

BEFORE THE
MARYLAND STATE BOARD OF CONTRACT APPEALS

Appeal of INFORMATION CONTROL)
SYSTEMS CORPORATION)
Under Department of Human) Docket No. MSBCA 1198
Resources (DHR) Award No.)
OA-DP-12-84-022)

August 29, 1984

Competitive Negotiation - In a competitive negotiation procurement, award is not always made to the responsible bidder offering the lowest price. Instead, award is made to the offeror whose proposal is most advantageous to the State upon consideration of price and the technical evaluation criteria set forth in the request for proposals.

Competitive Negotiation - The decision to make awards on proposals most advantageous to the State based on both price and technical evaluation criteria, as required by the request for proposals, will not be disturbed in the absence of a showing that the procurement officer's actions were unreasonable, an arbitrary abuse of discretion, or a violation of law or regulations.

Competitive Negotiation - The process of evaluating technical proposals in a procurement by competitive negotiation is inherently subjective. Under such circumstances, the procurement officer acted reasonably in awarding contracts based on evaluators' scores which were not markedly inconsistent and were based on the evaluators' exercise of their independent value judgments.

Competitive Negotiation - Bias will not be attributed to procurement officials in the absence of credible evidence showing that Appellant's proposal was downgraded unreasonably.

Competitive Negotiation - Discussions - Negotiation with each offeror is not required where the solicitation apprises offerors that contract award may be made without discussion.

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OPINION BY MR. KETCHEN

This is an appeal from a Department of Human Resources' (DHR) procurement officer's decision denying Appellant's protest of a contract award made pursuant to a competitive negotiation procedure. Appellant maintains that it should have been awarded the contract since it had submitted the lowest priced proposal and is capable of performing the requested services. Appellant also maintains that the evaluation of proposals was arbitrary and capricious since there was a wide disparity in the scoring of proposals and because DHR failed to hold discussions with Appellant in order to clarify its proposal. DHR, however, contends that it properly evaluated the proposals and awarded the contracts based on consideration of price and the technical evaluation factors set forth in the Request for Proposals (RFP).

Findings of Fact

1. DHR issued an RFP dated February 6, 1984 for data processing (keypunch) services to be provided through October 31, 1984.
2. In performing the services required under the RFP, the vendor is to obtain two types of source documents from DHR on a weekly basis. The source documents are employee wage records and absent parent records. The vendor then is to keypunch (key) information from the source documents onto disks which in turn store the information on magnetic tapes supplied by DHR. The vendor is to return the completed tapes to DHR at least once a week with each batch of source documents being keyed during the week received.
3. Section III, Para. A, of the RFP provides that contract awards will be made to not more than three vendors by dividing the two types of key-punch services among the vendors chosen so that the dollar amount of work for the contract period for each vendor is approximately equal.
4. On February 27, 1984, DHR held a vendors conference regarding the RFP. The scope of work was described and the system to be used in evaluating the proposals was fully explained. Appellant did not attend this conference.
5. Eight proposals were received by DHR on March 9, 1984, the date set in the RFP for their receipt.
6. Section IV of the RFP provides that all vendors' proposals will be evaluated by an Evaluation and Selection Committee. The DHR procurement officer appointed four members to this committee based on their familiarity with DHR's operating needs for keypunch services. The makeup of the committee consisted of an operations manager, a control clerk, a programmer, and a keypunch supervisor.
7. In accordance with the requirements of Section IV of the RFP, the committee first determined that all eight proposals received were acceptable and thus subject to a technical and price evaluation.
8. To evaluate the technical proposals, Section IV of the RFP directs the use of the following weighted evaluation factors and attendant subfactors:

Vendor Facilities (60%)

- Number and types of devices available
- Number of personnel and number of shifts
- Downtime records
- Facilities security
- Secure storage of source documents and State tapes

Vendor Experience (40%)

- Personnel experience
- Recent references (experience)
- Methods of delivery and backup
- Accuracy rate proposed

9. Each evaluator on the selection committee individually evaluated each proposal for the vendor facilities factor by assigning a score of one (1) to five (5) for each subfactor. The scores assigned in this manner by each evaluator were totaled. This figure then was multiplied by six to reflect the relatively greater weight of this factor when compared to the vendor experience factor. Since there were five subfactors for vendor facilities, an evaluator's scores for vendor facilities could range from 30 to 150. In actuality, the recorded scores were as follows:

<u>Vendor</u>	<u>Evaluators</u>				<u>Total</u>
	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	
Appalachian					
Computer Service	102	138	126	150	516
Cardware, Inc.	84	126	78	96	384
Essex Data Service	72	114	78	72	336
Data Entry Services	78	102	96	54	330 ¹
Accurate Data, Inc.	78	78	72	84	312
Computer Input					
Services, Inc. (CISI)	96	84	54	78	312
Automated					
Datatron, Inc.	72	54	72	54	252
Appellant ²	42	36	36	30	144

¹Data Entry Services' scores for vendor facilities total 330. However, the summary sheet used by evaluators shows a total of 230. This was due to an arithmetical error.

²The scores for Appellant represent the correct total scores of the individual evaluators for vendor facilities as shown on the selection committee's rating sheet. The scores on the rating sheet for Appellant were incorrectly transferred to a summary sheet. The incorrect scores on the summary sheet used by the committee in making its evaluation are: 72 (Evaluator 1), 42 (Evaluator 2), 36 (Evaluator 3), and 36 (Evaluator 4). Using these scores, the total score for Appellant for vendor facilities was 186.

10. The vendor experience factor, with a weight of 40%, was evaluated using the same scoring system used for the vendor facilities factor. Since there were four subfactors, scores could range from 16 to 80. The evaluators' scores for vendor experience as shown on the committee's rating sheet were as follows:

<u>Proposal</u>	<u>Evaluators</u>				<u>Total</u>
	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	
Appalachian	56	64	60	72	252
Cardware	56	64	52	68	240
Essex	56	64	48	68	236
Accurate Data	52	44	52	52	200
Automated Datatron	48	44	48	48	188
CISI	44	56	40	40	180
Appellant ³	44	32	44	16	136
Data Entry Services	40	20	36	40	136

11. The selection committee combined the scores for vendor facilities and vendor experience and transferred them to a summary sheet resulting in the following technical ranking of proposals:

<u>Vendor</u>	<u>Score</u>
1. Appalachian	768
2. Cardware	622 ⁴
3. Essex	572
4. Accurate Data	512
5. CISI	492
6. Automated Datatron	440
7. Appellant	374 ⁵
8. Data Entry Services	446 ⁶

12. The selection committee next ranked the vendors according to their price proposals from lowest to highest as required by Section IV of the RFP as follows:

³Appellant's scores for each evaluator are those shown on the selection committee's rating sheet. The scores for Appellant were incorrectly transferred to a summary sheet used by the selection committee to rank the proposals. The erroneous scores for each evaluator shown on the summary sheet are: 68 (Evaluator 1), 44 (Evaluator 2), 32 (Evaluator 3), and 44 (Evaluator 4). Using these scores, the total score for Appellant for vendor experience was 188.

⁴Cardware's correct total score was 624.

⁵Had the selection committee used the correct scores for each evaluator as shown on the rating sheet, Appellant's correct total technical score would have been 280. (See Findings of Fact Nos. 9 and 10).

⁶The selection committee ranked Data Entry Services based on an incorrect total technical score of 366 instead of the correct score of 466.

Vendor	Wage Records (Per 1000 Records)	Absent Parent Registry (Per 1000 Records)	Pick-Up Delivery Cost (Per Trip)
Appellant	\$ 42.00	\$42.00	-0-
Accurate Data	45.00	39.00	-0-
Essex	43.50	43.50	-0-
Cardware	47.00	45.75	-0-
Appalachian	57.00	54.00	-0-
CISI	75.00	65.00	-0-
Data Entry	82.50	94.50	\$ 8.00
Automated	125.00	—	35.00

13. Section IV, Para. E, of the RFP required the selection committee to make recommendations for contract award considering both price and technical evaluation factors with moderately greater importance assigned to price. The selection committee performed this function by use of the following formula:

$$\frac{\text{Individual Technical Score}}{\text{Highest Technical Score}} \times 4 + \frac{\text{Lowest Price}}{\text{Individual Vendor's Price}} \times 6 = \text{weighted score}$$

14. The weighted scores derived by combining the technical and price scores resulted in the following final ranking of proposals:

Vendor	Weighted Score
1. Essex	88
2. Cardware	85
3. Appalachian	84
4. Accurate Data	83
5. Appellant	79 ⁷
6. CISI	59
7. Data Entry Services	54
8. Automated Datatron	43

15. Based on the combined scores for technical evaluation and price, awards were made to Cardware, Appalachian, and Accurate Data. Although Essex had the highest ranked proposal, it withdrew its proposal prior to award.

⁷Had the selection committee used the correct scores for each evaluator as shown on the rating sheet, Appellant's weighted score would have been lowered to 75. (See Findings of Fact Nos. 9-11).

16. A debriefing⁸ with DHR procurement officials was held on May 17, 1984 at Appellant's request. Appellant was informed that its proposal may have been downgraded by the evaluators on the principle evaluation factors because its proposal was not clear.

17. By letter dated May 17, 1984 Appellant filed a protest with the DHR procurement officer contending that it was entitled to award of a contract since it submitted the lowest priced proposal.

18. The DHR procurement officer issued a final decision on June 8, 1984 denying Appellant's protest.

19. Appellant filed a timely appeal with this Board on June 27, 1984.

Decision

Appellant initially argues that it should have been awarded a contract because it was capable of performing the contract and had the lowest price. However, this was a procurement by competitive negotiation. In such procurements, as distinguished from procurements by competitive sealed bidding,⁹

⁸Appellant has complained of the inadequacies in the debriefing meeting regarding its proposal. A proper debriefing is of significance to the efficacy of the public policies which underlie Maryland procurement law. If properly conducted, it should serve to make contractors more competitive on future procurements. EDMAC Associates, Inc., Comp. Gen. Dec. B-182613, April 4, 1975, 75-1 CPD ¶206, p. 3. Here, DHR reasonably complied with the debriefing requirements of COMAR 21.05.03.06 by reviewing with Appellant a copy of the selection committee's evaluation indicating the areas in which its proposal was deficient. (Tr. 38). Even if the debriefing had been inadequate, however, this would have had no effect on the legal sufficiency of the contract awards. The Farallones Institute Rural Center, Comp. Gen. Dec. B-211632, November 8, 1983, 83-2 CPD ¶540, p. 6.

⁹In competitive sealed bid procurements contract award is based on the lowest price or the lowest evaluated price. COMAR 21.05.02.13A; Art. 21, Md. Ann. Code, §3-201(g); Johnson Controls, Inc., MSBCA 1155 (September 21, 1983).

contract award is made to the responsible offeror whose proposal is the most advantageous to the State taking into consideration price and the other relevant evaluation factors set forth in the RFP. COMAR 21.05.03.03C(6); Art. 21, Md. Ann. Code, §3-203(f); RFP, Section IV, Para. E. While Appellant had the lowest priced proposal, evaluation of this factor alone did not entitle Appellant to one of the three contracts to be awarded.

DHR determined that Appellant's proposal was not one of the three proposals that was the most advantageous to the State based on both price, for which Appellant received full value, and the technical evaluation. Accordingly, we will not disturb DHR's decision based on the evaluation of the relative merits of the proposals in the absence of a clear showing of unreasonableness, an arbitrary abuse of discretion, or a violation of law or regulations. Beilers Crop Service, MSBCA 1066 (September 16, 1982); B. Paul Blaine, Assoc., Inc., MSBCA 1123 (August 16, 1983); PSI Associates, Inc., Comp. Gen. Dec. B-200839, May 19, 1981, 81-1 CPD ¶382, p. 3.

Appellant maintains that DHR's actions in evaluating the proposals and awarding the contracts were improper. In this regard, Appellant first argues that the wide variation in scoring demonstrates that DHR's actions were arbitrary and capricious. To illustrate this variation, Appellant's President argued that there were disparities between the evaluators' scores on each proposal and wide variations in Appellant's scores and the scores of two of the highest technically ranked proposals, i.e., Essex and Appalachian. (Tr. 27, 44).

In procurements by competitive negotiation, the process of weighing the technical merits is a subjective process which relies on the business and technical judgment of the procurement officer. Beilers Crop Service, supra, p. 6; B. Paul Blaine, supra, p. 13. Although not required, numerical rating systems may be used to assist the procurement officer in his determination. Beilers Crop Service, supra, p. 6.

Appellant complains that the numerical rating system used in this procurement to evaluate technical factors resulted in a relatively wide variance among the evaluators and hence was arbitrary. (Findings of Fact Nos. 9 and 10). However, the scoring here reflected each evaluator's independent value judgment based on his or her background and experience. Further, the evidence in this record does not indicate that the variation shown in the evaluators' scores was markedly inconsistent or reflected other than the normal variation reasonably expected from an inherently subjective scoring process.¹⁰ In this regard, the weighted technical scores for each

¹⁰Appellant argues that it would have received higher scores had its references been checked. DHR's policy is to check all references if any reference is checked. However, DHR did not check any references in this procurement. (Tr. 82). In any event, Appellant was given a score of 3 by three evaluators and a score of 1 by the other evaluator for the experience (references) subfactor. (Exhibit 4, Agency Report). Had Appellant received full value for this subfactor, its total technical score for the vendor experience factor would have increased by 10 points to 146. This would not have affected Appellant's technical ranking, or its overall ranking when price was considered.

evaluator as depicted on the rating sheet clearly demonstrate that the evaluators consistently scored Appellant's proposal lower than the higher ranked proposals. (Findings of Fact Nos. 9 and 10). Under these circumstances, we cannot find either that the procurement officer's exercise of discretion or award of the contracts to the three vendors submitting the highest ranked proposals based on the recommendation of his selection committee was unreasonable.

Appellant next contends that its low scores indicate that the evaluators were biased against Appellant because Appellant never had provided keypunch services for DHR while the other vendors, including the three vendors who were awarded contracts, had performed such services for DHR. This subjective motivation attributed to the evaluators was mere conjecture on Appellant's part. No corroborating evidence in support of this proposition was adduced.¹¹ Under such circumstances, this Board reasonably will not infer that firms such as Appellant's, which had not provided keypunch services to DHR, would receive a low rating for that reason compared to those who had performed such work for DHR under prior contracts. B. Paul Blaine, supra, p. 13. Accordingly, in the absence of any credible evidence showing that the evaluators unreasonably downgraded Appellant's proposal, we cannot find bias here.

Appellant next alleges that DHR should have conducted discussions with Appellant pursuant to Section II, Para. E of the RFP.¹² In a procurement by competitive negotiations, the State has a duty to conduct discussions prior to award in the absence of notice in the solicitation apprising offerors that award may be made without discussions. COMAR 21.05.03.02A(3); Johnson Controls, Inc., MSBCA 1155 (September 21, 1983). However, in this procurement, the RFP gave notice that awards may be made without discussions.¹³ Additionally, Section II, Para. G of the RFP admonished prospective offerors that proposals should provide a straightforward and concise

¹¹DHR offered to make the evaluators in this procurement available for questioning by Appellant at the hearing. However, Appellant did not accept this invitation.

¹²Section II, Para. E provides:

"Vendors who submitted proposals may be required to make individual presentations to State representatives in order to clarify their proposals."

¹³Section II, Para. D provides:

"The State reserves the right to accept or reject any and all proposals, in whole or in part, received as a result of this RFP, or to negotiate with all responsible vendors, in any manner necessary, to serve the best interests of the State of Maryland."

description of the services to be provided to meet the requirements of the RFP. Thus, each vendor had the responsibility of making its proposal as complete as possible.

Finally, we note that the DHR procurement officer awarded the contracts based on the evaluation criteria set forth in the RFP which accorded price a greater weight than the technical factors. We find that in so doing the DHR procurement officer reasonably concluded that the higher ranked proposals, although not lowest in price, were the most advantageous to the State. Compare 52 Comp. Gen. 358 (1972).

For the foregoing reasons, therefore, Appellant's appeal is denied.

description of the subject is provided to meet the requirements of an
bill. This bill would not be considered as making the account an
account in relation

Finally, we note that the bill provides for the retention of
contracts made on the condition that the bill provides for the
provision of a greater weight than the original contract. We note that
to give the bill provision of the contract which is to be made
under the bill, although the bill is to be made under the bill,
the bill provides for the bill.

For the foregoing reasons, we recommend that the bill be passed.