



to be the most advantageous to the State considering price and evaluation factors. Contract awards if any, are subject to appropriate State approvals."

3. Section IV of the RFP provides, in pertinent part, the following evaluation criteria:

"A. Overview

...Proposals from those bidders complying with the mandatory requirements shall be studied in depth and evaluated in accordance with criteria established in this section of the R.F.P.

Cost proposals shall be submitted under separate, sealed cover clearly marked and will not be distributed to the selection committee for evaluation until completion of the technical proposal evaluation.

"B. Technical Evaluation

The selection committee, after determining compliance with all specified mandatory technical and contractual requirements set forth in this R.F.P., shall review the Technical Proposal of each vendor. The assessed competence in each area will be weighed accordingly.

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<u>Evaluation Criteria Elements</u>	<u>Weight</u>
1. <u>Equipment Maintenance and Support</u> Vendor Approach to Providing Maintenance Availability of Spare Parts Response to Equipment Failure Preventive Maintenance Requirements	15%
2. <u>Application Programs</u> Demonstrated Efficiency in Program Analysis and Programming Ability to Meet Delivery Schedules Extent of Price Related Experiences Demonstrated Understanding of the Scope of the Project and Sufficient Resources to Meet Program Needs	15%

**3. Implementation 15%**

Capability of Meeting Delivery Schedules  
Physical Installation Requirements  
Installation Involvement Required of User  
Project Plan and Control

**4. Equipment Reliability 15%**

History of Equipment Performance  
Experience of Other Users

**5. Ease of Operation 20%**

Ability to Perform Basic Operations  
User Training

**6. Hardware/Software Desirables 15%**

Capabilities Which Exceed Mandatory Requirements  
Physical/Environmental Characteristics  
Ability to Meet Expressed Desirables

**7. Administrative 5%**

Clarity and Content of Proposal  
Understanding of the Problem

**"C. Financial Proposal**

The State will evaluate the total system cost on a five-year life cycle. Your plan can consist of any combination of rental/purchase contracts but must specify the following information separately:

1. Five-year hardware pricing plan which may be any one of any combination of lease and purchase arrangements.
2. Delivery, installation, and set-up costs.
3. Five-year maintenance costs for hardware and systems software.
4. Five-year systems software license costs.

5. Applications software design and programming costs.

6. Five-year maintenance costs for application programs.

The offering vendor should also submit pricing data for rental or lease of twelve months, thirty-six months, and sixty months if available. Any possible purchase or purchase options and/or accruals should be explained for any rental or lease plan(s) offered. Any additional options or considerations favorable to the State should be explained (See Appendices 6-15)."

4. A pre-proposal conference was conducted on November 13, 1981 where Appellant first inquired as to the relative weights of the mandatory requirements and the costs. Appellant and the other offerors were informed that the cost proposal would be evaluated separately from the technical proposal and that award would be made to that proposal which comprised the best combination of high technical value and low overall cost.

5. On November 16, 1981, prior to submittal of proposals, Appellant filed a bid protest with the procurement officer claiming that "...the agency has refused to indicate the relative importance of each evaluation factor, including price as provided in 21.05.03.02.A(1), of the State Procurement Regulations."

6. The procurement officer issued a "Decision on Protest" on December 1, 1981 sustaining the Appellant's bid protest. Amendment #1 to the RFP was issued on the same day providing, in pertinent part, as follows:

"Add: Paragraph D (below) to Section IV of the RFP on page 41

"D. Relative Importance of Financial and Technical Evaluation

The selection committee will make recommendations for the award of the contract to the responsible offeror whose proposal is determined to be the most advantageous to the State, considering the financial and the technical evaluation factors set forth in this Request for Proposal, with moderately greater relative importance assigned to the technical evaluation. This indication of relative importance is assigned for the purposes of this procurement only and is not intended as an indication of relative importance of the financial and technical evaluation factors in other State procurements."

7. On December 7, 1981, Appellant filed an appeal with this Board stating that:

"Although, it was agreed to amend the R.F.P. to meet the requirements of 21.05.03.02 A(1), the amendment is a superficial effort to meet the requirement that willfully subverts the intent of the State Procurement Regulations.

"Section 21.05.02.01 B(3) specifically states that the objective measurable criteria to be used shall be set forth in the invitation for bids."

### DECISION

The issue before the Board concerns whether a numerical rating system was required to be employed in the evaluation of proposals under a competitive negotiation procedure. In this regard, Appellant contends that Maryland's procurement regulations specify that an RFP shall include objective measurable criteria, i.e., numerical ratings, to evaluate proposals. Corrections submits that the procurement regulations require only an indication in the RFP of the relative importance of each evaluation factor, including price.

The required content of an RFP is set forth in COMAR 21.05.03.02A<sup>1</sup> as follows:

"...The request for proposals shall be prepared in accordance with COMAR 21.05.02.01 [Invitation for Bids] provided that it shall also include:

- (1) An indication of the relative importance of each evaluation factor, including price.
- (2) A work statement or scope of services.
- (3) A statement that negotiations may be conducted with all responsible offerors. However, if the request for proposals so notifies all offerors, negotiations by the procurement officer need not be conducted:
  - (a) With respect to prices that are fixed by law or regulation, except that consideration shall be given to competitive terms and conditions;
  - (b) If time of delivery or performance does not permit negotiations; or

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<sup>1</sup>8:9 Md. R. S-51 (May 1, 1981).

(c) If it can be demonstrated clearly from the existence of adequate competition or accurate prior cost experience with the particular supply, service, or construction item, that acceptance of an initial offer without negotiation would result in a fair and reasonable price.

(4) A statement of when and how price should be submitted.

(5) A statement that price proposals are irrevocable for 90 days following the closing date for submission of price proposals. However, a procurement officer may reduce the period if he determines it to be in the State's best interest."

(Underscoring added.)

As is apparent from the preceding language, COMAR 21.05.02.01<sup>2</sup> also contains requirements applicable to RFP content. These appear as follows:

**".01 Invitation for Bids.**

A. Use. The invitation for bids is used to initiate a competitive sealed bid procurement.

B. Content. The invitation for bids shall include the following:

(1) Instructions and information to bidders concerning the bid submission requirements, including the time and date set for receipt of the bids and the address where bids are to be delivered;

(2) The purchase description, delivery or performance schedule, and any special instructions necessary; and

(3) Whether award shall be made on the basis of the lowest bid price or the lowest evaluated bid price,

<sup>2</sup>8:9 Md. R. S-43 (May 1, 1981).

whichever is applicable. If the latter basis is used, the objective measurable criteria to be used shall be set forth in the invitation for bids.

- C. Acknowledgement of Amendments. The invitation for bids shall require the acknowledgement of the receipt of all amendments, addenda, and changes issued."

(Underscoring added.)

The initial question for us to resolve therefore concerns whether the language contained in COMAR 21.05.02.01B(3) above, concerning the mandatory statement of objective measurable criteria, was intended to be applicable to both competitive bid and competitive negotiation procurements.

There are, without question, certain requirements which are common to both and IFB<sup>3</sup> and an RFP.<sup>4</sup> Those requirements are set forth, hereinabove, under COMAR 21.05.02.01B(1) and (2). However, the requirement contained in COMAR 21.05.02.01B(3), concerning the statement of objective measurable criteria, expressly is applicable only where a contract award is to be made on the basis of the lowest evaluated bid price. Since the award of a contract on this basis is made only under competitive sealed bid procedures, we conclude that COMAR 21.05.02.01B(3) was not intended to be applicable to competitive negotiated procurements. See COMAR 21.05.01.02B(1).<sup>5</sup>

We next consider whether a numerical rating system is required in an RFP to indicate "...the relative importance of each evaluation factor, including price." See

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<sup>3</sup>An IFB means "...any document, whether attached or incorporated by reference, used for soliciting bids under procurement by competitive sealed bidding and small procurement procedures including requests for quotations." COMAR 21.01.02.37 (8:9 Md. R. S-10 (May 1, 1981)).

<sup>4</sup>An RFP means "...any document, whether attached or incorporated by reference, used for soliciting proposals under procurement by competitive negotiations, noncompetitive negotiations, multi-step and small procurement procedures." COMAR 21.01.02.57 (8:9 Md. R. S-11 (May 1, 1981))

<sup>5</sup>This provision provides, in pertinent part, that:  
"Contracts in excess of \$7,500 shall be awarded by competitive sealed bidding unless the procurement officer, with the approval of the agency head, determines that:

- (1) Specifications cannot be prepared that permit an award on the basis of either the lowest bid price or the lowest evaluated bid price."

See 8:9 Md. R. S-43 (May 1, 1981).

COMAR 21.05.03.02A, supra at p. 6. The answer to this question may be gleaned from COMAR 21.05.03.03A<sup>6</sup> as follows:

"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."

Since this provision requires evaluation of proposals only with regard to factors contained in the RFP, and since numerical rating systems expressly are not required in performing the evaluation, we conclude that the regulations should not have been intended to require a numerical rating system to be specified in the RFP for the purpose of indicating the relative importance of evaluation factors. Compare Comp. Gen. Dec. B-167175, 49 Comp. Gen. 229 (1969); Comp. Gen. Dec. B-170398, 50 Comp. Gen. 565 (1971).

In the instant appeal, the procurement officer evaluated proposals only in accordance with those factors set forth in the RFP. By amending the RFP to indicate the relative importance which price had to the technical factors specified for evaluation, the procurement officer brought the RFP into compliance with the requirements of Maryland's procurement regulations.

For the foregoing reasons, we therefore deny Appellant's appeal.

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<sup>6</sup>8:9 Md. R. S-52 (May 1, 1981).