



Comptroller General
of the United States

Washington, D.C. 20548

1443060

Decision

Matter of: Central Air Service, Inc.

File: B-242283.4

Date: June 26, 1991

William A. Dempsay for the protester,
Alex A. Gaynes, Esq., for Minden Air Corporation, an inter-
ested party.
Alton E. Woods, Esq., Department of the Interior, for the
agency.
Robert C. Arsenoff, Esq., and John Brosnan, Esq., Office of
the General Counsel, GAO, participated in the preparation of
the decision.

DIGEST

1. Agency had a reasonable basis for downgrading protester's proposal for airtanker services in terms of support capability, aircraft, safety and business practices because record supports the technical evaluators' conclusions.
2. Although agency erred in scoring the awardee's proposal with respect to safety and past availability of aircraft and the protester's proposal with respect to availability, the record reflects that, with properly adjusted scores, awardee still submitted a superior proposal so that protester was not prejudiced.
3. Aircraft certification requirements, which were to be met shortly before contract performance, are not preconditions to award and whether they are timely satisfied by the awardee is a matter of contract administration.

DECISION

Central Air Service, Inc. protests the award of a contract to Minden Air Corporation^{1/} under request for proposals (RFP) No. 8090-32, issued by the Department of the Interior for

^{1/} Minden was awarded a single contract for item No. 4 to provide airtanker services at Whiteriver, Arizona and Billings, Montana during local fire seasons first commencing at Whiteriver on May 15, 1991. Other firms received awards covering different locations.

fire management airtanker services at various locations during local fire seasons. Central alleges that offers were comparatively evaluated in an improper manner and that Minden's proposal should not have been accepted since it failed to conform to material certification requirements in the RFP.

We deny the protest.

FACTS

The RFP contemplated awards on the basis of offers which were determined to be most advantageous to the government considering technical factors and price; technical considerations were twice as important as price. The listed technical evaluation factors (and their respective maximum point scores under the evaluation plan used by Interior) were as follows:

<u>Factor</u>	<u>Maximum Points</u>
Support Capability	360
Past Availability	350
Aircraft	350
Safety/Accidents	300
Business Practices	290
Flight Crews	<u>150</u>
Total	1,800 ^{2/}

The technical evaluation was to be accomplished by reviewing information presented in competing proposals and in further consideration of information developed at preaward on-site visits conducted by the evaluation team. For any given category, a score of 50 percent of the available points was regarded as average.

In addition, the specifications required that a contractor be certified by the Federal Aviation Administration (FAA) for agricultural operations, that its aircraft be FAA-certified as airworthy to perform fire suppression activities, and that the aircraft and tank systems be approved under standards of the Interagency Airtanker Board (IAB) in effect as of the time of award.

In the evaluation of best and final offers (BAFO), Central and Minden were scored as follows with respect to item No. 4:

2/ In keeping with the relative technical/price weights listed in the RFP, price was scored on a scale of 900 points.

<u>Factor</u>	<u>Central</u>	<u>Minden</u>	<u>(Maximum)</u>
Support Capability	213	260	360
Past Availability	80	200	350
Aircraft	230	300	350
Safety/Accidents	250	300	300
Business Practices	110	255	290
Flight Crews	<u>140</u>	<u>150</u>	<u>150</u>
Total Technical	1,023	1,465	1,800
Price	\$1,079,760 ³ / ₃	\$999,000	
Price Score	<u>817</u>	<u>890</u>	<u>900</u>
Total Score	1,840	2,355	2,700

As the evaluation results indicate, Central was scored above average in each factor except past availability and business practices. With regard to past availability, the protester was scored on the basis of its previous contract history of aircraft "downtime," as submitted with its proposal except that subcontract experience was eliminated from the evaluators' calculations as were experience on spray (as opposed to tanker) contracts and experience under contracts with the State of North Carolina. In the area of business practices, Central was downgraded because its president did not delegate authority within the company and because the firm had been defaulted on a 1980 airtanker contract with the agency.

Minden was awarded a contract for item No. 4 on November 23, 1990. The record of evaluation indicates that the selection decision was made on the basis of the firms' point totals.

PROTEST

Central disputes the evaluators' findings with regard to each factor except flight crews. The protester principally focuses on the agency's evaluation of its past availability and business practices. In addition, Central generally objects to all of Minden's scoring based primarily on the fact that Minden is a new firm without a performance history. Central also submits that, by not having the required FAA and IAB certifications at the time of award, Minden failed to submit a technically acceptable proposal.

3/ Central offered various discounts for multiple-awards; however, since our review does not disclose that it was in line for multiple awards, the protester's undiscounted price for item No. 4 was used.

We have thoroughly reviewed the record presented by the parties, including the two competing proposals, and find that under most of the factors, the agency had an adequate basis for scoring them as it did. In the area of past aircraft availability, however, we find that the evaluators erred in that they should have awarded Central more points than they did and awarded Minden more points than they should have. We also think that the evaluators erred in awarding Minden any points for its safety record.^{4/} Despite such errors, we deny the protest because, when the scoring is adjusted to reflect a reasonably supported evaluation of Central and Minden, the awardee's proposal would still be rated higher than Central's and, thus, we find that the protester was not materially prejudiced by the evaluation and award selection.

ANALYSIS

In our analysis, we first consider Central's objections to those areas in which it received above average but less than maximum scores, and then consider the areas of business practices and past availability where the protester was scored below average. Finally, we discuss Minden's alleged failure to submit a technically acceptable proposal.

The evaluation of technical proposals and the determination of their relative merit are primarily the function of the procuring agency since it alone must bear the burden of a defective evaluation. Thus, we do not independently review proposals to determine their relative merit but examine the evaluation to insure that it was rationally-based and consistent with the stated evaluation criteria; a protester's disagreement with the agency's technical judgment in the evaluation process does not by itself establish that an evaluation was unreasonable. Anderson-Elerding Travel Serv., Inc., B-238527.3, Dec. 19, 1990, 90-2 CPD ¶ 500.

Areas Where Central Was Rated Above Average

Support Capability

Central received 213 out of 360 points in this area. The protester was principally downgraded for submitting a proposal which attempted to explain past contractual performance difficulties rather than detailing a plan to ensure that such difficulties were not repeated in the future. In addition,

^{4/} This is not to say that the remainder of Minden's proposal --which detailed such matters as the company's resources, plans and personnel--could not provide a reasonable basis for favorable review just because the firm was new, as Central urges.

the evaluation team questioned the viability of Central's engine replacement program which was, in their view, new and unproven. They also faulted the protester's maintenance plans for not having an independent quality control function. Further, questions were raised as to the adequacy of Central's repair facilities, the experience of its maintenance personnel, and the lack of detailed plans concerning the availability of spare parts.

In response to the evaluators' findings, Central has at best established that it disagrees with the reasons for its downgrading. Our examination of the protester's proposal confirms the validity of the agency's chief criticism--that the firm spent considerable effort in defending its past performance difficulties and offered little or no detail about future plans to improve performance. The text of the proposal indicates that Central's proposed engine replacement program was (as the agency found it) relatively new, that a separate quality control function was not detailed and that its maintenance personnel were reasonably evaluated on the basis of the information presented by the protester. Central's principal contention in this area is that superior support capability is reflected in superior aircraft availability (a matter in dispute), and that the evaluators should have inferred superiority in this area from what it considers to be properly calculated availability figures.^{5/} We find this rationale to be unsupported by any concrete details in the record and, thus, we are presented with an insufficient basis for concluding that the agency should have awarded the protester more points. Anderson-Elerding Travel Serv., Inc., B-238527.3, supra.

Aircraft

Central received 230 out of 350 points in this area. The bulk of the 120 points deducted by the evaluators involved a strict mathematical calculation based on the rated efficiency of the DC-4 aircraft proposed by the protester--a matter which is not

^{5/} Central also questioned the evaluation of such matters as its inadequate hangar facilities by stating that it believes that large hangars are "not needed" at its primary location of operation and submits that Minden also does not have adequate maintenance facilities. This unsupported disagreement concerning its own hangars does not provide a basis to disturb the evaluation and we note that Minden's proposal included detailed plans to build a new facility for which the firm was reasonably given some credit. Likewise, we find that Interior had an adequate basis to downgrade Central with regard to the lack of detailed plans concerning the availability of spare parts.

in substantive dispute. Central also lost 50 points because, although the evaluators found its aircraft to be in good basic condition, they also found them to be in need of paint, cleaning and new instruments.

All that Central has provided in response to these criticisms are its own opinions that, for example, the parts and instruments on the aircraft are adequate and in good condition. Since we are only provided with largely unsupported disagreement as to the evaluators' conclusions with regard to the need for aircraft improvements, we have no legal basis to question their judgment as being unreasonable. Anderson-Elderling Travel Serv., Inc., B-238527.3, supra.

Safety/Accident Issues

Central lost 50 out of 300 points because of three declared emergencies during prior performance which caused it to jettison loads of government-furnished fire retardant chemicals. The protester does not deny that the incidents occurred, but suggests that it should not be downgraded because it did not receive "incident reports" concerning them, and otherwise argues that they were not serious. From the record, however, it appears that the incidents did in fact occur and that they were scored in accordance with a scale of point deductions applicable to all offerors. While the protester argues that the pilots involved in each incident had to dump their loads because of engine failure, we fail to understand why that makes the agency's classification of these three occurrences as safety issues for the purpose of evaluating Central's proposal unreasonable or arbitrary. Since we perceive no reason why these matters should not be considered as they were, we will not question the agency's evaluation in this regard.

While the evaluation of Central's safety record was, in our view, reasonable, we note that the protester has also generally questioned how Minden--a new firm--was rated as having a perfect safety record. We, too, question the basis for Minden's receiving maximum credit of 300 points in this area. The awardee, a recently-organized firm with what the agency has characterized as no performance record of its own, was apparently scored at the maximum level without any explanation except that safety ratings were solely calculated on the basis of deductive points for "incidents" and, since there was no record of "incidents," Minden deserved the full 300 points. In our view, while it is certainly appropriate for an agency to encourage newly-organized firms to compete for contracts, they must do so on an equitable basis with other firms; a method of evaluation which simply presumes a maximum score for safety where no safety record exists is neither equitable nor rationally-based. Regardless, however,

whatever scoring approval the agency might be able to justify here, even if we took the full 300 points from Minden's score, as will be seen below, Central's competitive position will not change.

Areas Where Central Was Rated Below Average

Business Practices

The protester received a total score of 110 out of a possible 290 points under this factor. Central's proposal was downgraded 30 points because of an insufficient delegation of authority from its president and 100 points for a 1980 contract default. Central maintains that its proposal outlines a delegation of authority from its president. Our review discloses that, although mechanics and pilots are briefly described as responsible for certain "front-line" jobs, the president is described as principally in charge of all functions of the company's operation. Thus, we find no support to challenge the agency's misgivings in this area.

Further, we find no support for Central's suggestion that it should not have been downgraded for the 1980 airtanker contract default. The RFP clearly indicates that default records going back to 1980 would be examined and the evaluators downgraded the protester in accordance with a preestablished scale of penalties for default incidents. While Central proffers a letter disputing the default which it sent the agency at the time, the protester did not litigate the matter and, thus, the proffered "evidence" simply does not establish, as the protester suggests, that the underlying default was improper--it merely establishes that the firm disagreed with Interior at the time.

Past Availability

Central received 80 points out of 350 points in this area because its aircraft availability rate on past contracts was calculated to be 95 percent--a figure which translated into 80 points on the evaluation scale used for this factor. Minden, on the other hand, was awarded 200 points--an above-average score--based on what the agency describes as the knowledge of its evaluators concerning the firm's "operation."

Central objects to the scoring of its own proposal on several bases: it questions why spray contracts were eliminated from the calculations; it questions why subcontract experience was similarly not evaluated; it questions the agency's judgment in eliminating experience under contracts with the State of North Carolina; and, it submits that 50 points were improperly lost through a mathematical rounding error which dropped an availability rating computed at just below 96 percent to

95 percent. With respect to the awardee's receiving 200 points--an above-average score for past availability--Central suggests that this is an improper rating for a firm with no previous airtanker history.

Interior explains that subcontracts were not made part of the calculations because prime contractors are principally responsible for aircraft availability, and that spray contracts differ so significantly from airtanker contracts that they are not reliable measures of related availability. Central has provided no substantive rebuttal to the stated reasons for eliminating subcontracts and spray contracts from those calculations.

As far as the use of North Carolina contracts are concerned, the agency states that during the evaluation process, it contacted North Carolina airtanker officials and gained the impression that the state was more lenient than the federal government in computing aircraft downtime figures and offers this as the principal reason it excluded the state's figures from its computations. North Carolina officials have provided Central a letter which disagrees with Interior's judgment in this regard but which does not cite the same state contract provisions upon which Interior based its position. At issue is whether North Carolina interprets its contract to permit authorized downtime for less than 1 day without assessing unavailability penalties. The North Carolina clause permits state officials to authorize unpenalized downtime for an undefined "reasonable" period of time. RFP clause F3.5 authorizes federal officials to do essentially the same but, as the protester itself admits, those officials read the clause as limiting a "reasonable" period to 60 minutes. Since the contract clauses do in fact differ and what constitutes a "reasonable" period is completely undefined in the state contract, we cannot conclude that Interior is acting arbitrarily in being concerned that North Carolina's provisions concerning unpenalized downtime are administered more "leniently" than its own.

Central has repeatedly raised the issue as to why it lost 50 points for having an unavailability rating calculated by Interior as 95.957 percent reduced to 95 percent, instead of rounded up to 96 percent.^{6/} In the various agency submissions in this matter, the subject remains completely unexplained; in the absence of any further explanation of the agency's rounding practices, and because Central's position concerning proper mathematical rounding appears to us to be logical, we

^{6/} On the evaluation scale used by Interior, a 96 percent level of availability was worth 130 points while a 95 percent level was only worth 80 points.

find that the protester improperly lost 50 evaluation points. Again, however, as will be seen below, Central was not prejudiced by the error.

We now turn to the assessment of Minden's record of availability for which it received an above-average score of 200 out of 350 points. The RFP advised offerors without previous government contract experience that they could receive evaluation credit based upon data submitted for related aviation services. In the section of the awardee's proposal addressing past experience, Minden indicated that its owner had been in agricultural aircraft operations for 20 years--12 as the operator of a named California firm which had logged about 14,000 hours of flying time. While we question the award of an above-average score of 200 points in the absence of any additional detail from Interior about the nature of Minden's "operations," we believe that the awardee's proposal provided sufficient detail to support an informed conclusion that the firm's past availability record was "average"--a rating which, under the methods used in this procurement, should have received approximately 175 points, not 200.

Minden's Technical Acceptability

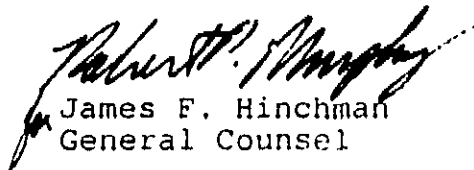
Central also submits that Minden did not have the requisite IAB and FAA corporate, aircraft, and tank certifications as mandated by the RFP at time of award, and maintains that Interior awarded a contract on the basis of a nonconforming proposal.

Clause C1.2.2 of the RFP provides that, with regard to IAB aircraft and tank certifications, they be met by March 1, 1991. Clause E3.1 of the RFP requires that FAA certifications be completed no later than 3 days before the commencement of performance--May 12, 1991, in the case of item No. 4. Contrary to the protester's basic premise that these certifications must be obtained prior to award, which was November 23, 1990, the language of the RFP does not so provide and, thus, the requirements are contract performance provisions rather than preconditions to award. United Health Serv., Inc., B-232640 et al., Jan. 18, 1989, 89-1 CPD ¶ 43. As "performance requirements," the matters are related to contract administration, which we do not review. Interstate Indus., Inc., B-241974, Nov. 13, 1990, 90-2 CPD ¶ 393.

CONCLUSION

We find that Central potentially "lost" a total of 375 points in a comparative evaluation with Minden for item No. 4. Central potentially "lost" 300 points for the improper attribution of a perfect safety record to Minden; 50 points for the unexplained rounding error in the calculation of its own past availability; and 25 points as the result of an over assessment of Minden's past availability record. Viewed in the light most favorable to the protester, however, these potential errors in the calculation of the two competing firms' scores fall short of the 515-point scoring differential between them for item No. 4. Thus, we do not find that Central was competitively prejudiced by these scoring errors. Since prejudice is an essential element of a viable protest, we will not disturb the award even if a defect in the evaluation process has occurred. Merrick Eng'g, Inc., B-238706.3, Aug. 6, 1990, 90-2 CPD ¶ 130.

We deny the protest.


James F. Hinchman
General Counsel