



## Decision

**Matter of:** Scheduled Airlines Traffic Offices, Inc.  
**File:** B-257292.7  
**Date:** December 20, 1994

Kenneth S. Kramer, P.C., James S. Kennell, Esq., and Catherine E. Pollack, Esq., Fried, Frank, Harris, Shriver & Jacobson, for the protester.

Lars E. Anderson, Esq., J. Scott Hommer III, Esq., and Wm. Craig Dubishar, Esq., for Carlson Travel Network, an interested party.

Gerald P. Kohns, Esq., Department of the Army, for the agency.

Andrew T. Pogany, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

1. Protest raising the same issues as those resolved in a recent decision on a protest by the same protester is dismissed as no useful purpose would be served by further consideration of the protest.

2. In reviewing protests concerning the evaluation of proposals, the General Accounting Office will examine the agency's evaluation to ensure that it had a reasonable basis. The fact that a protester does not agree with the agency's evaluation does not render the evaluation unreasonable.

3. Military agency may make award on the basis of initial proposals and not conduct discussions where, as here, the solicitation advises offerors of the agency's intent to do so, and the contracting officer determines that discussions are not necessary. The contracting officer has discretion to decide whether or not to hold discussions; the General Accounting Office will review the exercise of that discretion to ensure that it is reasonably based on the particular circumstances of the procurement.

\*The decision issued on December 20, 1994, contained proprietary information and was subject to a General Accounting Office protective order. This version of the decision has been redacted. Deletions are indicated by "[deleted]."

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**DECISION**

Scheduled Airlines Traffic Offices, Inc. (Sato) protests the award of two contracts, on the basis of initial proposals, to Carlson Travel Network under request for proposals (RFP) No. DAHC22-94-R-0002, issued by the Military Traffic Management Command, Department of the Army, for commercial travel management services for Defense Travel Regions 1 and 2 (DTR-1 and DTR-2).<sup>1</sup> Sato argues that the solicitation and award to Carlson are unlawful for a variety of reasons addressed below.

We deny the protest.

**THE RFP**

The RFP was issued on November 24, 1993, soliciting proposals for a fixed-price, no-cost contract to provide travel management services for both official and leisure ("unofficial") travel by Army personnel and other eligible patrons within DTR-1, DTR-2, and DTR-4.<sup>2</sup> The RFP contemplated a separate evaluation and award for each of the three regions for a 2-year base period with three 1-year option periods. The RFP required offerors to pay a "discount" to the United States Treasury, representing a portion of their fees and commissions earned from booking official government travel; for unofficial or leisure travel, the RFP required offerors to pay a portion of their fees and commissions to the local Morale, Welfare, and Recreation (MWR) Fund maintained for each of the military facilities serviced by a Commercial Travel Office (CTO).<sup>3</sup>

The RFP stated that award would be made to the offeror whose offer was most advantageous to the government considering the stated evaluation factors. The RFP also provided that the agency reserved the right to award a contract on the

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<sup>1</sup>The RFP also sought proposals for DTR-4. However, the agency did not award a contract for this region on the basis of initial proposals but proceeded to hold discussions and request best and final offers (BAFO).

<sup>2</sup>"Official" travel is paid for with appropriated government funds; "leisure" or "unofficial" travel is personal travel by government personnel and their families and is paid for by private funds.

<sup>3</sup>MWR Funds are Non-appropriated Fund Instrumentalities (NAFI).

basis of initial offers received, without discussions, in accordance with the following provision which was incorporated in the solicitation:

"The Government intends to evaluate proposals and award a contract without discussions with offerors. Therefore, each initial offer should contain the offeror's best terms from a cost or price and technical standpoint. However, the Government reserves the right to conduct discussions if later determined by the Contracting Officer to be necessary."<sup>4</sup>

The RFP also stated that "[i]f a clear most advantageous offer is identified by the initial evaluation, no [BAFOs] will be solicited."

The RFP advised offerors that the "areas of evaluation," listed in descending order of importance, were (1) technical and (2) fees.<sup>5</sup> Of these areas, the technical area was stated to be "moderately more important."

#### DTR-2 PROCUREMENT

On January 31, 1994, the agency received seven proposals for DTR-2 in response to the RFP, including proposals from Sato, Carlson, and Rosenbluth International. One proposal (from Hixson Professional Travel) was immediately rejected for failing to include a technical proposal. The six remaining initial proposals were then evaluated by an informal technical evaluation board (TEB).<sup>6</sup> Upon completion of the

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<sup>4</sup>This provision is found in Federal Acquisition Regulation (FAR) § 52.215-16, Contract Award (July 1990), Alternate III (Aug. 1991).

<sup>5</sup>Under the terms of the solicitation, each offeror's entire discount, both from official travel (to be paid to the Treasury) and from leisure travel (to be paid to the local MWR Fund), would be evaluated to determine the most advantageous offer from a price/cost standpoint.

<sup>6</sup>Unlike previous acquisitions of travel management services by this agency, this procurement did not follow formal source selection procedures. Specifically, there was no formal source selection evaluation board (SSEB) or source selection advisory council (SSAC); the contracting officer acted here as the source selection authority (SSA) for the award.

evaluation of individual proposals, certain members of the TEB met in a consensus forum to determine the overall adjectival rating for each factor and an overall adjectival rating for the proposal as a whole.

The overall rating for these proposals, as shown in the competitive range determination, and their final proposed total annual evaluated discounts, as ultimately determined by the agency, were as follows:

<u>Offeror</u>	<u>Technical Rating</u>	<u>Total Annual Discount</u>
Carlson	[deleted]	[deleted]
Sato	[deleted]	[deleted]
Rosenbluth	[deleted]	[deleted]

The TEB also prepared a detailed Comparative Analysis Report, analyzing proposals factor by factor, and recommending that the "contract for DTR-2 be awarded to" Carlson, which was "the best of all offers in the competitive range." Based on these evaluation results and recommendations, the contracting officer determined that Carlson's proposal represented a "clear most advantageous offer"; award was therefore made to Carlson on the basis of initial proposals without discussions on May 2. Sato was notified of the award and was provided a written debriefing outline with the award notice. This protest, supplemented at various times, followed.

#### ALLEGEDLY IMPROPER SOLICITATION TERMS

Sato first argues that, as structured, the solicitation and any award under the solicitation violate the laws governing the expenditure of appropriated funds. Sato states that appropriated funds will be used to subsidize and support NAFIs because the agency has improperly combined official and leisure travel services under a single procurement, under which contractors are invited to subsidize their contribution to the MWR Funds with proceeds derived from services relating to official government travel. Sato also argues that the agency's combined approach to procuring

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<sup>7</sup>Under the agency's evaluation scheme, the highest adjectival rating was "superior," followed, respectively, by "outstanding," "excellent," "satisfactory," "marginal," and "unacceptable."

travel services is unlawful because it permits leisure travel factors to influence and possibly control the selection of a contractor. Sato notes, for example, that under this RFP the evaluation factor "Marketing" solely concerns leisure travel. Here, we simply note that the combination of official and leisure travel in one procurement and the agency's intent to evaluate them on a combined basis, giving leisure travel substantial weight, was apparent on the face of the solicitation.

These two protest grounds raise issues identical to those raised in Scheduled Airlines Traffic Offices, Inc., B-257310; et al., Sept. 21, 1994, 94-2 CPD ¶ 107. Briefly, in that decision, issued after Sato's protest was filed, we determined that it was proper for the terms of a solicitation to require the payment of concession fees by a contractor to a NAFI where the solicitation, as here, requires strict accounting by the contractor to keep official and unofficial travel funds separate and where, as here, the required payments to the NAFI are derived solely from travel paid by travelers' personal funds. We also determined that solicitation terms providing for the evaluation of leisure travel services as a significant factor in the award determination were reasonable since the provision of unofficial travel services promotes the morale, welfare, and recreation of the agency's personnel and thus provides a bona fide benefit to the agency in fulfilling its mission.

Since the issues raised by Sato in this protest are identical to those we resolved in our recent decision, we see no useful purpose to be served by our further consideration of them. Wallace O'Connor, Inc., B-227891, Aug. 31, 1987, 87-2 CPD ¶ 213; Cryptek, Inc., B-241580, Feb. 12, 1991, 91-1 CPD ¶ 156; Government Contract Advisory Servs., Inc., B-255918; B-255919, Mar. 8, 1994, 94-1 CPD ¶ 181.

#### TECHNICAL FINDINGS CONCERNING CARLSON'S PROPOSAL

In reviewing protests concerning the evaluation of proposals, we will examine the agency's evaluation to ensure that it had a reasonable basis. RCA Serv. Co.; et al., B-218191; et al., May 22, 1985, 85-1 CPD ¶ 585. The fact that a protester does not agree with the agency's evaluation does not render the evaluation unreasonable. Logistics Servs. Int'l, Inc., B-218570, Aug. 15, 1985, 85-2 CPD ¶ 173.

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<sup>8</sup>Since these protest grounds, which concern alleged improprieties on the face of the solicitation, were not filed until after award, they are also untimely filed.  
4 C.F.R. § 21.2(a)(1) (1994).

Carlson's technical proposal received an [deleted] rating and, under the Comparative Analysis report, was determined to be the technically superior offer--"clearly the best offer." The agency specifically found that "there were no substantive issues in the Carlson proposal requiring changes or clarifications"--that is, the agency determined that discussions with Carlson were not necessary.

In its protest submissions, Sato, except in very limited areas, does not generally challenge the agency's evaluation of Carlson's proposal as [deleted]. Rather, Sato generally attempts to show that its own proposal should not have been downgraded relative to Carlson's proposal in several areas.

Sato's only major challenge to the evaluation of Carlson's technical proposal is in the staffing area. Sato explains that, unlike prior solicitations, this RFP did not express the agency's minimum staffing requirements in terms of a certain number of agents for a specified dollar volume of sales. Instead, the RFP here required that proposed staffing levels be "sufficient to meet quantifiable service standards with respect to average waiting times, telephone response time, and standard industry practice"; the RFP also provided that "[p]roposed staffing levels should be based upon workload data," and it provided the relevant work load data.

Carlson's staffing proposal offered the government approximately [deleted] percent more travel clerks serving government travelers than did Sato.<sup>10</sup> Specifically, Carlson proposed to staff offices at each location using a standard of one FTE travel clerk for every [deleted] of official travel and for every [deleted] of leisure travel. The agency found this approach "clear, unambiguous and

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<sup>9</sup>This change in the RFP was the result of the previous recommendations of a consulting firm, Logistics Management Institute (LMI), which was commissioned by the Army. We note, however, that the recommendations of LMI were not incorporated or otherwise a part of the RFP; moreover, we also note that these recommendations are not binding on the Army.

<sup>10</sup>Carlson proposed a total of [deleted] full-time equivalents (FTEs); additionally, as an enhancement to the basic proposal, Carlson stated that [deleted] management personnel, including [deleted] accounting clerks, would be qualified to perform reservationist duties if required by emergency circumstances. In contrast, Sato offered [deleted] FTEs for DTR-2; while Sato offered additional auxiliary personnel from its SatoReserve, it did not quantify the numbers.

simple," and credited Carlson with a comparative advantage in this staffing area.<sup>11</sup>

Sato argues that the agency had an undue preference for a "body count" approach without strict regard for the service considerations advocated by LMI and reflected in the RFP requirements. The record contains nothing to show that Sato's individual reservation clerks are any more productive than Carlson's reservation clerks. Both firms' proposed travel clerks that are well trained; this procurement contemplates a service contract that is highly dependent upon the quantity and quality of contractor personnel dedicated to its performance. We think that the agency reasonably could decide that an offer for more trained personnel will reduce waiting time for travelers, will reduce response time for making and confirming reservations, and will provide a greater opportunity for travelers to discuss travel arrangements in person with a fully trained travel counselor to the benefit of the government. Further, nothing in the RFP prohibited Carlson or any other offeror from expressing its staffing in terms of sales volume. We therefore find reasonable the agency's determination that Carlson's proposal, containing substantially greater (and clearly defined) staffing levels than Sato's proposal, was entitled to a comparative advantage in this area<sup>12</sup> and that

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<sup>11</sup>We discuss Sato's proposed staffing approach below.

<sup>12</sup>Concerning Carlson's technical rating, Sato also alleges that Carlson's personal check acceptance policy needed discussions before award could be made by the agency to that firm. Carlson offered to adopt the check acceptance policy of the Army and Air Force Exchange Service at all locations. Carlson offered a personal check acceptance policy that provided for the acceptance of checks for one-way tickets if the traveler had sufficient funds verified to cover the check. Carlson also proposed, as an enhancement and added benefit, that certain senior Carlson personnel would be authorized to waive this verification process. In its evaluation, the agency noted that this intended benefit could create "an appearance of discriminatory treatment of different customers," and stated, in the Comparative Analysis Report, that this "authority to make exceptions [for check verifications] should be changed or modified before contract implementation." Sato argues that this latter statement also constitutes an intention to award the contract and then modify it after award.

However, the record shows that the agency never considered Carlson's proposed check acceptance policy as unacceptable or as contrary to the stated terms of the RFP in any way;  
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Carlson was reasonably rated as [deleted] in the technical area.

#### TECHNICAL FINDINGS CONCERNING SATO'S PROPOSAL

Sato advances numerous arguments as to why its proposal should not have been evaluated by the agency as containing significant disadvantages in various technical areas relative to Carlson's proposal. We limit our discussion to two relative disadvantages which we believe the agency reasonably determined to be significant and which, in our view, reasonably would have necessitated discussions to correct and which support the agency's conclusion that Sato's proposal was not as advantageous as Carlson's proposal.

Under the staffing and organization factor, the most important factor in the most important technical evaluation area, both Carlson and Sato, in addition to proposing initial staffing levels, also proposed methodologies for determining future staffing levels which the agency considered "critical" because base realignments and closures were anticipated. As stated above, Carlson proposed using a standard of one FTE travel clerk for every [deleted] of official travel sales and one for every [deleted] of leisure travel sales; the agency found this approach "clear, unambiguous and simple."

In its proposal, Sato listed [deleted] variables that it would employ in determining future staffing levels including, for example, [deleted].

Sato stated that staffing levels based on this approach will ensure that [deleted] percent of telephone calls are answered within [deleted] seconds and that this "approach has enabled [Sato] to develop sound estimates of personnel requirements [and] will enable the Regional Contract Manager [and others] to monitor and maintain the staffing at all DTR-2 locations at the most effective level."

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<sup>12</sup>(...continued)

Sato has not shown otherwise in its protest submissions. Based on our review of the record, we conclude that the question of whether Carlson would be allowed to make individual waivers in its check acceptance policy during contract performance was a minor and insignificant matter (de minimis) which had no effect on the selection results, did not require discussions to resolve, would not constitute a significant modification of Carlson's contract, and could be resolved by the agency during contract administration.



The evaluation board agreed that these variables were valid factors for purposes of determining staffing; however, the evaluation board determined that Sato, in its proposal, completely failed to inform the agency as to the manner in which all [deleted] factors would be considered in determining staffing levels at a particular site. Specifically, the evaluators found as follows:

"The proposal does not provide a sufficient explanation of how each separate item of consideration, i.e., numbers of transactions, types of transactions, and average dollar value per transaction, are formulated to determine the appropriate level of service at a particular site. [Sato] has not indicated how their approach will determine manned versus unmanned locations. Because base realignments and closures are anticipated to occur during the term of this contract, it is critical both parties to the contract have an explicit understanding of how services will be provided, and at what level one or the other party can require service levels to be upgraded and downgraded."

In short, the TEB downgraded Sato's proposal, finding that Sato's "approach to providing services is overly complex, and is substantially less useful [than the plan provided by Carlson]."

Sato argues that the TEB was improperly looking for a "simplistic, sales volume-based staffing approach," rather than a performance-based approach; that the TEB had an undue concern with a "body count" approach; and that no mathematical formula for staffing was required by the RFP.

We agree with the protester that the RFP did not require any specific methodology or approach for determining future staffing levels. However, we agree with the agency that Sato failed to present any rational or reasonable explanation of its methodology for future staffing that the agency could understand and enforce. We think the agency's concern was reasonable because Sato, by simply listing [deleted] variables without explanation, effectively reserved to itself the right to unilaterally establish future staffing levels, an approach which the agency, in our view, reasonably determined to be a significant disadvantage which would require discussions to correct.

Next, under the marketing factor, the RFP did not require offerors to propose a financing plan for travelers; however, the RFP did provide for evaluation of any such plan that an offeror proposed in terms of its "originality and feasibility" as a marketing tool.

Sato proposed its VacationPlus plan, a financing plan which contained a \$2 per month service charge, an annual service charge of \$20 plus an annual interest rate. Sato's VacationPlus plan had been specifically rejected in October 1993 as unacceptable and as not in the "best interest of soldiers and their families" by the U.S. Army Community and Family Support Center. Specifically, the Army determined that based on annual purchase price of \$350 to \$400, the effective interest rate of Sato's financing plan would be 35.72 percent. The agency explains that Army Commanders are sensitive to the issue of soldier indebtedness and insist that costs to soldiers for financing reflect no higher expense than comparable financing charges to individuals with established credit at off-post institutions. We think the agency properly evaluated Sato's financing plan as a comparative disadvantage.

In sum, we conclude that Sato's technical proposal was reasonably evaluated by the agency as containing two significant disadvantages (staffing and traveler financing).

#### AWARD BASED ON INITIAL PROPOSALS

The protester argues that the perceived comparative disadvantages should have been the subject of discussions.

The Army may make award on the basis of initial proposals and not conduct discussions where, as here, the solicitation advises offerors of the agency's intent to do so, and the contracting officer determines that discussions are not necessary. See A Plus Servs. Unltd., B-255198.2, Jan. 31, 1994, 94-1 CPD ¶ 52. While the contracting officer has discretion to decide whether or not to hold discussions, we will review the exercise of that discretion to ensure that it is reasonably based on the particular circumstances of the procurement. See The Jonathan Corp.; Metro Mach. Corp., B-251698.3; B-251698.4, May 17, 1993, 93-2 CPD ¶ 174.

Here, the RFP advised offerors that award would be based on initial proposals if a "clear most advantageous offer is identified." We find that this is exactly what the contracting officer did in awarding the contract to Carlson. The TEB unanimously recommended award to Carlson based on its unique "outstanding" rating, which the protester has not effectively rebutted. The contracting officer found no disadvantage, deficiency or weakness in Carlson's proposal which required discussions. Further, Carlson offered a substantially better price than Sato. In contrast, Sato's

proposal needed discussions to resolve questions or clarifications concerning relative disadvantages.<sup>13</sup>

From a business standpoint, the contracting officer had already received an [deleted] proposal with a better fee than Sato's. The only reason for the contracting officer to have opened discussions would have been to attempt to raise Sato's proposal to the Carlson proposal's technical rating and hope that Sato would increase its discounts. However, the agency had already determined that Sato's fee and commission percentages were "reasonable in relation to proposed performance and historical data." Accordingly, the agency had no duty to discuss fees with Sato. We therefore conclude that award to Carlson, whose proposal was [deleted] and offered a substantially superior fee proposal than Sato, was proper and reasonable.

#### MISCELLANEOUS ISSUES

Sato complains that the agency improperly accelerated its evaluation and award by using "informal source selection" procedures.

First, concerning Sato's allegation that the procurement was accelerated for the benefit of a retiring military commander, the record shows that this allegation is simply factually erroneous. Second, based on our review of the record which contains a complete and fully documented evaluation and selection decision, we find nothing wrong with the procedures followed by the agency.

Sato also argues that the agency's decision to conduct discussions and request BAFOs in DTR-4, while awarding contracts for the other regions without discussions, demonstrates that the agency's decision to award was arbitrary and capricious.

We find that the decision to hold discussions in DTR-4 was appropriate and had no bearing on the decision not to hold

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<sup>13</sup>Sato also argues that the agency selection decision was unreasonable because Rosenbluth allegedly submitted a more advantageous proposal. We note in passing that the difference between Carlson's fee proposal and Rosenbluth's fee proposal was evaluated by the agency as only [deleted] per year, a negligible amount when compared to the annual estimated regional sales volume of more than \$100 million. Further, Rosenbluth's marketing and operations proposals were given a rating of [deleted] by the agency. The agency reasonably regarded the substantial technical superiority of Carlson's proposal as worth the slightly higher cost (lower discount) as compared with Rosenbluth's fee proposal.

discussions in DTR-2. In DTR-4, unlike DTR-2, Carlson, while technically superior, proposed [deleted] lower rebates than Sato did for that region (a difference of more than [deleted] per year). Because of its [deleted] fee proposal, Carlson was simply not the clearly most advantageous offeror for DTR-4. Thus, the decision of the contracting officer to open discussions was based on a business judgment that the government could reasonably expect to obtain higher fee discounts by holding discussions for that region with the technically less advantageous offerors. Such was not the case in the DTR-2 procurement.

Finally, Sato argues that the agency improperly concluded that Carlson's proposal was the most advantageous in the face of Rosenbluth's allegedly superior fee proposal and without conducting discussions. The abstract of offers shows the following discounts proposed by each competitive range offeror for the two relevant line items:

	<u>Line Item 0001AF</u>	<u>Line Item 0001AG</u> <sup>14</sup>
Carlson	4.0 percent	4.0 percent
Sato	[deleted] percent	[deleted] percent
Rosenbluth	[deleted] percent	[deleted] percent

The contracting officer decided that it would be an unreasonable interpretation to consider Rosenbluth's offer as [deleted] percent of gross sales. Rather, the contracting officer interpreted Rosenbluth's offer as representing [deleted] Rosenbluth and the government [deleted] from markups and commissions. Sato objects to this interpretation and objects to the agency's adjustment downward of Rosenbluth's rebate from [deleted] percent of sales to [deleted] percent of sales, thereby reducing the difference between Rosenbluth's proposed fees and Carlson's proposed fees by a total of [deleted]. Instead of adjusting the fee downward, the agency, according to Sato, should have discussed the matter with Rosenbluth to ascertain that company's "real intent."<sup>15</sup>

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<sup>14</sup>Line item No. 0001AF was described in the schedule as "local tours," the amount to be paid to the government from sales (less taxes and refunds) for local tours. Line item No. 0001AG was described as "National and Regional Attractions," the amount to be paid to the government from ticket sales (less taxes and refunds) for national and regional attractions.

<sup>15</sup>Of course, Sato argues that once the contracting officer opened discussions with Rosenbluth, he was obligated to open discussions with Sato. Sato also notes that the contracting  
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We think Rosenbluth's quoted fee discounts for these two line items would reasonably indicate to the contracting officer that an ambiguity or mistake may have been made by the firm. We think that the apparent errors would, at most, trigger a requirement for the contracting officer to clarify and verify the quotes. See FAR § 15.607. Such clarifications would not constitute or trigger discussions. Id. To the extent this is an issue, we think that Rosenbluth alone has the direct economic interest to protest any alleged lack of meaningful discussions with respect to its own proposal.

#### DTR-1 PROCUREMENT

As the protester acknowledges, the two contracts at issue are substantially similar, differing only with respect to the locale of performance. As the protester states, Sato and other offerors "submitted virtually identical proposals for each [contract]." In DTR-1, Carlson was again found to be the clearly most advantageous offeror with [deleted] technical rating and as having the highest rebate proposed by any competitive range offeror; the agency found the same relative disadvantages in Sato's proposal as in DTR-2. Since the agency's selection of Carlson for DTR-1 was based on virtually the identical reasons that Carlson's proposal was selected for DTR-2, which we have already discussed and resolved, we do not find merit to the protester's contentions concerning DTR-1 for the reasons already discussed with respect to DTR-2.

The protest is denied.

Robert P. Murphy  
General Counsel

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<sup>15</sup> (...continued)  
officer's award determination was based on a difference of [deleted] between Carlson and Rosenbluth. Sato argues that the "actual difference, in fact, was substantially greater."