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

Decision

Matter of: McKesson Corporation; Harris Wholesale Company--Reconsideration

File: B-243018.2; B-243019.2; B-243020.2; B-243021.2

Date: August 20, 1991

Gordon L. Lang, Esq., Nixon, Hargrave, Devans & Doyle, for Harris Wholesale Company, and John A. Burkholder, Esq., Crowell & Moring, for McKesson Corporation, requesting parties.
Catherine M. Evans, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Request for reconsideration alleging that decision sustaining protest improperly recommended that agency downgrade awardee's proposal on reevaluation is denied, where recommendation that agency reevaluate proposals in accordance with solicitation requirements was consistent with holding in decision that awardee's high score was based on application of incorrect criteria during evaluation.

2. Request for reconsideration alleging that agency's price evaluation was proper, contrary to finding in prior decision, is denied where requester merely reiterates prior arguments.

3. Argument in reconsideration request that protester was not prejudiced by improper price evaluation, and that decision therefore erroneously sustained protest, is denied where record showed possibility of prejudice in that new technical and price evaluations pursuant to General Accounting Office recommendation could significantly affect offerors' relative standings.

DECISION

McKesson Corporation and Harris Wholesale Company request reconsideration of our decision, Tennessee Wholesale Drug Co., Inc., B-243018 et al., June 29, 1991, 91-1 CPD ¶ ___, in which we sustained the protests of Tennessee Wholesale Drug Company, Inc. (TWD) against the award of contracts to McKesson under request for proposals (RFP) Nos. M5-Q2-91 and M5-Q4-91, and to Harris 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.

We deny the requests.

In its protests, TWD alleged 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 sustained the protests, finding that the technical evaluation was flawed in certain areas and that the agency's price evaluation method used gave price less weight in the evaluation than provided for in the RFP.

Both McKesson and Harris challenge our conclusion with respect to one area of the technical evaluation, involving the offerors' compliance with the RFP requirement that the contractor make visits to VA medical centers at the agency's request. In this regard, we held in our decision that the agency's scoring guidelines, which called for awarding more points to offerors agreeing to meet an obsolete requirement for two visits per month and fewer points to offerors agreeing to the more stringent requirement for visits at the agency's request, were inconsistent with the RFP. On this basis, we found that the scores of Harris and McKesson, both of which offered to make twice-monthly visits, were improperly inflated. We recommended that the agency reevaluate the technical proposals in accordance with our decision. McKesson and Harris assert that their proposals met the requirement for hospital visits at the VA's request and argue that our decision therefore improperly requires the VA to downgrade their proposals in this area.

Whether or not the firms' proposals in fact satisfied the hospital visit requirement, the record indicated that the VA improperly had based McKesson's and Harris's high scores under this evaluation factor on the firms' agreements to make two visits per month to each hospital, as if this agreement exceeded the amended requirement for visits at the VA's request. As noted in our decision, this was because the VA's evaluation guidelines erroneously provided for a score in the excellent range for proposals agreeing to two visits per month and a lower score for proposals agreeing to what we found was the more stringent amended requirement for visits "as needed." Since the record clearly showed that both McKesson's and Harris's high scores were based on their agreeing to meet the obsolete, less stringent, twice-monthly visit requirement, we found the scoring was improper. Our recommendation that the VA reevaluate the proposals in accordance with the RFP does not require the agency to assign the proposals some specific

lesser score for failure to meet the hospital visit requirement, since we never determined that the firms did not meet the requirement; we found only that the VA had not properly considered whether the firms met the requirement. If, after properly applying the evaluation criteria, the VA finds that Harris and McKesson meet or exceed the requirement, the VA should score their proposals accordingly. We conclude that this argument provides no basis for reconsidering our decision.

Harris also challenges our conclusions that the price evaluation was improperly conducted and that TWD was prejudiced as a result. As to the price evaluation, we found that the VA's method of scoring price proposals--assignment of a numerical score based on a government estimate--resulted in scores so closely grouped together that price effectively had no weight in the evaluation. Harris asserts, as it did during our consideration of the protest, that the 1 percent differential between its price score and TWD's was appropriate since its price was only "slightly" higher than TWD's. This argument is untenable since, in fact, Harris's price was 20 percent higher than TWD's, a difference that we do not consider slight. In any case, repetition of arguments made during our consideration of the original protest and mere disagreement with our decision do not warrant reconsideration. R.E. Scherrer, Inc.--Recon., B-231101.3, Sept. 21, 1988, 88-2 CPD ¶ 274.

Concerning our finding that TWD was prejudiced by the agency's action, Harris argues that TWD's technical score was so low that any rational adjustment to the price scores would not place it in line for award and that the awards to Harris therefore should not be disturbed. Where the agency clearly has violated procurement requirements, the reasonable possibility of prejudice is a sufficient basis for sustaining the protest. Logitek, Inc.--Recon., B-238773.2; B-238773.3, Nov. 19, 1990, 90-2 CPD ¶ 401. We recognized in our decision that while the defects in the technical evaluation involved relatively few total points, the relative standings of offerors may be affected when considered together with the price evaluation deficiency. The effect of the improprieties in the technical and price evaluations were not precisely determinable in terms of point scores; therefore, we could not conclude that TWD would or would not be in line for award after new technical and price evaluations. It was clear, however, that TWD's relative position would improve significantly under the new evaluations. Under the above standard, this was a sufficient basis for concluding that TWD was prejudiced by the VA's actions. Id.

We conclude that neither McKesson nor Harris has shown that our decision was in error; therefore, the requests for reconsideration are denied. See R.E. Scherrer, Inc.--Recon., B-231101.3, supra.

James F. Hinchman
General Counsel