in part and dismissed in part.

for *Wilton J. Fowler*
Comptroller General
of the United States