

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

FILE: B-184438

DATE: August 3, 1976

MATTER OF: Decision Sciences Corporation

61265

98759

DIGEST:

Response to request for submission of best and final offer which was reasonably interpreted by agency to be of questionable compliance with RFP was properly rejected without first obtaining clarification from offeror.

On April 21, 1975, the Department of Commerce issued a Request for Proposals (RFP) No. 5-36829 leading to the award of a firm fixed price contract for a planning study for the revitalization of the central business district of East St. Louis, Illinois, with particular emphasis on marketing and a feasibility analysis of the city's current plans. Paragraph III of the RFP section entitled "Instructions for Proposal Preparation" stated that price would be a factor and award would not necessarily be made to the offeror submitting the lowest price. The provision also indicated that no additional consideration would be given to technical capabilities in excess of those needed for successful performance of the work.

The RFP was issued to 198 sources with a proposal closing date of May 21, 1975, at which time 23 offers had been received. After technical evaluations, negotiations were conducted by telephone with the five offerors determined to be within the competitive range.

A telegram, dated June 21, 1975, requesting best and final offers by 5 p.m., June 26, 1975, was sent to the five offerors, all of whom responded on time. The telegram asked each offeror to "confirm, revise, clarify, and support, or improve your technical/cost proposal in order to provide your best and final offer." The telegram also stated "Receipt of best and final offers shall constitute closing of negotiations. After that time, unless this Office finds it necessary to contact you further, no information will be furnished to any offeror until the award of a contract."

The original proposal of Decision Sciences Corporation (DSC) stated that the objective of the program could not be achieved by simply providing a report or set of recommendations and that it was essential that a process for change be introduced and applied. Therefore, in addition to the required study report, the proposal offered delivery of an executive summary report, an executive briefing and selling aids coupled with a "dynamic computerized model and data base of East St. Louis to support the continuing process of planning and development." The proposal price was \$66,123. This technical proposal was evaluated one point higher than Ernst and Ernst's (E&E) whose initial proposal price was \$50,725. A third offeror was evaluated technically even with DSC but was determined to be outside the competitive range because of its proposed price of \$85,000.

In its best and final offer of June 24, 1975, DSC stated, in pertinent part, as follows:

"With respect to our technical/management proposal, we understand that no deficiencies exist and we, therefore, do not plan to submit a revised document. In essence, our previously submitted technical and management proposal stands, and therefore, we have not submitted a revised Section I.

"With respect to our cost proposal, please note that our technical/management proposal envisions providing the City of East St. Louis with an operational planning process as well as a study report. This planning process is supported by DSC's comprehensive community planning model, SCOPE. As a result we have included in our cost estimates, \$3,000 of computer costs and use of SCOPE Model specialists. If computer resources could be provided by the City of East St. Louis and the full SCOPE process is not employed, we would be able to reduce our proposal price significantly. Thus with respect to our cost proposal, we now wish to propose two options:

Option 1 - DSC provides computer facilities and use of SCOPE System

Option 2 - City of East St. Louis provides computer facilities as required

"These quotations are contained in the enclosed, sealed envelope marked Section II, and represent our best and

final offer. These quotations are good for a period of thirty (30) days, and we are prepared to accept the inclusion of all clauses, terms, and conditions of the solicitation."

To this letter was attached a table entitled, "Deliverable Items" which stated as follows:

	<u>"Study and reports in accordance with proposal</u>	<u>Support of continuing process of operational planning</u>	<u>DSC cost quotation</u>
Option 1	yes	DSC supplies computer time and assistance to support full SCOPE process	\$50,119
Option 2	yes	East St. Louis or Department of Commerce supplies computer time and full SCOPE process not employed"	\$39,873

DSC states it also telephoned and sent a mailgram, dated June 24, 1975, to the contracting officer explaining the two options. While we have no record of the telephone call, the mailgram, in part, reads as follows:

"Reference solicitation Number 5-36829 and our best and final offer. Our technical/management proposal previously submitted stands. Our cost proposal now includes two options. Option one is our original offer. Option two involves a three thousand dollar reduction based on provisions of computer time. Letter follows."

In evaluating the best and final offers, the Department of Commerce determined that Option 2 was unacceptable because it was based on contingencies or unknowns such as the existence and availability to DSC of an East St. Louis computer facility. DSC's Option 1 and E&E's proposal were evaluated as follows:

Offeror	<u>Technical</u>		<u>Cost</u>		<u>Final Rating</u>		
	Orig.	Final	Orig.	Final	Tech.	Cost	Total
E&E	77	79	\$50,725	\$46,698	79	17.5	96.5
DSC	78	78	\$66,123	\$50,119	78	16.3	94.3

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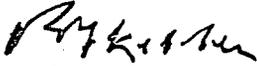
The proposal of E&E was determined to be most advantageous to the Government and a contract for \$46,698 was awarded to that firm on June 30, 1975.

DSC protested the award, claiming that the Department of Commerce arbitrarily eliminated its lower price option and that any question the Department of Commerce had concerning the intent of Option 2 should have been clarified by telephoning DSC. DSC contends that the proper interpretation of the best and final offer language was that the Option 1 price of \$50,119 included the provision of computer time and a computerized model and that Option 2 price of \$39,873 included "full delivery to meet all requirements of the solicitation but without providing extra computer resources and a computer model."

DSC has asked that the award to E&E be terminated and awarded to DSC or that DSC be awarded damages in the amount of \$25,000.

While DSC's assertion that its Option 2 proposal met all of the requirements of the solicitation seems to be supported by the statement in its best and final offer of June 24, it is not necessarily consistent with a comparison of the solicitation and DSC's technical proposal. The solicitation calls for evaluating the market and general feasibility of the proposed Collinsville Avenue Mall, recommending detailed short-term strategy for overall commercial revitalization of the central business district and suggesting a broad long-range strategy for the overall economic development of East St. Louis. The DSC technical proposal offered to develop a model (specifically described on page 16 as a computer model) to perform these tasks based directly on its SCOPE system. It is not clear whether the performance of these tasks can be interpreted in meaningful terms without a computer and without employing the "full SCOPE process." Apparently, this was the agency concern and we cannot find that it was unreasonable. Any request for clarification of DSC's interest by the contracting activity would, of course, require conducting another round of best and finals. We do not believe it is incumbent on the agency to continue with additional rounds until all possible questions have been resolved. The burden is on the offeror in submitting his best and final proposal to affirmatively demonstrate its merits. See Electronic Communications Inc., B-183677, January 9, 1976, 76-1 CPD 15.

Accordingly, the protest is denied.


Deputy Comptroller General
of the United States