

**DECISION**



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

*File*  
124502

FILE: B-213557

DATE: June 25, 1984

MATTER OF: Martin Widerker Ing.

**DIGEST:**

1. GAO will not disturb an agency's evaluation of technical proposals unless shown to be unreasonable or in violation of procurement laws and regulations.
2. Protest against price scoring plan, the essential elements of which were disclosed in the request for proposals, is untimely because it was not filed before the closing date for receipt of proposals.

Martin Widerker, Ing. protests award to Olympia-reinigung GmbH under request for proposals No. DAJAN6-83-R-0029 issued by the United States Army Contracting Agency, Europe, seeking custodial services for five schools in the Stuttgart area. Widerker contends that Olympia's proposal could not have been properly evaluated because Widerker is better qualified and its proposed prices are lower. We deny the protest.

The solicitation advised offerors that proposals would be evaluated on the basis of (1) custodial experience, (2) employee supervision, (3) quality control, (4) equipment and (5) training and phase-in plans. Offerors were also advised that proposed prices would be evaluated on the basis of the government's undisclosed cost estimate, and award would be made to the firm with the highest score overall. Six firms responded by the April 5, 1983 closing date and were evaluated by the Army's source selection evaluation board in accordance with the stated technical criteria and price scoring plan. The Army awarded each of the five custodial contracts to the firm receiving the highest combined score for that school, resulting in three awards to Olympia and two for Widerker.

Widerker's primary contention is that the technical evaluation criteria could not have been properly applied because Widerker is the more experienced janitorial contractor in the Stuttgart area and is otherwise better qualified than Olympia, so that award to Olympia at prices higher than Widerker proposed, as was the case for two awards, cannot be justified. Widerker argues that had the Army verified Olympia's experience, it would have been obvious that Widerker, the better qualified firm, was entitled to award of the contracts in question.

In reviewing complaints about the evaluation of technical proposals, our function is not to evaluate proposals anew or to make our own determinations as to their relative merits. That function is the responsibility of the contracting agency, which is most familiar with its needs and must bear the burden of any difficulties resulting from a defective evaluation. In light of this, we have repeatedly held that procuring officials enjoy a reasonable degree of discretion in evaluating proposals, and we will not disturb their decision unless the decision is shown to be unreasonable or in violation of the procurement laws and regulations. Blurton, Banks & Associates, Inc., B-211702, Oct. 12, 1983, 83-2 CPD ¶ 454.

We have reviewed both Widerker's and Olympia's proposals and the evaluation record. Olympia's proposal lists numerous custodial contracts throughout Germany, both governmental and commercial, and contains a number of commendatory letters from its customers. While Widerker's proposal also lists a broad spectrum of custodial contracts, primarily in the Stuttgart area, we see no reason to question the Army's judgment, reflected in its scoring, that the two firms have comparable experience. In this regard, the solicitation did not limit qualifying experience to custodial work in the Stuttgart area, so Olympia's experience in other German cities was properly considered. We further note that the largest difference in scoring between the two proposals was under the equipment category. Since Olympia's listing of equipment was more comprehensive than Widerker's, the record again supports the Army's judgment. As to the Army's failure to contact Olympia's customers to verify Olympia's past performance, the solicitation did not state that the Army would verify experience in this manner and we are unaware of any general requirement in that regard. In any event, the

commendatory letters from Olympia's customers appear to verify its claims. Consequently, we see no basis in the record to question the Army's evaluation of Olympia's proposal.

Widerker also protests that the Army's technique for scoring price based upon the government's undisclosed cost estimate was improper because it made award a matter of accident and, in at least one instance, resulted in an award at a price substantially in excess of Widerker's price. The Army replies that the scoring plan was apparent on the face of the solicitation and was fully explained in the preproposal conference so that Widerker's objections, first raised after submission of proposals, are untimely. Although the Army recommends dismissal of Widerker's protest as untimely, it further advises that the price scoring plan used in this case was inappropriate for fixed price contracting and that the procuring activity has been asked to discontinue its use in these circumstances.

We consider Widerker's protest of the Army's price scoring plan to be untimely. Under our Bid Protest Procedures, 4 C.F.R. § 21.2(b)(1) (1984), a protest of an alleged impropriety in a request for proposals must be filed prior to the closing date for receipt of proposals. Widerker does not dispute the Army's contention that the solicitation adequately conveyed the Army's intent to score price in the manner Widerker now questions and in fact the solicitation advised offerors of the essential elements of the Army's price scoring plan. Consequently, Widerker's allegation that the price scoring plan was improper relates to a proposal deficiency that was apparent on the face of the solicitation. The solicitation's closing date was April 5, 1983, but Widerker did not file its initial protest with the Army until July, after the evaluation was completed and the resulting contracts awarded to Widerker and Olympia. Accordingly, this aspect of Widerker's protest is untimely. M-R-C Joint Venture, P-210482, June 17, 1983, 83-1 CPD ¶ 663.

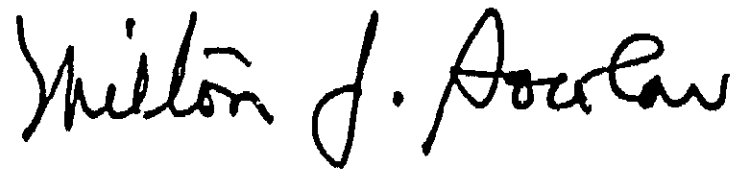
We note that, as Widerker alleges, the scoring of the offerors' proposed prices on the basis of an undisclosed government cost estimate appears to have led to inconsistent results in that Widerker received awards when its price was 12 and 19 percent lower than Olympia's, but did not receive an award when its price was 13.7 percent lower, even though each offeror was given just one technical score which applied to all five

28611

B-213557

awards. Consequently, we fully agree with the Army's conclusion that the price scoring scheme used here was inappropriate and agree with the corrective steps taken.

The protest is denied in part and dismissed in part.

*for*   
Comptroller General  
of the United States