

Matter of: Andrew M. Slovak

File: B-253275.2

Date: November 2, 1993

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the agency.
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the decision.

DIGEST

1. Although the evaluation of proposals is primarily within the discretion of the contracting agency, the General Accounting Office will examine the agency's evaluation to ensure that it was reasonable and consistent with the stated evaluation factors and will sustain the protest where the record shows that the evaluation was unreasonable.

2. Meaningful discussions were not conducted with the protester regarding perceived weaknesses in the protester's proposal where agency did not inform offeror of concerns which significantly affected the proposal's point scores and where protester would have had a reasonable chance of being in line for award if the areas of concern had been pointed out and corrected.

DECISION

Andrew M. Slovak protests the award of a contract to Nick and J's Catering under request for proposals (RFP) No. GS-07P-92-JWC-0186, issued by the General Services Administration (GSA) for cafeteria food services at the United States Courthouse in Billings, Montana. Slovak, the incumbent contractor, contends that the evaluation and the award decision were unreasonable.

We sustain the protest.

The RFP was for the establishment and operation of the food service facility. The successful contractor was to maintain the menu price structure in such a manner as to result in an annual combined net profit and administrative expenses not to exceed 10 percent of net sales or an annual profit of 4-5 percent of net sales if no administrative expense

existed from the operation of the cafeteria. The contractor was to pay the government 1-1/2 percent of net sales. The RFP advised that award would be made to the offeror whose offer was the most advantageous to the government. The RFP provided that technical proposals would be graded and ranked based on the evaluation factors and their relative importance. Price was not a factor because the contract involves no cost to the government. The RFP contained the following technical evaluation factors, listed in descending order of importance:

- (1) Menu
 - (a) Price list
 - (b) Menu Cycle and Variety
- (2) Experience and Reputation
- (3) Staffing and Qualifications of Key Personnel
- (4) Sanitation and Preventive Maintenance (PM)

By the December 23, 1992, closing date for receipt of proposals, GSA received proposals from the protester and Nick and J's. The agency appointed a Source Selection Evaluation Board (SSEB) to evaluate the proposals. The SSEB used a total point system in which points were assigned to each proposal. The scoring guidelines were established on a scale of 0 to 20 as follows: 0-unacceptable; 1 to 3-poor; 4 to 8-marginal; 9 to 13-acceptable; 14 to 17-very good; and 18 to 20-excellent. Although the RFP stated that the evaluation factors were listed in descending order of importance, each evaluation factor was assigned 20 points. The results of the initial evaluation were as follows:

<u>OFFEROR</u>	<u>MENU LIST</u>	<u>MENU CYCLE</u>	<u>EXP. & REP.</u>	<u>STAFFING</u>	<u>SANIT. & P.M.</u>	<u>TOTAL SCORE</u>
Slovak	17	13	9	6	13	58
Nick & J's	6	18	18	3	0	45

The SSEB determined that the protester's menu was complete and thorough with fair and reasonable prices. The SSEB found no major deficiencies in the protester's proposal, but it recorded several weaknesses. For example, performance under the current contract was not completely satisfactory, a small number of menu items did not have a serving size or price, and the menu did not provide as many healthy food items as the agency desired.

With respect to the proposal of Nick and J's, the SSEB found that the offeror submitted a complete menu with a good variety, including healthy options. Nick and J's had good references who were satisfied with the service provided and

rated the offeror highly. Some of the weaknesses noted by the SSEB were that the offeror failed to state portion sizes on some items, needed to provide more detail for each menu item, and failed to list soft drinks. Nick and J's also neglected to specifically identify the types of sandwiches and desserts to be offered, did not submit an organization chart, and failed to show proposed staffing responsibility for each employee. Nick and J's also failed to propose a back-up supervisor and failed to submit plans for sanitation or proposed PM.

The SSEB concluded that while both offerors were weak in some areas, both offerors had a reasonable chance of being selected for award with the submission of additional information. By letters dated March 2, 1993, discussion questions were sent to both offerors.

After receipt of revised proposals, the evaluation results were as follows:

<u>OFFEROR</u>	<u>MENU LIST</u>	<u>MENU CYCLE</u>	<u>EXP. & REP.</u>	<u>STAFFING</u>	<u>SANIT. & P.M.</u>	<u>TOTAL SCORE</u>
Slovak	17	13	9	8	13	60
Nick & J's	17	18	18	11	8	72

Based on the higher total point score of the offer submitted by Nick and J's, the SSEB recommended that award be made to Nick and J's. The contracting officer concurred and award was made to Nick and J's on April 14. This protest followed.

Slovak essentially contends that his proposal was evaluated in an arbitrary and capricious manner, rendering the award decision improper.

The evaluation of proposals is primarily within the discretion of the procuring agency. Consequently, we will not make an independent determination of the merits of offers; rather, we will examine the agency evaluation to ensure that it was reasonable and consistent with the stated evaluation factors. See Buffalo Central Terminal, Ltd., B-241210, Jan. 29, 1991, 91-1 CPD ¶ 82. Further, in negotiated procurements, contracting officials generally are required to conduct meaningful discussions with all offerors whose proposals are within the competitive range. 41 U.S.C. § 253b(d)(2) (1988); FAR § 15.610. For discussions to be meaningful, agencies must point out weaknesses, excesses, or deficiencies in proposals that must be corrected for an offeror to have a reasonable chance of being selected for award. Department of the Navy--Recon., B-250158.4, May 28, 1993, 93-1 CPD ¶ 422.

We conclude that, for three out of five evaluation factors, either the evaluation record contains no reasonable explanation for the scoring of the revised proposals, or the agency did not conduct meaningful discussions with the protester. First, under the evaluation subfactor "Menu Cycle and Variety," Slovak received an initial and final score of 13. The evaluators cited major weaknesses in Slovak's initial proposal. The SSEB consensus report noted the following:

"The menu did not provide for healthy food items. The menus submitted did not state how often or in what type progression the food would be served. The committee questioned whether the offeror would be selling all the items on the list since it was so extensive. List appears excessive for size and type of facility."

The only discussion question addressed to this area asked Slovak to submit a menu cycle showing sample daily menus with a summary of the items to be offered in each food category for each day. Slovak complied. However, the SSEB's primary concern with the protester's initial proposal was the protester's failure to provide for a variety of healthy food items. This major weakness in the protester's proposal was not conveyed to the protester during discussions, and it significantly affected the proposal's final score. Consequently, the protester was not provided a meaningful opportunity to improve his proposal under the "Menu Cycle and Variety" subfactor.

Second, the record does not support the relative scores of the competitors under the "Experience and Reputation" factor. Nick and J's was awarded 18 initial and final points ("excellent") for this factor. The RFP required offerors to submit the following information for current contracts and contracts performed within the past 3 years "for similar services": (1) type of facility; (2) estimated annual dollar value; (3) date of contract start and expiration; and (4) name and phone number of client contact. Nick and J's proposal contained a narrative describing its experience, which since 1989 has consisted of a "social catering business." Nothing in Nick and J's proposal refers to experience with a cafeteria style food service; it shows only that Nick and J's provide relatively low volume catering services. The only discussion question for Nick and J's in this area was whether its current contracts would conflict with this contract. Nick and J's score remained unchanged because the evaluators felt that the offeror did not appropriately respond to the question. The evaluation record contains no support for rating the current and recent experience of Nick and J's with respect to "similar services" as "excellent," with a score of 18 points. This

is especially so since Slovak, the incumbent contractor with 20 years of apparently satisfactory performance, received only half that number of points.

Finally, with respect to "Staffing and Qualifications of Key Personnel," Slovak provided a resume of his proposed manager and three other personnel describing their duties, responsibilities, hours worked, and experience. The evaluators awarded Slovak 6 points under this criterion. During discussions, Slovak was asked for an organization chart showing the chain of command. Slovak provided the chart and his final score was increased 2 points (for a total score of 8 points). In its report to our Office on this protest, the agency admits that it made a mistake in the evaluation of Slovak's proposal in this area, stating that Slovak should have received at least a score of 13 points.

Not only does the record not support Slovak's score, but it does not support the 11 points awarded Nick and J's with respect to staffing. Nick and J's initially received 3 points for this factor because it did not submit an organization chart, provide proposed staffing, or identify a back-up supervisor. During discussions, the agency asked Nick and J's to provide an organization chart showing the chain of command, a staffing plan of proposed employees, including position descriptions and responsibilities, and to identify the position to be held by the employee whose resume was submitted in its initial proposal. Nick and J's submitted an organization chart that showed the owner, Mr. Overmeier, in charge of an unidentified "Helper #1" and an unidentified "Helper #2." Nick and J's staffing plan described Mr. Overmeier as being in charge of all requirements, such as chief cook, menu planner, buyer, sanitation super, and PM super, and stated that Helper #1 and Helper #2 would assist in all duties as directed by Mr. Overmeier. Thus, Nick and J's failed to propose a staffing plan identifying employees, position descriptions, and responsibilities. Nevertheless, Nick and J's score was increased to 11 because the evaluators believed that it had responded more than satisfactorily to all discussion questions. The record does not explain or support this scoring.

Because the evaluation record provides no reasonable basis for the competitor's relative scores, which resulted in an award to Nick and J's, we sustain the protest. We recommend that the agency reopen discussions with the awardee and protester and request and evaluate revised proposals consistent with the technical factors and related weights listed in the RFP. Following the evaluation, GSA should determine which offer is most advantageous to the government as provided in the RFP. In the event Slovak's proposal is

determined to be most advantageous to the government, GSA should terminate the contract with Nick and J's and award the contract to Slovak. We also find that Slovak is entitled to the cost of filing and pursuing this protest, including attorneys' fees. 4 C.F.R. § 21.6(d)(1) (1993). In accordance with 4 C.F.R. § 21.6(f), Slovak's certified claim for such costs, detailing the time expended and costs incurred, must be submitted directly to GSA within 60 days after receipt of this decision.

The protest is sustained.

Comptroller General
of the United States