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DECISION



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

[Protest of Evaluation Criteria]

FILE: B-199680

DATE: April 9, 1981

MATTER OF: New Jersey Association on
Correction

DIGEST: *DCG 06484*

1. Protest after award against absence of values in RFP for evaluation criteria is untimely and not for consideration.
2. Although protester indicates that basis for additional points being assigned to competitor for evaluation factor was wrong and contracting officer has attempted to reconcile points on another basis, competitor's total score remains high even if assigned points are deducted and thus misapplication of points is not material.
3. Allegation that contractor is not performing in accordance with time in contract is matter of contract administration not for resolution under GAO Bid Protest Procedures.
4. Where, allowing for protester's contentions, total scores for evaluation criteria do not change standing of offerors, award will not be disturbed.

The New Jersey Association on Correction (NJAC) protests the award of a contract by the Department of Justice, Federal Prison System, to the Volunteers of America (VOA) under request for proposals (RFP) No. 272-3 for the provision of residential halfway house services to Federal offenders in the Trenton, New Jersey, area.

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NJAC has four principal grounds of protest: (1) the RFP did not assign values for the evaluation criteria; (2) evaluation of one of the criteria was flawed by reliance upon inaccurate information; (3) VOA is not performing on time; and (4) it is in the best interest of the Government to award the contract to NJAC.

The protest is dismissed in part and denied in part.

NJAC did not protest the absence of values in the RFP for evaluation criteria until after the award of the contract. It is an untimely protest. Alleged improprieties in any solicitation which are apparent prior to the closing date for receipt of proposals must be filed prior to the closing date to be considered. Thomas G. Gebhard, Jr., P.E., PH.d, B-196454, February 8, 1980, 80-1 CPD 115.

Although the complaint is untimely as to the propriety of the RFP, it is timely as to whether the evaluation was consistent with established evaluation criteria. In that regard, we note that NJAC submitted a proposal without questioning the absence of values for the evaluation criteria. Ordinarily, when no values are stated, offerors can assume that all criteria are of equal importance. Dikewood Services Company, 56 Comp. Gen. 188 (1976), 76-2 CPD 520. However, NJAC did not make that assumption since the record indicates it attempted to discover after the closing date what values would be assigned to the criteria. Apparently, NJAC recognized that different values would be attached to the criteria and did not have any concern for what they were when it submitted its proposal. Thus, the values were not important to NJAC for the preparation of its proposal. Its concern would seem to be that the values, whatever they are, be properly applied.

This brings us to the second point of NJAC's protest. NJAC objects to VOA having been favored on the "Accreditation Status" evaluation factor. VOA received five more points than NJAC on this factor. The basis for the additional points was that VOA was

in the "correspondence status" of accreditation. NJAC has indicated that was not correct. The contracting officer has attempted to reconcile the difference on the basis that VOA has accreditation status for other facilities and NJAC does not. However, the criteria called for evaluating the Trenton facility, not other facilities. Nevertheless, even if the extra five points are deducted from VOA's total score, it remains the higher of the two total scores. Thus, the misapplication of the points is not material.

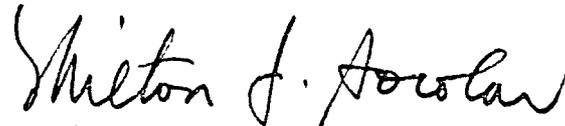
Although NJAC states that the commencement date for contract performance was July 1, 1980, and that VOA was not performing on time, that is a matter of contract administration which is a function and responsibility of the procuring agency and is not for consideration under our Bid Protest Procedures. Anderson's Complete Cleaning Service, B-200261, September 23, 1980, 80-2 CPD 223.

As to NJAC's contention that it is in the best interest of the Government to award the contract to NJAC, we point out that it is not the function of our Office to evaluate the technical merits of proposals or to substitute our judgment for that of the procuring agency as to which offer should have received the award. Sogitec, Incorporated, B-196158, January 24, 1980, 80-1 CPD 70. Therefore, technical evaluations and award determinations by procuring agencies will be questioned by our Office only upon a clear showing that they were arbitrary or unreasonable or inconsistent with established evaluation factors. Sogitec, Incorporated, supra.

While NJAC may disagree with the agency, we find no basis to conclude that the award should not have been made to VOA. Although, as indicated above, VOA was credited with five points it should not have received, that did not change the standing of the offerors. Further, although NJAC has complained that the contracting officer went beyond the listed evaluation criteria in taking NJAC's past deficient experience into consideration, we note that this factor was

not scored and that it, therefore, did not have any bearing on the total score which placed VOA in the lead. Accordingly, it is not necessary to consider whether the factor was a proper matter for evaluation. Moreover, while NJAC contends that the award should have been made to it because of its experience in providing the required services for many years, we observe that the number of years of NJAC's experience was evaluated and that it received the maximum number of points allocated for this factor, but, that after the consideration of all the other evaluation criteria, it did not have the highest total score.

In the circumstances, we will not disturb the award. However, by separate letter of today to the Director of the Bureau of Prisons, we are recommending that future solicitations indicate the relative importance of evaluation factors.



Acting Comptroller General
of the United States