



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Department of Justice--Request for Reconsideration

File: B-228052.3

Date: June 24, 1988

DIGEST

Prior decision is affirmed where agency essentially disagrees with decision and alleges unspecified aspects of the record were overlooked in the decision, but presents no argument or information establishing that the decision was legally or factually erroneous.

DECISION

The United States Marshals Service, Department of Justice, requests reconsideration of our decision in Princeton Gamma-Tech, Inc., B-228052.2, Feb. 17, 1988, 88-1 CPD ¶ 175. In that decision, we sustained the protest against award of a contract to Astrophysics Research Corporation for walk-through metal detectors, under request for proposals (RFP) No. 87-7054. The Marshals Service now essentially disagrees with the determination in our February decision that evaluation scoring was not rationally based, discussions were not meaningful, and the evaluation of the awardee's proposal lacked a reasonable basis.

The prior decision is affirmed.

We sustained Princeton Gamma Tech's protest primarily on the basis that the operational testing relied upon by the agency did not provide a rational basis for the evaluation scoring. The record indicated that while the testing was conducted on a pass/fail basis, i.e., on the basis of whether the offered unit met or did not meet the salient characteristics, the evaluation scoring was done on a comparative numerical basis, and there was no indication in the record of how the pass/fail scores were converted into comparative numerical scores. We also determined that discussions were not meaningful because the maintenance plan deficiency brought to the protester's attention was not sufficient to alert the firm to the deficiency for which the firm's proposal

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actually was downgraded. Finally, we determined that the agency improperly had evaluated Astrophysics' proposal under a requirement that the offeror have a certain number of the proposed units already in operation.

We concluded that while the impact of the various deficiencies on the selection decision was not clear, it was clear that a proper evaluation could have resulted in significantly different scores, since the deficiencies were of a nature that they may simultaneously have improperly reduced the protester's score while improperly inflating the awardee's. Since performance had been substantially completed, we found corrective action impracticable, and concluded that Princeton was entitled to reimbursement of its proposal preparation and protest costs.

The agency requests reconsideration primarily on the basis of its disagreement with our decision, contending that we overlooked pertinent parts of the record with regard to the basis of the comparative scoring, the adequacy of discussions, and the evaluation of the awardee's proposal. The agency also questions why we sustained the protest in this case, finding that evaluation scoring was not rationally based, when we denied a protest on a prior similar Marshals Service procurement.

The Marshals Service has provided no basis for us to reverse or modify the decision; the agency has not made a showing that our decision contained errors of fact or law or information not previously considered that would warrant reversal or modification. See Bid Protest Regulations, 4 C.F.R. § 21.2(a) (1988); Roy S. Weston, Inc.--Request for Reconsideration, B-221863.3, Sept. 29, 1986, 86-2 CPD ¶ 364. While the agency contends that we overlooked portions of the record, it presents no information not previously considered, and its mere disagreement with our decision and reiteration of arguments made during resolution of the original protest do not meet the standard for reconsideration. Id. We nevertheless briefly readdress the agency's arguments below.

First, the agency contends that it sufficiently explained the basis for the conversion of the pass/fail testing to comparative scoring during the course of the protest and invites us to reexamine the record. However, the agency does not specify the portion of the record we allegedly overlooked. We acknowledge that in some areas of the equipment evaluation, the method of conversion of the pass/fail scores to point scores was apparent (i.e., in some areas the scoring choice was between a set point score for a pass or satisfactory rating and a zero score for a fail or unsatisfactory rating). However, in some of the equipment


testing categories, the method of conversion was not apparent. For example, under one testing subcriterion, "detection of small caliber stainless steel weapons," there were 20 possible points for an outstanding rating, 15 points for superior, 10 for adequate, 5 for weak, and 0 for unsatisfactory. The actual test in this area was for a .22 caliber weapon held in seven different body positions. The evaluation form worksheet for this test, however, instead of including spaces for numerical scores, included boxes for each position under the heading "pass" (i.e., to designate that the item was detected), and these boxes were generally filled out only with check marks or x-marks under the "pass" heading, without numerical scores. The record included no indication of how the pass/fail test results ultimately were converted to numerical scores. Further, one offeror's form was filled out with the numerical 4 under each of the 7 pass boxes, for a total of 28 points, which actually exceeded the 20 total points available. Consequently, we concluded that the record did not establish a rational basis for the comparative evaluation scoring that the agency ultimately came up with. The Marshals Service has not shown otherwise here.

The agency suggests that our decision on the scoring issue here was inconsistent with our earlier decision in Astrophysics Research Corporation, B-228718.3, Feb. 18, 1988, 88-1 CPD ¶ 167, in which we denied the protest challenging the scoring under a similar Marshals Service procurement. While there were similarities in the two procurements, the Astrophysics procurement did not involve the conversion of pass/fail test results to numerical scores; rather, in Astrophysics, the testing was numerically scored from the outset. Thus, the evaluation testing results in Astrophysics did have a rational basis.

The agency further argues that we incorrectly based our determination of deficient discussions with the protester on the written discussion questions, without considering that portion of the record which indicated that "deficiencies in the protester's proposal as evaluated were carefully gone over orally with the protester during negotiations." Again, however, the agency does not direct our attention to the portion of the record allegedly showing that the protester was advised of the evaluated deficiency at issue (concerning the firm's maintenance network or acceptable staffing level). The agency's unsupported blanket statement that it orally notified the protester during discussions of all deficient areas of the firm's proposal simply is not sufficient to show meaningful discussions actually occurred.

Finally, the agency disagrees with our determination that evaluation of the awardee's proposal under the units in operation requirement was improper, again complaining generally that we overlooked pertinent aspects of the record to the contrary. The agency complains that our decision wrongly suggested that the awardee's point score was improperly inflated in this area, and requests that we indicate exactly which point assignment was erroneous. In our decision, however, we did specifically indicate that the evaluation scoring of Astrophysics' units in operation was not consistent with the RFP, which stated that only proposals demonstrating at least substantial compliance with the RFP requirement for units in operation for approximately 1 year would be scored highly; Astrophysics' proposal was scored highly even though the record showed that the unit it proposed had been in operation for no more than 3-1/2 months prior to award. The Marshals Service has not shown that this conclusion was erroneous.

We affirm the prior decision.

for 
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of the United States