

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

60207

FILE: B-182213

DATE: November 24, 1975

MATTER OF: Tracor Jitco, Inc.

97690

DIGEST:

Responding to prior GAO decision, agency furnishes rational support for bare conclusions reached by third evaluator (whose views prompted source selection) in conflict with technical evaluation committee's views. Committee evaluated and scored only original proposals but not additional information resulting from negotiations considered by third evaluator which reduced technical evaluation difference of technical committee in favor of protester. Additional information from lower cost awardee responded satisfactorily to technical problem raised by agency which, in large measure, accounted for technical evaluation difference between proposals.

This case involves further development and consideration of a bid protest by Tracor Jitco, Inc. (Tracor), against the award of a cost-reimbursement type contract to Southwest Research Institute (Southwest), by the National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT), on April 19, 1974.

Tracor's protest, considered in our decision Tracor Jitco, Inc., 54 Comp. Gen. 896 (1975), 75-1 CPD 253, questioned the rationale for the award to Southwest. Tracor asserted that it should have received the award because its higher rated technical proposal represented greater value than Southwest's lower cost offer.

The following excerpt from our decision relates significant matters leading to the protested award:

"Both the Chairman of the Evaluation Committee (Evaluator 1) and the Associate Administrator for Research and Development (Evaluator 2) concluded that Tracor's proposal (which was about 5.6 percent higher in technical score (826 vs. 782) and 5.1 percent higher in estimated cost (\$253,800 vs. \$241,440) than Southwest's proposal) represented the

'greatest chances of success of any of the proposals submitted.' By contrast, the Southwest proposal, although judged acceptable, was considered 'not as innovative' as the Tracor proposal.

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"We note that the analysis does not expressly or implicitly consider the innovative aspects of Tracor's proposal to be 'unneeded' capabilities or evidence of 'gold-plating.'

"* * * [T]he Administration's Associate Administrator for Administration (Evaluator 3) * * * decided that the proposals were essentially equal in technical merit and recommended that Southwest receive award 'as their proposal represents the best dollar value procurement.' The Associate Administrator's recommendation was forwarded by memo dated June 28, 1974, through the Assistant Secretary for Administration to the Secretary. * * * it is clear that the conclusions of the Associate Administrator for Administration prompted the ultimate award to Southwest in December 1974. The award was made, we assume, at the cost (\$253,800) finally proposed by Southwest. The cost compares to a Government estimated cost for the work of \$271,676."

We went on to note that complaints similar to Tracor's, questioning agency decisions in weighing cost/technical "trade-offs," have been considered by our Office in recent years. Uniformly, we had agreed with the exercise of the administrative discretion involved--in the absence of a clear showing that the exercised discretion was not rationally founded--as to whether a given technical point spread between competitive-range offers showed that the higher-scored proposal was technically superior. See cases cited in Tracor Jitco, Inc., supra. We further noted that we have upheld awards to offerors submitting less costly, albeit lower-scored technical proposals on a finding that the point score and technical narrative did not indicate superiority in the higher ranked proposal. Also "our practice of deferring to the agency involved in cost/technical trade-off judgments has been followed even when the agency official ultimately responsible for selecting the successful contractor disagreed with an assessment of technical superiority made by a working-level evaluation committee."

Based on the record then before us, we determined that the finding of Evaluator 3 (to wit: the subject proposals were "essentially equal") was in conflict with the views of Evaluators 1 and 2. The record contained factual development reasonably showing the superiority of Tracor's proposal in the cases of Evaluators 1 and 2, but contained only the bare conclusions in the case of Evaluator 3, i.e., that the proposals were technically equal, that the differences were insubstantial, and that the two offers assured an "equal chance of program success."

Because we did not have any indication of the reasoning underlying the conclusions reached by Evaluator 3, we were unable, on the basis of the record then before us, to conclude that the conclusions of Evaluator 3 were rationally justified, although we noted the possibility thereof.

We determined that, if the conclusions advanced by Evaluator 3 were to be rationally supported, the award to Southwest could be justified within our cited precedents. If not, Tracor's proposal would possess an uncontroverted superior rating and the only other basis for justifying award to Southwest would be offsetting cost savings in the Southwest proposal as suggested by a cost projection of the offerors' proposed costs. In the event that no such cost projection was made, we suggested, in connection with our ultimate recommendation set forth below, that cost factors inherent in each offer be evaluated to determine the reasonableness and realism of costs under the technical approaches proposed by each offeror.

We recommended that the Secretary of Transportation:

"* * * ascertain the reasons Evaluator 3 had for reaching the bare conclusions involved, with specific reference to the conclusion that the proposals were technically equal, notwithstanding the implicit findings of Evaluators 1 and 2 that Tracor's proposal was technically superior. If the Secretary's investigation shows that the bare conclusions reached are not rationally supported, we are further recommending that action be taken to terminate for convenience Southwest's contract and to award the study to Tracor, provided: (1) the cost savings involved with an award to Southwest are, upon further reflection and

consideration of our above-expressed analysis, considered insubstantial; (2) Tracor agrees to accept award on the terms and conditions it finally proposed; and (3) Tracor agrees to meet any congressionally-imposed deadlines for completion of the study."

In response to our decision, the Assistant Secretary for Administration, DOT, provided us with two reports containing information pertinent to the reasons behind the conclusions reached by Evaluator 3. As discussed in the reports, "the scoring and narrative summary [of Evaluators 1 and 2] were based upon the proposals as originally submitted and * * * subsequent negotiations resulted in additional information from both Southwest and Tracor Jitco [considered by Evaluator 3 and furnished our Office with one of the Assistant Administrator's reports] * * *. (Although) rescoring was not accomplished based upon the additional information, * * * it did reduce whatever were the initial differences between the two proposals."

We have examined both the original proposals and the additional information submitted by Southwest and Tracor to determine if a rational basis existed for the conclusions of Evaluator 3. As noted supra, Evaluators 1 and 2 characterized Southwest's proposal as "not as innovative as the Tracor Jitco proposal." With respect to Tracor's proposal, they also stated: "Substantial innovation was presented by their proposal in both the mechanical and electrical areas of the RFP requirements such as the tire locating and instrument centering mechanism (auto-centering)." The evaluators stated further that the Southwest proposal had no detailed design for an auto-centering system.

From the above, we conclude that a major reason for Tracor's proposal being judged "more innovative" and by inference thereby "having a greater chance of success" was Tracor's inclusion of a provision for an auto-centering device in its original proposal and the lack of such provision in Southwest's original proposal.

Concerned about the lack of a provision for an auto-centering device in Southwest's original proposal, DOT informally queried Southwest on this point. Southwest responded to the DOT question with "additional information."

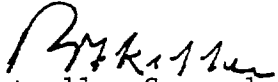
In responding to DOT, Southwest outlined its approach to the auto-centering problem. The information may be proprietary and, therefore, we will not disclose the technical aspects of Southwest's response. However, we can say that Southwest stated that the development phases of the contract would provide information upon which to base any detailed designs for an auto-centering system. Southwest did contemplate the eventual use of such a system and included a "symbolic representation" thereof with the additional information. Our technical evaluation of this aspect of the Southwest proposal indicates that this information responded satisfactorily to the auto-centering mechanism problem raised by DOT.

The lack of a design for an auto-centering mechanism, in large measure, accounted for the characterization of the Southwest proposal as "not as innovative" as Tracor's. Therefore, we conclude that the response by Southwest in the negotiations would rationally support the conclusions reached by Evaluator 3 that the gap existing between the proposals was narrowed. As such, we believe the award to Southwest is justified within the framework of our prior decision and Tracor's bid protest is denied.

Furthermore, we note that the Assistant Administrator also provided us with information relative to the cost analysis upon which the realism and reasonableness of Southwest's cost proposal was based, as we requested in our earlier decision. The analysis included (1) comparability of proposed costs with cost elements of the Government's estimates; (2) comparability of proposed costs with cost elements of Tracor's offer; (3) review of the proposed amount and application of man-hours of both proposals; (4) consideration of the proposed, priced bill of materials submitted by Southwest; and (5) consideration of the similarity of Southwest's proposed indirect cost rates with indirect cost rates of current DOT contracts with Southwest. In view of this explanation, we have no further objection to this aspect of the evaluation.

In closing, we relate with approval the following portion from one of the reports to our Office from the Assistant Administrator:

"Various aspects of our selection and pre-award process, in this case, could have been improved with better records of actions: I intend to examine the current file documentation practices in NHTSA to determine what corrective action needs to be taken if any."


Deputy Comptroller General
of the United States