

**DECISION**

*25370*  
**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

**FILE:** B-205754.2**DATE:** June 7, 1983**MATTER OF:** Reliability Sciences, Incorporated**DIGEST:**

1. Protest alleging bias on part of technical evaluators is denied. Protester bears burden of proving its case and bias will not be attributed to technical evaluators on the basis of inference or supposition. Where record contains no evidence to support allegation of bias, protester has not carried its burden of proof.
2. Protest that contracting agency did not properly evaluate cost realism of awardee's proposal is denied. Contrary to protester's assertion that awardee did not have a facility in the Washington, D.C., area as required by RFP and, therefore, underestimated costs of opening a new office and relocating employees to that office, awardee did have office in Washington, D.C., area and correctly did not include costs to open a new office. Since protester did not provide any evidence to show that awardee's cost proposal was otherwise too low or that Navy's evaluation was otherwise unreasonable, protester has not carried burden of proof.
3. Award based primarily on cost savings represented by awardee's proposal is proper where contracting agency reasonably considered technical proposals of awardee and protester to be essentially equal technically, cost was listed as one of four evaluation factors in RFP, and RFP stated that award would be based on "cost and other factors."
4. Fact that awardee's cost proposal showed significant cost increase between initial and best and final offers provides no basis to invalidate award since agency modified statement of work between submission of initial and best and final proposals.

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5. Charge that awardee under small business set-aside may have become large when awarded a similar contract is dismissed. Small Business Administration, not GAO, has exclusive jurisdiction to determine size status for procurement purposes.
6. Protest that awardee's proposed personnel may not be available to work on contract is rejected as speculative absent evidence that awardee intentionally misstated its intentions in its proposal. Whether awardee will be able to meet its contractual obligations is a matter of contract administration which is not for GAO review.
7. Withdrawal of protest filed by eventual awardee shortly before award of contract provides no basis to invalidate award.

Reliability Sciences, Incorporated (RSI), protests award of a contract to Technical Services Corporation (TSC) by the Naval Electronic Systems Command (hereinafter referred to as the Navy) pursuant to request for proposals (RFP) No. N00039-81-R-0471(Q).

The protester has raised a number of arguments which it believes invalidate the award. However, we conclude that all of the protester's arguments either are not appropriate for our consideration or are without merit. Accordingly, the protest is dismissed in part and denied in part.

The RFP, a total small business set-aside issued on June 16, 1981, called for providing technical services in support of the Navy's standardization program. The required services include editing technical documentation for use by the Navy in future procurements of electronic systems, equipment and components, microfilming files and preparing drawings. The RFP contained a firm requirement for services in fiscal year 1982 and included options for 3 additional years. A cost-plus-fixed-fee contract was contemplated. Proposals received in response to the RFP were evaluated and a contract was awarded initially to RSI on October 23, 1981.

On October 30, TSC protested to the Navy on the basis that the evaluation of proposals had not been properly conducted and that award should not have been made to RSI because RSI's price was approximately 300 percent higher than TSC's price. The contracting officer reviewed the solicitation and determined that the costing requirements set forth therein were too broad to provide a common basis for evaluation of proposals. In other words, the RFP set forth a range of performances, rather than a specific number of performances, for each task to be performed and, therefore, offerors were not necessarily competing on the same basis. As a result, on November 27, the contracting officer terminated RSI's contract for the convenience of the Government. Subsequently, the Navy modified the statement of work set forth in the RFP to provide a common basis for evaluation of cost proposals and requested submission of new cost proposals from all offerors that originally had been determined to be within the competitive range.

On December 8, TSC filed a protest in our Office alleging, among other things, that it should be awarded a contract under the original RFP rather than modifying the RFP and conducting a new competition based on revised cost proposals. TSC withdrew this protest on February 18, 1982. On March 12, the contracting officer notified all offerors that award to TSC was imminent. On March 17, RSI filed the present protest in our Office. TSC was awarded the contract on April 2.

The first basis for RSI's protest is that recommendations and decisions made by Navy technical and contract personnel reflect "strong prejudice" against an award to RSI and toward an award to TSC. In support of this charge, RSI alleges that the chairman of the Contract Award Review Panel recommended award to TSC before best and final offers were submitted in spite of RSI's higher technical and overall evaluation scores on initial proposals.

Even where bias is shown, we will deny a protest if there is no indication that the bias adversely affected the protester's competitive standing. Art Services and Publications, Incorporated, B-206523, June 16, 1982, 82-1 CPD 595; Earth Environmental Consultants, Inc., B-204866, January 19, 1982, 82-1 CPD 43. The critical test for determining bias in the agency's evaluation of proposals is whether all

offerors in the competition were treated fairly and equally. However, the protester has the burden of affirmatively proving its case and unfair or prejudicial motives will not be attributed to procurement officials on the basis of inference or supposition. See Pioneer Contract Services, Inc., B-197245, February 19, 1981, 81-1 CPD 107, and cases cited therein. Where the written record fails to demonstrate bias, the protester's allegations are properly to be regarded as mere speculation. In this respect, we must note that, where the subjective motivation of an agency's procurement personnel is being challenged, it may be difficult for a protester to establish--on the written record which forms the basis for our Office's decisions in protests--the existence of bias. Pioneer Contract Services, Inc., supra.

After careful examination of the record, we find that there is no evidence of any prejudice against RSI or for TSC on the part of procurement or evaluation officials. After initial proposals were evaluated and a competitive range was established, the chairman of the Contract Award Review Panel recommended (in a memorandum dated August 24, 1981) that discussions be held with all offerors in the competitive range; alternatively, if the Source Selection Authority determined to make award without discussions, the chairman recommended that award be made to TSC. The Source Selection Authority decided to hold discussions and request best and final offers. After best and final offers were evaluated, the chairman recommended (in a memorandum dated September 29, 1981) that award be made to RSI. This recommendation was followed and award was made to RSI on October 23. Only after TSC protested and a review revealed that offerors' cost proposals were not made nor evaluated on the same basis did the contracting officer terminate RSI's contract and reopen negotiations with all offerors in the original competitive range. After the revised cost proposals were evaluated, the chairman of the Contract Award Review Panel (in a memorandum dated February 26, 1982) recommended that, in view of the "close proximity" of their total evaluation scores, award be made to either RSI or TSC. We cannot conclude, based upon these actions, that any of the Navy officials involved in this procurement exhibited prejudice against RSI or for TSC. In fact, the record is totally devoid of any evidence that procurement officials/evaluators were biased against RSI. Since the record shows no evidence of bias, we cannot find that the protester has

carried its burden of proof. Todd Logistics, Inc., B-203808, August 19, 1982, 82-2 CPD 157. Accordingly, the protest is denied on this point.

RSI next argues that the award to TSC was improper because proposals were not evaluated in accord with the RFP's stated evaluation criteria. RSI contends that TSC was chosen primarily because of its low price. According to RSI, price was only a "minor evaluation factor," comprising only 11 percent of the total evaluation, and should not have been the determinant factor causing award to be made to TSC. RSI also argues that, since the RFP contemplated a "cost plus" type contract, cost should not have been considered a significant award criterion because proposed costs and actual costs incurred are often quite divergent. Moreover, RSI contends that the Navy did not properly evaluate TSC's cost proposal for cost realism as required under the RFP, because TSC did not have an office within 50 miles of Washington, D.C., and, therefore, the TSC proposal represented an unrealistically low cost offer which did not include the cost of opening a Washington, D.C., office, transferring personnel from the Pennsylvania office to Washington, D.C., or higher wages and related costs to be incurred in the Washington, D.C., area.

It is neither our function nor practice to conduct a de novo review of technical proposals and make an independent determination of their acceptability or relative merit. The evaluation of proposals is the function of the procuring agency, requiring the exercise of informed judgment and discretion. Our review is limited to examining whether the agency's evaluation was fair and reasonable and consistent with the stated evaluation criteria. We will question contracting officials' determinations concerning the technical merits of proposals only upon a clear showing of unreasonableness, abuse of discretion or violation of procurement statutes or regulations. KET, Inc., B-190983, December 21, 1979, 79-2 CPD 429. Our review of an agency's evaluation of the cost realism of proposals is subject to the same standard of reasonableness. Vinnell Corporation, B-203806, August 3, 1982, 82-2 CPD 101.

Concerning selection of an awardee, the RFP stated:

"IV. EVALUATION CRITERIA

"1. Critical Areas. A proposal shall be considered unacceptable, regardless of cost, if the company cannot comply with requirement for work to be performed at an established facility within 50 miles of Washington, D.C.

"2. Evaluation Criteria (listed in descending order of importance).

"a. Technical (in descending order of importance)

"(i) Experience in preparing, writing, editing and composing of military specifications, standards, and handbooks.

"(ii) Understanding of requirements.

"b. Management (equal in importance)

"(i) Organization

- Management capability
- Integration of task into overall organization

"(ii) Personnel

- Assignment of key personnel (publication engineer, project manager, proofreading personnel)
- Experience of key personnel
- Dependency on recruitment of key personnel
- Dependency on subcontract or temporary consultants

"c. Cost - including cost realism

"d. Schedule

- Capability to pick-up and deliver work daily

"3. Award Determination. Award will be made to the offeror whose proposal is considered most advantageous to the U.S. Government, cost and other factors considered."

RSI contends that TSC's cost proposal underestimated the various costs of doing the work out of a Washington, D.C., office and that the Navy's evaluation of TSC's cost realism was inadequate. RSI bases this argument on the premise that TSC does not have an office within 50 miles of Washington, D.C., as required in the RFP. Accordingly, RSI concludes that there should have been included in TSC's cost proposal transportation and relocation costs as well as higher estimates for rental and salaries to approximate typical expenses of this type of firm in the Washington, D.C., area.

Contrary to the protester's assertion, TSC's proposal shows that TSC does have a branch office in the Washington, D.C., area. TSC's branch office is located in Lorton, Virginia, about 11 miles outside of Washington, D.C. Thus, TSC meets the RFP's requirement of having a facility within 50 miles of Washington, D.C. Furthermore, TSC's proposal shows that TSC will be using some personnel who are located at its Lorton office. Accordingly, RSI's basic premise is incorrect and it appears that TSC correctly did not include the various costs of opening a new office in the Washington, D.C., area in its proposal. Since RSI has provided no other arguments or evidence to show that TSC's cost proposal was otherwise too low or that the Navy's cost realism was otherwise unreasonable, RSI has not carried its burden of proving this allegation and we have no basis to fault the Navy's analysis in this connection. See ACMAT Corporation, B-197589, March 18, 1981, 81-1 CPD 206. Therefore, this portion of the protest is denied.

In a related argument, RSI argues that TSC will not be able to provide the daily contact and extremely short turn-around time required under the RFP, because TSC operates out of a Pennsylvania office rather than a Washington, D.C., office as required under the RFP. However, as indicated above, TSC's proposal shows that TSC has a branch office within 50 miles of Washington, D.C., and, therefore, TSC meets the RFP geographical requirement imposed on performance.

RSI argues that the award to TSC was made primarily on the basis of TSC's lower cost in contravention of the RFP's stated criteria. According to RSI, since cost was listed in the RFP as the third criterion, cost should have been given a relatively low priority in this procurement. RSI points out that the overall evaluation conducted by the Navy--which took into account technical, management, cost (including cost realism), and schedule--resulted in RSI receiving a total score of 7,512 evaluation points, while TSC received a total score of only 7,363 evaluation points. RSI argues that it was entitled to award since it got the highest overall evaluation score and since the overall evaluation score included points based upon cost factors.

The Navy contends that award to TSC was justified because the technical proposals of RSI and TSC were essentially equal technically. In this connection, the Navy points out that, on a scale of 500 possible points for raw technical score, RSI received a total of 375 and TSC received a total of 337--a difference of only 38 points. Since TSC's offer (cost-plus-fee) for the basic contract period alone was \$112,393, while RSI's offer (cost-plus-fee) for the basic contract period alone was \$182,000, the contracting officer decided that the substantial savings which would result from award to TSC justified award to TSC in view of the substantially equal technical ratings. The Navy contends that this decision was in accord with the RFP which stated that "Award will be made to the offeror whose proposal is considered most advantageous to the U.S. Government, cost and other factors considered."

We have held that, where cost is assigned points as an evaluation factor along with other factors, the fact that a proposal receives the highest number of evaluation points does not in itself justify acceptance of the highest rated proposal without regard to estimated cost to the Government. See Timberland-McCullough, Inc., B-202662; B-203656, March 10, 1982, 82-1 CPD 222; see also Todd Logistics, Inc., supra. Even where the RFP evaluation factors indicated that award would be made to that offeror with the highest total point score, we have held that, before the contracting agency can award to the higher priced (or higher cost), technically superior offeror, the contracting agency is required to justify such award in light of the extra expenditure required. See Todd Logistics, Inc., supra; Timberland-McCullough, Inc., supra. Moreover, we have also

held that, while numerical point scores compiled by evaluators are useful as guides to intelligent decision-making, they do not control the award decision which must ultimately be made by the source selection official(s). In other words, agency source selection officials are not bound by point score totals compiled by lower level evaluators. Humanics Associates, B-193378, June 11, 1979, 79-1 CPD 408; The Onyx Corporation, B-187599, July 20, 1977, 77-2 CPD 37. Where the agency reasonably determines that competing proposals are basically equal technically, cost may properly become the determinative factor in award selection. See Cook Inlet Cablecom, B-197458, May 5, 1980, 80-1 CPD 324, and cases cited therein.

We do not agree with RSI's contention that cost was to be a relatively insignificant factor under the RFP evaluation scheme since cost was listed in the RFP as one of the four major evaluation factors and the RFP specifically stated that award would be based upon "cost and other factors." See 52 Comp. Gen. 686 (1973). Based upon the raw scores compiled for the technical, management, and schedule factors, and excluding points given for cost, the Navy points out that RSI received a score of 375 to TSC's 337 on a 500-point scale. RSI argues that raw scores should not be used since the various factors were given different weights in the evaluation. RSI points out that it received 677 more "weighted" points than TSC for these particular factors.

Using weighted scores as RSI suggests, the record shows that RSI's total point score (excluding cost) was 5,917 and TSC's total point score (excluding cost) was 5,240 out of a possible perfect weighted total of 7,800. Thus, reduced to a 100-point scale, RSI scored 75.9 to TSC's 67.2. In our view, due to the fact that the scores for factors other than cost were close, we cannot find unreasonable the contracting officer's determination that the technical proposals were basically equal technically. In 52 Comp. Gen. 686, supra, cited by the Navy in its report on the protest, we held that the contracting agency had not abused its discretion in deciding to award to the lower cost, technically lower rated offeror on the basis that the higher cost, technically higher rated offer was not materially superior. There, the awardee's technical proposal achieved a score of 649 points to the protester's score of 730 out of a possible 1,000 points, a difference of 8.1 points on a 100-point scale.

In the present case, the difference is approximately 8.7 on a 100-point scale. In view of the fact that the RFP stated that award would be based upon "cost and other factors" rather than solely upon the overall total scores, we cannot conclude that the Navy abused its discretion in these circumstances. See also Telecommunications Management Corp., B-190298, January 31, 1978, 78-1 CPD 80, and cases cited therein. Accordingly, the protest is denied on this point.

RSI also questions the validity of TSC's cost proposal because TSC's best and final cost proposal represented a significant increase over its initial cost proposal. However, as previously noted, the Navy modified the RFP's statement of work to define more clearly the expected number of times various tasks would have to be performed. The reason for this modification was that initial offers had not been made on the same basis (some offerors had offered based upon services at the low end of the range and others on the high end of the range). Clearly, with clarification of the amount of work to be performed, a substantial price increase is not necessarily unexpected. In any event, we find nothing improper with an increase in costs after the statement of work has been modified and discussions have been completed. Therefore, this portion of the protest is denied.

RSI also charges that, because TSC was recently awarded a similar contract by the Agency for International Development (AID), TSC may no longer be a small business and the people TSC proposed for the Navy's contract may be committed to work on the AID contract and, therefore, unavailable for work on this contract. The Small Business Administration, not our Office, has exclusive authority to determine matters of a firm's size status for procurement purposes. Putnam Mills Corporation, B-207973, July 6, 1982, 82-2 CPD 25. Furthermore, whether TSC personnel will be available to perform on the Navy contract and whether TSC will be able to perform in accord with its contractual obligations is a matter of contract administration which is not for our review. Maxton Lock Company, Inc., B-200469, February 4, 1981, 81-1 CPD 66. Moreover, absent any evidence that TSC intentionally misstated its intention to use certain personnel, this argument is rejected as speculative. See Support Systems Associates, Inc., B-200332, February 9, 1982, 82-1 CPD 112.

Finally, RSI protests the "coincidental withdrawal" of the TSC protest shortly before the Navy awarded the contract to TSC. This charge, however, does not provide any basis to invalidate the award to TSC.

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