

GOVERNMENT OF THE DISTRICT OF COLUMBIA
CONTRACT APPEALS BOARD

PROTESTS OF:

IDEAL ELECTRONIC SECURITY COMPANY)
and ACCUTECH SYSTEMS, INC.)
) CAB No. P-554, P-561
Under Solicitation No. DCPS-R-98036-OS) (Consolidated)

For the Protester, Ideal Electronic Security Company: Kenneth A. Martin, Esq., Martin & Rylander, P.C. For Protester, AccuTech Systems, Inc.: Mr. John C. Bellistri, *pro se*. For the Government: Howard S. Schwartz, Esq., Warren J. Nash, Esq., and H. Christopher Malone, Esq., Assistants Corporation Counsel.

Opinion by Administrative Judge Jonathan D. Zischkau, with Chief Administrative Judge Lorilyn E. Simkins and Administrative Judge Phyllis W. Jackson, concurring.

OPINION

Two prospective contractors, Ideal Electronic Security Company and AccuTech Systems, Inc., protested the decision of the District of Columbia Public Schools ("DCPS") to award Simplex Time Recorder Company ("Simplex") a contract under Solicitation No. DCPS-R-98036-OS for a closed circuit television surveillance system at various public schools. The protesters contend that DCPS improperly evaluated the proposals and improperly determined Simplex to be the only offeror within the competitive range.

We conclude that DCPS violated no law or regulation in its evaluation of the proposals and that the record does not show that the technical evaluation of the proposals was either irrational or arbitrary. The evaluation and scoring ultimately adopted by the contracting officer was consistent with the evaluation scheme established in the solicitation. Accordingly, we deny the consolidated protests.

BACKGROUND

On June 5, 1998, DCPS issued Solicitation No. DCPS-R-98036-OS for a closed circuit television surveillance system at various public school locations. (Agency Report ("AR") Ex. 1). Section M.3 of the solicitation defined the selection criteria and corresponding values as follows:

<u>Selection Criteria</u>	<u>Weight</u>
1. Technical Proposal	
A. Operational Capacity	40

B.	Technical Approach	40
C.	Installation	10
2.	Corporate Past Performance, Organizational Support, and Personnel Experience	
A.	Project Experience	10
B.	Project Manager and Personnel	5
C.	Organizational Support	5
3.	Price	40
4.	LSDBE	18 ¹
	Total Available Points	168

Five prospective contractors submitted responsive proposals by the solicitation's closing date and time on July 20, 1998. Proposals were submitted by Ideal, AccuTech, Simplex, Cardkey Systems, Inc., and Condortech Services, Inc. (AR at 3). On July 22, 1998, a technical evaluation panel ("TEP") appointed by the contracting officer reviewed the five proposals. According to instructions from the contracting officer, the evaluators first independently evaluated and scored each proposal. (AR Ex. 7). Based on all technical and price criteria, and including the 18 LSDBE points for which Ideal qualified, and correcting various arithmetic errors by two of the evaluators, the five proposals had the following average scores arrived at independently by each evaluator:

<u>Offeror</u>	<u>Technical</u>	<u>Price</u>	<u>Total</u>
Ideal	110.24	34.8	145.04
Simplex	102.40	36.8	139.20
Cardkey	103.72	19.3	123.02
Condortech	99.40	13.4	112.80
AccuTech	70.00	40.0	110.00

(AR Ex. 9; AR Ex. 13, at 4; AR at 4).

Next, the TEP met "to discuss the strengths and weaknesses of each proposal with the objective of reaching a consensus on its merits and deficiencies, relative to the evaluation criteria/factors." (AR Ex. 7). The TEP members met and discussed the offerors and their proposals, including strengths and weaknesses for each. During the discussion, one member identified deficiencies in Ideal's proposed

¹ The 18 point maximum allowed by the solicitation on the 150 point total for technical and price criteria is consistent with the Local, Small, and Disadvantaged Business Enterprises Act ("LSDBE Act"), which permits a total of 12 points on a 100 point scale.

cameras and video multiplexors and performance problems on one prior contract. (AR Supp. Ex. 18).² In the course of this consensus evaluation meeting, the TEP members then rescored the proposals based on their discussions. The panel members state that their detailed collective technical discussion and reassessment highlighted technical deficiencies in some of the proposals, including Ideal's, that were not noted by various members during their individual assessments. Ideal's consensus technical score was 37 points lower than its average technical score from the TEP individual evaluations, decreasing from 110.24 to 73. The decrease was primarily under the criteria for operational capacity and technical approach which decreased by a total of 34 points between them. Simplex's consensus technical score was about 5 points higher than its average technical score from the individual evaluations by the TEP members. The following summarizes the results of the consensus scoring:

<u>Offeror</u>	<u>Technical</u>	<u>Price</u>	<u>Total</u>
Ideal	73	34.8	107.8
Simplex	107	36.8	143.8
Cardkey	100	19.3	119.3
Condortech	95	13.4	108.4
AccuTech	30	40.0	70.0

(AR Ex. 9; AR Ex. 13, at 5; AR at 5). The TEP recommended that the competitive range be limited to Simplex, because the other offerors had no reasonable chance of supplanting Simplex as the highest ranked offeror in terms of technical and price. On July 22, 1998, the contracting officer met with the TEP and discussed their consensus evaluations, scoring, and recommendations. The contracting officer agreed with the TEP because the next closest two offerors, though close in technical scoring, were far lower in the price scoring because they offered prices 200 and 300 percent higher than that offered by Simplex. Ideal and AccuTech were considered to be too weak under the technical criteria. (AR Ex. 11; AR Supp. Ex. 18).

On July 24 and July 29, 1998, the contracting officer conducted negotiations with Simplex, requested a BAFO, and received Simplex' BAFO on July 31, 1998. The contracting officer determined that the BAFO price offered by Simplex was fair and reasonable and thereafter awarded a contract on August 5, 1998.

Ideal filed its protest on August 21, 1998, docketed as CAB No. P-554. It is not clear from the record whether Ideal ever sought and received a debriefing. On September 28, 1998, DCPS' contracting officer forwarded to us a protest of AccuTech which had been misfiled with DCPS. AccuTech's protest was docketed as CAB No. P-561.

DISCUSSION

We exercise protest jurisdiction pursuant to D.C. Code § 1-1189.3 (Supp. 1998).

² Exhibit 18, consisting of affidavits from the contracting officer and three of the evaluators, was filed as part of the District's October 5, 1998 response to Ideal's comments on the Agency Report.

In determining the propriety of an evaluation and selection decision, we examine the record to determine whether the decision was reasonable and in accord with the evaluation criteria listed in the solicitation and whether there were any violations of procurement laws or regulations. *Health Right, Inc.*, CAB No. P-507, Oct. 15, 1997, 9 P.D. 7372, 7395. Implicit in the foregoing is that the evaluation and selection decision must be documented in sufficient detail to show that it is not arbitrary. *Id.*; *Southwest Marine*, 96-1 CPD ¶ 56; *S&M Property Management*, B-243051, June 28, 1991, 91-1 CPD ¶ 615. In particular, the agency's technical evaluation documentation is required to include an analysis of the technically acceptable and unacceptable proposals, including an assessment of each offeror's ability to accomplish the technical requirements.

Ideal argues the contracting officer improperly relied on the subjective opinion of one TEP member concerning Ideal's past performance on another contract, in justifying the significant decrease in its technical scores (from the individual assessments to the consensus assessment) and its elimination from the competitive range. That argument does not take account of the additional supplementation offered by the District, including the affidavits of three of the TEP members and the contracting officer. Ideal argues that we should disregard those materials because they were submitted well after the Agency Report and after Ideal had responded to the Agency Report. Although we agree with Ideal that the record, as it existed prior to the District's last supplementation, did not adequately document the evaluation and selection process, at least with regard to the consensus evaluation of Ideal, we believe that the supplemental affidavits provide adequate explanation for the recommendations of the TEP and the evaluation and selection decision of the contracting officer. These affidavits should have been prepared and submitted as part of the Agency Report. Nevertheless, we will not exclude them from the record because it appears that no debriefing occurred and no depositions were conducted of the relevant District personnel. Thus, the key protest issues did not crystallize until after the Agency Report and its exhibits were served on Ideal. When Ideal pointed out in its comments on the Agency Report that the record lacked substantial information supporting Ideal's consensus evaluation and scoring, the District responded with the supplemental affidavits.

In other circumstances, post-Agency Report amplifications might not carry significant weight. Here, however, the facts set forth in the affidavits are consistent with the contracting officer's earlier and poorly documented conclusions. The affidavits also explain the rather vague comment in the TEP final report that the "detailed collective technical assessment highlighted technical deficiencies that were not noted in the individual assessments" – a reference primarily to the significant difference between the consensus technical scoring and the average of the individual technical assessments of Ideal, and the comment that "Ideal's past performance rating was reduced based upon the technical expert member's knowledge of the company." More importantly, Ideal has not rebutted the statements contained in the affidavits which detail deficiencies in the cameras and video multiplexors proposed by Ideal. For these reasons, we have permitted the District to supplement the record and we find that the supplemental affidavits provide an adequate rationale for the recommendations of the TEP and the competitive range and selection determinations made by the contracting officer.

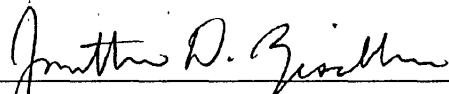
There is no indication in the record that either the TEP or the contracting officer considered criteria other than those provided in the solicitation. Thus, the argument that DCPS did not evaluate according to

the specified criteria is without merit. AccuTech's argument that its price was lower than that of Simplex's and that AccuTech's technical offering met the specification requirements does not contradict the determination of the contracting officer and the TEP that Simplex had the best offering, considering all price and technical criteria. Therefore, AccuTech's protest does not state a meritorious ground.


CONCLUSION

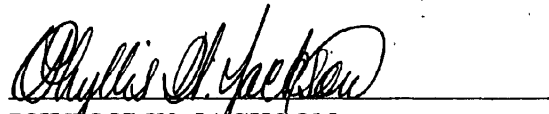
The consolidated protests are denied.

DATED: December 29, 1998


JONATHAN D. ZISCHKAU
Administrative Judge

CONCURRING:


LORILYN E. SIMKINS
Chief Administrative Judge


PHYLLIS W. JACKSON
Administrative Judge