

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

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FILE: B-183830

DATE: March 9, 1976

MATTER OF: Shapell Government Housing, Inc. and Goldrich and Kest, Inc.

DIGEST:

1. Although there were shortcomings and omissions in proposal of awardee under Navy negotiated fixed price "turnkey" family housing procurement and relatively minor inconsistencies and errors in technical evaluation of protester's and awardee's proposal, determination by Navy, in its broad discretion, that awardee had highest technically evaluated proposal had reasonable basis, and initial proposal award based upon lowest dollar per technical quality point ratio to awardee, who had higher priced, higher technically rated proposal, was reasonable despite protester's over \$600,000 lower offered price.
2. Appropriateness of Navy's failure to conduct discussions with offerors within competitive range in fixed price "turnkey" family housing procurements and its award on initial proposal basis is questionable, in view of many varied acceptable approaches of meeting "turnkey" projects' performance-type specifications, since fact that offeror is highest rated does not mean it is offering such "fair and reasonable" price that oral or written discussions would not be required, even if there are several competitive offerors.
3. Although doubt exists as to general appropriateness of Navy's failure to conduct discussions and making award on initial proposal basis in Navy "turnkey" family housing procurements and even though Navy's only justification of record for failing to conduct discussions was that awardee's proposal contained no major variances from RFP, Navy's failure was not unjustified or illegal in particular procurement, since offerors apparently submitted best possible offers at lowest prices, which allows inference that adequate competition existed to insure "fair and reasonable" price, and since awardee's price could be considered "fair and reasonable."

4. Award may be made on initial proposal basis without discussions with offerors in competitive range to offeror, who proposed higher fixed price than other presumably acceptable offeror under Navy "turnkey" family housing procurement, since winning offeror, who received lowest dollar per quality point ratio, had "lowest evaluated price" under ASPR § 3-807.1(b)(1) (1974 ed.). The language "lowest evaluated price" should be defined to include all factors involved in award selection. B-170750(2), February 22, 1971, modified.
5. Where substantial technical uncertainties exist in initial proposals, discussions should be conducted with offerors in competitive range and award should not be made on initial proposal basis because "adequate price competition" cannot be found to exist under such circumstances. However, proposal of awardee in present Navy "turnkey" family housing procurement, who received award on initial proposal basis, substantially complied with RFP requirements. Therefore, Navy's failure to conduct discussions was not unjustified or illegal.
6. Contrary to protester's assertions, Navy denies that contractor received "insider information" substantially prior to closing date for receipt of proposals relating to precise evaluation criteria and numerical breakdown. Also, GAO records do not indicate that awardee was supplied this information during bid protest involving prior procurement having identical evaluation scheme.
7. Navy RFP for "turnkey" family housing, which listed major technical criteria in descending order of importance and listed and explained all subcriteria of major criteria, although subcriteria's relative weight was not disclosed, has satisfied requirement that prospective offerors be informed of broad scheme of scoring to be employed and given reasonably definite information as to degree of importance to be accorded to particular factors in relation to each other. Disclosure of precise numerical weights is not required. However, RFP is defective for failing to disclose role of price in evaluation scheme.

8. Where Navy RFP for "turnkey" family housing failed to disclose manner in which price would be compared to technical evaluation criteria even though price was considered, i.e., award was made to offeror having lowest price per quality point ratio, disclosure of precise evaluation formula shortly before closing date for receipt of proposals was not meaningful disclosure. However, in view of advanced state of contract and since prejudice to unsuccessful offerors was speculative, protest is denied.

BACKGROUND

Shapell Government Housing, Inc. and Goldrich & Kest, Inc., a joint venture (Shapell), has protested the award of a contract to TGI Construction Corporation, and the Gallegos Corporation, a joint venture (TGI), under request for proposals (RFP) N62474-75-R-6010, issued by the Western Division, Naval Facilities Engineering Command, San Bruno, California. The RFP solicited proposals for the design and construction of 500 units of Navy family housing in Murphy Canyon Heights, Naval Complex, San Diego, California, on a "turnkey" basis. The RFP contemplated the award of a firm-fixed price contract.

The RFP indicated the basis of award in Section 1C.7 as follows:

"* * *The Navy reserves the right to reject any or all proposals at any time prior to award; to negotiate with any or all proposers; to award a contract to other than the proposer submitting the lowest price offer; and, to award a contract to the proposer submitting the proposal determined by the Navy to be the most advantageous to the Government. * * *"

"* * *PROPOSERS ARE ADVISED THAT IT IS DEFINITELY POSSIBLE THAT AWARD MAY BE MADE WITHOUT DISCUSSION OR ANY CONTACT CONCERNING THE PROPOSALS RECEIVED. THEREFORE, PROPOSALS SHOULD BE SUBMITTED INITIALLY ON THE MOST FAVORABLE TERMS FROM A PRICE AND TECHNICAL STANDPOINT WHICH THE PROPOSER CAN SUBMIT TO THE GOVERNMENT. DO NOT ASSUME THAT YOU WILL BE CONTACTED OR AFFORDED AN OPPORTUNITY TO CLARIFY, DISCUSS, OR REVISE YOUR PROPOSAL."

Section 1C.14a of the RFP summarized the evaluation criteria as follows:

"Evaluation will be made on the basis of site design, site engineering, dwelling unit design, and dwelling unit engineering and specifications, and cost. Basis for the evaluation will include the quality, durability, and maintainability of materials, equipment, products and other features provided, and consideration of life cycle costs."

The proposals were to be evaluated in accordance with the Navy Facilities Engineering Command Technical Evaluation Manual for Turnkey Family Housing (Manual). A modified version of the Manual was included in the RFP. Section II of the modified Manual stated:

"MAJOR EVALUATION AREAS. The major areas of consideration in the technical evaluation of turnkey family housing proposals have been established by the Department of Defense as a result of a report to the Department by a tri-service committee representing all of the armed forces. These major areas, in order of decreasing importance, are as follows:

- (1) Dwelling Unit Design
- (2) Dwelling Unit Engineering and Specifications
- (3) Site Design
- (4) Site Engineering"

In addition, the modified Manual listed all of the subcriteria included under each of these major criteria. Each of the subcriteria was explained in the modified Manual and the salient characteristics on which compliance with the subcriteria was to be judged were listed. However, the precise numerical point breakdown contained in the Manual was not included in the modified Manual.

In response to the RFP, six proposals were received from five offerors. Shapell submitted two proposals numbered 0006 and 0011. The proposals were identified only by number to preserve anonymity in the technical evaluation, but for purposes of clarity we will discuss the proposals here by name. The proposals were evaluated by a Technical Evaluation Team and the Contracts Evaluation and Selection Board in accordance with the Manual. The Board assigned a technical quality point score based on a 1,000 point scale. No discussions were conducted with any of the offerors. Award was made on the basis of initial proposals to the offeror receiving the lowest dollar per quality point (\$/q.p.) ratio. The ratio was obtained by dividing an offeror's

total number of technical quality points into the offeror's proposed fixed price. The proposals submitted received the following scores:

<u>Offeror</u>	<u>Price</u>	<u>Technical Quality Points</u>	<u>\$/q.p. Ratio</u>
TGI	\$13,698,000	662	\$20,692
Ecoscience & Associates	13,746,609	633	21,716
M. J. Brock & Sons and Malone Development Company, a joint venture	13,990,000	613	22,822
Shapell proposal 0006	13,095,000	579	22,617
Shapell proposal 0011	13,188,000	553	23,848
Minority Contractors Association of Los Angeles and Nominees	17,899,510	544	32,904

Award was made to TGI on April 28, 1975, in the amount of \$13,698,000.

PROPRIETY OF THE EVALUATION OF PROPOSALS

Shapell protests that the evaluation of its two proposals and TGI's proposal was arbitrary, capricious and contrary to the RFP requirements. Shapell has subsequently decided not to pursue its protest concerning the evaluation of its 0011 proposal in order to simplify matters. In support of its contentions, Shapell has made a comprehensive comparison of the relative merits of its 0006 proposal and TGI's proposal. This comparison includes four detailed charts comparing the proposals based on the subcriteria discussed in the Manual. These charts compare the alleged relative weaknesses and strengths of each proposal with regard to each of the subcriteria, and contain a re-evaluation and rescoring of the proposals. In addition, in its correspondence and attached affidavits, Shapell has elaborated on its contentions in this regard. These comparisons purportedly demonstrate the substantial superiority of Shapell's proposal, and that the Navy acted unreasonably in awarding TGI a significantly greater number of technical quality points than Shapell, especially considering that Shapell's price was over \$600,000 less than TGI's offered price.

The specific alleged deficiencies in TGI's proposal and the alleged superiorities of Shapell's proposal as compared to TGI's proposal are too numerous to discuss here. However, we have completely reviewed and compared the proposals of TGI and Shapell, including the numerous specific contentions and comparisons made by Shapell, as well as the Navy's scoring and evaluation of the proposals.

This procurement for the construction of family housing was conducted under the "turnkey" method. Consequently, offerors were required to propose to a performance-type specification setting forth only minimum broad standards and basic configurations. As we observed in 51 Comp. Gen. 129, 131 (1971):

"* * * under the 'turnkey' method, a developer builds in accordance with plans and specifications prepared by his own architect and to a standard of good design, quality and workmanship. Necessarily, the guidance in the solicitation is limited to an indication of the features required, such as style of house, number of bedrooms and baths, etc., and an indication of where the housing is to be located on the site--essentially, performance specifications. * * *"

Under such circumstances, the selection of the best qualified contractor in a "turnkey" procurement is best made by the administrative office concerned in the exercise of its sound judgment as to the best interests and advantage to the Government. See NHA Housing, Inc., B-179196, April 24, 1974, 74-1 CPD 211.

In addition, as we stated in Applied Systems Corporation, B-181696, October 8, 1974, 74-2 CPD 195:

"* * * It is not the function of our Office to evaluate proposals and we will not substitute our judgment for that of the contracting officials by making an independent determination as to which offeror in a negotiated procurement should be rated first and thereby receive an award. B-164552(1), February 24, 1969. The overall determination of the relative desirability and technical adequacy of proposals is primarily a function of the procuring agency and in this regard, we have recognized that the contracting officer enjoys

a reasonable range of discretion in the evaluation of proposals and in the determination of which offer or proposal is to be accepted for award as in the Government's best interest. B-178887(2), April 10, 1974; B-176077(6), January 26, 1973. Since determinations as to the needs of the Government are the responsibility of the procuring activity concerned, the judgment of such activity's specialists and technicians as to the technical adequacy of proposals submitted in response to the agency's statement of its needs ordinarily will be accepted by our Office. B-175331, May 10, 1972. Such determinations will be questioned by our Office only upon a clear showing of unreasonableness, an arbitrary abuse of discretion, or a violation of the procurement statutes and regulations. B-179603, April 4, 1974; B-176077(6), January 26, 1973."

Also see Riggins & Williamson Machine Company, Inc., 54 Comp. Gen. 783, 75-1 CPD 168 (1975); Institute for Social Concerns, B-181800, May 1, 1975, 75-1 CPD 274.

We believe the determination of TGI as having the highest technically evaluated proposal had a reasonable basis. There were shortcomings and omissions in TGI's proposal, e.g., TGI's failure to submit a plumbing diagrammatic layout as required by the RFP. (TGI's proposal was downgraded for this defect.) However, on the whole, TGI's deficiencies and its failures to comply with RFP requirements were relatively minor. Compare Corbetta Construction Company of Illinois, Inc., B-182979, September 12, 1975, 55 Comp. Gen. _____, 75-2 CPD 144, where the omissions and inconsistencies with RFP requirements in the proposal of the awardee under a Navy "turnkey" housing procurement were substantial.

Also, we have found some relatively minor inconsistencies and errors in the technical evaluation of TGI's proposal, e.g., the assignment of 22 points out of a possible 20 maximum quality points by the Board to TGI's proposal for the Bathing item of the Dwelling Unit Design section of the technical evaluation scheme (Section III-J of the Manual). However, considering the 1,000 point technical scale and the relatively wide differences between the technical scores, we do not believe that the minor errors we have found could have affected the award selection.

We have also found some areas where Shapell's 0006 proposal was apparently misevaluated. For example, the Navy apparently downgraded Shapell's proposal because the "living room and dining room areas * * * [for some proposed units] were below RFP minimums," even though, from our review, we believe Shapell met or exceeded the RFP minimum requirements in this regard. Nevertheless, on the basis of our overall review of Shapell's 0006 proposal and the Navy's evaluation thereof, we are unable to conclude that the Navy evaluated Shapell's proposal in an unfair or unreasonable manner. In this regard, Shapell's 0006 and 0011 proposals only received the fourth and fifth highest technical scores respectively of the six proposals received.

The Navy clearly took Shapell's low offered prices into account in making the award selection by virtue of its use of the \$/q.p. ratio. We have recognized the propriety of using this formula to determine the proposal most advantageous to the Government in terms of price and total technical points. See NHA Housing, Inc., *supra*; TGI Construction Corporation, 54 Comp. Gen. 775, 75-1 CPD 167 (1975); Bell Aerospace Company, B-183463, September 23, 1975, 55 Comp. Gen. ___, 75-2 CPD 168. Also, in negotiated fixed-price procurements, it is clear that price need not be the controlling factor, and award may be made to a higher-priced, higher technically rated offeror. See Bell Aerospace Company, *supra*, and cases cited therein. Indeed, Section 1C.7 of the RFP (quoted above) specifically recognized that award could be made to other than the offeror who submitted the lowest price. In view of the foregoing, TGI's low \$/q.p. ratio and the Board's specific finding that there was a marked separation between TGI's technical proposal and the others received, we believe that the Navy's determination to make the award to TGI despite its higher offered price was reasonable.

PROPRIETY OF THE FAILURE TO CONDUCT DISCUSSIONS

We have some general observations concerning the appropriateness of the Navy decision not to conduct discussions with any of the offerors but rather to make its award selection on the basis of initial proposals. In negotiated procurements, discussions are generally required to be conducted with offerors within a competitive range except in certain specified instances.

The statute requiring such discussions and setting forth the exceptions to the rule, 10 U.S.C. § 2304(g) (1970), states:

"In all negotiated procurements in excess of [\$10,000] in which rates or prices are not fixed by law or regulation and in which time of delivery will permit, proposals, including price, shall be solicited from the maximum number of qualified sources consistent with the nature and requirements of the supplies or services to be procured, and written or oral discussions shall be conducted with all responsible offerors who submit proposals within a competitive range, price, and other factors considered: Provided, however, That the requirements of this subsection with respect to written or oral discussions need not be applied to procurements in implementation of authorized set-aside programs or to procurements where it can be clearly demonstrated from the existence of adequate competition or accurate prior cost experience with the product, that acceptance of an initial proposal without discussion would result in fair and reasonable prices and where the request for proposals notifies all offerors of the possibility that award may be made without discussion." (Emphasis supplied.)

This statute is implemented, in much the same terms, in Armed Services Procurement Regulation (ASPR) § 3-805.1 (1974 ed.). The only arguable applicable exception to the general rule that discussions be conducted, which may seem to be applicable to the present procurement, is set out at ASPR § 3-805.1(a)(v) (1974 ed.) as follows:

"[where] it can be clearly demonstrated from the existence of adequate competition or accurate prior cost experience with the product or service that acceptance of the most favorable initial proposal without discussion would result in a fair and reasonable price, provided however that the solicitation

notified all offerors of the possibility that award might be made without discussion, and provided that such award is in fact made without any written or oral discussion with any offeror." (Emphasis supplied.)

ASPR § 3-807.1(b)(1)a (1974 ed.) sets forth the criteria for "adequate price competition" as follows:

"Price competition exists if offers are solicited and (i) at least two responsible offerors (ii) who can satisfy the purchaser's (e.g., the Government's) requirements (iii) independently contend for a contract to be awarded to the responsive and responsible offeror submitting the lowest evaluated price (iv) by submitting priced offers responsive to the expressed requirements of the solicitation. Whether there is price competition for a given procurement is a matter of judgment to be based on evaluation of whether each of the foregoing conditions (i) through (iv) is satisfied. Generally, in making this judgment, the smaller the number of offerors, the greater the need for close evaluation."

See 52 Comp. Gen. 346 (1972); Corbetta, supra.

In the present case, although prospective offerors were advised in the RFP that award on the basis of initial proposals could be made (see Section IC-7 of the RFP, quoted above), there is no indication in the record that the Navy made any determination upon receipt and evaluation of the proposals whether there was adequate competition so that acceptance of TGI's initial proposal without any discussions would result in a "fair and reasonable" price. From our review of the record, the only justification given by the Board for failing to conduct discussions which we have found was that TGI's proposal contained no major variances from the RFP and that, therefore, discussions were not warranted.

Although five presumably competitive offerors submitted proposals under the present RFP, we have some doubts as to the appropriateness in general of not conducting oral or written discussions in "turnkey" family housing procurements. As discussed above, "turnkey" procurements generally allow for many widely varied approaches in the design and construction of the family housing projects, since offerors are only required to meet performance-type specifications. Because of this wide variance of approaches, although an offeror has received the lowest \$/q.p. ratio, that does not mean it is necessarily offering such a "fair and reasonable" price that oral or written discussions would

not be required, notwithstanding the existence of several competitive offerors, since a true basis for comparison of the proposals to insure that a "fair and reasonable" price was received may be lacking.

It may be argued that this same problem exists in many cost-reimbursement contracts, where we have recognized the propriety of awards on an initial proposal basis. See 52 Comp. Gen. 346; B-177986(2), October 3, 1973. However, prior to the award of cost-reimbursement contracts, the Government is required to make an independent cost projection of the offerors' proposed estimated costs. See ASPR § 3-807.2(c) (1974 ed.); Raytheon Company, 54 Comp. Gen. 169, 74-2 CPD 137 (1974); Signatron, Inc., 54 Comp. Gen. 530, 74-2 CPD 386 (1974); Tracor-Jitco, Inc., 54 Comp. Gen. 896, 75-1 CPD 253 (1975). This means that the Government has an independent gauge in cost-reimbursement contracts (not generally available in fixed-price "turnkey" procurements), in addition to the competitive environment created by other acceptable proposals, to judge the fairness and reasonableness of the proposed awardee's estimated costs. See B-177986(2), supra.

In addition, we believe it is ordinarily conducive to the Government's receiving the best possible contract at the lowest price to conduct discussions with all offerors within a competitive range even if an award on an initial proposal basis may be technically justified. We believe this to be particularly the case where there is a possibility that the existence of competition will not necessarily insure that the Government pays the lowest price for the highest quality, a situation which we believe may exist here. Just because an initial proposal is ranked best overall does not necessarily mean that it is the best deal the Government can get. Discussions allow an opportunity for the Government to improve on the deal it was first offered, and give the Government the flexibility to get the most for its money.

Notwithstanding our general concern regarding the appropriateness of the Navy's failure to conduct discussions in "turnkey" procurements, we are unable to find that the Navy's failure to conduct discussions was unjustified or illegal in this case. In this regard, we have held that "competition" sufficient to support award of a negotiated contract on an initial proposal basis exists where several offerors submit independent cost and technical proposals, as was the case here, and the offeror with the most favorable proposal, price and other factors

considered, is selected for award at a "fair and reasonable" price. See B-168085, December 29, 1969; B-173915, December 21, 1971; B-176066(1), August 28, 1972; 52 Comp. Gen. 346; B-177986(2), supra. Ordinarily, the existence of several competitive offers helps to insure a "fair and reasonable" price for the Government because competitive pressures generally force offerors under negotiated procurements to "trade off" between cost and technical factors in order to offer the best possible proposal at a "fair and reasonable" price.

We believe it may reasonably be inferred from the facts and circumstances surrounding this case that the Navy could well have found that adequate competition existed which insured a "fair and reasonable" price. In this regard, it would appear to be likely that the offerors in the present case submitted their best possible offers at the lowest price, especially in view of the RFP's explicit warning regarding the real possibility of no discussions with any of the offerors. Also, TGI's price could be considered "fair and reasonable," notwithstanding that Shapell's price for a different and lower evaluated configuration was significantly lower.

With regard to the fact that TGI's price was higher than Shapell's offered prices, we note that one of the criteria contained in ASPR § 3-807.1(b)(1)a (1974 ed.) (quoted above) defining "adequate price competition" is that the offerors independently contend for a contract to be awarded to the "responsive" and responsible offeror submitting the lowest evaluated price. We have found this criterion not to be applicable in the award of cost-type contracts, see 52 Comp. Gen. 346, and have recognized the propriety of awards on an initial proposal basis, in appropriate circumstances, to technically superior offerors who propose higher estimated costs than those proposed by offerors submitting technically inferior, albeit acceptable, proposals. See B-170633(1), May 3, 1971; B-177986(2), supra. Similarly, in negotiated awards of fixed-price contracts, we have recognized the propriety of awards to the highest evaluated offerors, who have proposed prices higher than other offerors submitting technically acceptable proposals. See B-173218(1),(2),(3) and (4), November 16, 1971. In this regard, we believe the language "lowest evaluated price" (emphasis supplied) should be defined to include all of the factors in the award evaluation. B-170750(2), February 22, 1971, is modified insofar as it is inconsistent with this decision. That is, in the present case, the offeror, who received the "lowest evaluated price" and therefore the award, was TGI, who received the lowest \$/q.p. ratio, even though TGI's price was higher than another presumably acceptable offeror.

Also, in Corbetta, supra, we recognized that where substantial technical uncertainties exist in initial proposals--whether due to the proposals' failure to conform to a key technical requirement, or to the cumulative effect of a large number of relatively minor items--award should not be made on an initial proposal basis because written or oral discussions need to be conducted to the extent necessary to resolve the uncertainties. This is also related to one of the necessary criteria for "adequate price competition" contained in ASPR § 3-807.1(b)(1)a (1974 ed.), i.e., the requirement that there be at least two responsible offerors "responsive" to the RFP requirements. As we stated in Corbetta, supra, the reason for this rule is that:

"Where the Government's technical evaluators have noted a substantial number of questionable and uncertain areas in the initial proposals and no discussions are conducted, it becomes uncertain whether the Government is obtaining the most advantageous contract from a price and technical standpoint by making an award on the basis of the initial proposals. We believe discussions are required to clarify the actual technical quality being offered and also to determine whether any of the Government's requirements should be modified. We believe this is so regardless of whether the initial proposals are rated, in an overall sense, as technically acceptable, or whether they contain blanket offers to conform to the requirements."

However, the facts and circumstances of the present case are clearly distinguishable from those which existed in Corbetta, supra, in that TGI's proposal did not have substantial technical uncertainties but rather it substantially complied with the RFP requirements and contained only "minor variances" from RFP technical criteria.

AWARDEE'S ALLEGED POSSESSION OF THE PRECISE EVALUATION SCHEME

Shapell has also alleged that it was denied the right to compete on an equal basis with TGI because, substantially prior to the submission of proposals, TGI was provided with "insider information," i.e., the unexpurgated Manual, disclosing the precise evaluation criteria and numerical breakdown, material which was not furnished to Shapell in a timely manner. Shapell asserts that TGI obtained the Manual by virtue of its participation in the protest involved in our decision in TGI, supra. In support of its contentions in this regard, an

affidavit of one of Shapell's officers refers to the officer's conversation with the architect employed by TGI to prepare its proposal. The affidavit indicates that the architect admitted that he was informed prior to or in the course of preparing TGI's proposal on this RFP of the weight which would be accorded the various evaluation criteria and the allowable points for these criteria, and that he used this information to best advantage in preparing TGI's proposal. Shapell claims that it only received a copy of the Manual on March 14, 1975 (Friday), at approximately 5 p.m., and its request for an extension of the closing date for receipt of proposals from March 17, 1975 (Monday), at 2:30 p.m., was improperly denied. Shapell asserts that one weekend is not enough time to make any real revisions in a proposal on a project of this scope. Shapell also claims that had it been given more time it would have made such revisions in its proposals as to have clearly made its proposals the highest rated technically.

The Manual was released to all of the offerors shortly before the closing date for receipt of proposals under the RFP as a result of a "Freedom of Information Act" request made by TGI. The Navy asserts that it did not release the unrevised Manual to TGI prior to the fulfillment of TGI's "Freedom of Information Act" request in mid-March 1975, and upon release of the Manual to TGI, all prospective offerors were given equal access to the Manual as rapidly as possible. In addition, our records on TGI, supra, do not indicate that TGI was ever supplied the Manual by our Office.

In view of the foregoing, we are unable to conclude that TGI did, in fact, have a copy of the Manual long before the other offerors, notwithstanding the contrary statements in Shapell's affidavits. Also, we cannot find that the Navy's denial of Shapell's request for an extension of the closing date for receipt of proposals was unreasonable in view of the ASPR § 3-501(b)(3) D (i) (1974 ed.) prohibition against the disclosure of the precise evaluation process (discussed below) and the Navy's belief that all offerors were on an equal footing insofar as their knowledge (or lack thereof) of the evaluation scheme was concerned.

SUFFICIENCY OF THE SOLICITATION'S DISCLOSURE OF THE EVALUATION SCHEME

Shapell also protests that the RFP was defective inasmuch as it did not disclose the precise evaluation scheme upon which the proposals

were judged. Shapell alleges that since the precise numerical breakdown of the evaluation criteria and subcriteria, which is set forth in the Manual, was not timely included in the RFP, and was only supplied to the offerors shortly before the closing date for receipt of proposals, the offerors were prejudicially disabled from effective competition.

As an example of the alleged prejudicial nature of the undisclosed subcriteria, Shapell notes that the Master Television Antenna System subcriteria of the Site Engineering evaluation criteria (Section II-G of the Manual) was assigned seven technical quality points, whereas the subcriteria for the Street System of the Site Engineering criteria (Section II-H of the Manual), a substantially greater monetary investment, was assigned only 10 quality points. Shapell asserts that no offeror could reasonably fathom from the bare language of the RFP that the television antenna system would be assigned almost as many points as the entire street system, especially since the assignment of such a similar amount of points conflicted with the dictates of common sense experience and practicality.

As another example, Shapell refers to the Bathing subcriteria of the Dwelling Unit Design criteria (Section III-J of the Manual). Shapell states that although Section 2A.2.C of the RFP mandated one and one half baths in the three bedroom, one story dwelling units and two baths in the three bedroom, two story dwelling units, TGI was awarded extra points because its proposal offered two baths in the three bedroom, one story units and two and one half baths in the three bedroom two story units. (As discussed above, the Navy erroneously assigned TGI more than the 20 maximum possible points.) Shapell contends that Section 2A.2.C seemed clear that this was a mandatory number of baths rather than a minimum number of baths. Shapell asserts that its interpretation was reasonable in view of the fact that the quarters were for junior enlisted men rather than senior servicemen, who would presumably be entitled to better facilities. Shapell contends that only the precise criteria in the undisclosed Manual made it clear that additional points would be awarded for additional baths.

Our Office has consistently taken the position that offerors should be informed of the "the broad scheme of scoring to be employed" and given "reasonably definite information as to the degree of importance to be accorded to particular factors in relation to each other." 49 Comp. Gen. 229 (1969); 50 id. 59 (1970); BDM Services Company, B-180245, May 9, 1974, 74-1 CPD 237. Detailed evaluation information need not be included in the RFP. 50 Comp. Gen.

565 (1971); Kirschner Associates, B-178887(2), April 10, 1974, 74-1 CPD 182. We have also found that while offerors should be informed of the relative weight or importance attached to the evaluation criteria, the disclosure of the precise numerical weights to be used in the evaluation process is not required. 50 Comp. 565, 575; 50 *id.* 788, 792 (1971); B-170449(1), November 17, 1970; BDM Services Company, *supra*. Indeed, ASPR § 3-501(b)(3) D (i) (1974 ed.) specifically prohibits the disclosure of the precise numerical weights to be used in the evaluation of the proposals.

In the present case, we believe the Navy's disclosure of the technical evaluation factors was adequate. In the modified Manual included in the RFP, the four technical evaluation criteria were listed in descending order of importance or priority, a method for disclosing relative weights of evaluation criteria which we have recognized as ordinarily proper. See BDM Services Company, *supra*, and cases cited therein. With regard to the RFP's nondisclosure of the numerical or relative weights of the subcriteria, we have held that the relative weight of subcriteria need not be disclosed so long as the subcriteria are definitively descriptive of the principal criteria whose relative weight has been adequately disclosed. See AEL Service Corporation, 53 Comp. Gen. 800, 74-1 CPD 217. In view of the foregoing and inasmuch as the RFP actually disclosed and explained all of the subcriteria to be considered in assigning technical quality points, we believe the requirement that prospective offerors be advised of the evaluation criteria to be applied has been satisfied, insofar as the technical evaluation factors are concerned. See 50 Comp. Gen. 565; 51 *id.* 397 (1972); Kirschner Associates, Inc., *supra*; AEL Service Corporation, *supra*; Graphical Technology Corporation, B-181723, March 27, 1975, 75-1 CPD 183. (See the discussion concerning the disclosure of price below.)

With regard to the specific examples of alleged evaluation scheme deficiencies which Shapell has cited as prejudicially disabling it from effective competition, we offer some further observations.

We note that in the modified Manual in the RFP (as well as in the unexpurgated Manual), it was indicated that points would be added within the 20 point maximum for additional bathrooms under the Bathing subcriteria of the Dwelling Unit Design criteria. We believe this refutes Shapell's contention that the number of baths specified in Section 2A.2.C of the RFP was an absolutely mandatory number rather than a minimum number.

With regard to Shapell's questioning of the similar number of points assigned to the Master Television Antenna System subcriteria (7 points) and the Street System subcriteria (10 points) of the Site Engineering criteria, we have consistently found that the various factors to be considered in the point evaluation of proposals and the relative weights to be assigned to each factor are matters primarily for consideration by the procuring activity, and our Office will not substitute its judgment for that of the agency unless it is clearly and convincingly shown that the agency's actions in establishing and applying such factors and weights are not reasonably supportable by the facts. See 50 Comp. Gen. 565, 574; B-173951, February 8, 1972; BDM Services Company, supra. In explaining the reasons for the similar weights assigned to these subcriteria, the Manual (but not the modified Manual) states:

"* * * For example, under site engineering, it would appear that very nearly as much weight (7 points) for the provision of a master TV antenna system has been given than to the entire street system (10 points). It would seem, offhand, that such a major investment item as the street system should weigh far more heavily in the evaluation process than the TV antenna system. The RFP, however, sets a relatively strict standard of minimum acceptability on the street system in terms of width and pavement thickness. The relative weighting of 10 points given to this system is keyed to the much more limited flexibility, which the proposer has to provide us a more substantial road system, as compared to the greater flexibility he has to provide us with a TV antenna system providing the maximum number of channels and clarity of reception for the benefit of the occupants."

In view of the Manual's statement, we are unable to conclude that the Navy's assignment of points for these subcriteria was unreasonable. In any case, we note that all offerors were assigned either 2 or 3 points for the Master Television Antenna System subcriteria and from 2 to 5 points for the Street System subcriteria. Since TGI received

662 technical quality points or 29 points more than the next offeror and 83 and 109 points more than Shapell's proposals, we can perceive no possible prejudice to Shapell or any other offeror by assigning these subcriteria a similar number of points.

In addition, our review has not caused us to question the reasonableness of the other precise weights assigned evaluation criteria and subcriteria.


This procurement was deficient for failing to disclose the role of price in the award selection scheme. In TGI, supra, which involved the same evaluation scheme and procuring activity as the present case, we found the RFP deficient for failing to apprise prospective offerors as to the manner in which price would be compared to the technical evaluation criteria in determining the awardee, i.e., the RFP did not in any way indicate that the \$/q.p. ratio would be utilized.

The Navy asserts that it did, in fact, disclose the relationship of price in the evaluation scheme prior to the closing date for receipt of proposals by furnishing the prospective offerors with a copy of the unrevised Manual. (See the above discussion regarding the release of the Manual). However, we agree with the protester that this was not really a meaningful disclosure with regard to this procurement, in that one weekend does not seem to be sufficient time for an offeror to make any significant changes in its proposal for a project of this scope to take into account the new disclosure of the role of price in the evaluation scheme.

However, any possible prejudice to the unsuccessful offerors by virtue of this deficiency is speculative. In this regard, we note that although Shapell proposed significantly lower prices, TGI's proposal was found to be far superior technically to either of Shapell's proposals. Since, as indicated in TGI, supra, the relative weight accorded price in the evaluation scheme is not discernible, we are unable to find any prejudice. Moreover, the decision in TGI, supra, where we first brought this deficiency to the Navy's attention, was issued on March 20, 1975, after the closing date for receipt of proposals under the present RFP. In any case, the Navy has informed us that over \$2.3 million has already been paid TGI and approximately 23 percent of the work has been completed under the contract.

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Therefore, Shapell's protest is denied. However, we are bringing the procurement deficiencies we have found in our review of this procurement to the attention of the Secretary of the Navy.


Acting Comptroller General
of the United States