

BEFORE THE  
MARYLAND STATE BOARD OF CONTRACT APPEALS

Appeal of FOUR SEAS AND SEVEN  
WINDS TRAVEL, INC. )

Under Department of Budget and  
Fiscal Planning RFP )  
DBFP-MAA-88-001 )

Docket No. MSBCA 1372

August 18, 1988

APPEARANCE FOR APPELLANT:

John H. Morris, Jr Esq.  
Venable, Baetjer and Howard  
Baltimore, MD

APPEARANCE FOR RESPONDENT:

William A. Kahn  
Joseph Gill  
Gail Cohn  
Assistant Attorneys General  
Baltimore, MD

APPEARANCE FOR INTERESTED PARTY:

Dan E. Lee, Esq.  
Ask Mr. Foster Travel Service  
Minneapolis, Minnesota

Competitive Negotiation - Protest - Timeliness - COMAR 21.05.03.06 provides that unsuccessful offerors in a procurement by competitive negotiation are entitled to a debriefing, provided the request for debriefing is made within 30 days of the contract award. Therefore, under the facts of this case, the seven day protest period provided for in COMAR 21.10.02.03.B did not begin to run until Appellant's debriefing where it had the opportunity to gain the necessary knowledge on which to base a protest.

Competitive Negotiation - Evaluation of Proposals - "most advantageous to the State" - Where §11-111(e), State Finance and Procurement Article, provides for award of a contract under a competitive negotiated procurement to the responsible offeror whose proposal is "most advantageous to the State, considering price and the other evaluation factors set forth in the request for proposals," evaluators may only utilize those evaluation factors and criteria provided for in the request for proposals and they may not broaden the meaning of "most advantageous to the State" by consideration of other circumstances that may reflect State advantage, including statutorily based policies favoring resident firms and minority business.

Maryland Resident Firm Advantage - Where the evidence reflects that a nonresident offeror's home state does not provide a preference for its resident firms in the award of contracts there is likewise no preference provided in Maryland for Maryland resident firms under the provisions of §11-145, State Finance and Procurement Article, which is a reciprocal type

statute providing only for an identical advantage given to a nonresident firm in its home state.

Procurement From Minority Businesses - Section 11-148(b)(1), State Finance and Procurement Article, which provides for "designated departments" to attempt to achieve at least 10 percent of the total dollar value of their procurements from certified minority business enterprises, does not apply to this procurement of travel services by the Department of Budget and Fiscal Planning since the statute applies to that Department only for procurements of mechanical or electronic information processing equipment and associated services.

Procurement from Minority Businesses - Under the facts of this case the State complied with Section 11-148(b)(3), State Finance and Procurement Article, which does not provide a preference or advantage, but does provide that procurement agencies are required to structure their procedures for procurements to encourage participation by certified minority business enterprises and to attempt to provide them a fair share of State contracts.

Competitive Negotiation - Evaluation of Proposals - In evaluating the relative desirability and adequacy of proposals in a procurement by competitive negotiation, evaluators are required to exercise business and technical judgment which necessarily is subjective. This is a discretionary action which will not be overturned unless shown to be unreasonable, an arbitrary abuse of discretion, or a violation of law or regulation. Under the facts of this case the Appellant has not met its burden or proof to show that the action of the evaluators should be overturned.

#### OPINION BY MR. LEVY

This is an appeal from the final decision issued by the department of Budget and Fiscal Planning procurement officer denying Appellant's protest as untimely as well as on its merits.

#### Findings of Fact

1. The Department of Budget and fiscal Planning (DBFP) issued Request For Proposals (RFP), DBFP-MAA-88-001 on October 15, 1987 to provide travel services for state employees. The RFP was mailed to eighty firms and appeared in the Maryland Register on October 23, 1987. Proposals were due by November 25, 1987.

2. Ms. Susan Valvo (Valvo), the State Travel Manager, was responsible for issuing the RFP. During her preparation of the RFP she contacted the Minority Business Enterprise Certification Council which gave her a list

of nine minority owned travel firms. Appellant appeared on the list but was not listed as a certified minority firm.

3. The RFP provides for an exclusive two year contract, with an option to renew for an additional two years, to provide travel services primarily to units of the Executive Branch of the state government. Other branches of the government have the option of using these services. RFP, Section III A (1). The travel services required include reserving and delivering tickets for common carriers; renting vehicles; international travel services, including assistance in obtaining passports and visas; reserving lodging; preparing traveler's invoices, itineraries and management reports; coordinating lodging with transportation arrangements and scheduled meetings and seminars; and providing information programs for agencies and its travelers. RFP, Section III B (1)

4. Section III, C of the RFP requires the offeror to have the following capabilities, in part:

- A. All necessary furnishings, office equipment, computer systems, communications services, and related items necessary to conduct operations to fulfill the contract requirements.
- B. A full-time site manager and other personnel at each location who are experienced in providing all phases of volume travel services including the ability to operate automated reservation and ticketing equipment.
- C. Nine hours of office service, 8:00 a.m. to 5:00 p.m., Monday through Friday, as well as 24 hour toll-free telephone access.
- D. To be affiliated with the Airline Reporting Corporation (ARC), the International Air Travel Agent Network (IATAN), and AMTRAK as

well as other rail and ship carriers and professional travel organizations.

- E. Acceptable bank credit and financial references demonstrating stability and financial capacity to perform the services, specifically as follows:

The offeror must have sufficient financial capacity, working capital, and other financial, technical and management resources to perform the contract without assistance from the State. Although it is anticipated that most travel procurement will be through credit company arrangements, offerors should understand that State agencies normally reimburse contractors within thirty (30) calendar days of receipt of billing. The offeror must demonstrate that it has adequate capital and sufficient cash flow to carry its State Accounts Receivable for thirty (30) calendar days.

To document this capacity, the offeror shall provide a financial plan showing cash flow and how the firm will carry the State receivables to undertake the project. Each offeror shall provide a current independent financial statement certified as true and accurate by a certified public accountant demonstrating the firm's capability pursuant to the above. If a certified financial statement is not available the offeror shall provide other evidence sufficient to demonstrate its financial capacity, such as annual reports, bank letters of credit, a bond, etc. The confidentiality of any financial information which the offeror designates as proprietary will be determined according to Section VLB. of this RFP. RFP, Section III C (8).

- F. A system and procedures for self-monitoring to identify and correct deficiencies in the quality of the services provided.

5. The proposed contract under the RFP contemplates that most of the State's travel expenses will be charged directly to and paid for by a State agency. Any costs paid by the contractor are to be repaid by the State on a cost-reimbursement no fee basis. Therefore, the contractor's compensation under the contract is to be in the form of commissions paid to it by the carriers, hotels, and other providers of related travel services to the State. RFP Section IV. In addition to the required technical proposal each offeror

was invited, though not required, to submit a price proposal in the form of a rebate to be paid back to the State or shared commission proposal. The RFP required that this shared commission should be expressed as a percentage of total domestic air dollar volume, minus tax. RFP, Appendix A, Amendment Nos. 1 and 2.

6. Appendix C of the RFP provides for the evaluation criteria for the technical proposals as follows:

1. Work Objectives and Statement of the Problem
2. Project Management
3. Equipment Capability
4. Personnel Qualifications
5. Offeror's Qualifications
6. Business Affiliations
7. Financial Capability

While there was no numerical value breakdown provided in the RFP for these separate items, Ms. Valvo developed a scoring scale for the technical proposals that included a maximum of 400 points. Appendix B of the RFP provides for the proposal scoring criteria. Technical proposals were to be evaluated without consideration of the rebate proposals. In order to have your rebate proposal considered the technical proposal had to obtain at least 85% (340 points) of the maximum score of 400 points in the preliminary and final technical proposal evaluation. If you qualified to have your rebate proposal considered the overall scoring was to be based on the following formula, allowing 60% for technical proposal and 40% for rebate proposal.

$$60 \times \frac{\text{Number of Technical Rating Points for Individual Proposal}}{\text{Number of Technical Rating Points for Highest Rated Proposal}} = (\text{Technical})$$
$$40 \times \frac{\text{Individual offer}}{\text{Highest offer}} = Y (\text{rebate score})$$

(Score)

The technical score and rebate proposal score were to be added and the offerors ranked. If no rebate offer were submitted, the total score would equal the technical score. Offerors were also advised that "tiered shared commission proposals will be evaluated as a zero (0%) percentage rebate."

RFP, Appendix A.

7. The evaluation committee consisted of Ms. Valvo, Mr. John DuChesz, DBFP's Chief of Management Analysis and Audits and the designated procurement officer, Mr. Mark Reger, Deputy State Treasurer, and Mr. Charles Stevenson, Chief Financial Advisor, Office of the Governor.

8. Eleven proposals were received by the due date. The preliminary technical evaluation of the eleven had the following results:

	<u>Technical Points</u>
Thomas Cook	373
Ask Mister Foster Travel Services (Foster)	371.5
Appellant	356.75
Omega	353
Van Slycke & Reeside	349.25
Northwestern Business	292.75
Travel Resources	278.75
TV Travel	276
Corporate Travel Concepts	243
Corporate Travel Consultants/ Universal	198
US Travel/ITA	141.25

9. The top five offerors who preliminarily qualified as having met the 85% threshold had their rebate proposals opened. The remaining six had theirs returned unopened. The rebates offered by the five offerors were:

	<u>Percent of total domestic air fare minus taxes</u>
Thomas Cook	0.6
Foster	2.5
Appellant	3.067
Omega	3.72
Van Slycke & Reeside	1.0

10. Before final evaluations the committee conducted interviews with each of the five offerors and made site visits. Prior to the interview each offeror was sent a letter outlining questions and areas of concern to be addressed. The letter to Appellant (Agency Report, Exhibit 9), among other things, raised the issue of the financial information in Appellant's proposal:

Because of the recent losses suggested by your unaudited financial statement, the Selection Committee would like more objective evidence of your financial stability, such as a review of your unaudited statement if available, or a letter from Maryland National Bank indicating the balance on your line of credit. Any other assurances of your financial stability would be appreciated.

11. Following the interviews and site visits the committee made their final evaluations of the five technical proposals. The results, compared with the preliminary scores, were as follows:

	<u>Preliminary Technical Points</u>	<u>Final Technical Points</u>
Foster	371.5	375.0
Thomas Cook	373	360.5
Appellant	356.75	306.5
Omega	353	297.25
Van Slycke and Reeside	349.25	284.5

Based on the final technical evaluations only the rebate proposals of Foster and Thomas Cook were considered since only their final technical scores were above the 85% threshold. The procurement officer determined that award should be made to Foster based on the formula in the RFP.

12. Appellant was advised by a letter dated January 12, 1988 that award was going to be made to Foster. The letter also advised Appellant that it could request a debriefing by contacting Ms. Valvo. Appellant received this letter on January 14, 1988.

13. Mr. James H. McLean, Appellant's President and Chief Executive Officer, did not speak to Ms. Valvo until January 19, 1988 since he and his wife were leaving town on the day the letter from the procurement officer arrived. It was during this phone conversation that he was debriefed and told why Appellant's proposal had been re-evaluated down, primarily because of the committee's concern with Appellant's financial capacity.

14. Appellant filed its protest with the procurement officer three days later on January 22, 1988. In its protest the Appellant raised the following issues:

1. Appellant made a general statement that the selection process was discriminatory toward it as well as the taxpayers of Maryland. Appellant seemed to base this statement on the allegations that the apparent awardee, Foster, is an out-of-state company and is not set up to effectively and efficiently provide travel services to all the State locations.
2. Appellant agreed to refund a larger commission sharing percentage to the State than Foster.
3. Appellant's belief that it is strong financially and that its downgrading by the evaluators because of their concerns of this were unfounded.

15. The procurement officer issued his final decision on February 1, 1988 denying Appellant's protest. He determined that the protest was untimely pursuant to COMAR 21.10.02.03(B) because it was filed on the eighth day following receipt of the letter, when "the basis for a protest was known." The procurement officer also denied the protest on its merits.

16. The final decision was reissued by the procurement officer on March 9,



1988 in order to correct a technical procedural deficiency. The Appellant filed a timely amended Notice of Appeal with this Board on March 21, 1988. The appeal raised the following issues:

1. Appellant believes its technical proposal scoring was inconsistent with the requirements of the RFP since its score was inappropriately reduced because of concerns about its financial strength that had no factual basis.
2. Foster is a foreign corporation that is not set up to provide the range of services required by the RFP at all of the State locations.
3. Foster's proposal is not the most advantageous to the State since Appellant offered the State a substantially larger rebate on commissions.
4. Foster's selection was also not the most advantageous from the standpoint of policies statutorily enacted, in other procurement contexts, reflecting a preference for Maryland firms, §11-145, State Fin. and Procurement Art., and encouraging contracts with minority firms, §11-148 State Fin. and Procurement Art.

Appellant did not address the issue of the timeliness of its protest in its Notice of Appeal.

#### DECISION

The State raises as an initial issue the untimeliness of Appellant's protest. The procurement officer in his February 1, 1988 final decision stated that "the bid protest has not been submitted within the seven day period required by COMAR 21.10.02.03.B and is therefore untimely and may not be considered." In the State's Agency Report filed with this Board it also

asserts that two issues raised by Appellant "are untimely because the challenges are based upon alleged improprieties in the solicitation and were not raised prior to the closing date for receipt of initial proposals as required by COMAR 21.10.02.03.A." These two issues are Appellant's claim that Foster is an out-of-state company and the State's over concern for Appellant's financial capabilities. Appellant's counsel, in his March 23, 1988 response to the State's Agency Report, argues that the State has mischaracterized these two protest issues. He alleges that these two issues do not concern the propriety of the solicitation but instead go to "the manner in which the evaluators of the proposals applied the selection criteria under the solicitation to reach their determination in favor of [Foster ]"

We concur with Appellant in this argument. Appellant has not complained that there was an absence of a preference for Maryland businesses in the RFP but rather argues that its proposal would have been more advantageous to the State than Foster's because as a Maryland corporation it offers certain benefits that Foster cannot. Likewise Appellant's main concern with the second issue is the manner in which its financial capability was evaluated. While some of the testimony at the hearing could have been interpreted to question the need for placing so much concern on an offeror's financial position, it is clear that the real thrust of Appellant's argument questions its evaluation. For purposes of the State's timeliness argument we determine that it was not necessary to raise these two issues prior to the closing date for receipt of initial proposals as required by COMAR 21.10.02.03.A.

The State next argues that since it advised Appellant by letter dated January 12, 1988, and received by Appellant on January 14, 1988, that Foster was to be awarded the contract, then Appellant should have filed its protest within seven days pursuant to COMAR 21.10.02.03.B. Appellant filed its

protest on the eighth day, January 22, 1988, therefore, the State argues it is untimely. We disagree and find that the protest was filed timely pursuant to the facts of this case.

COMAR 21.05.03.06 provides that unsuccessful offerors in procurements by competitive negotiation shall be entitled to a debriefing, as follows:

A. When a contract is awarded on some basis other than price, unsuccessful offerors shall be debriefed upon their written request provided the request is made within 30 days after contract award.<sup>1</sup> Debriefings shall be provided at the earliest feasible time after contract award. They shall be conducted by a procurement official familiar with the rationale for the selection decision and contract award.

B. Information given offerors shall be factual and consistent with the evaluation. Offerors shall be informed of the areas in which their technical or management proposals were weak or deficient and furnished the basis for the selection decision and contract award.

C. A summary of the debriefing shall be made a part of the contract file.

And indeed the procurement officer in his January 12, 1988 letter advised Appellant, "[i]f you wish a debriefing regarding this process, please call Susan Valvo..." No other information was provided to Appellant in this letter other than the State's intent to award the contract to Foster. The State would necessarily argue that based on this January 12 letter it was incumbent upon Appellant to arrange a debriefing, gather and evaluate its information and file its protest within seven days since the letter put Appellant on notice that it was not going to be awarded the contract. However, we disagree that this is the appropriate approach in competitive negotiated procurements.

In procurements by competitive sealed bid all bidders have the opportunity to be made aware at the bid opening of what is wrong with all bids or if the procurement officer made some error in conducting the bid opening.

---

<sup>1</sup>"Award" is defined in COMAR 21.01.02.06 as "the decision by a procurement agency to appoint or present a purchase agreement or contract to a vendor."

There "the basis for protest is known or should have been known" (COMAR 21.10.02.03.B.) at the time of bid opening. In procurements by competitive negotiation by design there is no public opening and an offeror is not made aware until a debriefing of how or why evaluators scored its proposal.<sup>2</sup> Until an offeror knows or at least has the opportunity to find out the possible basis of a protest it is unreasonable to hold him to the seven day protest period as is done in a competitively sealed bid procurement. See Resdel Engineering Corporation, Comp. Gen. Dec. No. B-191797, June 29, 1978, 78-1 CPD ¶465.

The State argues that all of the issues raised by Appellant in its protest were known to it prior to the debriefing therefore the time for filing a protest should not be tolled. The record simply does not support the State's assertion, particularly Appellant's downgrading in the final evaluation of its financial position. All the issues raised by Appellant deal with the manner of the evaluation. Appellant could not have known about the specifics of the evaluation of its proposal until the debriefing. Therefore, we hold that Appellant was entitled to its debriefing within 30 days of notice of intent to award. Since it was not clearly shown that Appellant's grounds for protest were known by it prior to the debriefing on January 19, the period within which to file a protest did not begin to run until that time when Appellant had the opportunity to gain the necessary knowledge on which to base a protest. Since the protest was filed three days after the debriefing it was timely and we will consider the merits of the appeal.

While the State suggests in its Agency Report, at p. 14, that the issue of the selection process being "discriminatory" raised by Appellant in its protest may have been abandoned in its appeal, Appellant's attorney points

---

<sup>2</sup>Indeed §11-111d(4), State Finance and Procurement Article provides "[T]he procurement agency may not disclose to a competing offeror any information derived from a proposal of, or from discussions with, another competing offeror."

out in his March 23, 1988 response, at p. 3, that "[r]ather than abandon the claim that the process was 'discriminatory', this appeal clarifies the allegation to relate to the arbitrary and groundless scoring of the respective proposals of [Appellant] and [Foster] so as to result in the reduction in score of the former proposal and the determination that the latter is the most advantageous to the State." He succinctly and clearly points out that the appeal really raises as an issue

"the question of whether the award given to [Foster] is the most advantageous to the State under §11-111(e) of the State Finance and Procurement Article. The issue additionally raised is whether the determination of advantage under §11-111(e) is limited to strict application of the provision of the solicitation, or whether the understanding of advantage may be broadened by the consideration of other circumstances that also reflect State advantage, including statutorily-based policies favoring resident firms and minority businesses."

While these two issues were not presented in this form in the Appellant's protest, Mr. Morris' statement puts them into appropriate perspective for purposes of the appeal.

Section 11-111(e), State Finance and Procurement Article, provides for the award of a contract under competitive negotiated procurement as follows:

(e) Award of contract. - Except for real property leases, this subsection applies to all contracts to be awarded by competitive negotiation. After all approvals required by law or regulation have been obtained, the contract shall be awarded to the responsible offeror whose proposal or best and final offer is determined to be the most advantageous to the State, considering price and the other evaluation factors set forth in the request for proposals. (Underscoring added)

And COMAR 21.05.03.03.A. provides the following with regard to evaluation of proposals:

A. Evaluation. - The evaluation shall be based on the evaluation factors set forth in the request for proposals and developed from both the work statement and price. Numerical rating systems may be used but are not required. Factors not specified in the request for proposals may not be considered. Evaluations shall be conducted by a minimum

of two individuals, consisting of the procurement officer and the agency head or his designee. (Underscoring added)

This Board has consistently held that in an evaluation of a proposal under competitive negotiation the evaluators may only utilize those evaluation factors and criteria which have been set out in the RFP. See Mid-Atlantic Vision Service Plan, Inc., MSBCA 1368, (Feb. 18, 1988); AGS Genasys Corporation, MSBCA 1325, 2 MSBCA ¶158 (1987). The simple answer therefore to Appellant's inquiry above is that the determination of "advantage" under §11-111(e) is limited to the provisions of the solicitation and the evaluation factors set out in the RFP. The understanding of "advantage" in §11-111(e) may not be broadened by the consideration of other "circumstances" that may reflect State advantage, including statutorily-based policies favoring resident firms and minority businesses. To consider factors other than those stated in the RFP puts all parties at a disadvantage since no one would know upon what their proposals were being evaluated until after the fact. By utilizing only those factors provided for in the RFP all parties compete evenly and fairly.

As noted Appellant has pointed to statutorily-based policies favoring resident firms and minority businesses that it suggests should have been considered by the evaluators. While we have held above that only factors listed in the RFP should be considered and that the RFP did not provide for these policies we will briefly explain how these policies are administered by the State in its procurement programs.

Section 11-145, State Finance and Procurement Article, does give an advantage to Maryland firms over nonresident firms in awarding contracts by competitive bidding but only if the nonresident firm is located in a State

which gives an advantage to its resident businesses.<sup>3</sup> The Maryland law allows the procurement agency to give the lowest responsive and responsible Maryland firm an identical advantage over the nonresident firm. This is known as a reciprocal type statute and does not give an automatic advantage to Maryland firms. In any event we note that the record reflects no assertion that Foster's home state provides such a preference for its resident firms.

Purchases by the State from minority businesses are addressed in §11-148, State Finance and Procurement Article. This section provides for "designated departments" to attempt to achieve a minimum of 10 percent of the total dollar value of their procurements from certified minority business enterprises, §11-148(b)(1). "Designated Department" is defined to include the Department of Budget and Fiscal Planning but only "for procurements specified under Title 3, Subtitle 4 of this article." Title 3, Subtitle 4 of the Procurement Article deals with "information processing" and specifically §3-405 gives the department the authority over the procurement of mechanical or electronic information processing equipment and associated services. Therefore the subject procurement is not covered by §11-148(b)(1).

Under §11-148(b)(3) procurement agencies are required to structure their procedures for procurements "to encourage participation in the process by certified minority business enterprises and to attempt to provide to certified minority business enterprises a fair share of State contracts." But this section gives no preference or advantage to minority businesses. DBFP did "encourage participation" by minority firms. For example the RFP at Section V.L. states "[m]inority business enterprises are encouraged to respond to this solicitation notice" and at Appendix D. d., it is noted that "[t]he

---

<sup>3</sup>The State asserts that this preference is only applicable to procurements by competitive sealed bid. There is no need to address that issue in this opinion.

contractor will provide the maximum practicable opportunity to minority and small business concerns to participate in the performance of this award." Additionally, DBFP contacted the Minority Business Enterprise Certification Council which provided a list of nine minority owned travel firms [Finding of Fact No. 2] who were all sent a copy of the RFP. We believe that DBFP did everything that §11-148 required. To have provided Appellant a preference in its evaluation because it was a minority firm would have been contrary to the law and an unjust advantage.<sup>4</sup> See Colonial Detective Agency, Inc., MSBCA 1354, 2 MSBCA ¶166 (1987).

Two of the remaining issues raised by Appellant question the method used in the evaluation of the proposals. With regard to the evaluation of proposals by evaluators this Board has long held that:

In evaluating the relative desirability and adequacy of proposals, a procurement officer is required to exercise business and technical judgment. This is a discretionary action which may not be disturbed or superseded in the absence of a clear showing of unreasonableness, an arbitrary abuse of discretion, or a violation of law or regulations. See Solon Automated Services Inc., MSBCA 1046 (January 20, 1982) at p. 22; compare Riggins & Williamson Machine Co., Inc., Comp. Gen. Dec. B-182801, 75-1 CPD paragraph 168 at p. 10; Decision Sciences Corporation, Comp. Gen. Dec. B-182558, 75-1 CPD paragraph 175 at p. 6.

Beilers Crop Service, MSBCA 1066, 1 MICPEL ¶25 (Sep. 16, 1982). We have also said that ". . . the review of these technical factors [by the evaluators] requires the exercise of judgment which necessarily is subjective." B. Paul Blaine Associates, Inc., MSBCA 1123, 1 MSBCA ¶58 (1983) at p. 13. See also Mid-Atlantic Vision Service Plan, Inc., MSBCA 1368 (Feb. 18, 1988).

Applying these principles to the evaluation at hand we find that Appellant has

---

<sup>4</sup>We take notice of the minority business preference provided for in COMAR 21.05.03.03.C(6) and 21.05.02.14.B in the event of tie bids or of offers in which the evaluation of technical and price proposals are essentially equal. Neither of those situations are present in this case.



not met its burden of proof to establish that the action of the evaluators was unreasonable, an arbitrary abuse of discretion, or a violation of law or regulation.

First, Appellant complains that Foster, as a foreign corporation, is not set up to provide the range of services required by the RFP at all of the State locations specified. This is no more than an attack on the evaluators' determination of Foster as a responsible provider of travel services, capable of fulfilling the requirements of the RFP. Appellant just disagrees with this determination but offers no substantive evidence to challenge the evaluators' actions. We agree with the State's view that Appellant's allegation is made with the point of view of an industry participant in head-to-head competition with Foster and the other travel service providers. Agency Report at p. 26. The evaluators appear to have made their determinations based on objective analysis of the proposals and Appellant's allegation lacks any substantive basis.

Second, Appellant complains that its technical proposal scoring is inconsistent with the requirements of the RFP since its score was inappropriately reduced because of concerns about its financial strength that had no factual basis. Here again there is a basic disagreement with the evaluators' determination.

The RFP required the offeror to provide a financial plan showing cash flow and how it will carry the State receivables to undertake the project. The offeror was to provide a current independent financial statement certified by a certified public accountant. If a certified financial statement was not available the offeror was to provide other evidence sufficient to demonstrate its financial capacity. RFP, Sec. III C(8). In response to this requirement Appellant submitted a compilation financial report which is an unaudited

report and does not carry the certification of an accountant. Appellant's report reflected a negative balance of cash in its operating account; that it had a bank note due in excess of its total cash; that it had a substantial amount of assets in corporate travel receivables; that it had a current period loss; and that it only had a relatively small net worth. At its interview when questioned about its financial condition Appellant did produce a letter from Maryland National Bank reflecting a \$2,000,000 line of credit, though it had some restrictions placed on it. It required the bank's commercial loan committee to approve advances over \$500,000 and the outstanding loan could not exceed 75% of Appellant's account's receivable. Appellant also explained that it had recently acquired another agency for cash and that probably was the reason for the negative balance in its operating accounts. Based on all of the information before them, however, we cannot say that the evaluators acted unreasonably, arbitrarily, or in violation of the law or regulations. Further, as noted by the State, even if full credit were given to Appellant for this evaluation factor it still could not meet the required 85% threshold to have its price proposal considered.

Appellant's final argument is that it offered the State a substantially lower rebate on commissions, therefore Foster's proposal is not the most advantageous. However, this argument must fail for obvious reasons. The RFP, Appendix B clearly states that rebate proposals will only be considered from those offerors whose technical proposal evaluation receives a rating of 85% or more of total possible points. Since Appellant's technical score did not pass the threshold, its rebate proposal was to be returned and not considered. We also note, as pointed out by the State in its Agency Report at p. 13, that even if Appellant were allowed to have its rebate proposal considered along with its technical point score, under the formula provided for

scoring in Appendix B Appellant still would have had only the third best total score.

For all of the above reasons, therefore, this appeal is denied.

Dated: August 10, 1986

