

DOCUMENT RESUME

02091 - [A1232225]

[Protest Filed against the Evaluation of Proposal for On-Site and Off-Site Programming and Analysis Support Services].
B-106391. April 29, 1977. 8 pp.

Decision re: Consultants and Designers, Inc.; by Robert F. Keller, Deputy Comptroller General.

Issue Area: Federal Procurement of Goods and Services:
Reasonableness of Prices Under Negotiated Contracts and Subcontracts (1904).

Contact: Office of the General Counsel: Procurement Law II.

Budget Function: General Government: Other General Government (806).

Organization Concerned: National Aeronautics and Space Administration: Goddard Space Flight Center, Greenbelt, MD.

Protester contended that evaluation of its proposal to perform programming and analysis support services was improperly conducted. Solicitation stipulation that two or more contracts were to be awarded did not require that awards be made to two or more contractors. Agency's determinations were reasonable. The protest was denied. (SW)

DECISION



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

FILE: B-186391

DATE: April 29, 1977

MATTER OF: Consultants and Designers, Incorporated

DIGEST:

1. RFP provision stipulating that two or more contracts were to be awarded for 5 separate areas of work did not require that awards be made to two or more contractors. RFP provision was intended to allow offerors to compete for portion of work and not to prevent award to same offeror for all portions of work.
2. Agency's determination that protester's phase-in plan was deficient because it was geared toward having a large percentage of top level personnel from incumbent is reasonable where based on agency's belief that such personnel would likely be retained by incumbent and transferred to other work and would not be available for employment with new contractor.
3. Agency's judgment that good management system requires not only ability of offeror to remove an employee but also the authority to provide incentives and propose penalties short of dismissal is not unreasonable. Therefore agency was justified in downgrading offeror's proposal which failed to meet this standard.

The subject protest has been filed by counsel for Consultants and Designers, Inc. (C&D) against the evaluation given that firm's proposal by the National Aeronautics and Space Administration (NASA) under request for proposals (RFP) 5-19300-153, issued by the Goddard Space Flight Center (GSFC), Greenbelt, Maryland.

The purpose of the procurement was to obtain on-site and off-site programming and analysis support services for five functional areas:

- (1) Mission Support
- (2) Spacecraft Control
- (3) Information Processing
- (4) Scientific Data
- (5) Scientific Application

The RFP provided for a competitive cost-plus-award-fee contract for a basic period of twenty-four months, with two options to extend the period of performance by twenty-four and twelve months respectively.

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The RFP specified that the Government intended to award a minimum of two and a maximum of five contracts covering the foregoing functional areas, whereby one or more awards would be made on the first three functional areas, and one or more awards for the fourth and fifth areas. Offerors were instructed to prepare a separate technical and cost proposal for each functional area for which consideration was desired. While proposals submitted in response to the RFP were required to be based upon the technical/professional level of effort set forth therein, alternate proposals were permitted if an offeror felt that the work could be accomplished more efficiently with organizational plans, staffing, or management other than described in the RFP.

The RFP provided that proposals would be evaluated against three primary criteria classifications described as "mission suitability," "cost" and "other factors." Under the classification of "mission suitability," the RFP set forth four main factors: contract staffing, technical approach, project management, and personnel resources and facilities. The first two were stated to be of equal importance, the third somewhat less important than the first two, and the fourth approximately one-half as important as the third. It was further specified that the mission suitability evaluation would be numerically scored. The solicitation also provided that an offeror's phase-in plan would be evaluated separately.

With regard to "cost," the RFP stipulated that cost proposals would be evaluated to assess both the realism of the proposed cost and to determine the probable cost to the Government including any improvements to be required by the Government. No point score was to be applied to the evaluation of cost proposals.

"Other Factors" were described as factors other than mission suitability and cost, and included priority organization and management, business systems, financial capability, company experience and past performance, labor relations, compliance with request for proposal, and "additional factors pertinent to the procurement." These factors were neither weighted nor scored, but were to be evaluated only to determine offerors' acceptability or lack thereof.

Counsel for C&D points to the specific representation in the RFP on page 5 of Section A that:

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"The Government intends to award a minimum of two contracts as a result of this RFP and reserves the right to award as many as five should it be in the best interest of the Government to do so. One or more awards will be made on the first three functional areas and one or more awards will be made on the fourth and fifth functional areas."

C&D alleges that it interpreted the "minimum of two contracts" as meaning that award for the five functional areas would be divided between two or more contractors so that neither the incumbent (CSC) nor any other one contractor would be considered for award in all five functional areas. C&D further contends that its interpretation is consistent with statements made by the Source Evaluation Board (SEB) chairman at a pre-proposal conference to the effect that the current effort is both large and encompassed by a single contract; that on previous occasions GSFC had attempted to reduce the size of the contract by increasing the number of the contracts to three; and that this time it was to be broken into potentially five pieces.

We are unable to concur with the protester's interpretation. Not only did the RFP fail to provide anywhere for the award to two or more contractors (as distinct from contracts), but the transcript of the pre-proposal conference also fails to reveal any such express representation. In that regard, the SEB Chairman stated as follows:

"This is a large contract. As it (the present contract) presently stands, it is a single contract. Those of you that have sat in this room on some earlier occasions have known that we have tried before to reduce the size of the contract by increasing the number of the contracts. We are going to try that again this time. The last time we went through we broke it into three pieces. The three pieces were conducted as separate evaluations but the same firm won those three pieces. The Computer Sciences Corporation today holds that single contract.

"This time we are going to break it into potentially five pieces. In order for each of those evaluations to be conducted you will be asked to submit a technical proposal and a supporting cost proposal on each of the five elements upon which you wish to bid.

You will find that the request for proposal says that under any circumstances there will be no fewer than two contracts resulting from this RFP. Those two contracts would combine all of the mission and data operations activity into one contract and the applications and sciences directorates work into the second contract. There will be more said on this particular point by Mr. Payne when he presents business information to you. But keep in mind that we are talking potentially five contracts, no fewer than two contracts."

It is clear to us from the award provision and comments of the SEB Chairman that the intent was to preclude an evaluation of proposals based on all five areas of work and not to preclude award to one offeror for all areas of work if that offeror submitted the most advantageous proposal for each of the five areas of work. We find no basis to sustain C&D's interpretation of the RFP award provision.

The majority of C&D's remaining objections are encompassed by a general allegation that the evaluation of its proposal was improperly conducted so as to perpetuate the incumbency of CSC.

C&D charges that the source selection official applied evaluation factors not specified in the RFP, specifically that NASA gave the incumbent a "plus score" for its on-the-job experience with the result that CSC was conferred with an advantage over any other offeror, no matter how highly qualified, since no other offeror could possibly demonstrate the same experience.

With regard to the experience of offerors, the record clearly shows that company experience and past performance were included under the criteria classification of "other factors" and were not numerically scored but given an adjective evaluation of "acceptable" or "weak," and that C&D as well as CSC earned a rating of "acceptable" for each of the "other factors." The record further shows that the ratings in the area of "Personnel Qualifications" were consistent with the evaluation scheme.

NASA is further charged with improperly considering phase-in costs in evaluating C&D's cost proposal. C&D contends that to do so places any non-incumbent offeror at a competitive disadvantage with the incumbent. It is C&D's contention that such costs should be evaluated solely as an aid in determining the offeror's understanding of mission suitability requirements.

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We note, however, that phase-in costs were evaluated separately and presented separately to the Source Selection Official (SSO) as "below the line" items; and that while "reviewed" by the SSO, the cost of phase-in plans were not selection considerations. Moreover, the record establishes that even absent the inclusion of phase-in costs in C&D's cost profile, CSC had nevertheless submitted a lower proposed and evaluated cost. Accordingly, we see no prejudice to C&D from the method in which phase-in costs were considered.

C&D next objects to the finding that its phase-in plan was deficient because it was geared toward hiring a large percentage of top level personnel from CSC.

Specifically, C&D contends that its proposal was improperly downgraded because it proposed to hire 10 incumbent supervisors, 5 incumbent senior analysts, and 50 percent of the remaining staff from CSC. C&D argues that based on its experience a significant number of the incumbent's staff would want to continue performance with a new contractor rather than transfer job assignments.

NASA replies:

"* * * We disagree. It was not the mere proposed use of incumbent personnel that was the basis for downgrading, but rather the SEB's lack of confidence that incumbent personnel would be available to transfer to C&D. As indicated in the RFP, Section B, paragraph 2.1.2.1, page 6 of 30, the technical evaluation score may be adjusted 'based upon the degree of confidence the offeror gives regarding the timely availability of his proposed staff.' NASA is familiar with CSC. It has been our experience that CSC is large enough to provide continuous work for its supervisors and senior analysts. We believe that CSC would not permit its core of highly skilled analysts and supervisors to be hired by C&D. CSC is a successful contractor and has an excellent track record for winning new work under Government contracts. As an example, NASA's National Space Technology Laboratories recently selected CSC to take over its technical support contract requiring more than 130 staff-years of effort per year for two years plus options for

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extension. This new work has opened many opportunities for CSC to place personnel. With these facts in mind, the TAC and SEB felt that without reasonable assurance to the contrary, it was highly unlikely that C&D's incumbent employees capture rate would be as high as it predicted, especially in the categories of supervisor and senior analyst."

While we understand the problems incurred by a non-incumbent offeror in this type of situation, there does appear to be a reasonable basis for NASA's conclusion in this instance. In view of CSC's extensive government and commercial business, it cannot be assumed with any certainty that highly skilled personnel would not be retained and transferred by CSC to other projects utilizing these skills, or that they would necessarily leave the employment of CSC for the purpose of remaining on this project. We cannot conclude that NASA's conclusions were either unreasonable or unwarranted.

C&D also alleges that it was improper to select CSC for award on the basis of its alternate proposal for areas 1-5 which offered a lower cost and fee than the sum of each individual CSC proposal. The protester charges that the utilization of the lowest overall cost as award justification was contrary to the terms of the RFP calling for multiple awards, and NASA should have been cognizant that such division of the procurement would necessarily involve phase-in costs, temporary administrative inconvenience, and the possible loss of savings. It is contended that NASA should have been prepared to sacrifice such benefits and assume those burdens to meet its purported objective of making multiple awards.

The record shows that because CSC was found technically superior in all five areas, NASA decided to accept for negotiation purposes the offered advantages in overhead and G&A contained in CSC's alternate cost proposal. As noted above, the RFP provided that alternate proposals could be submitted and considered if an offeror felt that the work could be accomplished more efficiently with organizational plans, staffing, or management other than described in the RFP. In view thereof, we must reject the argument that the selection of CSC's alternate proposal for negotiation was improper. It was clearly in accord with the circumstances spelled out in the RFP under which alternate proposals would be considered.

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Finally C&D contends that it was improperly "given a minus score, rather than the plus score called for by the RFP," for its plan to use two small business subcontractors, one of which has minority group participation. C&D submits that the RFP not only permitted, but encouraged subcontracting, particularly where it resulted in small business participation and minority manpower utilization. Moreover, C&D argues that it was improperly downgraded because it failed to define the subcontracting work requirements in terms of estimated manhours and not in terms of tasks.

NASA points out in response, and the record so corroborates, that small business/minority participation was included as a sub-factor under the "Other Factors" classification, and was not given a plus or minus score, but was accorded the adjective rating of "acceptable" or "weak"; the record shows that all offerors in the competitive range, including C&D, were rated "acceptable" in all areas listed under "Other Factors." Therefore, C&D was not penalized for its proposal to use small business subcontractors, per se.

Similarly, the record does not show that C&D's proposal was downgraded because it failed to define subcontracting in terms of tasks. The record does show, however, that one of the reasons C&D's technical proposal did not receive a higher score in "Project Management" was because of the SEB's assessment that C&D's plan for management of subcontractor personnel, and for co-ordination between the prime contractor and subcontractors, was weak. The essential weakness discerned by the SEB was a failure of the C&D proposal to demonstrate a strong management plan with total authority vested in the Project Manager to fire, reward, and otherwise motivate all of the employees under his control. The SEB Chairman reports that all personnel, including approximately 60 percent to be provided by C&D, would be managed by the Project Manager, a C&D employee; however, under the proposed arrangement, he is powerless to discipline, promote, hire or fire the other 40 percent for which he maintains responsibility; his only means of control being removal from the project and recommendation of action to subcontractor officials.

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C&D argues that NASA's concerns were unjustified since the Project Manager would have had the authority to remove from the project a subcontractor employee whose performance was considered less than satisfactory, and subcontractor officials could replace such employee with a person satisfactory to the Project Manager. C&D feels that it is irrelevant whether the subcontractor officials would transfer the replaced person to some other project or fire him. In NASA's view a good management system requires not only the ability to remove an employee "when faced with a knotty personnel problem" but also "the authority to provide incentives and impose penalties short of dismissal." Clearly C&D's proposed management system did not meet the NASA standard for a Government system. While one may disagree with NASA's view of what constitutes a good management system, we do not think the NASA view may be considered unreasonable. Therefore, NASA was justified in downgrading C&D's proposal in this respect

Accordingly, the protest is denied.


Deputy Comptroller General
of the United States

J. Notopoulos
Proc. II

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

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APR 29 1977



The Honorable Newton I. Steers
House of Representatives

Dear Mr. Steers:

Pursuant to the request of your predecessor, the Honorable Gilbert Gude, we enclose a copy of our decision of today concerning the protest of Consultants and Designers, Inc. (C&D) under National Aeronautics and Space Administration solicitation 5-19300-153.

By way of explanation, the protest was initially filed by Mr. Gude's constituent, Old Dominion Systems, one of C&D's prospective subcontractors in the event that C&D received an award from NASA. Subsequently, the protest was consolidated by C&D's attorneys into C&D's protest, with Old Dominion's acquiescence.

Sincerely yours,

R.F. KELLER

Comptroller General
of the United States

Enclosure

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