

DECISION

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

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FILE: B-211702**DATE:** October 12, 1983**MATTER OF:** Blurton, Banks & Associates, Inc.**DIGEST:**

1. GAO will not disturb an agency's technical evaluation unless shown to be unreasonable or in violation of procurement laws and regulations. Further, because the protester bears the burden of proving its case, mere disagreement with an evaluation does not render the evaluation unreasonable.
2. Award to a firm with the best technical proposal and overall highest rated proposal when price was factored in was not improper simply because another firm offered a lower price, since agency reasonably determined that the technical superiority of the winning proposal was worth the higher price.
3. While in a negotiated procurement discussions generally are held with all offerors in the competitive range, award without discussion is proper where it can be clearly shown from the existence of adequate competition that acceptance of the most favorable initial proposal will result in a contract at a fair and reasonable price, provided the solicitation so advises.
4. GAO does not consider small business size status protests since the Small Business Administration has statutory authority to make conclusive size status determinations in federal procurements.

Blurton, Banks & Associates, Inc. (BBA) protests the Corps of Engineers' rejection of its offer to provide surveying and mapping services under request for proposals

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(RFP) No. DACW01-83-R-0024. The protester argues that the Corps unfairly evaluated its technical proposal, and complains that the Corps awarded a contract at a price significantly higher than the price BBA offered. The protester also complains that the Corps never conducted discussions or extended BBA an opportunity to submit a best and final offer. Finally, the protester contends that the awardee did not meet the applicable size standard for this procurement, which was set aside for small business concerns.

We deny the protest in part and dismiss it in part.

The RFP advised that of the two evaluation factors, Technical Qualifications/Capability would be considered more significant than Price. Technical Qualifications/Capability subfactors were listed, in descending order of importance, as follows: (a) performance on like contracts in the last 5 years, and the offeror's qualifications; (b) operating policies and equipment available; and (c) management capability and experience of key personnel. The Corps used an evaluation scheme in which Technical Qualifications/Capabilities was weighted 3:1 in relation to Price, and the three technical subfactors were weighted 45 percent, 35 percent, and 20 percent, respectively.

Under this scheme, BBA--whose offer of \$683,990 was the least costly of 17 acceptable proposals submitted--received a technical score of 76.7, while the awardee--whose price was \$962,715, or approximately \$280,000 more than BBA's--received a technical score of 92.3. After factoring the technical scores and prices together using the 3:1 ratio, the Corps obtained an overall score of 81.91 for BBA and 84.86 for the awardee. The Corps then determined that the awardee's proposal did not contain any significant technical or price inadequacies, and that the technical capability and superiority of the awardee's proposal were more important than the savings obtainable by accepting BBA's proposal, which was rated ninth in the technical scoring and fifth overall. The Corps therefore decided there was no need to conduct discussions and made the award on the basis of initial proposals.

The Corps conducted a debriefing with BBA at the firm's request, and explained several deficiencies in the proposal. One deficiency was that while the RFP stated the contractor might be required to furnish up to 12 surveying parties, and while the Corps expected an average of 6 to 8 teams, BBA's proposal included personnel and equipment for

only 4 or 5 parties. The Corps also explained that it had received unfavorable comments from contract personnel in the Corps' district offices in Mobile, Memphis, New Orleans and Vicksburg, all references BBA listed in its offer. The references remarked on BBA's allegedly marginal or average performance and its frequent turnover of field personnel which, as purportedly reported by former BBA employees, was caused by untimely payments from the home office to the field. The remarks also included complaints that BBA's performance had posed some safety problems (for example, BBA's utilizing marginal equipment) and had required close monitoring and administrative direction.

BBA takes exception to these noted deficiencies. The protester states generally that its proposal more than adequately satisfied the solicitation's requirements, and the protester points out that it proposed 14 survey-party-chiefs and 22 instrument persons, which the firm says are the critical technical position in a survey party. BBA states that it contacted the references to learn the basis for the Corps' evaluation in that respect, and argues that its investigation shows the Corps misconstrued some of the references' remarks and that other reported deficiencies, particularly regarding alleged safety problems, were due to BBA's attempts to comply with inadequate specifications.

In reviewing complaints about the evaluation of technical proposals, our function is not to evaluate the proposals anew or to make our own determinations as to their relative merits. That function is the responsibility of the contracting agency, which is most familiar with its needs and must bear the burden of any difficulties resulting from a defective evaluation. In light of this, we have repeatedly held that procuring officials enjoy a reasonable degree of discretion in evaluating proposals, and we will not disturb their decision unless the decision is shown to be unreasonable or in violation of the procurement laws and regulations. Information Network Systems, B-208009, March 17, 1983, 83-1 CPD 272. Additionally, the protester bears the burden of affirmatively proving its case, and the fact that a protester does not agree with an agency's evaluation thus does not in itself render the evaluation unreasonable. Id.

In this regard, the protester has proffered no reasons why the Corps' conclusion concerning the adequacy of proposed personnel for the surveying teams might be unreasonable; it merely disagrees with the Corps' conclusion that

BBA failed to propose an adequate staff. BBA therefore has failed to meet its burden of proof, since the protester's mere disagreement with the evaluators' judgment does not render the evaluation unreasonable. Information Network Systems, supra.

With respect to the comments received from BBA's references, the RFP clearly indicated that the list of references was solicited as an aid in the agency's technical evaluation, and we believe that the evaluators therefore were entitled to rely on the reports given by other government procurement personnel, who are presumed to act in good faith in executing their duties. See J. F. Barton Contracting Co., B-210663, February 22, 1983, 83-1 CPD 177. The record shows, however, that of the three members of the technical evaluation panel, only one noted the comments as a significant deficiency. His technical scores for BBA nonetheless were in line with the scores of the other two evaluators, who considered BBA's prior performance as having been adequate.

In addition, the record shows that the evaluators found BBA's proposal inadequate for failing to demonstrate that the firm would provide a land surveyor registered in all the states where the work would be performed, as required by the RFP, and viewed BBA's proposal as deficient in its listing of equipment available to perform the work. On the other hand, the evaluators found that the awardee complied with the land surveyor registration requirements; offered superior equipment and adequate staffing for the expected number of survey teams; demonstrated considerable experience in the Corps' district where the work is to be performed; and showed good to outstanding prior performance.

As stated above, we will not take exception to a contracting agency's evaluation of technical proposals unless the protester shows that the evaluation was unreasonable. Here, BBA has not provided any basis for us to conclude that the evaluation of its offer was improper, or that the difference between BBA's technical score and the awardee's was overstated.

With regard to the price difference in a negotiated procurement there is no requirement that the award be made on the basis of the lowest price or cost to the government; rather, the procuring agency has the discretion to select a more highly rated technical proposal if doing so is in the government's best interest and is consistent with the evaluation scheme set forth in the solicitation. Electronic Data Systems Federal Corporation, B-207311, March 16, 1983,

83-1 CPD 264. Here, BBA's technical score was 76.7 (out of 100), whereas the awardee's was 90.3. Even after price scores, reflecting BBA's low price, were factored in, BBA's total score was only 81.91 compared to the awardee's total score of 84.86.

The RFP stated that award would be made to the responsible offeror whose offer the contracting officer evaluates as most advantageous to the government, technical, price, and other factors considered; explicitly reserved for the Corps the right to accept other than the lowest offer; and advised that the technical evaluation would be "the most important evaluation area with price assigned a lesser degree of significance." We see no basis to find irrational the procuring agency's decision that the awardee's technical superiority outweighed the fact that it was not the lowest-priced offer--a decision clearly permitted under the evaluation scheme on which proposals were based--so that we thus have no legal basis to object to the selection decision. See Electronic Data Systems Federal Corporation, supra.

BBA further contends it was improper for the Corps to make an award without establishing a competitive range and giving offerors deemed within that range an opportunity for discussions and the submission of best and final offers.

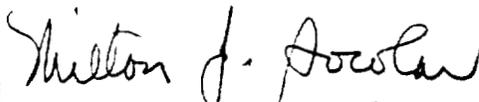
In a negotiated procurement, discussions generally are required to be conducted with offerors in a competitive range except on certain specified instances. One such instance is where the record shows the existence of adequate competition (or there is accurate prior cost experience with the product or service) to ensure that an award without discussions will result in a fair and reasonable price, provided that the solicitation advised offerors of the possibility that an award might be made without discussions. Todd Logistics, Inc., B-203808, August 19, 1982, 82-2 CPD 157; Defense Acquisition Regulation § 3-805.1(v) (1976 ed.).

The present solicitation, in the section captioned "Evaluation/Award Factors," specifically provided for the possible award of a contract based on initial offers and without discussions. The Corps determined that the awardee's price was reasonable, since it was approximately \$400,000 less than the government estimate, was only the fifth highest of the prices proposed in the 17 acceptable proposals, and was in a close range with several other

offers. Moreover, as stated above, consistent with the evaluation criteria, the Corps determined that although the awardee did not submit the lowest price, the higher cost was worth the awardee's technical superiority. We therefore believe the circumstances of this procurement meet the exception to the general requirement for discussions and an opportunity to submit best and final offers. See Todd Logistics, Inc., supra.

The protester's final complaint is that the awardee's proposal stated that the firm had gross fees of more than \$2,500,000 per year, whereas the applicable small business size standard for this set-aside imposes a limit of \$2,000,000 per year. In response, the Corps points out that the RFP specifically stated that a small business concern for purposes of this procurement is a concern that, among other things, "had average annual receipts for the preceding 3 fiscal years not exceeding \$7,500,000." In any case, our Office does not review protests concerning a firm's size status because the Small Business Administration has statutory authority, under 15 U.S.C. § 637(b)(6), (1982), to make conclusive size status determinations for federal procurements. See JLS Servco, B-208655.3, March 2, 1983, 83-1 CPD 219. We therefore dismiss this protest ground.

The protest is denied in part and dismissed in part.

for 
Comptroller General
of the United States