

**DECISION****THE COMPTROLLER GENERAL  
OF THE UNITED STATES**

WASHINGTON, D.C. 20548

**FILE:**

B-214032

**DATE:** June 18, 1984**MATTER OF:**

National Designers, Inc.

**DIGEST:**

1. In a negotiated procurement, award may be made to a higher priced, higher technically rated offeror as long as the decision to do so is reasonable and in accordance with the stated evaluation criteria.
2. GAO will not object to the technical evaluation of protester's proposal where evaluation was reasonable and in accordance with the evaluation criteria.
3. Protester's allegation that awardee had an unfair competitive advantage is dismissed because the protester has failed to meet its burden of affirmatively proving this allegation.
4. Agency's decision to modify awardee's contract to cover increased requirements is proper where the agency determined that the modification was necessary to fulfill requirements until a new procurement could be issued.

National Designers, Inc. (NDI), protests the award of a contract to PRC Guaralnick, Inc. (PRC), under Department of the Navy (Navy) request for proposals (RFP) No. N00612-83-R-0130. NDI alleges that it should have received the award because it submitted the lowest priced technically acceptable offer. NDI also questions the Navy's modification of the contract awarded to PRC.

The protest is denied in part and dismissed in part.

The RFP, issued on March 18, 1983, sought proposals to design and modify specifications used by the Supervisor of Shipbuilding, Conversion and Repair (the requiring activity) to overhaul and repair Navy ships. Offerors were required to submit separate cost and technical proposals and the RFP

specified that in evaluation cost would be worth 25 points and technical would be worth 75 points.

Clause M202 of the RFP listed, in descending order of importance, the factors which would be used to evaluate proposals. These were Company Background and Management Experience, Quality Assurance Plan and Personnel Qualifications. Also listed were 37 subfactors which would be evaluated under Company Background and Management Experience and offerors were advised that subfactors 36, updating Coordinated Shipboard Allowance List (COSAL), and 35, updating selected record drawings and data, would each be weighted 7-1/2 times more than the other subfactors. The RFP further advised that offeror's management must possess a background in each of the 37 areas listed.

The Navy received six proposals and forwarded these proposals to the requiring activity for technical evaluation. Four proposals, including those submitted by NDI and PRC, were placed in the competitive range. By letter dated October 18, these offerors were notified of the deficiencies in their proposals and requested to submit best and final offers by November 1. After the best and final offers were submitted, the requiring activity reevaluated the technical proposals and evaluated the cost proposals. PRC received a technical score of 75 points and a cost evaluation score of 24.1 for a total evaluation score of 99.1. NDI received a technical score of 68.5 and a cost evaluation score of 25 for a total evaluation score of 93.5. The contracting department determined that PRC's 5.6 points higher total evaluated score justified an award to PRC even though the cost of PRC's proposal was \$40,620.38 higher than that of NDI's proposal. An indefinite quantity, time and material contract covering the period from January 1, 1984, until December 31, 1984, was awarded to PRC on December 19, 1983.

By letter dated December 19, 1983, NDI protested the award to PRC. NDI argues that, since it submitted the lowest priced technically acceptable offer, it should have been awarded the contract. NDI also asserts that its proposal was not properly evaluated, the Navy failed to comply with the RFP provision concerning small business size status and that PRC had an unfair competitive advantage.

On February 7, 1984, the requiring activity met with the Navy's contracting department to discuss increased

requirements it had for services covered by the PRC contract. The requiring activity estimated that its requirements exceeded the \$538,000 cost ceiling in PRC's contract by \$962,000. This increase resulted because the original estimate was based on a normal 12-month workload, but after the contract was awarded the requiring activity was ordered to perform design services for four Coast Guard vessels.

The contracting department determined that the magnitude of this increase required the Navy to issue a new procurement. However, it modified the cost ceiling in PRC's contract to \$938,425 to cover orders placed under the contract and requirements which could not be separated from these orders. A new RFP was issued on February 14 to cover the requirements for the balance of the contract period. By letter dated February 28, 1984, NDI protested the modification to PRC's contract.

While NDI first argues that PRC's 6.5 points higher technical score did not justify an award to PRC at a cost \$40,620.38 greater than that offered by NDI, this protest ground does not demonstrate that the Navy's decision to award the contract to PRC was improper. In negotiated procurements, an agency may award a contract to an offeror with a higher technical rating than other offerors even though that offeror's proposal is not the lowest cost proposal if the agency determines that the technical difference is sufficiently significant to outweigh the cost difference. Asset Incorporated, B-207045, February 14, 1983, 83-1 CPD 150. We will uphold an agency's decision to award a contract to an offeror with a higher technical rating and a higher cost as long as that decision is reasonable and in accordance with the stated evaluation criteria. Id.

In the present case, the total evaluation scores were obtained by adding the scores for the cost proposals to the technical scores. NDI's low priced cost proposal received the maximum point score; however, this score did not outweigh PRC's higher rated technical proposal. The RFP notified offerors that an award would not necessarily be made to the offeror who submitted the lowest priced proposal. Given these factors, we have no basis to find unreasonable the Navy's determination to award the contract to PRC. Blurton, Banks & Associates, Inc., B-205865, August 10, 1982, 82-2 CPD 121. Accordingly, this ground of PRC's protest is denied.

NDI next asserts that the Navy improperly evaluated NDI's technical proposal. Specifically, NDI believes that its proposal should have received the maximum point score for evaluation subfactors 36, updating COSAL, and 37, inclining experiments. NDI concedes that it has no direct experience with COSAL. NDI states, however, that its proposal demonstrates that NDI has completed many projects which required the knowledge and utilization of COSAL. NDI believes that the Navy should have found this COSAL related experience sufficient to give NDI the maximum point score for updating COSAL. NDI also argues that updating COSAL should not have been worth 7-1/2 times more than the other evaluation subfactors, especially in light of the modification to PRC's contract under which the percentage of COSAL work to be performed was reduced. Concerning inclining experiments, NDI believes that it should have received the maximum point score based on the experience of NDI's Senior Naval Architect.

In considering protests against an agency's evaluation of a technical proposal, this Office will not independently evaluate the proposal. Rather, we will review the agency's evaluation to insure that it was reasonable and in accordance with the evaluation criteria stated in the RFP. Holmes and Narver, Inc., B-206138, January 11, 1983, 83-1 CPD 27.

The Navy reports that NDI did receive the maximum point score for inclining experiments. Regarding updating COSAL, the Navy responds that the evaluation panel awarded NDI's best and final offer 2.3 points out of a possible 7.5 points because NDI did not have any direct experience updating COSAL. The evaluation panel based this score on its belief that, because of NDI's lack of direct experience, NDI would not be able to perform error-free COSAL updating immediately upon award of the contract. The Navy points out that the RFP specifically expressed the Navy's concern with this requirement.

Given this basis for the Navy's evaluation of NDI's proposal, we do not believe the evaluation of NDI's proposal was unreasonable and we will not question it. Finally, NDI's protest that updating COSAL should not have been worth 7-1/2 times more than the other evaluation subfactors concerns an impropriety in the solicitation and was required to be submitted before April 29, 1983, the closing date for receipt of proposals. 4 C.F.R. § 21.2 (b)(1) (1983). Since

the issue was not raised until after the contract was awarded, it is untimely. B.H. Aircraft Company, Inc., B-210798, April 1, 1983, 83-1 CPD 344. The fact that the amount of updating COSAL was reduced during performance does not affect the propriety of the evaluation factor at the time it was drafted.

NDI's third protest ground is that PRC had an unfair competitive advantage. NDI states that the person who prepared PRC's proposal previously worked for the Navy and his duties included evaluating proposals for the services requested by the present RFP. NDI also notes that, during this man's previous employment with another firm, that firm was awarded a contract for the same type of services which were being solicited under this procurement. NDI believes that this person possessed undisclosed information concerning the Navy's evaluation of proposals and this information aided PRC in obtaining the contract award.

NDI has presented no evidence in support of its belief. Therefore, we find that NDI's speculative assertions do not meet NDI's burden of affirmatively proving its claim. This protest ground is dismissed. Louis Berger & Associates, Inc., B-208502, March 1, 1983, 83-1 CPD 195.

NDI also questions whether the Navy complied with RFP clause "L" 28. This clause provides that the solicitation is not a small business set-aside, but that, in the event of tie proposals, an offeror's status as a small business may be considered. Since the proposals of PRC and NDI were not tied, the Navy properly did not consider NDI's status as a small business. Cf. Asset Incorporated, B-207045, February 14, 1983, 83-1 CPD 150.

Finally, NDI protests the Navy's decision to modify the cost ceiling in PPC's contract from \$538,000 to \$938,425.

An agency may properly modify an existing contract if the modification is within the scope of that contract. W.H. Mullins, B-207200, February 16, 1983, 83-1 CPD 158; Cray Research, Inc., B-207586, October 28, 1982, 82-2 CPD 376. However, where, as here, the agency has conceded that the modification is outside the scope of the existing contract, the modification is proper only if a sole-source procurement would have been justified. Department of the Interior-Request for an Advance Decision, B-207389, June 15,

1982, 82-1 CPD 589. In reviewing the propriety of a sole-source award, this Office considers whether the agency had a reasonable basis to conclude that the sole-source award was required by the legitimate needs of the government. See Systems Group Associates, Inc., B-195392, January 17, 1980, 80-1 CPD 56; W.H. Mullins, supra. We have upheld an agency's decision to extend an incumbent's contract so that the agency's needs would be met until a new procurement could be conducted and a new contract awarded. See Cerberonics, Inc., B-205063, April 14, 1982, 82-1 CPD 345; Research, Analysis & Management Corporation, B-203786, November 2, 1981, 81-2 CPD 372.

Here, the Navy contracting department determined that, due to the magnitude of the requiring activity's increased needs, a new procurement was necessary. At that time, however, orders exceeding PRC's contract ceiling already had been placed. The contracting department thus determined that it was in the government's best interest to modify PRC's contract to cover these orders so that the requiring activity's needs would be met. In accordance with the above cited cases, we do not find that either this decision or the decision to modify the contract to cover requirements which could not be separated from those orders was unreasonable. Consequently, this protest ground is denied.

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