



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

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Matter of: CVB Company

File: B-278478.4

Date: September 21, 1998

Robert A. Brunette, Esq., for the protester.

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John Lariccia, Esq., Marian E. Sullivan, Esq., and Mark Frazier, Esq., Department of the Air Force, for the agency.

Susan K. McAuliffe, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest of agency's evaluation of proposals is denied where record shows that evaluation was reasonable and consistent with the stated evaluation factors.
 2. Agency's proposed award to offeror that submitted lower-rated, lower-priced proposal in a best value procurement (where solicitation stated that technical merit was significantly more important than price) is proper where the source selection authority performed a rational integrated assessment of the proposals and reasonably determined that the price premium involved in an award to the protester on the basis of its higher-rated, higher-priced proposal was not justified given the favorable level of technical competence available at the lower price.
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DECISION

CVB Company, a joint venture of CV International, Inc. and Bauer Compressors, Inc., protests the proposed award of a contract to Pacific Consolidated Industries (PCI) under request for proposals (RFP) No. F41608-97-R-20209, issued by the Department of the Air Force for self-generating nitrogen service carts (SGNSC). CVB principally contends that the evaluation of proposals and source selection decision were unreasonable and inconsistent with the stated evaluation factors for award.

We deny the protest.

The RFP, set aside for small business concerns, contemplated the award of a fixed-price requirements contract for a 2-year base period, with a 3-year option

period, for an estimated quantity of 1,420 SGNSCs. RFP § B, § L-65C, and Amendment No. 8. The required SGNSC is a diesel engine-powered, self-contained, towable unit capable of producing high-purity nitrogen gas from ambient air using air separation membrane technology; the carts are to be used in servicing military aircraft (e.g., in the service of tires, struts, accumulators, and external receivers) in all operating environments. The RFP, § M-902, provided for award on the basis of the proposal that "provides the best overall value to satisfy Air Force needs." In this regard, section M-900.A.1 provided that the agency would award a contract under the solicitation "to the responsible offeror whose offer, conforming to the solicitation, has the highest degree of credibility and whose performance can best meet the Government's requirements at an affordable cost."¹

The RFP, § M-900.A.1, stated that award would be based on an integrated assessment of the results of the evaluations of the technical and price proposals, proposal and performance risk, and general considerations.² The technical proposals were to be evaluated under the following factors (and subfactors), listed in descending order of importance: design (including unit design, reliability/maintainability, and first article test plan); and production (including facilities, quality programs, and production plan). RFP § M-900.B.1. Offerors were advised that "to allow innovation and encourage superior design, evaluators may reward proposals which improve upon the requirements of the purchase description, with emphasis on mean time between failure, unit dimensions, weight, and operating time before refueling." *Id.* Proposed prices were to be evaluated for realism and reasonableness. RFP § M-900.B.2.

Section M-900.A.3 of the RFP specified as follows regarding the respective weights of the evaluation factors in the overall evaluation scheme:

The Technical Area is significantly more important than cost or price, with cost or price and general considerations receiving equal consideration. The Technical Area will receive a color rating and a performance risk rating, and the technical factors will receive color

¹The term "highest degree of credibility" refers to the extent to which offerors provide sufficient support in their proposals to verify claims to meet solicitation requirements; the term "affordable cost" refers to the source selection authority's tradeoff analysis between technical merit and price. Hearing Transcript (Tr.) at 12, 59-60, 97.

²The RFP defines "general considerations" as elements typically relating to proposed contract terms and conditions, and results of preaward surveys. While proposals were not to receive color, proposal risk, or performance risk ratings under this factor, it would be considered in the integrated assessment forming the basis for award. RFP § M-900.A.4.

ratings and proposal risk ratings.^[3] Each of the ratings shall be given equal consideration in making an integrated source selection decision.^[4]

Eight firms submitted proposals by the closing time for receipt of initial proposals on June 30, 1997. Discussions were then conducted, through the issuance of clarification and deficiency reports, with the six offerors that submitted proposals determined to be within the competitive range for award, including CVB and PCI. Initial best and final offers (BAFO) were received on November 3, and second BAFOs, submitted in response to certain amended solicitation terms, including a reduction in the stated estimated quantity, were received on February 18, 1998.

³The "color rating" depicts how well the offeror's proposal meets the evaluation standards and solicitation requirements (e.g., a "blue" rating indicates "exceptional"--that the specified performance or capability has been exceeded in a way beneficial to the government, and there are no significant weaknesses--and a "green" rating indicates "acceptable"--that the evaluation standards have been met and any weaknesses are readily corrected). "Proposal risk" assesses the risk associated with the offeror's proposed approach as it relates to accomplishing the requirements of the solicitation (e.g., a low proposal risk rating reflects little potential to cause disruption of schedule, increase in cost, or degradation of performance, and normal contractor effort and normal government monitoring will probably be able to overcome difficulties). The "performance risk" rating assesses the probability of the offeror successfully accomplishing the proposed effort based on the offeror's demonstrated present and past performance (e.g., a low performance risk rating indicates that little doubt exists that the offeror will successfully perform as proposed). RFP § M-900.A.3.

⁴Referring to this sentence, CVB asserts that the technical factors comprising the overall "technical area" were to be given equal weight to the technical area itself. This arguments reflects a strained reading of the sentence and is inconsistent with the overall evaluation scheme in the RFP. Specifically, section M-900.B.1 sets out the two technical factors and their subfactors as elements of the overall technical area, not as independent factors; that provision also specifies that the factors are listed in descending order of importance, meaning that the first factor, design, is more important than--not equal to--the second, production. Section M-900.A.3 then specifies that it is the overall "technical area" that is significantly more important than price in the evaluation. In sum, the RFP clearly contemplates that the proposals would be evaluated under the two technical factors, resulting in an overall rating in the technical area which would then be significantly more important than price. It simply is not reasonable to read the phrase "each of the ratings" in section M-900.A.3 as establishing that the individual factors under the overall technical area--which themselves comprise the technical area--were to be given weights equal to the technical area itself.

The source selection evaluation team (SSET) assigned a [deleted] color rating to CVB's proposal for the "technical area" (reflecting the [deleted] color rating received under the more important "design" technical evaluation factor, and the [deleted] color rating received under the less important "production" technical evaluation factor). CVB's proposal also received a [deleted] performance risk rating under the technical area, and [deleted] proposal risk ratings under the design and production technical evaluation factors. The CVB proposal was ranked highest technically of the offers received.

PCI's proposal was ranked third highest technically (slightly below another offeror's higher-priced proposal), with an overall [deleted] color rating for the "technical area" (reflecting the [deleted] color ratings the proposal received under the "design" and "production" technical evaluation factors). Like CVB's proposal, PCI's proposal received a [deleted] performance risk rating under the technical area, and [deleted] proposal risk ratings under both technical evaluation factors.

CVB's evaluated price was \$[deleted], which was the second highest price among the six competitive range offerors; PCI's evaluated price, at \$[deleted], was the lowest received (at an amount only slightly lower than proposed by two other offerors). All of the offerors' proposed prices were determined to be realistic and reasonable in terms of proposed approach; the difference between CVB's and PCI's proposed prices [deleted] primarily was attributed to PCI's lower overhead and material costs.

In his source selection decision document (SSDD), the source selection authority (SSA) compared the strengths, weaknesses, evaluation ratings, and proposed prices of the six competitive range offerors. In making his best value determination for award, the SSA expressly recognized that CVB's proposal received the highest technical rating, and that technical merit was significantly more important than cost. The SSA determined, however, that "the additional technical benefits" offered by CVB compared to those offered by PCI did not merit paying the associated [deleted] cost premium (slightly more than \$[deleted] million) over PCI's proposed price.⁵ SSDD at 7. The offerors were subsequently notified that the agency intended to award the contract to PCI, since PCI submitted the proposal found to offer the best value to the government. This protest, which includes supplemental protest grounds filed by CVB in response to the agency's document productions, followed.

⁵As noted above, section M-900.A.4 of the RFP also provided for an evaluation of "general considerations" for each proposal. The SSA concluded that the general considerations factor was not a discriminator between CVB's and PCI's proposals in view of the fact that both firms had received unconditional award recommendations under this factor. SSDD at 7.

CVB challenges the agency's evaluation of its and PCI's technical proposals as unreasonable. The evaluation of technical proposals is a matter within the discretion of the contracting agency because the agency is responsible for defining its needs and the best method of accommodating them. Metrica, Inc., B-270086, B-270086.2, Feb. 8, 1996, 96-1 CPD ¶ 135 at 3. In reviewing an agency's evaluation, we will not reevaluate proposals, but instead will examine the agency's evaluation to ensure that it was reasonable and consistent with the solicitation's stated evaluation criteria. Decision Sys. Techs., Inc.; NCI Info. Sys., Inc., B-257186 et al., Sept. 7, 1994, 94-2 CPD ¶ 167 at 7. An offeror's disagreement with the agency does not render the evaluation unreasonable. McDonnell Douglas Corp., B-259694.2, B-259694.3, June 16, 1995, 95-2 CPD ¶ 51 at 18. Based on our review of the record, and as discussed in the examples set forth below, we believe that the agency's evaluation of CVB's and PCI's proposals was reasonable and consistent with the RFP's stated evaluation criteria.

The final SSET technical evaluation ratings, as recorded in the Proposal Analysis Report prepared by the SSET, and reviewed by the SSA, were as follows:

	<u>PCI</u>	<u>CVB</u>
Technical Area/Risk	[deleted]	[deleted]
Design/Risk	[deleted]	[deleted]
--Unit Design	[deleted]	[deleted]
--Reliability	[deleted]	[deleted]
--First Article Test	[deleted]	[deleted]
Production/Risk	[deleted]	[deleted]
--Facilities	[deleted]	[deleted]
--Quality Programs	[deleted]	[deleted]
--Production Plan	[deleted]	[deleted]

CVB protests the favorable technical ratings given to the PCI proposal, generally contending that its proposal should have been rated significantly higher in technical merit than the PCI proposal under each technical evaluation factor, as well as for overall merit. Although we have reviewed every one of CVB's numerous challenges to the agency's evaluation of proposals, we see no basis to question the proposed award. We discuss below a sampling of CVB's allegations.

CVB generally contends that, since it has produced similar SGNSC units in the past, its proposal should have been ranked significantly higher than PCI's proposal in the technical area (i.e., higher in technical merit and lower in proposal and performance risk). As the agency's evaluation record shows, CVB was credited for its prior experience in connection with the evaluation of performance risk (for which the protester's proposal received a [deleted] rating). However, contrary to CVB's contention that its prior SGNSC experience should have increased its proposal's rating under the [deleted], the agency reasonably gave CVB's proposal a [deleted] rating, [deleted], compared to the larger quantities and shorter time frames required

under the RFP. We also do not find that CVB's SGNSC experience provides any basis to conclude that PCI's proposal should have been rated as inferior regarding performance risk. PCI's proposal was credited, and reasonably so, for the firm's substantial favorable prime contractor experience, and credit reasonably was given for the documented air membrane technology experience of its proposed subcontractor, since the RFP did not preclude the consideration of subcontractor experience. Premier Cleaning Sys., Inc., B-249179.2, Nov. 2, 1992, 92-2 CPD ¶ 298 at 4. There is nothing in the record, and the protester does not provide any persuasive basis, to suggest that the [deleted] performance risk rating assigned to the PCI proposal (supported by favorable customer and preaward survey information regarding the firm's compliance with delivery schedules) was other than reasonable.

CVB also protests that, under the technical area's design factor, PCI's proposal unreasonably received a [deleted] rating for the unit design subfactor--CVB contends that only its proposal deserves this high rating. The RFP, § M-900.B.1, informed offerors that innovative proposals that exceeded technical requirements would receive additional credit, with emphasis in the design areas of mean time between failure, unit dimensions, weight, and operating time before refueling (where, regarding size and weight of the unit, proposing smaller measurements was desirable). Both CVB's and PCI's proposals were found to exceed the RFP requirements in the following four identified significant design areas and, as a result, received [deleted] color ratings for the most important subfactor (unit design) of the most important technical evaluation factor (design):

<u>Purchase Description Requirement</u>	<u>PCI</u>	<u>CVB</u>
Mean time between failure (250 hours)	[deleted]	[deleted]
Unit dimensions (90"l x 72"w x 62"h)	[deleted]	[deleted]
Unit weight (4,000 lbs.)	[deleted]	[deleted]
Oper. time between refueling (5 hours)	[deleted]	[deleted]

CVB contends that its proposal [deleted] should have been [deleted] because CVB's unit is based on proven technology and exceeded RFP requirements to a greater extent than PCI's unit.

Our review of the record shows that both offerors' proposals reasonably earned their [deleted] ratings under this subfactor in light of the design strengths noted for each. For example, PCI's proposal was credited for proposing the use of [deleted] and [deleted] CVB's proposal was credited for proposing [deleted]. Since our review of the evaluation record confirms the reasonableness of the agency's determination that both proposals exceeded critical RFP requirements, and that

each provided adequate support for the cited additional strengths, we have no basis to question the [deleted] ratings received by both proposals in this technical area.⁶

CVB also protests the evaluation of CVB's and PCI's proposals under the second and less important technical evaluation factor, production. In particular, CVB challenges the agency's acceptance of PCI's substantially smaller proposed facilities, for which the PCI proposal received a [deleted] rating under the facilities subfactor. (CVB's proposal received a [deleted] rating for offering much larger production facilities.) The record reasonably supports CVB's higher rating given [deleted] CVB for this effort. However, contrary to CVB's contentions, there is no basis in the record to conclude that PCI's proposed facilities are inadequate to successfully perform the contract. Although PCI's proposed production facilities are substantially smaller than those proposed by CVB, the evaluators found that the smaller facilities posed little, if any, risk to successful performance in light of PCI's proposed production facility layout and approach. Tr. at 103-04. Our review supports the reasonableness of this determination in view of PCI's anticipated substantial subcontracting of production line (metal fabrication subassembly) work to be performed at additional facilities.⁷ Overall, based on our review of the record, CVB has not provided any persuasive basis to question the propriety of the evaluation of CVB's and PCI's proposals.

⁶CVB also alleges that it was unreasonable for the agency to accept PCI's projections regarding mean time between failure, because those projections were based on PCI's analysis of the performance of only [deleted] of approximately [deleted] SGNSC components. We find CVB's challenge unpersuasive, since the RFP did not require the level of proof sought by CVB to be applied to the PCI proposal, and the record shows that those components that were analyzed are the PCI unit's key components which are critical to successful performance and reasonably serve as a representative model of anticipated unit operation. Tr. at 101-02, 153-54; Proposal Analysis Report at 23.

⁷CVB's proposal received a [deleted] rating for the quality programs subfactor of the production technical evaluation factor for certifying compliance to an acceptable, yet less stringent quality assurance program than that proposed by PCI; PCI's proposal was rated [deleted] under this subfactor of the production factor. CVB challenges the ratings assigned to the proposals under this subfactor. Although CVB contends that its "certification" of performance to the less stringent quality standards offers some sort of strength over PCI's promise to "conform" to the more stringent standards, the agency reports that it does not recognize "certification" as offering any benefit over a firm's conformance to higher standards. Tr. at 23, 84. In short, since performance must be in compliance with the level of quality assurance standards proposed, we agree that PCI's proposal of a more stringent plan justifiably received the higher rating.

CVB next protests the agency's selection of PCI for award as the offeror submitting the proposal determined to offer the best value to the government. CVB contends that the technical superiority offered by its proposal more than accounts for the cost difference [deleted], or slightly more than \$[deleted] million) between the PCI and CVB proposals.

Notwithstanding a solicitation's emphasis on technical merit, an agency may properly select a lower-priced, lower technically scored proposal if it decides that the price premium involved in selecting a higher-rated, higher-priced offer is not justified given the acceptable level of technical competence available at the lower cost. Dayton T. Brown, Inc., B-229664, Mar. 30, 1988, 88-1 CPD ¶ 321 at 4. The determining element is not the difference in technical merit, per se, but the contracting agency's judgment concerning the significance of that difference. Id. at 4-5. In this regard, evaluation scores are merely guides for the source selection authority, who must use his or her judgment to determine what the technical difference between competing proposals might mean to contract performance, and who must consider what it would cost to take advantage of it. Grey Adver., Inc., B-184825, May 14, 1976, 76-1 CPD ¶ 325 at 9-10. In making such determinations, the source selection authority has broad discretion, and the extent to which technical merit may be sacrificed for cost, or vice versa, is limited only by the requirement that the tradeoff decision be reasonable in light of the established evaluation and source selection criteria. Id. at 12.

In making his source selection decision, the SSA reviewed the solicitation requirements and factors for award, the SSET's Proposal Analysis Report, the briefing charts prepared by the SSET, oral presentations by the SSET, and the results of inquiries he posed to the SSET. Tr. at 15-17. The SSA recognized that CVB's proposal was highest rated technically, and that the proposal exceeded the four emphasized design requirements (regarding weight, size, mean time between failure, and refueling) "by a significant margin." Tr. at 19. The SSA then considered those proposals which were rated next highest technically, along with the SSET findings regarding those proposals. Tr. at 20. The SSA then noted where proposals offered the same sort of strengths offered in the CVB proposal; the SSA noted, for instance, that the PCI proposal "far exceeded" the same critical design requirements that were significantly exceeded by the CVB proposal. Tr. at 21. The SSA (who specifically noted that PCI's projected mean time between failure was based on [deleted] critical components, but that the evaluators reasonably were not substantially concerned about that sole weakness, Tr. at 22), considered the overall technical evaluations for design and production. Tr. at 24.

CVB asserts that the SSA improperly found the two proposals to be technically equal. Our review of the SSDD, however, does not support the protester's allegation that the proposals were at any time considered to be technically equivalent, since the SSA expressly recognized that CVB's proposal was technically superior to PCI's. Rather, the SSA noted that both PCI and CVB far exceeded the

Air Force's minimum requirements "in the same areas" and that they, therefore, offered "many of the same strengths." Tr. at 25. The SSA explains that it was not critical to him that CVB "significantly" exceeded some RFP requirements that PCI's proposal "far exceeded" (but to a lesser degree than the CVB proposal did in some instances), since both firms submitted strong proposals greatly exceeding those requirements. Tr. at 80. The SSA instead reviewed the SSET's findings to determine if there were any meaningful differences between the proposals that were worth paying another \$[deleted] million, since the agency could make award to PCI on the basis of its strong technical proposal, that included several cited technical strengths, at a significant cost savings. Tr. at 25-26, 36-37.

We have reviewed the integrated assessment performed by the SSA in reaching his best value determination, and the SSDD memorializing that determination. The SSA's review was, in our opinion, quite comprehensive. The SSA first noted that CVB's proposal was highest rated technically, and included a short, but detailed evaluation summary of the proposal's technical ratings, as well as the strengths of that proposal that were noted by the SSET; he recognized that no weaknesses were found in the proposal and that it offered low risk. He then summarized every other proposal's evaluation and strengths/weaknesses, followed by a comparison of those technical areas where offerors had similar (albeit, to a differing extent) strengths. He eliminated from consideration those offers that did not appear to have a reasonable chance for award in terms of technical merit or price. Three proposals remained in the analysis: CVB's higher-rated, higher-priced proposal; another offeror's slightly higher-rated, slightly higher-priced proposal; and PCI's technically acceptable proposal, with noted technical strengths (as well as a noted weakness regarding the limited seven-component reliability analysis to support proposed mean time between failure). Focusing on the substantial cost difference, and the other two proposals' technical strengths, the SSA removed the CVB proposal from further consideration for award. Finding that the intervening proposal was only slightly superior technically to PCI's lower-priced proposal, the SSA determined that the additional cost was not warranted, and that PCI's proposal offered the best value to the government. Specifically, the SSA stated in his SSDD, at 7, that "CvB's proposal was the most highly rated and ranked Technical Proposal, and the Technical Area was significantly more important than Cost, however, in my final integrated assessment I did not consider the additional technical benefits CvB offered compared to PCI . . . merited paying an additional [deleted] (over PCI)"

CVB contends that if a dollar value were assigned to each noted technical benefit in its proposal, the cumulative dollar value would outweigh the savings expected by the agency in making award to PCI at its lower price. Specifically, CVB contends that the SSA wrongfully failed to consider [deleted] from the protester's SGNSC's [deleted].

First, the record shows that, as noted by the SSA, the RFP did not provide for evaluation of any claimed [deleted]. (In fact, our review of the PCI proposal shows

that that firm also claimed [deleted] its proposed technology, which likewise were not evaluated in terms of dollar value.) Second, these alleged [deleted] are only potential savings, at best, given that they would not be realized until the bulk of the estimated units were purchased (which further assumes no possibility of early termination of the contract or failure to exercise the option). Moreover, the claimed [deleted] are dependent on a 20-year use of the SGNsCs (when, of course, advances in related technology or changed agency needs could as reasonably be expected to result in much earlier retirement of some of the units). The SSA's failure to consider these, at best, [deleted], in our view, cannot be said to be unreasonable.

In our opinion, the SSA properly compared CVB's proposal's technical superiority, available at a substantially higher price, to the technical strengths of the PCI proposal (which exceeded critical RFP requirements), available at a substantially

lower cost, and reasonably determined in accordance with the best value terms of the procurement that the noted technical superiority was not worth the cost premium involved.

The protest is denied.⁸

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⁸CVB has also raised numerous protest issues which are not for our consideration and thus, are addressed here only in a summary manner. For example, the protest ground asserting that this should have been a commercial item procurement is an untimely challenge to the terms of the solicitation. 4 C.F.R. § 21.1(a)(1) (1998). In this regard, CVB also has failed to provide sufficient grounds to support a waiver of our timeliness rules, since its contention that it did not know of the alleged requirement for a commercial item procurement prior to competing under the RFP is insufficient to excuse a late filing, and CVB has not persuasively shown that the matter warrants consideration as a significant issue of widespread interest. Air Inc.-Recon., B-238220.2, Jan. 29, 1990, 90-1 CPD ¶ 129 at 2. We also note, as follows, that several of CVB's other challenges simply do not constitute valid bases of protest, since, contrary to CVB's general allegations: it is not unlawful for an offeror to "buy in" (or offer a price below its costs), T.J. O'Brien Co., Inc., B-223680, Aug. 11, 1986, 86-2 CPD ¶ 177 at 1-2; CVB is not an interested party to protest the proposal evaluations of those offerors not in line for award before CVB, ECS Composites, Inc., B-235849.2, Jan. 3, 1990, 90-1 CPD ¶ 7 at 1; and, where an offeror's price is found to be reasonable, discussions are not required to inform the offeror that its price is higher than some of the other offerors'. Blue Cross Blue Shield of Texas, Inc., B-261316.4, Nov. 9, 1995, 95-2 CPD ¶ 248 at 6-7. Additionally, CVB has failed to provide any persuasive support for its general allegations of improper agency action related to the possible relaxation of purchase description requirements for PCI, or an alleged release by agency personnel of sensitive target pricing information to PCI (information which, we note, the record shows is available from other public sources and, in any event, could reasonably be estimated from available commercial pricing information). Robert Wall Edge-Recon., B-234469.2, Mar. 30, 1989, 89-1 CPD ¶ 335 at 2. The remaining protest issue, regarding the propriety of the agency's denial of an earlier requested preaward debriefing, was withdrawn by CVB.