



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** WB Incorporated

**File:** B-250954

**Date:** February 23, 1993

John C. Walsh for the protester.

Lester Edelman, Esq., Department of the Army, for the agency.

Christina Sklarew, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

1. Where the two highest scored technical proposals are within one percentage point in score and reasonably are determined to be essentially equal technically, award may properly be made to the low cost offer notwithstanding the solicitation's emphasis on technical merit as more important than price.
2. Award on the basis of initial proposals was proper where it was consistent with the terms of the basic contract award clause contained in the solicitation.

### DECISION

WB Incorporated protests the Department of the Army, Corps of Engineers's (Corps) award of a contract to Malone Displays under request for proposals (RFP) No. DACW54-92-R-0056. WB alleges that the agency's award decision was based on price and was therefore not consistent with the RFP's evaluation scheme, which emphasized technical merit. The protester also alleges that the agency was required to hold discussions under the circumstances of this procurement, but failed to do so.<sup>1</sup>

<sup>1</sup>Although the protester also challenged several provisions in the RFP in its initial protest submission, the agency asserted in its protest report that these challenges were untimely raised under our bid protest regulations. Since the protester failed to address these issues further in its comments on the agency report, we deem them abandoned.

The RFP was issued by the Army Corps of Engineers as a small business set-aside for the design, production and installation of informational displays for the Falls Lake Management Center in Raleigh, North Carolina. Offerors were instructed to submit their technical, management/personnel and cost/price proposals in separate volumes. The RFP listed three technical subfactors for evaluation: soundness of approach; understanding the requirements; and compliance with requirement. The RFP also contained three management subfactors: key personnel; program management controls; and relevant company experience.

The RFP stated that primary emphasis in the proposal evaluation process would be placed on the technical area, with a slightly lesser degree of importance afforded the management area, and that the price/cost area would be least important. However, it cautioned that "[a]lthough price/cost is of secondary importance to both the technical and management areas, it is an important factor and should not be ignored. The degree of its importance will increase with the degree of equality of the proposals in relation to the other factors on which selection is based."

The RFP also stated that the government might award the contract on the basis of initial offers received, without discussions, and that each offer should be submitted based on the most favorable terms that the offeror could submit to the government. Award was to be based on the offer considered most advantageous to the government in accordance with the evaluation criteria set forth in the RFP.

Five offerors, including WB and Malone, submitted proposals in response to the RFP. A technical evaluation panel reviewed the technical and management proposals and assigned an evaluated score to each, and a price evaluation panel reviewed the submitted price proposals. All of the proposals were determined to be acceptable and within the competitive range.

The proposals submitted by WB and Malone received combined technical/management scores of 88 and 87 (out of 100 possible points) respectively. The contracting officer determined that they were essentially equal in technical merit. Because Malone's price of \$128,381.56 was low (WB's price was \$149,472), the contracting officer determined that it would be in the best interest of the government to award the contract to Malone, and that discussions were not necessary. The award was so made, and this protest followed.

WB argues that because its proposal had received the highest technical score under an evaluation scheme that weighted technical merit more heavily than cost, award to Malone was

improper. The protester does not challenge the technical evaluation or claim that it should have received a higher technical score, nor does it specifically question the determination that the two highest-scoring proposals were essentially equal technically; rather, WB simply asserts that "the spirit of the solicitation was on the best technical approach"; yet, the deciding factor in the award decision was price. The protester's argument appears to rest on the fact that its proposal's technical score was 1 point higher than Malone's, notwithstanding the fact that the two proposals were found to be of equal technical merit.

We conclude that the contracting officer's award decision was reasonable. Contrary to the protester's assertions, a finding of technical equality need not be based on strict equality in terms of point scores. N.W. Avera Inc., B-248654, Sept. 3, 1992, 92-2 CPD ¶ 154. The significance of a given point spread depends upon all the facts and circumstances surrounding a given procurement; the point scores themselves are not controlling, reflecting as they do the disparate subjective judgments of evaluators, but are useful as guides to intelligent decisionmaking. Earle Palmer Brown Co., Inc., B-243544; B-243544.2, Aug. 7, 1991, 91-2 CPD ¶ 134. Proposals have properly been viewed as essentially equal from a technical standpoint with technical differentials between proposals of more than 15 percent. See Ogilvy, Adams & Rinehart, B-246172.2, Apr. 1, 1992, 92-1 CPD ¶ 332.

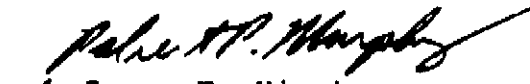
Here, the record supports the agency's conclusion that the two proposals, which were within 1 percentage point of each other in score, were essentially equal technically. The record shows that both offerors were rated the same under soundness of approach and relevant company experience. For the remaining subfactors, the two firms vary in rating by only 1 point for any category. As a result, for the substantial majority of the factors, both firms received close to the maximum points available. The evaluators specifically concluded that WB and the awardee were qualified and capable of performing the work. Further, by the RFP's express terms, the importance of an offer's price/cost component was to "increase with the degree of equality of the proposals in relation to the other factors on which selection is based." Thus, the solicitation reasonably provided for price to become the determining factor between two proposals that have been determined to be equal technically. Here, based on the closeness of the technical point scores and the evaluation narrative, award based on price was proper and consistent with the RFP selection criteria.

WB also protests that the Corps was required to conduct discussions, based on the fact that its proposal "provided the best solution and was within the budget range

specified." WB also asserts that while the RFP included a clause advising offerors of the possibility that award would be made without discussions, it did not specifically reference the specific Federal Acquisition Regulation (FAR) section prescribing the clause, and contends that the clause "was not noted due to the missing reference number." Thus, WB argues, for this reason, the notice that award might be made on initial offers was defective.

The RFP included the text of the contract award provisions of the "Contract Award (July 1990)" clause found at FAR § 52.215-16, advising offerors (as pertinent here) that "[t]he Government may award a contract on the basis of initial offers received, without discussions. Therefore, each initial offer should contain the offeror's best terms from a cost or price and technical standpoint." In a separate section (Evaluation Factors for Award, Section M), the RFP again cautioned offerors that the agency might award the contract on the basis of initial offers, without conducting any discussions. We think the solicitation provides clear and unequivocal notice of the agency's right to award on the basis of initial offers and warned offerors to submit their best terms. We do not think the failure to specifically identify FAR § 52.215-16 as the source of the notification was material, since the notice provision was reproduced in full. We therefore conclude that the award without discussions to Malone was proper and consistent with the terms of the solicitation.

The protest is denied.

  
for James F. Hinchman  
General Counsel