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**DECISION**



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

FILE: B-189338                      DATE: November 23, 1977  
MATTER OF: National Puerto Rican Forum, Inc.

**DIGEST:**

1. Protest that protester's proposal, lower in cost than awardee's, offered technical competence and, therefore, was of greater value to Government is denied, since successful proposal was highest rated technically and RFP showed technical considerations were of more importance to Government than cost, thereby giving source selection rational basis.
2. While protester adhered to level of effort guidelines in RFP and had lower total cost proposal than awardee, awardee was rated high technically and offered lowest man-day cost which under cost evaluation warranted better cost score than protester received. However, even reducing awardee's staff to level of effort stated in RFP and recomputing final evaluation formula does not result in awardee being displaced.
3. Whether proposal is included in competitive range is matter of administrative discretion which will not be disturbed unless arbitrary or capricious. Inclusion in competitive range of proposal which was rated fourth out of six proposals technically cannot be said to be arbitrary or capricious.
4. Experience of offeror can be considered as evaluation criterion based on information contained in proposal and also in determining responsibility of offeror. Information relating to responsibility determination may be obtained prior to award.
5. Protest, filed after award, that solicitation should have been canceled rather than amended twice increasing level of effort and scope of work and that technical leveling occurred when level of effort was raised by amendment to that originally proposed by protester is untimely under 4 C.F.R. § 20.2(b)(1) which requires that alleged improprieties which do not exist in initial solicitation but which are subsequently incorporated therein must be protested not later than next closing date for receipt of proposals following incorporation.

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6. Where amendment to RFP stated revised best and final offers are requested, this was sufficient to advise offerors that they may not be given another opportunity to revise and offeror who withholds best and final offer in expectation of further round of negotiations does so at its peril.

National Puerto Rican Forum, Inc. (NPRF), has protested the award of a contract to Capital Formation, Inc. (Capital), by the Department of Commerce under request for proposals (RFP) No. 7-36437. The RFP was for providing management and technical assistance to socially and economically disadvantaged businesses in Manhattan, New York.

While seven proposals were received by the closing date of December 27, 1976, we will limit our discussion to the proposals of NPRF and Capital. The initial proposals of these two offerors were evaluated as follows from a cost and technical standpoint:

	<u>Estimated Cost</u>	<u>Technical</u>
Capital	\$275,038	71.75
NPRF	\$282,730	62.90

Negotiations were conducted with all offerors between February 14 and 23, 1977, and best and final offers were to be submitted by March 3, 1977. Capital's best and final offer received a technical rating of 74.40 and NPRF's proposal was rated at 70.00. Neither offeror changed the estimated costs in its best and final offer.

On March 23, 1977, the New York Regional Office of the Office of Minority Business Enterprise (OMBE), the user activity, requested the contracting officer to amend the RFP to increase the manpower level of effort and revise the scope of work statement and evaluation criteria. On March 28, 1977, amendment No. 1 was issued making the above changes and requesting revised offers to be submitted by April 11, 1977. The RFP, as originally issued, estimated the level of effort necessary to perform the contract to be eight professional and four clerical employees. Amendment No. 1 increased this estimate to 13 professional and four clerical positions.

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The results of the evaluation of the revised proposals were as follows:

	<u>Estimated Cost</u>	<u>Technical</u>
Capital	\$555,120.00	66.87
NPRF	\$325,185.24	66.75

Negotiations were again conducted with all offerors between April 27 and 29, 1977, and a request for best and final offers made with a cutoff date of May 9, 1977. On May 9, the New York Regional Office of OMBE again requested the contracting officer to revise the solicitation by increasing the professional staff from 13 to 16 and raising the number of clerical staff from four to five.

This change was incorporated in amendment No. 2 which was issued on May 10, 1977, and requested revised best and final offers by May 20, 1977. The May 20 offers were evaluated as follows:

	<u>Estimated Cost</u>	<u>Technical</u>
Capital	\$443,588	72.9
NPRF	\$436,636	68.0

The RFP stated that award would be made to the offeror whose technical/cost relationship offered the greatest value to the Government. In the evaluation criteria, cost was weighted at 20 percent and technical at 80 percent. Commerce utilized the following formula to arrive at the greatest value scores (GVS) for each offeror:

1. Technical raw score of an offeror divided by the highest technical score attainable is multiplied by the weighted factor.
2. Lowest man-day cost divided by the offeror's man-day cost is multiplied by the weighted factor.

The above computations resulted in a GVS of 92.90 for Capital and 87.48 for NPRF. Based on this result, the contract was awarded to Capital. NPRF protested the award on a number of grounds.

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First, NPRF argues that its proposal was lower in cost than Capital's, that it offered technical competence and, therefore, was a greater value to the Government. While NPRF's proposal was technically acceptable, it was not the highest rated technical proposal. In fact, there were five proposals, including Capital's, that received a higher technical rating. As the evaluation criteria (80 percent technical, 20 percent cost) contained in the RFP showed, the Government gave greater weight to technical considerations and was not seeking merely an acceptable proposal with award based on lowest cost.

We have held that our review of source selection decisions is limited to the test of rationality. Tracor Jitco, Inc., 54 Comp. Gen. 896 (1975), 75-1 CPD 253. Specifically, a source selection determination will be questioned by our Office only upon a clear showing of unreasonableness or a violation of procurement statutes or regulations. Riggins & Williamson Machine Company, Incorporated, 54 Comp. Gen. 783 (1975), 75-1 CPD 168. Based upon our review of the evaluation of proposals, we cannot say that the decision to select Capital was irrational or unreasonable. Capital's proposal, while higher in cost than NPRF's by \$6,952, was lower in cost than the other four proposals considered and was the highest rated technical proposal of all proposals received. Where the solicitation shows that technical excellence is more important than cost considerations to the procuring agency, we have upheld awards to concerns submitting superior technical proposals, although the awards were made at costs higher than those proposed in lower rated technical proposals. 52 Comp. Gen. 358 (1972).

Regarding the evaluation of cost, NPRF contends that it was penalized in the scoring by adhering precisely to the solicitation guidelines and offering a lower unit cost while Capital's proposal employed more people at a higher cost. In the cost evaluation, Capital received the maximum 20 points and NPRF received 19.4 points, which NPRF feels was improper. Capital proposed 16 professionals and a support staff of six for a total of 5,694 man-days. NPRF offered 16 professionals and five support personnel, which resulted in a total of 5,460 man-days. Therefore, while NPRF's cost proposal offered a lower total estimated cost (\$436,636), its per man-day cost exceeded that offered by Capital, \$77.90 compared to NPRF's \$79.97. Accordingly, Capital was awarded 20 points under the cost evaluation as offering the lowest man-day cost. While NPRF argues that it was penalized for adhering to the level of effort estimated in amendment No. 2, even reducing the support staff of Capital to

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the level of effort estimated by amendment No. 2, the GVS for each of the two offerors does not change so significantly as to have prejudiced NPRF. We arrive at this conclusion by reducing the proposal of Capital by the salary and man-days of one member of the support staff, reducing its technical rating under staffing capability to the score attained by NPRF, and recomputing the respective GVS for Capital and NPRF according to the GVS formula. Capital's GVS remains the highest.

NPRF also contends that it was advised by the contracting officer at its debriefing that no cost evaluations were made until after the May 20, 1977, submissions. NPRF takes the view that if cost had been evaluated earlier, Capital would have been found outside the competitive range based on its April 11, 1977, submission containing the cost proposal of \$555,120. Commerce has responded that cost and technical evaluations were made on the proposals submitted prior to May 20, 1977, and that following the evaluation of the April 11 submissions, all six proposals submitted were found to be in the competitive range. Our Office has held that the determination of whether a proposal is to be included in the competitive range is a matter of administrative discretion which will not be disturbed unless it is clearly arbitrary or capricious. 52 Comp. Gen. 382 (1972) and 49 *id.* 309 (1969). Here, while Capital's proposal was the highest cost proposal submitted, it was ranked fourth technically out of the six proposals and we cannot say that the determination to include Capital in the competitive range and to conduct further discussions was arbitrary or capricious.

Next, NPRF alleges that the evaluation factor "Management Capability" was improperly considered by the evaluators. The RFP contained the following under "Criteria for Evaluation of Proposals":

<u>"Factor</u>	<u>Weight</u>
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Management Capability:

Prior experience, either organizationally or individually, in successfully furnishing business assistance or business development services to minority businesses in the area to be served or elsewhere."	15
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NPRF states that it was advised during its debriefing that the only experience assessed by the evaluators was the information included in the proposals of the offerors but NPRF was also advised that after the evaluation the contracting officer requested documentation on prior experience of Capital. NPRF argues that this "modus operandi" contravenes the intent of the evaluation criteria seeking to review empirical evidence of an offeror's past performance. We have reviewed the evaluator's scoring sheets for Capital's proposal and the proposal itself and find nothing improper in the evaluation of this factor. Capital's proposal contained a summary of past experience, both of the organization and of the employees, in this type of contract. While the contracting officer requested additional information from Capital regarding experience after the evaluation was completed, this was proper to obtain in determining the responsibility of an offeror. See Lamar Electric-Air Corporation, B-185791, August 18, 1976, 76-2 CPD 170, and 52 Comp. Gen. 854 (1973) for a discussion of the use of experience as both a matter of proposal acceptability and offeror responsibility.

Also, NPRF questions the rationale for the issuance of the second amendment which increased the level of effort required by the contractor. NPRF states that at a June 10, 1977, debriefing session, the contracting officer denied NPRF's request for documentation to support the amendment. However, from our review of the record furnished our Office, we find that OMBE's request, dated May 9, 1977, to Commerce stated that the level of effort was apparently low based on the responses from the offerors. It appears from the record that OMBE considered the change in the level of effort reflected in amendment No. 1 to accurately state the Government's need. Subsequently, after a review of the proposals submitted in response to amendment No. 1, OMBE felt that it had underestimated the effort required. While it is unfortunate that OMBE did not request the change until the day best and final offers were due, we have held that it is incumbent upon an agency to clearly inform all offerors when there is a change in the level of effort. International Finance and Economics, B-186939, January 27, 1977, 77-1 CPD 66.

NPRF questions the failure of Commerce to call for best and final offers after the responses to amendment No. 2 as was done following the previous submissions. We note that amendment No. 2 stated that "revised best and final offers shall be submitted \* \* \*." This notice was sufficient to alert offerors that they may not have another opportunity to revise their proposals. Once negotiations have been held, as here, under prior submissions and best and final offers received, negotiations should not be reopened unless it is clearly in the Government's best interest. ILC Dover, B-182104, November 29, 1974, 74-2 CPD 301. If NPRF held back its best and final offer in the expectation of another round of negotiations, it did so at its own peril. Security Assistance Forces & Equipment International Inc., B-186428, September 29, 1976, 76-2 CPD 293.

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Next, NPRF states that it was induced to lower the productivity goals in its proposal because of information communicated to it by the negotiators during discussions. During negotiations, the Commerce representatives informed NPRF that a research study, conducted by the New York Office of OMBE, showed that there were only 435 minority businesses in Manhattan of which 300 were qualified for the program. Based on this information, NPRF states that it reduced its projected goal from 435 businesses to 300. However, amendment No. 2 raised this estimate to 420 businesses and NPRF alleges this change constituted "technical leveling" which tended to prejudice the bidders. Further, NPRF contends that the instant solicitation should have been canceled rather than the numerous amendments issued which changed the level of effort and scope of work to almost twice the level originally solicited. Both of these contentions are untimely under § 20.2(b)(1) of our Bid Protest Procedures (4 C.F.R. part 20 (1977)) which requires that alleged improprieties which do not exist in the initial solicitation but which are subsequently incorporated therein must be protested not later than the next closing date for receipt of proposals following the incorporation. Accordingly, these bases of protest should have been filed by May 20, 1977, the next closing date following the issuance of amendment No. 2. However, NPRF's protest was not filed until June 15, 1977.

NPRF contends that Capital never submitted a complete proposal in response to the May 10, 1977, amendment, but merely submitted a 3-page technical submission which referred back to its earlier proposal. While Capital did submit a 3-page technical submission, it also submitted a revised cost proposal, staff allocation matrix and time and performance plan. Therefore, we find this basis of protest to have no merit. When an offeror submits a revised proposal, it is not necessary to restate all the information contained in the original proposal, as NPRF did with each submission, but only those parts affected by the prior negotiations or amendments.

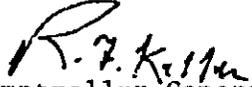
NPRF asserts that Capital exercised undue influence on the Commerce Department prior to an award being made by having meetings with high level officials at the agency and picketing the White House. After our review of the entire record before our Office, including the evaluation sheets of the evaluation committee, we do not find that any proposal was evaluated improperly or unfairly or that any influence was exerted to direct the award to a particular offeror.

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Finally, NPRF states that commerce raised NPRF's indirect cost basis from the 16 percent stated in its proposal to 20 percent, which was a ceiling figure included in the proposal at the request of Commerce. Commerce has responded that it used the 20-percent figure because it considered that figure more realistic based on past audited contracts held by NPRF. NPRF states that it attempted to justify the lower figure to Commerce by showing how its situation had changed (no longer owned building but was renting, etc.). We do not find it necessary to decide if the decision by Commerce to use the 20-percent figure was rational, because even using the 16-percent figure advanced by NPRF, Capital still receives the highest GVS score.

Accordingly, the protest is denied.

Deputy

  
Comptroller General  
of the United States