

# DECISION



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

FILE: B-208133

DATE: January 25, 1983

MATTER OF: Frank E. Basil, Inc.; Jets Services, Inc.

## DIGEST:

1. GAO will not disturb the procuring agency's evaluation of the proposals submitted in response to a solicitation unless the evaluation was arbitrary or in violation of the procurement laws and regulations. The record shows that the procuring agency's evaluation of the protester's technical proposal was reasonable.
2. Selection officials in negotiated procurements have broad discretion in determining the manner and extent to which they will use technical and cost evaluation results. Consequently, GAO will only look to determine whether the selection of the awardee was reasonable and consistent with the solicitation's evaluation scheme. Since solicitation specifically provided that award would be made to the offeror having the lowest unit of cost for each technical evaluation point, GAO finds award to higher priced, technically superior offeror receiving highest price/quality point score proper even though its price was significantly higher.
3. While negotiated procurements generally include discussions within a competitive range, price and other factors considered, Defense Acquisition Regulation § 3-805 (1976 ed.) permits award without discussions where award may be made at a fair and reasonable price based on initial proposals and the solicitation so advises offerors. Record shows that, contrary to protesters allegations, there was nothing to indicate that the Navy found any of the awardee's proposed services to be unnecessary to fulfill the solicitation's requirements. Moreover, GAO is unable to conclude that any

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significant improvements in the protester's technical rating could have been made through discussions without substantially changing the company's initial price offer.

Frank E. Basil, Inc., and Jets Services, Inc. (Basil/Jets), a joint venture, protests the award of a contract to Pan Am World Services, Inc. (Pan Am), under request for proposals (RFP) N62474-81-C-8831 issued by the Naval Facilities Engineering Command. The RFP was for a fixed-price contract for the performance of services necessary for the fiscal year 1983 operation of the Naval Submarine Base, Bangor, Washington. The RFP also provided for two 1-year renewal options.

Basil/Jets raises the following grounds of protest:

- (1) The technical evaluation upon which the Navy based its decision to award to Pan Am was arbitrary, unreasonable, and in violation of procurement statutes and regulations;
- (2) The Navy selected the much higher priced proposal of Pan Am over the proposal of Basil/Jets which met the agency's minimum needs without making any rational determination that Pan Am's apparent technical superiority warranted the additional cost involved in the award to Pan Am; and,
- (3) The Navy improperly failed to conduct discussions with Basil/Jets prior to award to Pan Am concerning any technical deficiencies that purportedly existed in Basil/Jets' proposal.

For the reasons set forth below, we deny the protest.

#### Background

Two proposals were received by the Navy in response to the RFP, one from the protester and one from Pan Am. Following evaluation by a 36-man technical evaluation team, the protester received 105,451 technical points and Pan Am received 221,642 technical points. After the technical evaluation points had been awarded, the Navy's selection

board then opened the offeror's price proposals and calculated the unit of cost for each technical point received. The protester received \$239.52 in cost for each of its technical points and Pan Am received \$150.01 for each of its technical points. An award was made to Pan Am on June 11, 1982.

After receipt on June 18, 1982, of the Navy's June 14, 1982, notification of award, Basil/Jets filed a protest with our Office on July 2, 1982.

#### Technical Evaluation

Basil/Jets contends the Navy's decision to give Pan Am's technical proposal over twice the quality points given to its technical proposal was improper. According to the protester, it was unreasonable for the Navy to give Pan Am that many more technical points where the RFP called for relatively uncomplicated base maintenance and operation services and where Basil/Jets' "no frills" proposal was found by the Navy to have met all the RFP requirements in an acceptable manner. Basil/Jets also asserts that the Navy's technical evaluation of its proposal was unreasonable in view of the joint venture's extensive experience in providing base operating services similar to that required by the RFP. In this regard, Basil/Jets alleges that it received a technical point score that was within 10 percent of Pan Am's score in a recent Navy solicitation to provide many of the same services required by the protested RFP.

The Navy argues that Basil/Jets challenge to the technical evaluation of the proposals is untimely. In the Navy's opinion, Basil/Jets is basically contending that the Navy's method of award was improper. The Navy points out that the procedure for the evaluation of proposals was clearly set forth in the RFP. Thus, the Navy takes the position that any objection to the method of proposal evaluation should have been made prior to the time set for receipt of proposals in accordance with our Bid Protest Procedures. See 4 C.F.R. § 21.2(b)(1).

We do not think that Basil/Jets' challenge to the technical evaluation of its proposal is untimely. Under our Bid Protest Procedures, 4 C.F.R. part 21 (1982), protests based upon alleged solicitation improprieties must be filed

prior to the closing date. 4 C.F.R. § 21.2(b)(1). Here, however, Basil/Jets is questioning the technical evaluation score it received rather than the evaluation procedures provided for in the RFP. Since Basil/Jets did not learn how the Navy evaluated the proposals until it received the agency's notification of award to Pan Am on June 18, 1982, the company's protest within 10 working days after the notification is timely. See 4 C.F.R. § 21.2(b)(2).

As to the merits of Basil/Jets contentions, the Navy asserts that the protester has shown nothing which would indicate that the evaluation of the technical proposals was unreasonable. The agency emphasizes that the offerors knew or should have known the relative importance of the major technical evaluation categories. According to the Navy, an offeror's experience in providing base operating services was only one of many evaluation factors in the RFP and Basil/Jets experience was appropriately considered by the technical evaluators. Moreover, the Navy points out that there is no direct correlation between an offeror's prior experience and the quality of base operating services the offeror would propose in order to meet the RFP's requirements.

With respect to the evaluation of proposals, the determination of the relative merits of an offeror's technical proposal is primarily a matter of administrative discretion on the part of the contracting agency. Dynamic Science, Inc., B-188472, July 20, 1977, 77-2 CPD 39. The function of our Office is not to evaluate anew the proposals submitted and make our own determination as to their relative merits. Houston Films, Inc. (Reconsideration), B-184402, June 16, 1976, 76-1 CPD 380. That function is the responsibility of the contracting agency, which must bear the burden of any difficulties resulting from a defective evaluation. Macmillan Oil Company, B-189725, January 17, 1978, 78-1 CPD 37. Thus, we have repeatedly held that procuring officials enjoy a reasonable degree of discretion in the evaluation of proposals and that this discretion will not be disturbed unless shown to be arbitrary or in violation of the procurement laws and regulations. Piasecki Aircraft Corporation, B-190178, July 6, 1978, 78-2 CPD 10.

Furthermore, the protester has the burden of affirmatively proving its case. C. L. Systems, Inc., B-197123, June 30, 1980, 80-1 CPD 448. The fact that the protester does not agree with the agency's evaluation of its proposal does not itself render the evaluation unreasonable. Kaman Sciences Corporation, B-190143, February 10, 1978, 78-1 CPD 117.

We do not think that the Navy's evaluation of Basil/Jets technical proposal was unreasonable. The record shows that Pan Am's proposal was evaluated overall as having a complete and comprehensive understanding of all contract requirements, while Basil/Jets' proposal was evaluated only as "fair" and less acceptable than Pan Am's for performing the contract requirements. Specifically, the Navy's technical evaluators found the qualifications of some of Basil/Jets' proposed project personnel to be only satisfactory. Also, many of the individuals listed by Basil/Jets were not employed at the time by the company and there was no indication of their commitment to the project. In the area of project management and administration, the evaluators found that Basil/Jets had not provided details for project phase-in, a work accounting system, and Government interface. As to Basil/Jets' comprehension of the project's work requirements, the evaluators determined that the direct labor manning proposed by Basil/Jets was low enough to call into question the company's precise comprehension of the contract requirements. Finally, the evaluators concluded that Basil/Jets' proposed method of operation was basically a reiteration of the RFP containing little discussion of how the company planned to accomplish the required work.

On the other hand, the evaluators found the qualifications of Pan Am's proposed project personnel ranged from excellent to outstanding with an overall superior education level. Also, Pan Am proposed the commitment of all of its key personnel to the project. In the area of management and administration, Pan Am was found to have present a detailed, planned approach which discussed Government interface indepth. As to Pan Am's comprehension of the project's work requirements, the evaluators noted that Pan Am had provided a detailed comprehensive manning

and material plan in response to the RFP and that the procedures for work accomplishment thoroughly addressed the interface between contractor maintenance operations and Government operations as well as the interface of contractor operations between the various annexes of the RFP.

Turning to Basil/Jets argument that the technical evaluation of its proposal was unreasonable in view of Basil/Jets extensive prior experience, the record shows that Basil/Jets was evaluated as having demonstrated good experience in support service contracts world-wide but that Basil/Jets had failed to provide sufficient detail to show how its experience related to the RFP's particular requirements. In this regard, we note that the record also shows that the work to be performed was more comprehensive than other base maintenance contracts in that the RFP involved 19 functional areas of maintenance, operations, engineering and support for a new Navy base that recently received the first of the new Trident, Ballistic Missile, Nuclear Submarines.

#### Award to Higher Priced Proposal

Basil/Jets contends that the Navy's use of a ratio of technical points to price as the basis for award to Pan Am cannot validate the Navy's failure to take into account the actual price that Pan Am offered. Basil/Jets emphasizes that Pan Am submitted a technically acceptable proposal at a price of \$33,248,072, nearly \$8 million more than Basil/Jets' price. Citing Hager, Sharp & Abramson, Inc., B-201068, May 8, 1981, 81-1 CPD 365 and The BDM Corporation, B-202707, October 28, 1981, 81-2 CPD 354, Basil/Jets argues that our Office has held that where lower-priced technically acceptable proposals are available, procuring agencies can award contracts to higher priced offerors only if an independent rational determination is made that the additional cost is justified by the qualitative superiority of the higher-priced proposal. According to Basil/Jets, any difference in quality between its proposal and Pan Am's proposal cannot be so significant as to justify an additional Navy expenditure of nearly \$8 million.

Basil/Jets asserts that there can be no rational basis for a Government estimate which is \$13.5 million greater than Basil/Jets proposed price and \$5.5 million greater than Pan Am's contract price. Basil/Jets therefore asserts that in the absence of a reasonable Government cost estimate, no separate objective evaluation was made by the Navy to ascertain whether the qualitative superiority of Pan Am's proposal justified its substantially greater cost to the Government.

The Navy states that Pan Am's cost proposal was compared to the Government's estimated cost of \$38.8 million for the project and Pan Am's total proposed price was found to be fair and reasonable. Specifically, the Navy points out that in view of the limited number of proposals received and the significant differences in prices, the Selection Board again reviewed the evaluation process. The Navy reports that:

"Since the quality and pricing of the proposals had been submitted in a competitive environment, the Board concluded that when compared to the Government estimate of \$38,795,481, which equals \$155/quality point for a perfect proposal, the total and price/quality point of Pan Am was fair and reasonable."

The Navy also points out that Basil/Jets was awarded a base operating support contract for the Kings Bay, Georgia, Naval Base on exactly the same award basis as the RFP's and the total price of the contract was substantially in excess of that of the next low offeror.

We have recognized that in a negotiated procurement selection officials have broad discretion in determining the manner and extent to which they will make use of the technical and cost evaluation results. Cost/technical tradeoffs may be made, and the extent to which one may be sacrificed for the other is governed only by the tests of rationality and consistency with the established evaluation factors. Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 CPD 325. Further, we have held that quantifying technical point scores in terms of dollar advantage is a

recognized method for determining the proposal most advantageous to the Government in terms of cost and quality. Bell Aerospace Company, 55 Comp. Gen. 244 (1975); 75-2 CPD 168.

The RFP set forth the basis for award as follows:

"Award will be made to that firm offering the lowest dollar to quality point ratio determined by dividing the offered total target price by the technical evaluation points assigned during the Navy evaluation procedure. The Navy reserves the right to reject any or all proposers; to award a contract to other than the proposer who submits the lowest total target price; and, to award a contract to the proposer submitting the proposal determined by the Navy to be most advantageous to the Government \* \* \*."

The record shows that the award to Pan Am was in accordance with the above-quoted award method. Pan Am's 221,642 technical evaluation points were divided into its proposed contract price and the resultant ratio of \$150.01 per quality point was arrived at. The same mathematical procedure gave Basil/Jets \$239.52 per quality point. Further, as noted above, the Navy did not rely solely on the cost/quality point score, but separately justified the acceptance of Pan Am's higher priced offer.

#### Discussions

Basil/Jets contends that the deficiencies in its proposal were not serious and could, therefore, have been clarified or corrected during technical discussions. According to Basil/Jets, it was quite likely that Basil/Jets given its experience, could have upgraded its technical proposal had the Navy simply indicated any alleged proposal weaknesses and any additional services desired which were not in its proposal. Basil/Jets further argues that if the Navy had conducted discussions, they would have likely resulted in the Navy obtaining a reduced price offer from Pan Am.



The Navy states that its Selection Board found nothing in Pan Am's and Basil/Jet's proposals which required correction and consequently the board concluded that the evaluation of the proposals could be completed without discussions. The Navy argues that since Basil/Jets proposal was technically acceptable there was no requirement for it to have discussions on all the inferior aspects of Basil/Jets proposal. In this regard, the Navy emphasizes that discussions should not be employed to infuse one proposer's good idea to another proposer. Finally, the Navy points out that the RFP expressly advised offerors that award might be made without discussions on the initial proposals submitted.

In response, Basil/Jets claims that under the circumstances the Navy had a clear duty under applicable procurement statutes and regulations to hold some discussions and that the Navy's failure to hold any discussion was particularly serious because even minimal discussions would have provided the Government the opportunity to obtain technically improved, lower-priced proposals from both Basil/Jets and Pan Am. In addition, Basil/Jets asserts that there was no way the Navy could have been sure that it even understood its technical proposal unless discussions were held. With respect to the Navy's concern of possible disclosure of one offeror's ideas to another offeror, Basil/Jets argues that at least some weaknesses, inadequacies, or deficiencies in proposals can be the subject of discussions without being unfair to other proposers. Specifically, Basil/Jets asserts that although having discussions can create a danger of technical leveling in certain types of procurements, such a danger was not present here because the RFP did not call for any kind of "technical, independent problem solving techniques."

While it appears to us that the Navy could have held discussions without fear of technical leveling or trans-fusion, we do not agree with Basil/Jets that the Navy violated the applicable statutes and regulations by not holding any discussions. The statutes and regulations do provide that discussions shall be conducted with all responsible offerors within a competitive range, price and other factors considered, except where award may be made at

a fair and reasonable price based on initial proposals and the solicitation so advises offerors, as here, that award made be made without discussions. 10 U.S.C. § 2304(g) (1976) and Defense Acquisition Regulation 3-805 (1976 ed.). We have held that where it is likely that an award reasonably can be expected to be made at a price lower than that obtainable under the initial proposals, the contracting agency should hold discussions rather than make award under the initial proposals. Galaxy Aircraft Instrument Company, Inc., B-194356, May 28, 1980, 80-1 CPD 364.

With regard to Pan Am's award price, Basil/Jets' challenge to this price rests primarily on the assumption that Pan Am's proposal offered services over and above the RFP's requirements so that discussions with Pan Am concerning these extra services would have resulted in a reduced price offer from Pan Am. We question this assumption. There is nothing in the record which indicates that the Navy found any of Pan Am's offered services to be unnecessary for the fulfillment of the RFP's requirements.

Moreover, we are unable to conclude that any significant improvements in Basil/Jets technical point score through discussions could have been made without substantially changing the company's initial price offer of \$25,258,122. As noted above, the direct labor manning proposed by Basil/Jets for many of the RFP services was so low as to call into question the company's overall comprehension of the contract requirements. Also, we note that the Navy's selection board found that the qualifications of Basil/Jets proposed Key personnel low and that some of the personnel described in the resumes submitted by the company did not meet RFP requirements.

Finally, the Navy has indicated that the total price offered by Pan Am was fair and reasonable by comparison to the Government estimate for the project. Other than question how the Government's estimate can be \$13.5 million greater than Basil/Jet's proposed price, Basil/Jets has provided us with no basis for concluding that Pan Am's proposed price was in fact unreasonable.

Protest denied.

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