

**DECISION**

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

50626

97151

FILE: B-182268

DATE: June 25, 1975

**MATTER OF: Maintenance Incorporated; Bonded Building Cleaners,  
Incorporated**

**DIGEST:**

1. Agency need not cancel RFP and resolicit since any defect or ambiguity in terms of RFP did not adversely affect competition or prejudice prospective offerors. However, in view of particular circumstances involved here GAO will not object to opening negotiations if deemed necessary and appropriate.
2. When prior to award of contract, but following initial evaluation and selection of successful offeror, agency discovers arithmetical error in computation of evaluation score of unsuccessful offeror, GAO will not reevaluate proposals to determine which offeror should receive an award as such judgment is properly left to administrative discretion of contracting agency involved.

Solicitation No. 4 PBO-78 issued by the General Services Administration (GSA) on June 19, 1974, requested proposals to provide custodial services for the Social Security Administration Building in Birmingham, Alabama, for a period of one year commencing with the date of award. An award to a small business firm of a cost-plus-incentive-fee contract is contemplated as a result of the solicitation.

Following the receipt of 13 proposals on July 26, 1974, five firms were determined not to be in the competitive range. After further evaluation, GSA's Source Selection Board (SSB) announced in a source selection statement dated August 30, 1974, that Bonded Building Cleaners, Incorporated (Bonded) was the successful offeror.

In a letter of September 19, 1974, Maintenance Incorporated (Maintenance) protested the selection of Bonded. It claimed that it should have been selected for the award since it proposed the lowest cost and since its proposal was technically acceptable.

In response to Maintenance's protest, GSA filed an administrative report on March 12, 1975. The report noted the following with respect to the numerical rating and total cost plus applicable fees of the offerors within the competitive range:

<u>Company</u>	<u>Cost + Fees</u>	<u>Numerical Rating</u>
Maintenance Incorporated	\$356,620	26.9
Custom Janitorial Service	\$385,477	27.6
Bonded Building Cleaners	\$390,543	28.0
Falls Janitorial Service	\$403,207	27.3

More importantly, it is noted in the report that "\* \* \* Maintenance was penalized [in the evaluation] for proposing a lower cost estimate for maintenance and equipment without sufficient evidence that the estimate was unreasonable." However, GSA concluded that the SSB had not properly applied the evaluation factors as it had originally intended and that offerors were not fully apprised as to the manner in which cost was to be evaluated and thus the RFP was ambiguous. In this connection, it is GSA's position that while the formula used by the SSB in determining the score for "cost" was intended to insure that an estimated cost for a particular item be in reasonable relationship with other costs, the solicitation only advised offerors that they would be penalized for unrealistically low or high rates or estimates. Concerning a possible remedy for the situation, the report states:

"It is our view that an award under the circumstances to Bonded would be prejudicial to Maintenance and other offerors for the reasons cited above. On the other hand, an award to Maintenance would be equally unfair to Bonded since it would be based on applying a factor for estimated costs (i. e. 'price') not adequately set forth in the solicitation. Accordingly, and since more than five months have passed since the proposed award date, we have instructed the region to cancel the solicitation and to resolicit under a revised solicitation."

Subsequently, both Bonded and Maintenance protested GSA's decision to resolicit. The position of both firms is that the solicitation is not ambiguous and an evaluation consistent with the terms of the RFP is possible. Additionally, Maintenance and Bonded have submitted lengthy arguments as to why their respective firms should be selected as the successful offeror under the RFP. Pursuant to 4 C. F. R. § 20.9 (1974), a conference was held in this Office on April 10, 1975. Representatives of GSA, Bonded and Maintenance attended the meeting. During the course of the conference GSA noted that it had not yet

resolicited, nor was it sure whether resolicitation was appropriate. The agency agreed to refrain from any further action prior to this Office rendering its decision. In addition, GSA recognized the possibility of an arithmetical error in the scoring of the Maintenance proposal.

By letter to this Office of April 14, 1975, GSA confirmed the arithmetical error in the scoring of the Maintenance proposal. As corrected by GSA the numerical rating and total cost plus applicable fees are as follows:

<u>Company</u>	<u>Cost + Fees</u>	<u>Numerical Rating</u>
Maintenance Incorporated	\$356,620	28.1
Custom Janitorial Service	\$385,477	27.6
Bonded Building Cleaners	\$390,543	28.0
Falls Janitorial Service	\$403,207	27.3

Following the conference and receipt of GSA's April 14, 1975, letter both protesters have expressed their continued belief that it would be injurious to the integrity of competitive procurement process to cancel and resolicit. Bonded also argues that based on its "more realistic cost proposal" it should receive the award. Maintenance on the other hand argues that it should receive the award on the basis of its lower cost proposal and higher numerical rating.

A review of the RFP does not indicate any ambiguity which adversely affected competition or was prejudicial to any offeror. In fact none of the firms submitting proposals has suggested that the RFP was ambiguous. Rather, both Maintenance and Bonded have convincingly advocated the overall clarity of the RFP. In this connection, cost was listed as second in order of importance of the four evaluation criteria. In addition, the RFP included specific detailed instructions concerning the cost estimates to be submitted and a detailed "Cost Proposal Summary" describing the format and contents of the cost estimates. In addition to warning offerors that they would be penalized for unrealistic cost estimates, the RFP included the following provisions covering evaluation of costs:

"(4) An offeror's total cost estimate will not be given a numerical score in the source evaluation process.

"(5) Certain of the cost elements making up the total cost estimate will be of considerable significance since it is GSA's intent to limit recovery of these cost elements under the contract to be awarded. These include indirect expenses (general and administrative) and fees, which could be indicative of the cost of joint business with a particular contractor. Numerical scores, for evaluation purposes will be established for these cost elements, and offerors will be required to indicate their willingness to accept their own estimate of particular cost elements as ceilings, thereby limiting their recovery under any contract to be awarded. Proposal scoring and evaluation will be based on the ceiling proposed.

"(6) Labor rates and fringe benefits will be scored as within a practical range to attract and retain the proper caliber of employee. Accordingly, companies will be penalized if they propose rates which are over or under a reasonable level required to achieve a stable, efficient work force."

While the solicitation did not specify the precise weight to be accorded costs, or the other evaluation factors for that matter, it is not necessary to do so, as long as the relative importance is indicated. 48 Comp. Gen. 314, 318 (1968). It is our view that the RFP meets this standard and is not therefore ambiguous in the sense that competition was adversely affected or prospective offerors prejudiced.

GSA's other reason for originally suggesting resolicitation was that the SSB had not properly applied the evaluation factors to the proposals because it did not use the percentage points it had originally intended. Our review of the solicitation indicates that the major factors to be considered in proposal evaluation were listed in their relative importance and provided sufficient information to submit intelligent competitive offers. It also appears from the GSA report that the in-house percentages actually used by the SSB were in direct consonance with the relative importance of the factors as announced in the RFP. In these circumstances, we are unable to conclude that any firm was prejudiced since all offers were evaluated on a common basis in accordance with the stated evaluation criteria.


Furthermore, we see no necessity for cancelling the solicitation and resoliciting. However, since negotiations have never been conducted, and in view of the recently discovered arithmetical error

in the evaluation of Maintenance's proposal and GSA's recognition concerning the insufficiency of the evaluation of Maintenance's cost estimate, we would not object to a determination that opening of negotiations was necessary and appropriate.

Finally, both protesters have urged our Office to conclude that it should receive the award based on the RFP and its respective proposal. As we have often pointed out, 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. 52 Comp. Gen. 382 (1972). In 50 Comp. Gen. 390 at page 410 (1970), we stated:

"Our Office has noted that the award of cost-reimbursement contracts requires procurement personnel to exercise informed judgments as to whether submitted proposals are realistic concerning the proposed costs and technical approach involved. B-152039, January 20, 1964. We believe that such judgment must properly be left to the administrative discretion of the contracting agencies involved, since they are in the best position to assess 'realism' of costs and technical approaches, and must bear the major criticism for any difficulties or expenses experienced by reason of a defective cost analysis."

We believe it now incumbent upon GSA to make its determination as to which offeror under the terms of the RFP and submitted proposals should be rated first and thereby receive the award, or to open negotiations if that action is considered necessary and appropriate.

  
Deputy Comptroller General  
of the United States