

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

60598

FILE: B-184446

DATE: March 2, 1976

MATTER OF: Bayshore Systems Corporation

98525

## DIGEST:

1. While apparently inconsistent agency positions concerning need to amend RFP to allow for purchase of additional supplies give rise to some concern regarding adequacy of justification for this action, evidence of record is not sufficient for GAO objection to award, because determinations of minimum needs are function of agency and will not be disturbed unless clearly shown to be without any reasonable basis.
2. Where RFP described technical considerations as most important evaluation factor, and price second, agency's use of nondisclosed numerical evaluation formula which weighted technical factors three times as heavily as price is not so inconsistent with RFP statement as to be objectionable. Though protester's proposal offered lowest price, it was also lowest technically, and protest against award to higher-priced, technically superior proposal is denied. Alleged improper alteration of technical evaluation record is unsubstantiated, because numerical scores which were written over other figures in record were the scores which were actually intended.
3. Notwithstanding allegation that unnecessary preaward survey subjected protester to economic stress, no basis is seen for objection to initiation of survey in view of contracting officer's statements that protester was considered possible candidate for award and that he lacked information concerning protester's responsibility as prospective contractor.
4. Under GAO Bid Protest Procedures, protests against improprieties which are apparent in RFP as originally issued must be filed prior to closing date for receipt of initial proposals. Thus, contentions made in protest filed after award that RFP specifications should have set forth minimum performance standards for data conversion units and that RFP should have provided for award of cost-reimbursement type contract are untimely and not for consideration.

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Bayshore Systems Corporation (Bayshore) has protested to our Office against the award of a contract to Northern Precision Laboratories, Inc. (NPL), under request for proposals (RFP) No. N00421-75-R-0142, issued by the Naval Air Station, Patuxent River, Maryland. The procurement was for a quantity of data conversion units, plus associated spares and data. Bayshore was one of six offerors competing for the award.

Bayshore first contends that the contracting officer abused his discretionary powers by conspiring with his technical personnel to award a contract up to the limit of available appropriated funds, rather than a contract for quantities which would meet the Navy's actual minimum needs. In this regard, the RFP as originally issued sought offers for four data conversion units. After initial offers were received, the RFP was amended to allow submission of best and final offers for four, six or eight units. The award was made to NPL for a quantity of six units.

Bayshore believes these facts show that the changes in quantities were artificially contrived to maximize the quantity capable of being purchased within the available appropriation (\$100,000), and that the contracting officer was at least passively acquiescent in this action because he did not require the technical activity to rejustify its need for increased quantities.

In many decisions of our Office we have held that a determination of minimum needs is the function of the contracting agency, and that it will not be disturbed by our Office unless clearly shown to be without a reasonable basis. See, for example, CSA Reporting Corporation, 54 Comp. Gen. 645 (1975), 75-1 CPD 70; Julie Research Laboratories, Inc., 55 Comp. Gen. 374 (1975), 75-2 CPD 232. In the present case, the contracting officer's statements set forth two somewhat inconsistent bases for amending the RFP to allow the purchase of greater quantities of data conversion units. The contracting officer's statement dated August 18, 1975, indicates that the requirement for additional units arose after the RFP was issued, and that it was decided to amend the RFP rather than issue an additional solicitation. The contracting officer's statement dated November 5, 1975, indicates that a valid requirement for additional quantities existed before the RFP was issued, but the RFP as originally issued contemplated the purchase of only four units because the estimated price was \$25,000 per unit and only \$100,000 was available for the procurement. It is stated that, after evaluating the initial proposals, it became apparent that a greater number of units would possibly be purchased, and the RFP was accordingly amended.

These inconsistent positions, coupled with the somewhat sparse documentation in the Navy's report regarding the perceived needs of the

technical activity, give rise to some concern as to the sufficiency of the justification to support the purchase of increased quantities. However, from an evidentiary standpoint such concern is not enough to cause our Office to raise any legal objection, in the absence of a much stronger showing that the need to obtain additional quantities was without a reasonable basis. Cf. Phelps Protection Systems Inc., B-181148, November 7, 1974, 74-2 CPD 244.

Another of Bayshore's major objections concerns the evaluation formula used by the Navy in making its "best buy" analysis. Essentially, this formula gave the scores received by proposals for the technical criteria approximately three times the weight given to price. Bayshore states that this formula was not disclosed to offerors in the RFP, and that there is no assurance that it was not adopted after the proposals were received. Bayshore alleges in this connection that since it submitted a technically acceptable offer which was lowest in price, it should receive the award.

The contracting officer has replied that the formula is used by the procuring activity for all procurements of this type unless the technical activity specifically requests that a different formula be used, which did not occur here. Also, the contracting officer points out that Armed Services Procurement Regulation (ASPR) § 3-501(b)(3) Sec. D(i) (1974 ed.) prohibits the disclosure to offerors in the RFP of the numerical weights which are employed in the evaluation of proposals. Also, the contracting officer observes that section "D" of the RFP advised offerors of the following evaluation factors, in descending order of importance: (1) technical capability (this factor was broken down into a number of listed subfactors); (2) price; and (3) delivery.

In this regard, the following statements from our decision in the matter of BDM Services Company, B-180245, May 9, 1974, 74-1 CPD 237, are pertinent:

"We have consistently held that while offerors should be informed of the relative weight or importance attached to the evaluation criteria, the disclosure of the precise numerical weights to be used in the evaluation process is not required. \* \* \* Therefore, we do not object to the prohibition in ASPR 3-501(D)(i) against the disclosure of precise numerical weights.

"Nevertheless, it has always been our position that offerors should be informed of the broad scheme of scoring

to be employed' and given 'reasonably definite information as to the degree of importance to be accorded to particular factors in relation to each other.' \* \* \* We have recognized that an appropriate method of disclosing the relative weights of the evaluation criteria is to list the evaluation factors in descending order of importance or priority. \* \* \* However, under some circumstances listing the evaluation factors in relative order of importance will not suffice to even inform the offerors of the broad basis on which their proposals are to be evaluated. \* \* \*

"Here the first of the five evaluation factors listed in relative order of importance constituted 72 percent of the total technical evaluation score and was 6 times the weight of the second factor and 24 times the weight of the fifth factor. We believe that in consonance with ASPR 3-501(D)(i), the predominant value accorded the first factor should have been disclosed to the offerors. Moreover, we believe the general relationship of the remaining factors to each other could have been described in narrative without violating the prohibition against disclosure of precise numerical weights in ASPR 3-501(D)(i). As a matter of sound procurement policy, the fullest possible disclosure of all of the evaluation factors and their relative importance is to be preferred to reliance on the reasonableness of the offerors' judgment as to the relative significance of the various evaluation factors."

Consistent with these views, we believe that in the present case the RFP statement of evaluation factors could have been made more definite, as for example, by adding a statement that technical considerations were approximately three times as important as price. However, we cannot say that the 3:1 relationship between technical and price considerations in the numerical scoring formula was so out of line with the RFP's statement that use of the formula was objectionable. The RFP clearly advised offerors that technical considerations were the most important factor in the Government's purchase decision. Also, we note that while Bayshore's proposal was the lowest priced, it also received the lowest technical rating of the six proposals. Under these circumstances, we see no basis for objection to the selection of a higher-priced, technically superior proposal in lieu of Bayshore's proposal.

Bayshore next contends that two handwritten numerical scores in the technical evaluation record were apparently altered. The two scores

were written over other figures which, if accurate, would have given Bayshore a more favorable technical rating. However, we agree with the contracting officer's statement that the apparent figures were those actually intended. This is supported by a comparison of the written-over figures with other documentation in the technical evaluation record.

Bayshore also complains of the fact that it was subjected to the economic stress of a preaward survey. The contracting officer states that he requested a survey because he lacked data as to Bayshore's responsibility, and because--in view of Bayshore's low price proposal--an award to the protester was a possibility. While it may be true that a preaward survey subjects an offeror to some inconvenience and stress, we see no basis in light of the facts involved here to conclude that the contracting officer's action was legally objectionable.


Bayshore also contends that the arbitrariness of the contracting officer's position is illustrated by the fact that he denied Bayshore's telephonic oral protest on July 1, 1975, "within 30 seconds." Bayshore believes that there was a deliberate effort to assure that its protest could not be asserted until after an award had been made. The contracting officer states, however, that he advised Bayshore in the telephone conversation that a written protest would have to be submitted. We note that this advice is consistent with the provisions of ASPR § 2-407.8(a) (1974 ed.) which states in pertinent part: "If the protest is oral and the matter cannot otherwise be resolved, written confirmation of the protest shall be requested." According to the contracting officer, only Bayshore's insistence on an immediate response caused him to state that the oral protest was denied. Moreover, since the award had been made on June 30, 1975, and the oral protest was made July 1, 1975, it is apparent that Bayshore's first notice of protest was given after award in any event. In light of these considerations, we see no basis to conclude that the contracting officer acted improperly.

Bayshore also maintains that where, as here, the award of a fixed-price contract is involved, the RFP should define the minimum performance standards of the equipment being purchased. Also, Bayshore suggests that the procurement should have been handled as a research and development effort, resulting in the award of a cost-reimbursement type contract. Under section 20.2(b)(1) of our Bid Protest Procedures, 40 Fed. Reg. 17979 (1975), protests against alleged improprieties which are apparent in an RFP as originally issued must be filed prior to the closing date for receipt of initial proposals. Bayshore's objections against the definiteness of the

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specifications and the type of contract come within this rule, and these aspects of the protest are therefore untimely and not for consideration.

The protest is denied.

  
Deputy Comptroller General  
of the United States