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

FILE: B-221374; .2; .3 **DATE:** May 14, 1986

MATTER OF: Fort Wainwright Developers, Inc.; Sadco Enterprises; Fairbanks Associates

DIGEST:

1. Where a cost ceiling is included in a solicitation for the purpose of comparing life cycle costs for government construction of military family housing with the same costs for contractor construction, and the government's cost is expressed in terms of present value, the cost for contractor construction also must be converted to present value. A proposal that, before discounting, exceeds the cost ceiling should not, therefore, be rejected.

2. Protester was not prejudiced by the failure of the solicitation to state whether an annual cost ceiling represented anticipated actual expenditures where the protester did not rely on the cost ceiling in formulating its price proposal.

3. Where a solicitation does not specify the inflation rates to be used to evaluate cost proposals for a 19.5 year lease, but merely states that during the term of the lease, maintenance costs will be allowed to escalate according to "Economic Indicators" prepared by the Council of Economic Advisors, the agency is not required to use an average of past indicators for evaluation purposes, but rather is free to use any reasonable index of future inflation.

4. Whether an agency improperly excluded an initial proposal from the competitive range because of its inclusion of an interest rate contingency is academic when the agency in fact evaluates an unsolicited best and final offer from which the contingency has been deleted.

5. Protest challenging selection of a higher-priced offeror is denied where the selection is consistent with the evaluation scheme in the solicitation, under which offerors are ranked according to cost per quality point.

I. Introduction

Fort Wainwright Developers, Inc., Fairbanks Associates, and Sadco Enterprises protest the award of a contract to North Star Alaska Housing Corporation under request for proposals (RFP) No. DACA85-85-R-0019, issued by the U.S. Army Corps of Engineers. The procurement is for the construction, leaseback to the government, and operation and maintenance of military family housing at Fort Wainwright, Fairbanks, Alaska. The agency made award to North Star on December 31, 1985, but suspended performance between January 22 and March 25, 1986, when, in accord with the Competition in Contracting Act of 1984 (CICA), it determined that urgent and compelling circumstances justified performance notwithstanding the protests.[1]

The protesters principally complain that the award to North Star was improper because the "average annual cost" of the firm's initial proposal exceeded the RFP's cost ceiling. Fairbanks Associates also complains that rejection of its initial proposal as nonresponsive because of an interest rate contingency was improper. Additionally, the protesters complain that the award to an offeror whose price was more than their own was not in the best interest of the government.

In supplemental protests, Fort Wainwright Developers and Fairbanks Associates complain that North Star's proposed development plan does not comply with (1) building setback and road construction requirements of the City of Fairbanks, which are incorporated into the RFP, (2) numerous design criteria of the RFP, and (3) the development boundary limits. Because the supplemental protests have later deadlines for agency reports and protester and party comments, see 4 C.F.R. § 21.3 (1985), we will resolve them in a separate decision.

1/ Only the initially-filed Fort Wainwright Developers protest effected suspension of performance, since only it was filed and the agency notified within 10 calendar days of award. See the Federal Acquisition Regulation (FAR), § 33.104(c)(5) (FAC 84-9), implementing CICA, 31 U.S.C.A. § 3553 (d)(1) (West Supp. 1985).

We deny the protests considered in this decision in part and dismiss them in part.

II. Background

The Corps conducted this procurement pursuant to section 801 of the Military Construction Authorization Act of 1984, 10 U.S.C.A. § 2828(g) (West Supp. 1985), as amended by the Military Construction Authorization Act of 1986, Pub. L. No. 99-167, § 801, 99 Stat 961, 985-86. The statute provides that the Secretary of a military department may enter into a contract for the lease of family housing units to be constructed on or near a military installation where there is a validated deficit in family housing. 10 U.S.C.A. § 2828(g)(1). No contract may be entered into, however, until the Secretary of Defense submits to the appropriate committees of Congress, in writing, "an economic analysis (based upon accepted life cycle costing procedures) which demonstrates that the proposed contract is cost effective in comparison with the alternative means of furnishing the same facilities," i.e., government construction. 10 U.S.C.A. § 2828(g)(6)(A).

Here, in anticipation of the arrival of the 6th Light Infantry Division at Fort Wainwright in the summer of 1987, the RFP contemplated construction of 400 family housing units that the contractor will lease back to the government and operate and maintain for 19.5 years. The RFP provided for technical proposals to be evaluated on the basis of site design and engineering, dwelling unit design and engineering, and maintenance plans, with a maximum of 1,300 points available for these factors.

The RFP indicated that life cycle costs also would be a basis for evaluation. Offerors were to submit separate first-year prices for two cost elements, designated "shelter rent" (the contractor's "return on and return of his investment") and "maintenance rent" (the contractor's charge for keeping the development in adequate repair). According to the RFP, shelter rent will remain fixed for each year of the contract, but maintenance rent will be allowed to escalate "at a rate pegged to the 'Economic Indicators' prepared for the Joint Economic Committee of Congress by the Council of Economic Advisors . . . ."

The RFP further provided that the relative value of proposals would be established by means of a cost/quality ratio. This was to be calculated by dividing the combined shelter and maintenance rent for each proposal, projected over 19.5 years, by the quality (technical) points that th opposal rece ed during the technical evaluation. er, the RFP arned that the final selection would be by the selec on oard to ensure an award in the best rest of the g ernment and in compliance with applicable s tutory limitat ons.

Since the un erlying objective of the procurement was to determine whet r contractor construction and leaseback of the housing ur s under section 801 would be more cost effective than gc nment construction, the RFP also advised offerors that an nomic analysis, based on life cycle costs, would be p pared and submitted for congressional review. In this ard, the RFP specified that the "average annual cost" of iter and maintenance was not to exceed $8,140,000. Alt gh not stated in the solicitation, this figure represents the uniform annual equivalent of the cost of government cor truction, expressed in present value terms, less 5 per ent. Whether the awardee's initial price exceeded this amount is a protest issue.

Six offerors submitted proposals by the July 5, 1985 closing date. The Corps describes the actual evaluation of these proposals as comprising the following steps:

1. Initial review to ensure that proposals included required submittals and met minimum design criteria;

2. Evaluati n consisting of two steps:

   a) Technical review by a 10-member multi-disciplinary team to whom the identity of offerors was not known;

   b) Ranking of proposals according to projected cost per quality point (the highest-ranked proposal was the one having the lowest cost per point); and

3. Economic analysis, comparing the life cycle cost of the highest-ranked proposal with that of government construction, as required by the enabling legislation.

The Corps ranked the initial proposals at issue here as follows[2]:

Offeror	Technical Points	First-Year Shelter and Maintenance Rent	Projected 19.5 Year Cost [3]	Cost per Quality Point
North Star	984	$8,139,800	$166,460,887	$169,168
Fairbanks	862	$7,306,871	$151,469,409	$175,719
Fort Wainwright	806	$7,363,680	$146,735,797	$182,054
Sadco	856	$7,800,000	$164,722,946	$192,433

The Corps' subsequent economic analysis resulted in an evaluated life cycle cost of $56,169,071, or a uniform annual equivalent of $7,427,807, for North Star's proposal. The agency considered this cost effective compared with the corresponding

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2/ Of the remaining initial proposals, the Corps ranked that of Ben Lomond and Company second and Green Builders Construction Company sixth. The agency determined, however, that the Lomond proposal was unacceptable because, like that of Fairbanks Associates, it included an interest rate contingency. The Corps did not ask Lomond to submit a best and final offer, and it did not do so. Green's best and final offer was ranked last. Neither of these offerors has protested or commented on the subject protests.

3/ To project proposed costs over the lease period, the Corps first multiplied the first year shelter rent by 19.5. To this, it added total maintenance rent, adjusted for inflation for each year after the first. Then, to calculate the cost per quality point in accord with the formula in the RFP, it divided total projected costs by the quality points for each proposal. The agency used inflation rates stipulated by the Office of Management and Budget through the Office of the Secretary of Defense (OMB/OSD) to escalate maintenance rent. In projecting proposed costs, the agency did not discount them as it did in the subsequent economic analysis.

figure for government construction, $8,140,000, and submitted the economic analysis to the appropriate committees of Congress.4/

In December 1985, however, the staff of the Subcommittee on Military Construction, House Committee on Appropriations, advised that all proposals were too high. The agency advised offerors of this fact and requested best and final offers by December 16, 1985. Specifically, the Corps requested offerors to adjust shelter and/or maintenance rent, but stated that no changes should be made in technical proposals. North Star provided a best and final offer in the amount of $7,730,920, approximately 5 percent less than its initial offer of $8,139,800. Although the agency had determined that Fairbanks Associates' offer was "nonresponsive" because of an interest rate contingency,5/ the firm learned of the request for best and finals and submitted one in which it reduced its price and deleted the contingency.

The agency ranked the best and final offers at issue here as follows:

Offeror	Technical Points	First-Year Shelter and Maintenance Rent	Projected 19.5 Year Cost	Cost per Quality Point
North Star	984	$7,730,920	$158,094,253	$160,665
Fairbanks	862	$6,806,871	$141,104,417	$163,694
Fort Wainwright	806	$6,838,480	$136,494,393	$169,348
Sadco	856	$7,314,019	$155,184,943	$181,291

4/ The Corps calculated life cycle costs for the government construction option over a 21-year period (1986-2006), allowing 1.5 years for construction and 19.5 years for operation and maintenance. It then applied a discount factor of 12 percent to projected costs, year by year, to obtain a net present value of $64,458,170. The Corps converted this figure to a uniform annual equivalent, $8,523,954, in order to reflect the fact that money would be spent at different times during the period of construction and operation of the housing units. Finally, the Corps reduced the uniform annual equivalent by 5 percent to allow for possible errors, leading to the $8,140,000 identified in the RFP as the "average annual cost." Life cycle costs and the uniform annual equivalent for North Star's proposal were calculated in the same way.

5/ The firm had stated that if interest rates rose to more than 14 percent before contract award, it would require a feasibility analysis and possible adjustment of the proposal.

Because the Corps had found North Star's initial proposal to be cost effective, it states that it did not perform an economic analysis of best and final offers. The Corps awarded the contract to North Star on December 31, 1985.

III. Protests Regarding Evaluation and Award

A. Average Annual Cost

All three protesters maintain that North Star's initial proposed price, as evaluated, exceeds the RFP's $8,140,000 cost ceiling, and that the firm's initial proposal therefore should have been summarily rejected as "nonresponsive." They base their protests on paragraph J of the RFP, as amended, which states:

> "J. Annual Cost. Congress established this program as a test to determine if leasing is more cost effective than alternative means of furnishing the same housing. Economic analyses will be prepared and submitted to the Congress for their review. Proposals in excess of that amount will be considered nonconforming and will not be further evaluated. The average annual cost based on shelter rent and maintenance rent cost from Exhibit "B" of section VI is expected to be between $5,000,000 and $7,000,000 but shall not exceed $8,140,000."

Fort Wainwright Developers argues, based upon information provided to it in a debriefing and in portions of the agency report, that the Corps improperly used only North Star's first-year shelter and maintenance rent in determining that its average annual cost was less than $8,140,000. Fort Wainwright argues that the Corps considered, but rejected, an amendment to the RFP that would have applied the ceiling to first-year costs only.

Both Fort Wainwright Developers and Fairbanks Associates argue that the Corps should have calculated the average annual cost referred to in paragraph J simply by averaging each offeror's projected 19.5 year costs. Both protesters have submitted calculations showing that, evaluated this way, the average annual cost of North Star's initial proposal is more than $8,536,000.

Fort Wainwright acknowledges that responsiveness does not generally apply to a negotiated procurement, but argues that certain requirements may be so material that a proposal which fails to meet them is technically unacceptable. The protester argues that the cost ceiling was such a requirement, because the RFP stated that average annual cost "shall not" exceed $8,140,000 and that proposals in excess of that amount would not be further evaluated.

Fairbanks Associates, citing Corbetta Construction Co. of Illinois, Inc., 55 Comp. Gen. 201 (1975), 75-2 CPD ¶ 144; aff'd 55 Comp. Gen. 972 (1976), 76-1 CPD ¶ 240, argues that "shall" and "will" signify mandatory requirements, and that where an initial proposal fails to comply with a mandatory requirement, it must be summarily rejected.

In the alternative, Fairbanks Associates argues that the term "average annual cost" was ambiguous, and that it was prejudiced as a result of the ambiguity. Fairbanks Associates contends that without the cost ceiling as it interpreted it, the firm could have designed and proposed a more elaborate project and would have been awarded more quality points.

B. Inflation Rates

Fairbanks Associates further maintains that the evaluation was flawed because the inflation rates used by the Corps to project maintenance rent differed from those in the RFP. The protester states that because the solicitation indicated that maintenance rent would be allowed to escalate according to the "Economic Indicators" prepared by the Council of Economic Advisors, it based its proposal on an average of these indicators for the years 1982 to 1984, which was 4.7 percent. Fairbanks Associates argues that using this rate, it calculated that its first-year proposed price could not exceed $7,440,000.

The protester argues that the Corps improperly used rates supplied by the Office of Management and Budget through the Office of the Secretary of Defense (OMB/OSD), which are less than the average of past "Economic Indicators.6/ Fairbanks Associates concludes that the Corps' use of the lower OMB/OSD inflation rates also prejudiced it competitively in the sense that it could have prepared a

6/ The OMB/OSD rates used by the Corps were 4 percent for fiscal year 1984 and 4.4 percent for fiscal year 1985. The rates gradually decrease to 3.4 percent for fiscal year 1989 and each year thereafter to 2006.

higher priced, more elaborate proposal and earned more quality points.

C. Exclusion of Fairbanks Associates from the Competitive Range

Fairbanks Associates also protests the Corps' determination that its initial proposal was "nonresponsive" because, as noted above, the firm included an interest rate contingency. The protester alleges that it was orally advised that the contingency was acceptable, and argues that the Corps is estopped from rejecting the proposal on this ground. The Corps, however, denies giving such advice and states that the contingency rendered the proposal too indefinite to evaluate, so that it was eliminated from the competitive range before the request for best and finals.

D. Award to a Higher-Priced Offeror

The protesters also allege that award to North Star was improper because the cost of North Star's proposal exceeded the cost of each of their respective proposals. Fort Wainwright Developers points to the final award factor--whether selection is in the best interest of the government--and maintains that award to North Star is not in the best interest of the government due to the cost discrepancy between the awardee's proposal and its own.

IV. GAO Analysis

We have carefully considered all submissions by each of the parties. However, we do not consider it necessary to review each and every argument here. We believe that the following discussion is adequate for purposes of resolving the protests.

We find first that Sadco's protest is academic, since its proposal was ranked fourth among those at issue here. Sadco has argued only that the awardee's proposal should have been summarily rejected, and has not protested concerning either of the other offerors, whose proposals cost less per quality point than its own. We dismiss the protest, since the firm would not be in line for award even if we found that its allegations had legal merit. See Claude E. Atkins Enterprises, Inc., B-205129, June 8, 1982, 82-1 CPD ¶ 553. We note, however, that the issues raised by Sadco generally duplicate those raised by the other two protesters, so that our discussion should resolve Sadco's concerns.

A. Average Annual Cost

With regard to average annual cost, we believe that the protesters misunderstood the derivation of the $8,140,000 ceiling in the RFP, leading to a misunderstanding of how and when the Corps would determine whether offers exceeded it. While the RFP could have been more clearly drafted, as discussed below, we do not find the protesters were prejudiced by the deficiency.

The record--particularly the economic analyses prepared for the Congress and at the request of our Office following a conference--makes it clear that the $8,140,000 figure is the result of a present value analysis of the life cycle cost of construction and maintenance of the housing units if performed by the government.

A present value analysis is required by the applicable Office of Management and Budget Circular, No. A-104, which covers decisions on lease or purchase of real property. As North Star points out in its comments to our Office, the circular specifically states that "undiscounted cash flow analysis will not be the basis for identifying the most economic of lease-or-purchase alternatives."

The protesters' suggested method of determining average annual cost, i.e., merely averaging total projected costs (by dividing total projected shelter and maintenance rents by 19.5), does not permit a meaningful comparison of the cost of government construction with the cost of contractor construction under section 801. The protesters' method takes inflation into account. However, because the projected costs for 19.5 years are not discounted, the total of these costs does not reflect the fact that inflated dollars (paid by the government to the contractor in the year 2000, for example) will be worth less than current dollars. In short, since the $8,140,000 ceiling in the RFP was based on discounted costs, the Corps also had to discount projected shelter and maintenance rent before it could determine which alternative was most cost effective.

The RFP does not clearly state that the cost ceiling is equal to the uniform annual equivalent of the cost of government construction, expressed in present value terms. Nevertheless, paragraph J concerns the economic analysis and, in our opinion, indicates that the ceiling would be applied at this stage of the evaluation process. We do not agree with the protesters that the Corps should have summarily rejected North Star's initial proposal because the average of its total projected costs, undiscounted, exceeded $8,140,000.

Nor do we agree that Fairbanks Associates was prejudiced by the Corps' failure to state more explicitly how proposals would be measured against the cost ceiling. The firm in effect contends that it would have offered a higher price had it realized that it would be discounted before comparison with the ceiling. It is clear from the procurement record that neither Fairbanks Associates nor Fort Wainwright Developers used the cost ceiling to establish its price.

As evaluated by the Corps, Fairbanks Associates' undiscounted average annual cost, $7,767,662, was $372,338 (4.6 percent) less than the cost ceiling as the protester understood it. After the Corps told offerors that all prices were considered to be too high, the cost ceiling was no longer relevant to Fairbanks Associates' offer, since it was already below the ceiling, whether calculated as the Corps intended or as Fairbanks Associates believes reasonable. Fairbanks Associates then lowered its price significantly. Fort Wainwright's initial price was similarly less than the cost ceiling (7.6 percent), as determined without discounting, and it too submitted further reductions in its best and final offer. Thus, the protesters' contention that, but for their understanding of the cost ceiling, they would have offered a higher price, is not persuasive.

We also question whether, by its increasing price, either Fairbanks Associates or Fort Wainwright Developers could have displaced North Star. Increased prices would in themselves make the firms' offers less competitive by increasing their cost per quality point ratios. An increased price would have to result in an increase in technical score that not only outweighed the detriment from the higher price but also made up the substantial difference in technical scores between North Star and the other two offerors.

Here, there was a difference of 122 quality points (12.4 percent) between Fairbanks Associates and North Star, and of 178 quality points (18.1 percent) between Fort Wainwright Developers and North Star. Using best and final offers, this translates into a difference of $3,029 per quality point for Fairbanks Associates and $8,683 for Fort Wainwright Developers. In their debriefings, each offeror was shown the number of technical points that it received, according to category, versus the points assigned to North Star. The protesters have not suggested how they could have improved their technical proposals--for example, by adding additional tot lots, by upgrading appliances or carpeting, and so on--that would have resulted in a substantial increase in quality for an unspecified additional price. Fairbanks Associates' bare statement that it would have submitted a more elaborate proposal if it had known the actual nature of the cost ceiling is not, in itself, sufficient to show that the firm would have had a reasonable chance of receiving the award. See WHY R & D, Inc., B-221817, Apr. 16, 1986, 86-1 CPD ¶ ___; Digital Radio Corp., B-216441, May 10, 1985, 85-1 CPD ¶ 526.

In considering the protests that North Star's initial proposal should have been summarily rejected as nonresponsive, we also note that the term responsiveness, as used by the protesters, is generally inapposite in a negotiated procurement. As Fort Wainwright contends, it can be used in an RFP to mean requirements that are so material that a proposal failing to conform to them would be considered unacceptable. Computer Machinery Corp., 55 Comp. Gen. 1151, 1154 (1976), 76-1 CPD ¶ 358. Even then, however, an agency should not automatically reject a nonconforming initial proposal in the same manner that it would reject a nonresponsive bid. Scan-Optics, Inc., B-211048, Apr. 24, 1984, 84-1 CPD ¶ 464. Rather, the agency must determine whether the proposal is reasonably susceptible to being made acceptable through discussions. Id.; see also Federal Acquisition Regulation (FAR), 48 C.F.R. § 15.609(a) (1984) (requiring that competitive range determinations include all proposals that have a reasonable chance of being selected for award).

Here, the solicitation did not specifically use the term responsive. However, it did warn that proposals in excess of "that amount," which the protesters interpreted as an average annual cost of $8,140,000, would be considered nonconforming and would not be further evaluated. Regardless of the derivation of this figure, we do not believe it would have been reasonable to apply the cost ceiling to initial proposals.

The Corbetta cases, cited by the protesters, also involved a procurement for the design and construction of military family housing units; all but one initial proposal exceeded a statutory limitation on the average cost per housing unit. We interpreted the applicable procurement regulation,[7] providing that a proposal containing prices that exceed statutory cost limitations should be rejected, as not requiring rejection of an initial proposal, even if the price exceeds the statutory limitation. We found that during discussions offerors might reduce prices so as to come within the statutory limitation. See 55 Comp. Gen. supra at 982; 55 Comp. Gen. supra at 219; Corbetta Construction Co. of Illinois, Inc., B-182979, Mar. 10, 1978, 78-1 CPD ¶ 191 at 4.[8]

Even if, for the sake of argument, we view North Star's initial proposal as having an average annual cost of more than $8,140,000, it was reasonably susceptible to being made acceptable through discussions. In North Star's best and final offer, proposed first-year prices for shelter and maintenance rent; the annual average of these costs, projected over the 19.5 year term of the lease; and the uniform annual equivalent were all less than the amount specified in the RFP.

Accordingly, we deny the protests that North Star's initial proposal should have been summarily rejected.

B. Inflation Rates

With regard to the inflation rates used to escalate offerors' proposed first-year maintenance rents, the RFP did not specify any rate for evaluation purposes. The RFP indicated only that during the term of the lease, maintenance rent would be allowed to escalate at a rate pegged to the "Economic Indicators" (identified in the sample lease included in the RFP as the Housing, Shelter, Maintenance, and Repair Index for the 12 months preceding payment) prepared for the Joint Economic Committee of Congress by the Council of Economic Advisors. In its economic analysis, the Corps states that it assumed that the OMB/OSD inflation indexes that it used for evaluation purposes would equate to future changes in the Economic Indicators. We believe

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7/ Armed Services Procurement Regulation, § 18-110(c) (1974). The comparable current section is the Federal Acquisition Regulation, 48 C.F.R. § 36.205 (1984).

8/ Unlike Corbetta, here there is no statutory limitation on cost. The legislative history of section 801 specifically states that the intent of Congress was not to impose a ceiling on the maximum annual lease, so long as it was cost effective when compared with the alternative of government construction. H.R. Rep. No. 359, 98th Cong., 1st Sess. 45 (1983).

this assumption, and use of the lower OMB/OSD rates, was reasonable.

The Housing, Shelter, Maintenance, and Repair Index is one of the component indexes of the Consumer Price Index (CPI). The CPI is a statistical measure of change over time in the prices of goods and services in major expenditure groups (for example, food, housing, apparel, transportation, health and recreation). It compares the prices of the same goods and services in a current month with those in the previous month or year.9/ The CPI is frequently used as an index of inflation. However, it is relevant solely for measurement of past price changes. It does not project future inflation rates.

Although the RFP referred to the "Economic Indicators," it did not state that indicators for past years would be used for evaluation purposes. When the solicitation is read as a whole, it indicates only that the pegging of the maintenance rent to the increase or decrease in the referenced CPI will be for the purpose of adjusting payments during the term of the lease. Since the Corps did not specify the inflation rate or rates that it would use for evaluation purposes, as opposed to payment purposes, we believe it was free to use any reasonable index, including the OMB/OSD rates that are specifically intended to predict future inflation. Although Fairbanks Associates' method of estimating future inflation, using an average of "Economic Indicators" for past years, may have been reasonable, the protester has not met its burden of showing that the agency's method was unreasonable. See Centurial Products, B-216517, Sept. 19, 1985, 64 Comp. Gen. ____, 85-2 CPD ¶ 305; Western Filament, Inc., B-181558, Dec. 10, 1974, 74-2 CPD ¶ 320.

Fairbanks Associates' also argues that it was competitively prejudiced by the use of lower inflation rates to project maintenance rent. As discussed above in the context of the cost ceiling, even if the firm had been aware that the Corps would use the lower OMB/OSD inflation rates to evaluate its proposed first-year maintenance rent, we do not believe that there was a reasonable possibility that the firm could have increased its technical score by

9/ Joint Economic Comm., 96th Cong., 2d Sess., 1980 Supplement to Economic Indicators: Historical and Descriptive Background 85 (Comm. Print 1980); Bureau of Labor Statistics, Dept. of Labor, Rep. No. 517, The Consumer Price Index: Concepts and Content Over the Years (1977).

an amount sufficient to displace the awardee by increasing the portion of its proposed price representing maintenance rent. Maintenance represents less than 16 percent of Fairbanks Associates' proposed first-year price, and it is not reasonable to assume, based upon the protester's bare assertion, that a small increase in this small portion of its offered price would have increased the firm's cost/quality ratio.

We deny the protest that the cost evaluation was flawed because the Corps used OMB/OSD rates to project maintenance rent.

C. Exclusion of Fairbanks Associates from the Competitive Range

With regard to Fairbanks Associates' protest that the Corps improperly eliminated its initial proposal from the competitive range because of the inclusion of an interest rate contingency, we find the matter academic.

Although the Corps did not request a best and final offer from Fairbanks Associates, the firm, as noted above, in fact submitted a revised offer, lowering its price and deleting the interest rate contingency to which the Corps objected. We find nothing improper in this, since despite the Corps' request that offerors not change their technical proposals, as long as negotiations are still open, offerors within the competitive range have a right to change or modify their proposals in any manner. See PRC Information Science Co., 56 Comp. Gen. 768 (1977), 77-2 CPD ¶ 11; The EMI-Hammer Joint Venture, B-206665, Aug. 20, 1982, 82-2 CPD ¶ 160.

Moreover, even if the Corps improperly found the firm's initial proposal to be unacceptable, it actually evaluated and ranked Fairbanks Associates' best and final according to cost per quality point. For all practical purposes, the firm was included in the competitive range, and we will not consider this basis of protest further.

D. Award to a Higher-Priced Offeror

The Corps clearly took the protesters' lower prices into account by virtue of its use of the cost per quality point evaluation formula specified in the RFP. We have recognized the propriety of using such a formula to determine which proposal is most advantageous to the government, 34437

see Shapell Government Housing Inc., et al., 55 Comp. Gen. 839 (1976), 76-1 CPD ¶ 161; Claude & Atkins Enterprises, Inc., supra, and we note that mathematically, the formula results in giving equal weight to cost and technical factors. In a negotiated procurement, there is no requirement that award be made on the basis of lowest price or cost to the government unless the solicitation so specifies. See Washington Health Services, Ltd., B-220295.2, Feb. 13, 1986, 86-1 CPD ¶ 157.

Here, North Star's final cost per quality point was $3,029 less than that of Fairbanks Associates and $8,683 less than that of Fort Wainwright Developers. We find that the award to North Star was reasonable and in accord with the evaluation scheme set forth in the solicitation. We therefore deny the protests with regard to the award to higher-priced offeror.

The protests are dismissed in part and denied in part.

Harry R. Van Cleve

Harry R. Van Cleve
General Counsel