



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Nelson Hurst Insurance Brokers Limited

File: B-261548

Date: September 27, 1995

John Tyson for the protester.

Glenn A. Heisler, Esq., Panama Canal Commission, for the agency.

Paul E. Jordan, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that agency's evaluation was flawed is denied where record establishes that agency had a reasonable basis for assessing weaknesses identified in protester's proposal.
 2. Where solicitation makes technical criteria more important than price, award to offeror which submitted lower-priced, lower technically scored proposal is unobjectionable where contracting officer reasonably concluded that protester's technical superiority was not worth the additional cost.
 3. Protest that agency provided unequal or misleading discussions is denied where record establishes that all offerors received appropriately equivalent advice.
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DECISION

Nelson Hurst Insurance Brokers Limited protests the award of a contract to Nicholson Leslie Marine Insurance Limited under request for proposals (RFP) No. MSC-150078, issued by the Panama Canal Commission (PCC) for insurance broker services. Nelson Hurst contends that the agency's evaluation was flawed and that it should have been awarded the contract on the basis of its technically superior proposal.

We deny the protest.

The RFP contemplated the award of a firm, fixed-price contract for a period of 1-year with 3-3/4 years of options. Proposals were to be evaluated on the basis of price and four technical subfactors, listed in descending order of importance: experience and past performance; technical approach; experience with ship

canals/channels; and participation of a Panamanian firm. The RFP advised that price was an important factor, but that the four technical subfactors, when combined, were significantly more important than price. Award was to be made to the offeror whose proposal represented the greatest overall value and was most advantageous to the agency.

Eight offerors, including Nelson Hurst and Nicholson Leslie, submitted proposals by the March 16, 1995, closing date for receipt of initial proposals. Both Nelson Hurst's and Nicholson Leslie's proposals were included in the initial competitive range of four proposals. The agency conducted discussions with the offerors and based upon their responses, eliminated one of the proposals from the competitive range. After conducting further negotiations, the agency requested best and final offers (BAFO) from the offerors.

The final scores and prices for each offeror are as follows:

Broker	General Exper. (450)	Technical Approach (300)	Canal Exper. (150)	Panamanian Participation (100)	Total (1,000)	BAFO Price (000)
Nelson Hurst	368	262	127	70	827	\$980
Nicholson Leslie	370	257	82	58	767	\$699
Offeror C	371	248	12	65	696	\$775

In making his award determination, the contracting officer reviewed the technical evaluations of each offeror's proposal along with the BAFO prices. While Nelson Hurst's proposal received the highest technical score, which was 60 points higher than Nicholson Leslie's, the contracting officer concluded that the technical superiority of Nelson Hurst's proposal was not worth the additional \$280,600 in price. After receiving notice of the award and a debriefing, Nelson Hurst filed this protest. Based upon a finding of urgent and compelling circumstances, the agency authorized continued contract performance.

Nelson Hurst first challenges the agency's evaluation, arguing that various proposal weaknesses identified by the evaluators were unjustified.

The evaluators identified five technical weaknesses in Nelson Hurst's proposal in the areas of risk analysis, broking policy, and commitment and activity of certain named personnel. In its protest, Nelson Hurst explained why it believed the agency's evaluation was not justified. In response, the agency provided detailed explanations for each of the identified weaknesses. While the agency identified these as weaknesses, it explains that Nelson Hurst's proposal was not deficient in these areas; it simply did not receive the maximum score for each subfactor.

Further, despite these identified weaknesses, in all but one of the four technical subfactors, Nelson Hurst's proposal was scored higher than either of the others. In its comments, Nelson Hurst declined to elaborate on its position or to respond to the agency's specific explanations.

Where an evaluation is challenged, we will examine the evaluation to ensure that it was reasonable and consistent with the evaluation criteria and applicable statutes and regulations, since the relative merit of competing proposals is primarily a matter of administrative discretion. Information Sys. & Networks Corp., 69 Comp. Gen. 284 (1990), 90-1 CPD ¶ 203. Mere disagreement with the agency's evaluation does not itself render the evaluation unreasonable. Litton Sys., Inc., B-237596.3, Aug. 8, 1990, 90-2 CPD ¶ 115. Here, Nelson Hurst's complaints simply represent its disagreement with the agency's evaluation, which is insufficient to render the evaluation unreasonable. Id. Further, from our review of the record, including Nelson Hurst's proposal, the evaluations, discussions, and arguments of the parties, we see nothing objectionable in the agency's evaluation.

For example, the agency noted that Nelson Hurst's world-wide broking policy was weak. In its protest, Nelson Hurst refers to various aspects of its proposal and discussion question responses in which it details the number of professional risk managers it has in its home and world-wide offices. While Nelson Hurst has identified its world-wide strengths, the agency downgraded the firm's proposal for relying primarily on the use of telephone and telefacsimile contacts to obtain world-wide participation in broking. The protester has provided nothing to show that the agency was unreasonable in finding that this methodology, which is less formal and structured than that proposed by the other offerors, and offered a smaller degree of personal contact with potential underwriters outside of the London market, represented a weakness in the proposal.

In another instance, the agency was concerned that one of Nelson Hurst's key employees was not committed to work for the protester long-term. This was a specific area of inquiry during discussions and in response, the protester outlined limited circumstances under which the employee would work on the PCC account. From this the agency concluded that the employee's length and level of future participation did not appear "significant." While the protester argues that it had made clear that the employee was committed to the PCC contract for its duration, after receiving notice of the award, the protester confirmed that it had only committed the employee for 6 months. Since the agency believed that this employee's contribution was important to Nelson Hurst's performance of the contract, and its concerns about his long-term involvement were justified, the agency reasonably concluded that his short-term commitment represented a weakness in the protester's proposal.

Nelson Hurst next contends that since technical factors were more important than price, it should have been awarded the contract based upon its higher technical score. In a negotiated procurement, agency selection officials have broad discretion in determining the manner and extent to which they will make use of the technical and cost evaluation results. Price/technical tradeoffs may be made; the extent to which one may be sacrificed for the other is governed by the test of rationality and consistency with the established evaluation factors. General Servs. Eng'g, Inc., B-245458, Jan. 9, 1992, 92-1 CPD ¶ 44. An agency may select an offeror with a lower-priced, lower-scored proposal if it determines that the premium involved in awarding to an offeror with a higher-rated, higher-priced proposal is not justified. Dayton T. Brown, Inc., B-229664, Mar. 30, 1988, 88-1 CPD ¶ 321.

In evaluating Nicholson Leslie's proposal, the evaluators identified a number of strengths, including its client list, team member experience with the past Panama Canal insurance program, strong claims team, and added training. The contracting officer took particular cognizance of the fact that Nelson Hurst's proposal was scored only 3 points higher than Nicholson Leslie's under the two most important technical subfactors, general experience and technical approach, which combined were worth 750 of the 1,000 possible points. While Nelson Hurst's proposal was scored higher under the experience with canals and the Panamanian participation subfactors, these subfactors combined represented only one-fourth of the total possible points and only one-third of the other subfactors. In view of the closeness in scores in the most important technical subfactors, the contracting officer concluded that Nelson Hurst's 60-point technical score advantage was not worth the additional \$280,600 in price. While technical considerations were more important than price, under the circumstances presented here, we find that the contracting officer reasonably concluded that an award to Nelson Hurst was not justified at its higher price.

In its comments to the agency report, Nelson Hurst observed that one of its competitors substantially reduced its BAFO price when, prior to BAFOs, the competitor's price was relatively close to the protester's price. Nelson Hurst also alleges that at the close of face-to-face discussions, a PCC representative told it that the agency was "not encouraging [it] to alter [its] proposal or price. In fact, this would cause us a problem." Asserting that it was heeding this advice, Nelson Hurst did not change its price in its BAFO. Nelson Hurst questions whether the other offerors received the same advice.

Essentially, Nelson Hurst is arguing that it received unequal or misleading discussions. Agencies are required to conduct meaningful discussions with all offerors whose proposals are within the competitive range. Miller Bldg. Corp., B-245488, Jan. 3, 1992, 92-1 CPD ¶ 21. While agencies are required to tailor discussions to each particular offeror, they may not conduct misleading or

prejudicially unequal discussions. MSI, A Division of the Bionetics Corp., B-243974 et al., Sept. 17, 1991, 91-2 ¶ 254. The record here provides no evidence of misleading or unequal discussions.

The agency explicitly denies that it told the protester that changing its proposal or price would present a problem. It explains that at the close of discussions, it advised Nelson Hurst that the firm had the opportunity to revise its proposal and/or price. The agency also explained that Nelson Hurst could submit an entirely new proposal, but that this would cause "some problem" since its current proposal had placed Nelson Hurst in the competitive range. The agency states that it provided the same advice to all three competitive range offerors.

While the protester relies upon its transcript of the discussions, its "transcript" was based on the notes taken by an administrative assistant working for one of Nelson Hurst's representatives. No mechanical recording was made of the discussions and there is no evidence of the assistant's qualifications as a verbatim transcriber. In fact, rather than recording the proceedings verbatim, the notes appear to condense and paraphrase what was said. The agency explains that at the close of discussions, when the alleged advice was rendered, numerous people were speaking, occasionally simultaneously. Given the circumstances of when and how the statements attributed to the agency were made, as well as how they were "recorded," we find it is more likely that Nelson Hurst misunderstood the advice, than that any misleading advice was given. This finding is further supported by the written request for BAFOs, sent to each offeror, after the close of negotiations. The letters, including that sent to Nelson Hurst, specifically advised that each offeror was "given the opportunity to revise [its] proposal and submit a Best and Final Offer." Moreover, while Nelson Hurst contends that its failure to change its price was based on the agency's advice, we note that its original protest argued that it "had a full appreciation of the level of services demanded by operators of facilities such as the Panama Canal, and the 'cost-conscious response' in [its] proposal provides a level of service which [it] believe[s] commensurate with the demands of

the PCC." (Emphasis added.) In our view, this clearly suggests that the firm was aware of the need to be price competitive and had calculated its proposed price accordingly.¹

The protest is denied.

/s/ Christine S. Melody
for Robert P. Murphy
General Counsel

¹Even if the agency may have "encouraged" Nelson Hurst not to revise its proposal or price, given its higher technical score and closeness in price to the awardee's proposal, we find nothing erroneous or misleading in the advice. When the advice was allegedly rendered, Nelson Hurst's proposal was competitive without further revision.