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DECISION



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

FILE: E-186125

DATE: October 27, 1976

MATTER OF: Design Concepts, Inc.

DIGEST:

1. Protest after award based on alleged improprieties apparent in RFP is untimely. However, price evaluation formula which could result in award at price more than six times that of another technically acceptable offeror should be reviewed prior to future use by agency.
2. Where RFP does not provide that each proposal will be rated by all evaluators, fact that some proposals were read only by one evaluator provides no grounds for disturbing selection.

Design Concepts, Inc. (DCI) protests the award of a fixed price contract for interior planning and design services under request for proposals (RFP) PCB-IPD-76-01-HUD issued by the General Services Administration (GSA). As the basis for its protest, DCI contends that the method of evaluating price was improper and the evaluation of the technical proposal was not conducted in accordance with the terms of the RFP. GSA contends that the alleged impropriety regarding the evaluation of price was apparent in the RFP and that therefore the protest is untimely because it was not filed prior to the closing date for the receipt of proposals.

The RFP provided that the technical proposals would be evaluated first to determine those that were "contractually responsive" and that only the price proposals of those that were so determined would be opened. Award would be made to the offeror with the highest total score with the technical proposal being weighted at 80 percent and the price proposal at 20 percent. Of the 14 evaluation criteria for the technical proposal, "approach" was given a weighting factor of 50, and "understanding" was given a factor of 30. The weighting factors for the remaining 12 criteria ranged from 1 to 20. The score for the price proposals was to be determined by awarding the lowest price 20 points and dividing each of the other prices into the lowest price and multiplying the result by 20.

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The technical scores of the 29 proposals considered to be "contractually responsive" ranged from a high of 75.6 to 30.2, and the price proposal scores ranged from 20 to 3.4. The lowest priced proposal of \$11,760 was scored at 20 for price, 48.5 for its technical proposal and it received a total score of 68.5. DCI's price of \$12,800 received a score of 18.4, its technical score was 60.12 and its total score was 78.5. Interspace Incorporated (Interspace) which received the award was given a score of 14.7 for its \$16,000 price, 75.6 for its technical proposal and a total of 90.3.

In our opinion, the price evaluation formula and the technical evaluation weights assigned to "understanding" and "approach" and the alleged lack of definition of those terms should have been known to DCI prior to the date proposals were due, notwithstanding that it may not have fully appreciated the alleged defect in the scoring scheme until given the scores of the firm's competitors at a debriefing. Accordingly, its protest concerning the propriety of those solicitation provisions which was filed here after the closing date for receipt of initial proposals is untimely under the Bid Protest Procedures of this office. 4 C.F.R. § 20.2(b)(1) (1976).

We note however, that DCI's contention that the price evaluation formula would have permitted an award to Interspace up to a price of \$81,000 appears to be valid. Although such a result is hypothetical as applied to this case, it does cast doubt as to the soundness of the formula or its compatibility with GSA's concept of competitive range as evidenced by the facts of this case. It appears that the trouble lies primarily in the application of the formula to a competitive range consisting of the proposals submitted by 29 of the 30 offerors. We assume that the term "contractually responsive" as used by the GSA in this procurement means technically acceptable and that such a technically acceptable proposal would meet the minimum needs of the Government. However, the fact that the scores of the technically acceptable proposals ranged from 30.2 to 75.6 raises questions as to the criteria used to determine technical acceptability or the justification for the 80 percent weighting factor allocated to the technical proposals. We note, for example, that the DCI proposal was determined to be within the competitive range even though 16 proposals were rated higher technically. In addition, the low price from which all other prices were downgraded was submitted by an offeror with a technical score of 48.5, and no reasonable chance for award since 21 technical proposals were rated higher. Under the circumstances, we suggest that the GSA review the price evaluation formula and the circumstances to which it will be applied before using it in future procurements of a similar nature.

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DCI objects to the use of evaluation factors bearing on responsibility. Although DCI recognizes that this issue was decided in a previous protest (Design Concepts, Inc., B-184754, December 24, 1975, 75-2 CPD 410), DCI disagrees with that decision and requests that this Office should reconsider its position. DCI contends that the position "substantially emasculates the Certificate of Competency procedures established by 15 U.S.C. 637(b)(7), with respect to negotiated procurements." Although the request to reconsider the decision is untimely under 4 C.F.R. § 20.9 (1976), we have reviewed the position it reflects and cannot agree that a change of position is in order.

DCI also contends that the evaluation was not conducted in accordance with the RFP because the technical proposal score sheet implied that each proposal would be scored by six individuals and that the actual score would be the average of the six. GSA indicates that while six evaluators were involved, no evaluator read all proposals. Many proposals were read by only one evaluator, although in the presence of the other evaluators with whom discussions were conducted. We believe that DCI puts undue importance upon the six columns for raters which appears on the "Scoring Summary Sheet." That this form was not prepared especially for this procurement is indicated by the fact that the solicitation identification line is blank and the form is identified as "REV #9-19-75." The RFP makes no commitment with regard to the number of members on the evaluation panel or the number of proposals to be rated by each evaluator. Under the circumstances we are unable to find that the selection procedures used by GSA were unfair or unreasonable.

DCI, however, challenges the basic fairness of the evaluation procedure which could result in a proposal being rejected upon the evaluation of only one person. DCI contends that as individual judgments can vary greatly, there can be no real uniformity of scoring. However, for a procurement of this size, we do not believe that it would be necessary to require that all 30 proposals be evaluated by all six evaluators. The evaluators were working under the same instructions, in the same room and with the same evaluation criteria.

DCI has set forth its position on a number of points in its proposal on which it was told at a debriefing it received less than maximum points in the evaluation. For example, the RFP required the submittal of a diagram reflecting, among other things, the timing of

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the steps necessary to accomplish the project, DCI contends that because it saw no problems in complying with the time constraints, its proposal did not deal in detail with the subject of performance time and that it should not have been downgraded on this point. GSA replies that the DCI proposal was downgraded because it did not indicate the timing or recognize the need for early phase in of certain program requirements. We note, however, that the Interspace diagram, which indicated the sequence and timing of the program events, reflected better comprehension and organization than the DCI diagram which indicated only the sequence of the events. We have reviewed the proposals of DCI and we can see no basis upon which to conclude that the determination of GSA was unreasonable.

For the reasons set forth above, the protest is denied.


Deputy Comptroller General
of the United States