

DOCUMENT RESUME

02404 - [A1602583]

[Protest to Evaluation of Proposals]. B-187892. June 2, 1977. 5 pp.

Decision re: Computer Data Systems, Inc.; by Robert F. Keller, Deputy Comptroller General.

Issue Area: Federal Procurement of Goods and Services (1900).

Contact: Office of the General Counsel: Procurement Law II.

Budget Function: National Defense: Department of Defense - Procurement & Contracts (058).

Organization Concerned: Computer Sciences Corp.; Department of the Navy: Naval Regional Procurement Office, Washington, D.C.

Authority: 10 U.S.C. 2304(g). 52 Comp. Gen. 686. 52 Comp. Gen. 690. 54 Comp. Gen. 096. 54 Comp. Gen. 530. 54 Comp. Gen. 375. B-182104 (1974). B-183816 (1975). B-179259 (1974).

Protest to award of a contract was based on contention that evaluation criteria in the RFP were not properly applied, that the criteria were changed without notice to the offerors, and that price evaluation improperly excluded certain costs. In addition, protester questioned determination that the technical proposals were essentially equal. Agency determination that technical proposals were equal was not subject to objection. Cost may become determinative when proposals are equal technically. Transition costs were properly not considered. The protest was denied. (QM)

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DECISION

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

FILE: B-187892

DATE: June 2, 1977

MATTER OF: Computer Data Systems, Inc.

DIGEST:

1. Agency determination that competing proposals are technically equal in face of point spread of 5.7 out of 100 is not subject to objection since point scores are only guides for decision-making and record does not reveal any differences among proposals.
2. Where competing proposals are regarded as essentially equal technically, cost may become determinative consideration notwithstanding that in overall evaluation scheme cost was of less importance than other criteria.
3. Agency's refusal to consider contractor transition costs as part of price evaluation is proper since price evaluation method set forth in solicitation did not provide for such evaluation.

Computer Data Systems, Inc. (CDSI) protests the award of a labor-hour type contract to Computer Sciences Corporation (CSC) under request for proposals (RFP) No. N00600-75-R-5522 issued by the Naval Regional Procurement Office (NRPO), Washington, D.C. The solicitation invited proposals to design, develop, implement and maintain various software systems located in Washington, D.C., Norfolk, Virginia, and Pearl Harbor, Hawaii. Task assignments under the contract are issued by the Naval Command Systems Support Activity (NAVCOSSACT).

The RFP was submitted to 132 firms of which CDSI, CSC and Planning Research Corporation (PRC) submitted proposals. The technical proposals were evaluated by a NAVCOSSACT technical evaluation panel (panel) which ranked the proposals as follows:

<u>OFFEROR</u>	<u>TECHNICAL SCORE</u>
CDSI	99.5
PRC	96.0
CSC	93.8

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CSC proposed a price of \$1,348,989 for the base year and two option periods. CDSI's proposed price was \$1,431,456. On November 12, 1976, NRPO awarded a contract to CSC, the proposer which offered the lowest price.

There are three inter-related grounds for CDSI's protest. First, CDSI contends that the evaluation criteria in the RFP were not properly applied in making the award determination. Second, CDSI charges that the technical evaluation criteria specified in the RFP were changed without notice to the offerors. Third, CDSI alleges that NRPO's price evaluation improperly excluded certain costs to be incurred by the Government upon acceptance of the CSC proposal. In addition, CDSI questions whether NAVCOSSACT's ultimate determination that the technical proposals were essentially equal was properly made.

The RFP provided that both technical and price considerations would govern award selection. With respect to price, the RFP provided:

"Price will be given a weight equalling approximately one quarter of the total weight which will be assigned to the technical factors. Thus, price, while not controlling, will be an important factor in selecting a contract under this solicitation. The degree of its importance will increase with the degree of equality of proposals with regard to the other factors on which selection will be based."

Basically, it is CDSI's contention that award to CSC was contrary to the RFP evaluation criteria because price was the determining factor in the award selection. CDSI maintains that under the stated criteria price should have received a weight equal to 25 percent of the total weight assigned to the technical factors, and that by application of that formula CDSI's proposal would clearly receive the highest overall score. NRPO reports that by letter dated September 1, 1976, NAVCOSSACT initially recommended to NRPO that award be made to CDSI. Subsequently, on October 5, 1976, a NRPO contract negotiator telephoned NAVCOSSACT to inquire whether there was a significant technical difference among the proposals "i/nasmuch as there were only 5.7 points (out of 100) separating the highest from the lowest technical proposal." The contract negotiator states that he "took the initiative to ask this question as he was the only one privy to the prices as well as the technical scores."

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He further states that NAVCOSSACT told him "that the technical evaluation panel had indicated that all of the technical proposals were substantially equal, and that award would /sic/ be made to the lowest priced offeror." This telephone conversation was confirmed by a memorandum dated October 26, 1976, from the Commanding Officer, NAVCOSSACT, to the Officer in Charge, NRPO.

CDSI argues that "/t/here is no indication that the technical evaluation committee which evaluated the proposals was consulted prior to the issuance of the memorandum and that the conclusion stated therein represents the views of the committee." Moreover, CDSI asserts, in effect, that its proposal was clearly technically superior to the CSC proposal and that this superiority was reflected in the difference between the point scores assigned to the two proposals.

We have consistently stated that "technical point ratings are useful as guides for intelligent decision-making in the procurement process, but whether a given point spread between two competing proposals indicates the significant superiority of one proposal over another depends upon the facts and circumstances of each procurement and is primarily a matter within the discretion of the procuring agency." 52 Comp. Gen. 686, 690 (1973); ILC Dover, B-182104, November 29, 1974, 74-2 CPD 301; see also Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 CPD 325 and cases cited therein. As we stated in Tracor Jitco, Inc., 54 Comp. Gen. 896 (1975), 75-1 CPD 253:

"* * * Uniformly, we have 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 offerors showed that the higher-scored proposal was technically superior."

Here, it is reported that the technical evaluation panel specifically determined that all the proposals submitted were substantially equal technically, the protester has not alleged the existence of any marked differences among the proposals, and the technical scores were very close. On this record we are unable to conclude that the Navy's determination of relative technical equality was unreasonable or made by unauthorized personnel.

CDSI argues that NRPO's reliance on price to select CSC was improper because it had the effect of turning the least important evaluation criterion into the most important one. There is no merit to this contention. Procuring agencies are required to advise offerors of the criteria against which proposals will be evaluated and to adhere to those criteria when evaluating proposals. See e.g., EPSCO, Incorporated, B-183816, November 21, 1975, 75-2 CPD 338; Signatron, Inc., 54 Comp. Gen. 530 (1974), 74-2 CPD 386; Willamette-Western Corporation et al., 54 Comp. Gen. 375 (1974), 74-2 CPD 259 and cases cited therein; see also Armed Services Procurement Regulation (ASPR) § 3-501(b) (Sec. D) (1975 ed.). However, where an agency regards proposals as essentially equal technically, cost or price may become the determinative consideration notwithstanding the fact that in the overall evaluation scheme cost was of less importance than other criteria. The designation of cost or price as a subsidiary evaluation factor means only that, where there is a technical advantage associated with one proposal, that proposal may not be rejected merely because it carries a higher price tag. It does not mean that when technical proposals are regarded as essentially equal, price or cost is not to become the controlling factor. Analytic Systems, Incorporated, B-179259, February 14, 1974, 74-1 CPD 71; see Grey Advertising, Inc., supra, and cases cited therein. Indeed, under 10 U.S.C. 2304(g) (1970), price must be given appropriate consideration in the award of all negotiated Government contracts.

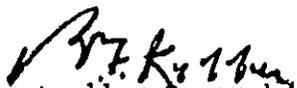
CDSI's final contention is that NRPO failed to consider change-over costs in its evaluation of price. CDSI recently completed a contract with the agency for the same work covered by the current contract with CSC. The protester submits that NRPO should have considered transition costs involving such things as training, orientation and security clearances "that would be incurred if award were made to a firm other than CDSI, the incumbent contractor." Moreover, since the RFP called for a labor-hour contract, CDSI suggests, in effect, that as a result of its experience it could be expected to complete many of the various jobs more quickly, and therefore at less expense to the Government than a new firm.

The Navy reports that the transition costs referred to are "too speculative to provide a meaningful basis for evaluation". Moreover, the RFP provided for evaluation of price "by adding the total prices for all option quantities to the total price for the basic quantity." There was no provision in the

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RFP for evaluation of transition costs. Therefore, the consideration of such costs would have improperly interjected a new evaluation criterion not set forth in the solicitation. The Human Resources Company, B-187153, November 30, 1976, 76-2 CPD 459. With regard to CDSI's ability to perform tasks more quickly, we need note only that the technical evaluation does not indicate that NAVCOSSACT believed CDSI to have any particular advantage in this area.

The protest is denied.


Deputy Comptroller General
of the United States