



Comptroller General  
of the United States  
Washington, D.C. 20548

## Decision

**Matter of:** Tennessee Wholesale Drug Company, Inc.

**File:** B-243018; B-243019; B-243020; B-243021

**Date:** June 28, 1991

Dennis J. Meaker, Esq., Waller Lansden Dortch & Davis, for the protester.

Gordon L. Lang, Esq., Nixon, Hargrave, Devans & Doyle, for Harris Wholesale Company, and John A. Burkholder, Esq., Crowell & Moring, for McKesson Corporation, interested parties.

Lyndia R. Glasgow, Esq., Department of Veterans Affairs, for the agency.

Catherine M. Evans, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

1. Technical evaluation under certain evaluation subfactors was unreasonable where offerors earned maximum scores for proposals that did not meet solicitation requirements, and where record does not support award of lower score to protester than to one of the awardees.

2. Agency's method of evaluating price proposals, which resulted in very closely grouped price scores, was improper where it resulted in price having virtually no weight in evaluation and thus was inconsistent with the evaluation scheme in the solicitation.

3. Award to higher-priced, technically superior offeror was improper where technical evaluation was flawed in certain areas and price evaluation method effectively gave no weight to price, and protester, the low-priced offeror, might have been the successful offeror despite technical deficiencies had evaluations been properly conducted.

### DECISION

Tennessee Wholesale Drug Company, Inc. (TWD) protests the award of contracts to Harris Wholesale, Inc. under request for proposals (RFP) Nos. M5-Q2-91 and M5-Q4-91, and to McKesson Corporation, under RFP Nos. M5-Q3-91 and M5-Q5-91, issued by the Department of Veterans Affairs (VA) for prime vendor services in four VA hospital regions. TWD alleges that the agency misapplied the technical evaluation criteria and

improperly evaluated the price proposals, and that award to Harris and McKesson at prices higher than TWD's therefore was improper.

We sustain the protests.

The solicitations contemplated award of a contract for prime vendor services in each of four VA hospital regions for a base year and 2 option years. As prime vendor for a VA region, the contractor is required to set up and maintain a computerized inventory and ordering system for federal supply schedule pharmaceutical items at designated VA hospitals, and to provide next day delivery of ordered items in most cases. The RFPs provided that award would be made to the responsible offeror submitting the proposal considered most advantageous to the government in terms of three equally weighted evaluation factors: Price, Organizational Experience, and Technical Approach.

For each of the 4 solicitations, VA received from 5 to 11 proposals, all of which were evaluated by the same technical panel and found to be in the competitive range. TWD submitted proposals for all four regions. Following discussions and best and final offers, TWD, Harris and McKesson were ranked as follows:

RFP Nos. M5-Q2-91 and M5-Q4-91

<u>Offeror</u>	<u>Technical</u>	<u>Organizational</u>	<u>Price</u>	<u>Total</u>
Harris	312	325	324	961
McKesson	311	316	321	948
TWD	272	280	325	877

RFP Nos. M5-Q3-91 and M5-Q5-91

<u>Offeror</u>	<u>Technical</u>	<u>Organizational</u>	<u>Price</u>	<u>Total</u>
McKesson	311	316	321	948
TWD	272	280	325	877

Based on the total scores for each evaluation, the agency determined that the proposals of Harris and McKesson were the most advantageous to the government, and awarded contracts to those firms. Upon learning of the awards, TWD filed this protest.

TWD alleges that the agency failed properly to apply the evaluation criteria in the RFPs when it selected higher-priced offers for the awards. With regard to the technical evaluation, TWD concedes that it did not fully meet certain RFP requirements, but maintains that the agency excessively downgraded its proposal based on its weaknesses in those allegedly minor areas, and also that the agency relied on

unstated evaluation factors in awarding higher scores to the awardees in those areas. As for the price evaluation, TWD asserts that the agency's method of evaluating prices effectively removed price as a consideration in the award decision. As discussed below, we find that the technical evaluation was improper with respect to three evaluation subfactors, and that the price evaluation was flawed.

#### TECHNICAL EVALUATION

The technical evaluation included two factors, Organizational Experience and Technical Approach. Each factor was divided into equally weighted subfactors, based on the RFP requirements. The Organizational Experience factor included four subfactors: Experience in Similar Contracts (82 possible points), Structure to Provide Requirements (83 points), Fill Rate History/Maintenance (83 points), and References for Similar Contracts (82 points). The Technical Approach factor was broken down into six subfactors, each worth 55 points: Technical Approach to Specific Functions, Capability to Maintain Inventory, Method of Meeting Delivery Requirements, Data Processing Capability, Proposed Implementation Plan, and Training Methods/Approach. The evaluators assigned point scores to the proposals under each subfactor according to descriptive guidelines they developed. Under these guidelines, a proposal offering to exceed RFP requirements would be awarded points in the "excellent" or "good" range for the subfactor, while a proposal offering to meet the requirements would receive a score in the "acceptable" range; a proposal not meeting the requirements would receive a score in the "marginal" or "unacceptable" range.

#### Visits to Medical Centers

Under the Technical Approach to Specific Functions subfactor of the Technical Approach factor, the agency's evaluation guidelines provided that a proposal would receive a score in the excellent range if it offered to accept returns at no cost, identified customer service representatives, and proposed to make at least two visits per month to each medical center, while a proposal that did not identify customer service representatives and offered to visit medical centers on an as-needed basis would receive a score in the acceptable range. Under this evaluation scheme, TWD, which indicated that it had only three sales representatives, and offered to schedule visits to the medical centers "with the mutual consent of the medical center and TWD," received a marginal score of 38 of 55 possible points, while Harris and McKesson, both of which offered large sales staffs and regular visits twice per month, each received 52 points.

As noted above, the RFP requirement for visits to medical centers was amended from two visits per month to visits at the request of the medical center. TWD contends that it met the amended requirement, and argues that it was unreasonable for the agency to award more points to offerors who agreed to meet the old requirement.

We do not agree with TWD that its offer to schedule visits to medical centers based upon the mutual consent of the parties complied with the requirement to schedule visits at the request of the medical center, which would not depend upon TWD's consent. However, we do agree that the agency's scoring of proposals in this area was unreasonable. First, the agency's apparent determination that an offer of two visits per month exceeded the basic requirement for visits on request simply is untenable. We think it is reasonably clear that the amended requirement for visits on request is more stringent than the original requirement for two visits per month. For example, if a medical center requested four visits from the contractor during a particular month, the contractor would be required to make all of those visits under the amended requirement. Consequently, we find the agency's scoring guidelines, which awarded more points to offerors who met the obsolete requirement, inconsistent with the RFP. Thus, even though we find that TWD did not agree to meet the amended requirement, and that it therefore was scored properly, the scores given Harris and McKesson were improperly inflated.

#### Experience

Under the Experience in Similar Contracts subfactor of the Organizational Experience factor, TWD received 80 of 82 possible points, while McKesson and Harris each received the maximum score. The evaluation guidelines for this subfactor provided that an offeror listing seven or more contracts would receive "79+" points. In the evaluation, the agency noted that TWD currently holds 12 prime vendor contracts with a large university hospital consortium, and is a wholesaler to 86 VA Medical Centers and a number of national purchasing groups. TWD argues that this experience entitled it to the maximum score for this subfactor.

Again, the record does not support the agency's award of more points to Harris and McKesson under this subfactor than to TWD. The agency's only negative comment in TWD's evaluation was that it is not the prime vendor to any national purchasing groups or VA hospitals. However, TWD listed 12 prime vendor contracts with university hospitals, while Harris only listed three and McKesson listed 10. We conclude that the record provides no basis for the VA's conclusion and, therefore, for TWD's lower score.

### Data Processing Requirements

The RFP required the contractor to supply a basic order entry system at no cost, and requested prices for additional equipment, such as personal computer terminals for each medical center. The RFP provided that prices for additional equipment would not be evaluated. Under the evaluation guidelines for the Data Processing Capability subfactor of the Technical Approach factor, an offeror agreeing to provide all equipment and on-line access to software at no charge, and including copies of all required reports with its proposal, would receive the maximum available points. TWD received 50 of 55 points for this subfactor, apparently because it did not provide copies of all required reports and intended to charge the government for rental of personal computer terminals for medical centers. Harris, whose proposal was similar to TWD's in this regard, received 49 points, and McKesson, which did not include copies of all reports but offered computer terminals at no charge, received 52 points.

TWD argues that, since the RFP precluded evaluation of prices for nonrequired equipment, it was improper for the agency to award maximum scores only to offerors proposing to provide nonrequired equipment at no charge. We agree. Although the agency did not include prices of nonrequired equipment in the price evaluation, it did effectively consider those prices in the evaluation when it awarded more technical points to proposals offering the additional equipment at no charge. Since the protester is correct that the RFP stated that prices of additional equipment would not be evaluated, the agency's consideration of the offer of additional equipment at no charge in the technical evaluation was improper.

### Other Issues

TWD raises numerous additional issues with respect to the technical evaluation that we find are without merit and do not warrant a full discussion. For example, TWD contends that maximum scores were awarded only to offerors that met undisclosed criteria, as evidenced by the fact that only McKesson and Harris received the maximum score under the Method of Meeting Delivery Requirements subfactor because they proposed to use their own delivery trucks, even though the RFPs did not require offerors to have trucks. (TWD proposed to use common carriers.) However, the RFPs provided that evaluation under the Technical Approach factor would involve consideration of the offeror's ability to serve the medical centers, including its method of ensuring that the delivery requirements would be met. An offeror's proposed method of transportation clearly is related to meeting delivery

requirements. See Hoffman Mgmt., Inc., 69 Comp. Gen. 579 (1990), 90-2 CPD ¶ 15. We therefore do not discuss the remaining technical evaluation issues.

#### PRICE EVALUATION

The RFPs provided that price was to receive the same weight in the evaluation as each of the two technical factors, but did not specify how prices would be scored. In order to evaluate the proposed prices, the agency selected as a "benchmark" or anchor for the scoring scheme the internal distribution cost incurred under its depot system--4.5 percent of the cost of the goods--as it had no prior experience with prime vendor contract prices. The agency then developed a scoring system based on this anchor, under which a distribution fee of 4.5 percent would receive a score in the acceptable range--264 points--and lower prices were awarded correspondingly higher scores, with a zero markup receiving the maximum score of 330 points. Under this scheme, TWD, the lowest-priced offeror with a .75 percent markup, was awarded 325 points. Harris, charging .9 percent, received 324 points, and McKesson, at 1.45 percent, received 321 points.

Noting the closeness of the price scores, TWD argues that the agency's evaluation method virtually removed price considerations from the award decision. TWD asserts that the 4.5 percent anchor was unrealistic because it was based on the VA's own overhead costs rather than on competitive market prices. As the average offered price was much lower than the benchmark, TWD contends, the price scores were artificially grouped together near the maximum score. In this regard, TWD points out that McKesson's price was 93 percent higher than its own price, yet McKesson's price score was only 1.2 percent lower than TWD's. Similarly, although Harris's price was 20 percent higher than TWD's, the difference between their price scores was less than 1 percent. TWD concludes that the evaluation method effectively rendered the price evaluation worth less than the weight indicated in the RFPs.

We agree. While procuring activities have broad discretion in determining the particular method of price proposal evaluation to be utilized, the chosen method must provide a rational basis for source selection. Francis & Jackson, Assocs., 57 Comp. Gen. 244 (1978), 78-1 CPD ¶ 79. In this regard, we have questioned the use of certain methods when they tend to produce misleading or irrational results. For example, including a very high-priced offer in a comparative evaluation of prices can result in "bunching" the scores of the other, more realistically priced offers, in effect improperly reducing or eliminating price as an evaluation factor. See GP Taurio, Inc., B-222564, July 22, 1986, 86-2 CPD ¶ 90.

We think the agency's method of evaluating price proposals here produced this type of misleading result. Compared to the distribution fees offered by TWD, Harris and McKesson, the agency's 4.5 percent estimate was unreasonably high; the agency's comparison of offered prices to the estimate therefore resulted in unrealistic "bunching" of the price scores. The agency's assignment of virtually identical point scores to the three offerors totally disregarded the relative difference of the firms' distribution fees, the price element that was the basis for the evaluation. As a result, only the technical differences in the proposals were reflected in the evaluation, with price differences essentially receiving no weight. As TWD alleges, price improperly was eliminated as an evaluation factor. See Group Operations, Inc., 55 Comp. Gen. 1315 (1976), 76-2 CPD ¶ 79.

The agency may have underestimated the significance of the disparities in the distribution fees due to the relatively small difference in the fees compared to the total cost associated with the four contracts, \$14 to \$22 million. The total value of the contracts is misleading for purposes of the comparative price evaluation, since the total contract prices included the cost of the pharmaceutical items. Because the pharmaceuticals are covered by Federal Supply Schedule contracts, their cost would be the same for any contractor. Although the distribution fees amount to only relatively small percentages of the cost of the pharmaceuticals, they really are the meaningful elements of the price proposals for comparison purposes.

If the offerors' proposed distribution fees were similar, this deficiency possibly would not have had a significant effect on the evaluation. However, as indicated, Harris's and McKesson's proposed fees were relatively much higher (20 and 93 percent, respectively) than TWD's. Thus, if the price evaluation was more reflective of this relative difference, and the technical evaluation deficiencies discussed above also were corrected, the relative standing of offerors might well be different, notwithstanding TWD's lower technical score.

Accordingly, we sustain the protests. By letter of today to the Secretary of Veterans Affairs, we are recommending that VA reevaluate the technical proposals in accordance with our decision, and reevaluate price proposals in a manner that reflects the relative differences in proposed distribution fees, consistent with the stated evaluation criteria. In this regard, we do not recommend any particular method of price evaluation. The solicitation does not require the agency to quantify its evaluation of any factor by using a numerical scoring system. If it again elects to use a numerical system to evaluate price, the VA should not anchor the scoring

scheme with what appears to be an excessive government estimate.

VA should make awards consistent with the results of the new evaluations, terminating the present awardees' contracts for convenience if necessary. We also find TWD entitled to reimbursement of the costs of filing and pursuing its protests, including reasonable attorneys' fees. 4 C.F.R. § 21.6(d)(1).

The protests are sustained.

*for Milton I. Auster*  
Comptroller General  
of the United States