



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

REDACTED DECISION

A protected decision was issued on the date below and was subject to a GAO Protective Order. This version has been redacted or approved by the parties involved for public release.

Matter of: Deployable Hospital Systems, Inc.

File: B-260778.2; B-260778.3

Date: February 12, 1996

Michael A. Gordon, Esq., and Fran Baskin, Esq., Holmes, Schwartz & Gordon, for the protester.

Barbara S. Kinosky, Esq., Bean, Kinney & Korman, for TVI Corporation, an interested party.

Robert B. Tauchen, Esq., and Gregory H. Petkoff, Esq., Department of the Air Force, for the agency.

Tania L. Calhoun, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that contracting agency improperly determined that awardee satisfied a definitive responsibility criterion requiring it to provide evidence of recent sales of the item being procured or similar items is denied where the agency's determination that the awardee's recent sales constituted sales of "similar items" is fully and reasonably supported.
2. Protest that contracting agency improperly evaluated awardee's financial capability as part of the technical evaluation by ignoring evidence questioning the findings of a pre-award survey is denied where the contracting officer considered this evidence and reasonably determined, notwithstanding that information, that the firm remained financially capable of performing the contract.
3. Protest asserting disparate treatment and improper evaluation of technical proposals is denied where the record shows that the evaluation of proposals was reasonable and consistent with the solicitation's evaluation criteria save for one aspect, and correction of this aspect of the evaluation in the manner most favorable to the protester would not affect the reasonableness of the award determination since, at most, the two offerors would be approximately technically equal; the

protester's price is significantly higher than that of the awardee; and the agency reasonably states that such a result would not have affected its best value determination.

DECISION

Deployable Hospital Systems, Inc. (DHS) protests the Department of the Air Force's decision to affirm its award of a contract, under request for proposals (RFP) No. FA0021-95-R-0009, to TVI Corporation after having implemented our recommendation in Deployable Hosp. Sys., Inc., B-260778, July 21, 1995, 95-2 CPD ¶ 65. In that decision, we sustained DHS' protest of the original award to TVI because the Air Force's failure to document its technical evaluation and its determination that TVI satisfied a definitive responsibility criterion compelled a conclusion that they lacked a reasonable basis. DHS now challenges various aspects of the Air Force's reevaluation and the subsequent award decision.

We deny the protest.

BACKGROUND

The solicitation sought offers for a fixed-price contract for deployable integrated mobile hospital tent systems. A total system satisfying the requirement consisted of shelters--or tents--and their associated equipment, packed within trailers providing transport, storage, electrical power, and heating, ventilation and air conditioning (HVAC) support.

Award was to be made to the offeror providing the best overall value to the government. Proposals would be evaluated based on an integrated assessment of quality and price, with quality somewhat more important than price. Quality encompassed two equally important evaluation factors, technical quality and quality control. The technical quality factor contained four subfactors, in descending order of importance: technical specification compliance, interoperability, total system, and expeditious setup. The importance of price was to increase as the quality differences between proposals decreased.

The RFP also listed, as less important, several general considerations that would be considered in the technical evaluation, including pre-award survey results, financial capability, and level of experience in similar acquisitions. Section LH-173 of the RFP discussed the contracting officer's need to make a responsibility determination and required offerors to provide, as a minimum, a list of the three most recent sales of "this or similar items/services" to commercial concerns or government activities.

TVI and DHS were the only offerors submitting proposals. Each offeror submitted a technical proposal, a price proposal, and a training videotape. The evaluators rated both offers acceptable under each technical factor and subfactor, and the Defense Contract Management Area Operations (DCMAO) office's pre-award survey of TVI and its proposed subcontractor for trailer manufacture resulted in satisfactory findings.¹ The contracting officer concluded that both proposals were essentially technically equal, noting, however, that TVI's proposal was superior with respect to the expeditious setup subfactor, and turned to a consideration of price--TVI's offered price was \$1,367,104 and DHS' was \$1,815,755. She stated that DHS's higher price could not be justified for a substantially equal technical solution, and, on March 6, 1995, awarded TVI the contract. In sustaining DHS' protest of the award for the reasons cited above, we recommended that the Air Force reevaluate the proposals, adequately document the evaluation, and make a best value determination based upon the reevaluation results.

In its reevaluation, the Air Force determined that TVI satisfied the definitive responsibility criterion and all of the unrated general considerations, including financial capability. In addition, TVI's proposal was now rated superior² under both the technical quality factor and the quality control factor. DHS' proposal was rated acceptable under both factors. Based upon these findings and a consideration of the large difference between the offerors' prices, the Air Force affirmed its award to TVI.

DHS' protest challenges the agency's determinations as to TVI's satisfaction of the definitive responsibility criterion and the financial capability consideration, as well as the agency's evaluation of the offerors' technical proposals.

DEFINITIVE RESPONSIBILITY DETERMINATION

DHS argues that the Air Force improperly determined that TVI satisfied the solicitation's requirement to provide evidence of recent sales of "this or similar items."

The solicitation required offerors to provide, as a minimum, "a list of the three most recent sales of this or similar items/services" The parties do not dispute that this requirement, which calls for the prospective contractor to have a designated number of projects in a specific area completed, is a definitive responsibility

¹Since DHS had previously provided shelters to this activity, the Air Force determined that a pre-award survey of the firm was unnecessary.

²The possible adjectival ratings were "insufficient data," "unacceptable," "acceptable," or "superior."

criterion, see D.H. Kim Enters., Inc., B-255124, Feb. 8, 1994, 94-1 CPD ¶ 86, which is a specific and objective standard established by an agency for use in a particular procurement for the measurement of an offeror's ability to perform the contract. Federal Acquisition Regulation (FAR) § 9.104-2; BBC Brown Boveri, Inc., B-227903, Sept. 28, 1987, 87-2 CPD ¶ 309.

A contracting agency has broad discretion in determining whether offerors meet definitive responsibility criteria, since the agency must bear the brunt of any difficulties experienced in obtaining the required performance. BMY, Div. of Harsco Corp., B-233081; B-233081.2, Jan. 24, 1989, 89-1 CPD ¶ 67. Where an allegation is made that definitive responsibility criteria have not been satisfied, we review the record to ascertain whether evidence of compliance has been submitted from which the contracting officer reasonably could conclude that the criteria have been met. BBC Brown Boveri, Inc., *supra*. In making a determination regarding an offeror's compliance with a definitive responsibility criterion, a general statement by the agency of its rationale is all that is required. Deployable Hosp. Sys., Inc., *supra*.

The criterion in question here could be satisfied by an offeror's providing evidence of three recent sales of "this or similar items." This solicitation seeks offers for soft shelters packed within a utilities trailer—a soft shelter system. TVI's proposal lists only one such contract, which was terminated for convenience prior to performance, and its trailer subcontractor lists no such contracts and claims no such sales. Since TVI has no recent sales of a soft shelter system—shelters with a trailer—the question is whether the contracting officer reasonably determined that TVI's sales of soft shelters alone, under six recent contracts, and/or its sales of targets and decoys, under four recent contracts, are sales of "similar" items, so as to satisfy this criterion.

During the reevaluation, the contracting officer prepared detailed findings in which she concluded that TVI's recent sales of soft shelters alone, and its recent sales of targets and decoys, were sales of "similar" items sufficient to show TVI's compliance with this criterion. In addition to the fact that the soft shelters previously sold were the same shelters proposed for this contract, she concluded that TVI had extensive manufacturing experience with targets and decoys whose manufacturing process was sufficiently similar to that required for the soft shelters that the criterion was satisfied. In this regard, the multi-dimensional targets and decoys manufactured by TVI are quick-erect, expandable units, constructed of an articulating strut frame covered with a canvas-type material—which is the same technology used for the soft shelters.

The essence of DHS' challenge is that an offeror must have recent sales of both the shelters and the utilities trailers to meet this criterion and that, since TVI has not previously sold or manufactured the trailers, it cannot reasonably meet the criterion. However, previous sales of both the shelters and trailers would clearly constitute evidence of sales of "this item"--the system required here. The protester's proffered reading of the criterion thus is unreasonable, since it would eliminate the "similar" item provision from the criterion.

In concluding that TVI had recent sales of "similar" items sufficient to satisfy the definitive responsibility criterion, the contracting officer documented her findings that TVI's manufacturing experience related to its recent sales of shelters alone, and targets and decoys, is similar to the process required here, noting various construction similarities. Since her determination that TVI's recent sales involved "similar items" is supported by the record, we have no basis to find it unreasonable. See Restec Contractors, Inc., B-245862, Feb. 6, 1992, 92-1 CPD ¶ 154.

FINANCIAL CAPABILITY

DHS contends that the Air Force's reliance upon TVI's pre-award survey results in determining the firm's financial capability improperly ignored evidence produced prior to the reevaluation, which calls those survey results into question.

In reevaluating TVI's proposal with respect to financial capability,³ the contracting officer acknowledged that her initial evaluation relied upon DCMAO's pre-award survey findings. In that survey, DCMAO reviewed copies of TVI's financial information, provided over the signature of TVI's then-president, Mr. Brent Molovinsky. DCMAO concluded that the firm had made a strong recovery from its 1991 bankruptcy; had a strong ability to meet cashflow needs; and had sufficient working capital available to perform the contract.

During the initial protest, DHS submitted documents which questioned DCMAO's positive assessment of TVI's financial capability. In a March 1995 bankruptcy court filing, TVI's shareholders' committee objected to a report filed by Mr. Molovinsky, asserting that it contained false or misleading information. The committee stated

³While an offeror's financial capability to perform a contract is a traditional responsibility factor, see FAR § 9.104-1, in appropriate circumstances, and where the solicitation so appraises offerors, financial capability may be used to assess the relative merits of individual proposals. E.H. White & Co., B-227122.3; B-227122.4, July 13, 1988, 88-2 CPD ¶ 41. This solicitation clearly apprised offerors of the Air Force's intention to consider financial capability in the technical evaluation as one of the less important general considerations.

that there was evidence that the firm had been extremely unprofitable for the last 2 years; that Mr. Molinovsky had not filed required financial reports; and that there was a pattern of concealment and evidence of improper use of company assets. The firm's June 2 report to its shareholders, issued after Mr. Molovinsky was asked to resign, suggested that, based upon preliminary review, TVI had long been operating at a very low level of sales and with a significant monthly loss, resulting in cashflow problems; that the firm had not filed required bankruptcy reports and had deviated from its bankruptcy reorganization plan; and that the firm had violated several Securities and Exchange Commission regulations related to the sale of stock. With respect to the status of the firm's records, the report stated that initial investigations suggested significant malfeasance by Mr. Molovinsky.

In reevaluating TVI's proposal, the contracting officer stated that she had reviewed these documents and concluded that there was nothing to indicate that TVI did not presently have the backing of its financial institution to execute the contract, or the ability to obtain it. The June 2 report specifically addresses each element of TVI's financial status and sets forth the management action proposed to resolve the problems. With respect to the status of its working capital, the report states that TVI believes its "long standing ally," Capital Bank, will finance requirements for government contracts. After the issuance of our initial decision, Capital Bank provided the contracting officer with a letter in which it confirmed that it had agreed to provide TVI with short-term credit to complete the contract, which would ensure that the company had adequate financial resources to perform.⁴

For a procuring agency to ignore extrinsic evidence indicating that an offeror may not be able to perform would be unfair to the agency and to the other competitors, and thus is inconsistent with the competitive procurement system. See Continental Maritime of San Diego, Inc., B-249858.2; B-249858.3, Feb. 11, 1993, 93-1 CPD ¶ 230. Here, however, the contracting officer did not ignore the extrinsic evidence provided by DHS, but reviewed it and concluded that, notwithstanding this information, TVI had the financial capability to perform the contract. In light of the contracting officer's consideration of this evidence, including the fact that TVI's

⁴We do not agree with DHS that the agency's review of this letter constituted improper discussions solely with TVI. Discussions occur when an offeror is given an opportunity to revise or modify its proposal, or when information provided by an offeror is essential for determining the acceptability of its proposal. FAR § 15.601; Motorola, Inc., 66 Comp. Gen. 519 (1987), 87-1 CPD ¶ 604. This letter merely clarified the statement in the shareholder's report concerning the firm's working capital, and there is nothing to suggest that it had any bearing on the agency's determination that TVI's proposal was acceptable. See Jack Faucett Assocs., B-254421.2, Feb. 18, 1994, 94-1 CPD ¶ 204.

management had clearly set forth the steps it planned to take to recover its businessworthiness, and the fact that a bank was willing to provide working capital to TVI, we cannot conclude that her evaluation of TVI as financially capable was unreasonable. See Transco Contracting Co., B-228347.2, July 12, 1988, 88-2 CPD ¶ 34.

DHS contends that Mr. Molovinsky provided DCMAO with fraudulent information which tainted TVI's entire proposal requiring its rejection. However, as we stated in our initial decision, the record before us concerning this issue is so speculative as to preclude any conclusion of fraudulent activity. TVI's own report to its shareholders clearly states that it is based on "incomplete records and preliminary examination," and that "little if any has been verified and is simply based upon the best documents or information available." Moreover, the basis for the charge of malfeasance against Mr. Molovinsky primarily concerns his failure to keep adequate records and file timely financial reports, which suggests, at most, negligence. Such preliminary and speculative information affords us no basis to find any fraud here, much less a basis to reject TVI's proposal. See Deployable Hosp. Sys., Inc., *supra*.

EVALUATION OF TECHNICAL PROPOSALS

DHS argues that the Air Force's reevaluation of the offerors' technical proposals lacks a rational basis and evidences a disparate treatment of the two offerors.

We will review an evaluation to ensure that it was reasonable and consistent with the stated evaluation criteria. Newport News Shipbuilding and Dry Dock Co. et al., B-261244.2 *et al.*, Sept. 11, 1995, 95-2 CPD ¶ 192. The determination of the merits of proposals is primarily a matter of administrative discretion which we will not disturb unless the evaluation was arbitrary or unreasonable. See Realty Executives, B-237537, Feb. 16, 1990, 90-1 CPD ¶ 288. The fact that a protester does not agree with the evaluation does not render the evaluation unreasonable. Logistics Servs. Int'l, Inc., B-218570, Aug. 15, 1985, 85-2 CPD ¶ 173. In a best value procurement, as here, where there is a substantial price difference between the protester's proposal and the awardee's proposal, the protester, in order to prevail, must show that its proposal should have been evaluated by the agency not just as essentially technically equal or close in technical merit, but as overall technically superior to the awardee's proposal. See Newport News Shipbuilding and Dry Dock Co. et al., *supra*; Scheduled Airlines Traffic Offices, Inc., B-253856.7, Nov. 23, 1994, 95-1 CPD ¶ 33.

Technical Quality

As indicated above, for the technical quality factor, which contained four subfactors (technical specification compliance, interoperability, total system, and expeditious setup), TVI's proposal was rated superior and DHS' acceptable. The first subfactor,

technical specification compliance, involved a review of the extent to which the offerors complied with the RFP's technical specifications. DHS' proposal was rated acceptable under all of the specifications, except training, where it was rated superior. TVI's proposal was rated acceptable under all of the specifications, except the operation and the frame specifications, where it was rated superior. Since TVI scored higher in these two areas, the Air Force rated its proposal superior overall for technical specification compliance. DHS' proposal was rated acceptable.

DHS challenges the evaluation with regard to numerous specifications. As the following examples illustrate, our review of the record in this matter shows that DHS' challenge consists of its disagreement with the agency's judgment, premised largely upon its misreading or selective reading of the record, and affords us no basis to find this aspect of the evaluation unreasonable.

For example, the life cycle specification required an indefinite life cycle for the shelter frame and an exterior fabric liner with specified characteristics. Both proposals were rated acceptable because both firms proposed to comply with the requirements. While DHS complains that the agency ignored its experience in producing these shelters, we see no basis to conclude that that experience, in itself, evidences that its shelters will have a longer life cycle. DHS also asserts that the agency ignored favorable user input about its product, but the contracting officer's memorandum of her discussions with users about both offerors' products contains the information to which DHS refers, as well as favorable and unfavorable information about both offerors' products. Finally, DHS' insistence that a test report shows the "fragility" of the TVI shelter is rebutted by information showing that the damage suffered was due not to any inherent life-cycle deficiency, but to user misuse.

DHS next objects that, in reevaluating the proposals under the wind and snow loading specification, for which both proposals were rated acceptable, the agency ignored test data DHS submitted in support of its claim to meet the wind loading requirements and ignored TVI's lack of objective evidence to support its similar claim. The Air Force did not ignore this information, but specifically referenced the respective proposal sections in which it was contained. In addition, DHS' statement concerning its test data is matched by TVI's additional support for its claim. TVI explains that its shelters have survived the winds of helicopter overflight, and states that the stress of the calculated wind loads is significantly less than that of the snow loads, for which it was tested. In view of the agency's full consideration of this matter, including TVI's additional supportive information, we have no reason to believe that the evaluation was unreasonable.

Finally, the frame specification required that structural tubing/framing be of sufficient size and strength to be durable and lightweight, "such as 0.625" aluminum tube, 2024 T-3 series" aluminum alloy or lightweight high strength steel. TVI proposed to have struts that were .635" thick and made of the stated alloy. DHS proposed to have struts that were [DELETED] thick and made of a different alloy. The agency rated DHS' proposal acceptable because it met the thickness requirement, albeit with an unspecified alloy. TVI's proposal was rated superior because the Air Force believed its frame was more robust based upon its thicker struts, made of the specified alloy;⁵ a user report asserting that TVI's frame is stronger than that of DHS; and DHS' training video, which states that if erection and striking is not done evenly and with continual eye contact, its struts can be broken. DHS argues that the user report elsewhere states that, according to a user, the negative information concerns an older, less strong version of the DHS frame; however, that user's statement was made a year after proposals were submitted, and DHS has not made it clear whether the newer frame to which the user refers is the one it offered under this proposal. DHS' failure to address this issue, as well as its failure to address the offerors' differing strut thicknesses and its own admission concerning the fragility of its shelter, leaves us with no basis to find the evaluation unreasonable. See Mevatec Corp., B-260419, May 26, 1995, 95-2 CPD ¶ 33.

The first of the remaining subfactors, interoperability, involves consideration of compatibility with the DHS shelters and trailers that already exist in the Air Force's inventory. In brief, all shelters must be able to interconnect, such as by way of a "boot" or other interconnecting component, and be erectable and repairable with the shelters of different manufacturers at the system level. Both proposals were rated acceptable because, respectively, DHS stated that its shelters were interoperable, and TVI stated that its shelters could be modified, with minor design adjustments, to be interoperable with other shelters. DHS argues that these identical ratings evidence disparate treatment because DHS has accomplished the requirements, without design adjustments, and TVI merely states that it believes its proposed design will be interoperable with only minor modifications. However, nothing in the RFP dictates that actual accomplishment of the requirements, in and of itself, warrants a superior rating, and there is no reason to question TVI's representations.

⁵In discussing the qualities of the different alloys, the Air Force quoted a passage from a data sheet submitted by TVI's counsel during the course of the initial protest. For the same reasons discussed above, we do not agree with DHS that the agency's consideration of this document constituted improper discussions. This communication did not revise TVI's proposal, but merely confirmed information already in the agency's possession and, thus, constituted a permissible clarification. See FAR § 15.601; Jack Faucett Assocs., supra.

Similarly, the total system subfactor required firms to supply tents that could be packed within the trailer, and a trailer unit meeting the requirements, for a total system. Both offerors received acceptable ratings because both proposals contained evidence that the firms could meet these requirements. We again reject DHS' argument that TVI should have been found unacceptable because it has no experience in manufacturing or integrating a total system, as the subfactor does not require such experience for an acceptable rating, and TVI's proposal supports the evaluation result.

Finally, the expeditious setup subfactor required firms to provide a system with quick erecting capability--each shelter must be erectable in less than 4 minutes, and fully equipped with standard equipment in less than 10 minutes by six trained personnel for a large shelter or four trained personnel for a medium or small shelter. TVI's proposal, rated superior, stated that its shelters were erectable by two to four personnel in under 4 minutes, and could be fully equipped in under 10 minutes using no special tools or push poles. DHS' proposal, rated acceptable, stated that its large shelter was erectable in less than 4 minutes⁶ and could be fully outfitted in less than 10 minutes using six trained personnel, and its medium and small shelters could be fully set up and outfitted using four trained people in less than 10 minutes. DHS also utilizes a push pole to erect the shelters. The Air Force rated TVI's proposal superior for two reasons. First, TVI required a minimum of two people and DHS required a minimum of four people for erection and setup, and the agency reasonably found that the use of fewer personnel was more efficient. Second, the Air Force believed that the streamlined method of TVI's shelter erection, absent push poles, was beneficial.

DHS argues that the agency improperly failed to investigate how many people were needed to erect TVI's large shelter; whether TVI's setup time was based on a small shelter; or whether TVI's time for having the shelter fully equipped included various items. However, TVI's proposal clearly states that "its shelters were erectable by 2-4 personnel in under 4 [minutes], fully equipped in under 10 minutes. . . ." There is no reason to believe that this statement does not refer to all of its shelters, nor is there any reason to believe that the expression "fully equipped" does not mean what it says. As to DHS' belief that the Air Force is "silly" to find beneficial value in TVI's streamlined erection method, and that other aspects of TVI's erection are detrimental, this disagreement with the agency's judgment is insufficient to render that judgment unreasonable. Fermont Div., Dynamics Corp. of Am., B-257373.3 et. al., Dec. 22, 1995, 95-2 CPD ¶ ____.

⁶Another section of DHS' proposal gives this setup time as 5 minutes, which does not meet the specification.

In sum, the protester has not shown that TVI's superior rating or DHS' acceptable rating for the technical quality factor were unsupported or unreasonable.

Quality Control

Although, as noted in our prior decision, the language of the quality control factor and subfactor is unclear,⁷ it appears to allow an offeror to demonstrate its quality control expertise by virtue of its experience in manufacturing similar systems or through explanations of such issues as specific inspection techniques and corrective actions. In its reevaluation, the Air Force broke the factor down into two areas: quality control processes, wherein it evaluated the offerors' quality assurance processes, and experience level, wherein it evaluated the offerors' experience in manufacturing similar systems.⁸

The Air Force rated TVI's proposal superior and DHS' proposal acceptable under the quality control processes aspect, based on the contents of the proposals; DHS' favorable past performance; TVI's pre-award survey results; and the offerors' differing warranty terms. The Air Force stated that it made the distinction because TVI provided insight into its subcontractor's quality control processes by citing compliance with a military quality control standard, and DHS did not, and because TVI offered a longer warranty term than did DHS. Our review of the record shows that the agency's evaluation here is unreasonable.

The contents of the two proposals contain marked differences. DHS' proposal included a thorough total quality management policy delineating the quality responsibilities of each department head. DHS addressed the steps it takes with respect to the quality assurance of its subcontractors, and its trailer subcontractor

⁷(4) Quality control is the implementation of a controlling process that can identify and correct any structural or design problem before, during, and after production of the product.

"(a) Firms with an experience level in the manufacturing of similar systems with the capability to build in sufficient quantity/quality to meet delivery. Firms should demonstrate the expertise to predict product quality concerns, i.e., specific inspection techniques and corrective actions might be one area addressed."

⁸For the same reasons that we find that the contracting officer reasonably determined that TVI complied with the definitive responsibility criterion, we reject DHS' argument that TVI should have been rated unacceptable, instead of acceptable, under the experience level aspect of this factor. DHS was rated superior here.

specifically states its experience with the military quality control standard--the agency was wrong to state otherwise and failed to acknowledge this error when it was raised. Finally, DHS provided an exhaustive set of total quality management procedures for each step in the manufacturing process, as well as its quality control check lists for the frame, fabric, and trailer, and a sample certificate of inspection and quality control. In contrast, TVI's proposal simply states that it and its subcontractors meet the quality assurance requirements of the military standard and provides a sketchy outline of its overall quality control. This general nod to the solicitation's requirements is not augmented by TVI's pre-award survey results,⁹ which show nothing more than is contained in the proposal. While we do not dispute the use of warranty terms as a measure of quality assurance processes and cannot conclude that the record, as a whole, does not support an acceptable rating for TVI, the agency could not reasonably conclude that TVI's proposal is superior under this factor.

Nevertheless, we see no basis to conclude that the agency's error in the evaluation under the quality control factor would have changed the award decision. Assuming an adjustment in scores most favorable to DHS, the ratings of the proposals under the quality control factor would be reversed--TVI's would change from superior to acceptable, while DHS' would change from acceptable to superior. Their ratings under the other, equally important technical factor (technical quality) would remain unchanged (DHS' proposal, acceptable; TVI's proposal, superior). Accordingly, adjusting the quality control scores in the manner most favorable to the protester would, at most, make the proposals approximately technically equal. Where proposals are essentially technically equal, price may become the determinative factor in making an award, notwithstanding that the evaluation criteria assigned price less importance than technical considerations. Ogilvy, Adams & Rinehart, B-246172.2, Apr. 1, 1992, 92-1 CPD ¶ 332. Considering the RFP's specific instruction that the importance of price would increase as the quality differences between proposals decreased, we have no basis to question the agency's best value determination in light of DHS' substantially higher price. See Newport News Shipbuilding and Dry Dock Co. et al., *supra*. Indeed, the agency confirms that even

⁹DHS argues that the agency improperly utilized the pre-award survey results to evaluate this factor, but the solicitation specifically states that the pre-award survey results would be considered. Moreover, in evaluating proposals, contracting agencies may consider any evidence, even if that evidence is entirely outside the proposal, so long as the use of the extrinsic evidence is consistent with established procurement practice. Intermagnetics Gen. Corp.--Recon., B-255741.4, Sept. 27, 1994, 94-2 CPD ¶ 119.

if DHS' technical ratings had improved, given the substantial differences between the two offerors' prices, its award decision would have been the same.

The protest is denied.

Comptroller General
of the United States