

DECISION

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

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FILE: B-183965

DATE: September 16, 1975

MATTER OF: Camil Associates, Inc.

DIGEST:

1. Protest alleging unfair consideration of proposal on basis that investigation of protester for rumored improprieties in connection with procurement (ultimately disproved) unduly prejudiced rating panel's evaluation of protester's technical proposal is not supported where record of evaluation indicates proposal was fairly and honestly considered and protester's exclusion from competitive range was based upon proper exercise of administrative discretion.
2. Where agency failed to comply with procedural requirement of FPR in making award after notice of protests, no consideration by GAO is required since validity of award was not thereby affected and agency has taken remedial action to preclude recurrence.

Camil Associates, Inc. (Camil), protests the award under request for proposals (RFP) No. MA/OPER 7501, issued December 19, 1974, by the Department of Labor, Manpower Administration, Office of Policy Evaluation and Research, for a study on the Job Search and Relocation Assistance Pilot Project. Camil's principal contention is that unfair prejudice resulting from an investigation of certain alleged improprieties involving Camil in connection with this procurement denied the protester fair consideration of its proposal.

The record shows that consideration of all proposals was initiated during the week of February 17, 1975, by an evaluation panel comprised of five members and a chairperson. On February 20, 1975, an indication of possible improprieties in the handling of the procurement came to the attention of the Office of Manpower Research and Development (OMRD) staff based on certain rumors to the effect that the award was "rigged" for Camil. The Director of OMRD thereafter decided to request an investigation by the Office of Investigation and Compliance (OIC) because of the specific and substantive nature of the reported rumors. The specific allegations were: (1) that Camil had possession of the RFP two weeks

before its publication; (2) that the RFP contained elements of a report prepared by Decision Making Information (DMI), a potential subcontractor to Camil; and (3) that Camil had the project "sewed up." The investigation occupied the first three weeks of March 1975, and no evidence was found to support the allegations.

The rating panel, which had been disbanded during the investigation, was reconvened on March 25, 1975, to continue evaluation of the proposals. On April 7, 1975, a new chairperson was named for the panel because it was felt by OIC that the original chairperson's knowledge of the details and background of the investigation might unconsciously influence her rating of the proposals. The remaining panel members were felt to have so little knowledge of this issue that it could not reasonably be expected to influence their ratings. The panel report was submitted on May 8, 1975, and it ranked Camil sixth highest of the 20 proposals received. Thereafter negotiations were conducted only with the top five proposers.

The description of the reviewing process shows that each of the panel members reviewed and rated all of the 20 proposals on the basis of the technical considerations described in the RFP. The individual ratings were then collated and the panel report and total technical ratings synthesized. Cost analyses and ratings were performed by CSS. Final ratings for the five firms in the competitive range and Camil were:

Summary Ratings

<u>Firms</u>	<u>Ratings</u>		
	<u>Tech. Points</u>	<u>Cost Points</u>	<u>Total</u>
1. Westat, Inc.	576	104	680
2. North Star Research and Development	559	114	673
3. Contract Research Corporation	547	97	644
4. Research Triangle Institute	538	105	643
5. Kirschner Associates	540	102	642
6. Camil Associates, Inc.	509	93	602

Rating criteria and their respective weights were as follows:

<u>Criteria</u>	<u>Weight</u>	<u>Points</u>
A. Proposer's collective experience as it relates to the work required by the proposed contract	5	0-40
B. Education and experience of proposer's key personnel as they relate to the work required by the proposed project	4	0-40
C. Proposer's resources and facilities	2	0-40
D. Planned approach in accomplishing the proposed work and its indication of the proposer's understanding of the work required	5	0-40
E. Estimated cost	3	0-40

Camil was highly rated with respect to the first three criteria, as were all the five firms within the competitive range, but was downgraded for deficiencies in its planned approach to the work, criterion "D", and to a lesser extent on the cost criterion. The protester does not argue the technical merit of its proposal as such, but alleges the existence of certain inconsistencies in the evaluation process which it feels supports an inference of bias. The final ratings combined with the narrative summaries of the rating panel provide a sufficient basis for us to examine these contentions. We will address each of the asserted discrepancies in turn.

(1) The protester alleges that although its own proposal was down-rated for an overly general approach to process evaluation, that of the highest rated proposer, Westat, was deficient in the same area. The basis for this assertion is a statement by the OMRD Director that "The process evaluation part of the [Westat] proposal should be strengthened to include a broader approach to this task."

The quoted statement refers to the strengthening of a proposal already found acceptable with respect to specificity by the rating panel, whereas the panel's narrative explicitly cites the lack of specificity in the protester's proposal as the principal reason for down-rating. We note incidentally that the narratives indicate an increasing lack of specificity in proposals taken in descending order of rating. We find no evidence of an inconsistent application of the requirement for specificity in proposals.

(2) The protester asserts that the Department of Labor's explanation of the down-rating of the statistical portion (program impact evaluation) of its proposal is controverted by a statement from OPER's statistical expert which is strongly supportive of Camil's statistical approach and compares it favorably with that of the highest rated proposer. It appears to us that Camil has misconstrued the objections to the statistical portion of its proposal. The rating panel's objections went not to the technical or mathematical merits of the experiment proposed, upon which the expert apparently commented, but to the underlying premises of the model which appear to favor a market-oriented approach over the more individual-oriented qualitative assessment the agency was seeking. The panel's narrative summaries support this interpretation. We see no substantial inconsistency between the panel's rating and the assessment of the technical merit of Camil's model under these conditions.

(3) The protester asserts that despite the strong emphasis in the RFP and work requirements on interviewing, the panel report appears to ignore this "pivotal issue." However, the record shows that a data collection capability was considered by the panel and that in addition to interviewing, alternatives such as mail and telephone follow-up were also considered in evaluating the data collection effort. We find no evidence that Camil was prejudiced by the panel's consideration of this factor.

(4) Camil also questions the validity of the cost evaluation of its proposal, contending that it may have been substantially downgraded without consideration of the extent of work and level of manhours it proposed for the price quoted. It is clear from the record that although Camil's estimated cost was higher than the average its numerical rating on this criterion did not change the ranking of its proposal in relation to the other proposals as the spread between Camil and the next highest ranked proposal was 31 points without consideration of the cost criterion and 40 points with cost considered.

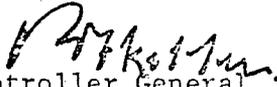
(5) Finally, Camil questions the wisdom of replacing only the chairperson subsequent to completion of the investigation, contending that the panel members' knowledge of the fact that Camil was under investigation rendered an objective appraisal impossible. While it cannot be denied that this is a possibility, we are unable to conclude based upon the record of the evaluation as related above that Camil's proposal received other than fair and honest consideration.

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Since the determination of what constitutes a "competitive range," particularly with regard to technical proposals, is primarily a matter of procurement discretion which we will not question where, as here, we can discern no abuse of such discretion, Essex Corporation, B-182595, April 23, 1975, we can perceive no basis to object to the agency's determination not to negotiate with Camil.

Accordingly, the protest is denied.

We note that an award of the contract was made to Westat on May 30, 1975, after receipt of informal advice of Camil's protest on May 22, 1975, and without following the procedure prescribed in Federal Procurement Regulations § 1-2.407-8(b)(3) (1970 ed.). The agency has advised us that the contracting officer "forgot" about the pending protest and has assured us that the matter has been brought to the attention of the procuring activity and no repetition is expected. Since the agency has recognized and taken remedial action with respect to this matter, and the validity of the award is not thereby affected, it requires no further consideration by our Office.


Deputy Comptroller General
of the United States