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DECISION



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

FILE: B-190888

DATE: March 16, 1978

MATTER OF: Joseph Legat Architects

DIGEST:

RFP provided that award would be made to offeror with best "cost/quality ratio," but that judgment of Selection Board would be applied to insure that cost and "all other factors" were considered. Protest that RFP was deficient because offerors were not advised what "all other factors" were is denied. Phrase clearly refers to elements implicitly considered in any solicitation, and does not reflect existence of undisclosed evaluation criteria or improper introduction of new criteria.

Request for proposals (RFP) No. N62472-77-R-0464 was issued on October 17, 1977, by the Naval Facilities Engineering Command for the construction of 200 family housing units in the Portsmouth, New Hampshire, Naval Complex. The procurement was to be conducted using the "turnkey" method of construction. Proposals were due on November 30.

Paragraph 1C.14 of the RFP provided that proposals would be evaluated "on the basis of site design, site engineering, dwelling unit design, and dwelling unit engineering, and specifications and cost." The evaluation based on the first four of these criteria, which were further described in subparagraphs (A)-(D), would result in a "quality rating" for each proposal. Subparagraph (E) stated that a "cost/quality ratio" would then be calculated for each major alternate of a proposal by dividing proposed price by quality rating. Subparagraph (E) further provided:

* * * * The final ranking of proposals by cost/quality ratio should normally establish the proposal having terms most favorable to the Government. However, the judgment of the Selection Board will be applied to insure that cost and all other factors are properly considered in making a selection, which is in

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compliance with applicable statutory limitations and is in the best interests of the Government. (See paragraph entitled 'Basis of Award.')

(Emphasis added.)

Paragraph 1C.7, "Basis of Award," provided that "award would be made to that firm offering the lowest dollar to quality point ratio."

By letter to the Navy dated October 31, 1977, Joseph Legat Architects (JLA) requested, among other things, that the date proposals were due be extended to January 16, 1978, and asked what the term "all other factors" in paragraph 1C.14(E) actually referred to. The Navy responded on November 7, 1977, by extending the proposal receipt date to December 14, and by stating in regard to paragraph 1C.14(E):

"The term 'All other factors' * * * is included to make clear that there are factors other than costs which by law must be considered by any Government Contracting Officer to assure that award of a contract is in the best interest of the United States. For example, there are questions of responsiveness, conformity to the RFP, and technical capability, record of performance on past contracts, satisfactory compliance with equal opportunity and other 'social action' requirements, fund availability, and many others."

In a letter dated November 11, JLA requested a further time extension and, concerning the other issue, asked for an explanation of the term "and many others" as used in the Navy's November 7 description of "all other factors."

On November 23, the Navy declined to postpone the proposal receipt date past December 14. It further stated:

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"You request a comprehensive definition of the term 'and many others.' To prepare an exhaustive list of all factors described in Armed Services Procurement Regulation [ASPR] and the United States Code is neither feasible nor necessary. We refer you to that regulation, which is part of the Code of Federal Regulations, Title 32, and to the United States Code."

JLA responded on November 25, advising that it was not seeking a comprehensive or exhaustive summary of ASPR or the U. S. Code, but was "requesting the criteria that will be used to select the successful developer." JLA warned that it would file a protest in our Office if the Navy did not reconsider its position. In addition, JLA advised that it would be able to submit only an unfinished proposal by December 14.

By letter of December 2, the Navy informed JLA that the actual evaluation criteria were listed in the RFP, and that it believed it had adequately described the necessity for including the term "other factors."

JLA filed a protest in our Office on December 12, contending that the term "all other factors" and the Navy's explanation thereof reflect the possible introduction of undisclosed or previously unlisted evaluation factors into the RFP. JLA states that it did not, therefore, submit an offer under the RFP.

We have on many occasions held that sound procurement policy dictates that offerors be advised of the evaluation factors to be used and the relative importance of these factors. See Grey Advertising, Inc., 55 Comp. Gen. 1111, 1123 (1976), 76-1 CPD 325; 50 Comp. Gen. 60, 61 (1970). The purpose for this rule is to provide all offerors with the information necessary to properly prepare their proposals. See Min'ares Building Maintenance Company, B-184263, March 10, 1976, 76-1 CPD 168.

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However, we have also recognized that the term "other factors" as used in the direction that award be made "to that responsible offeror whose offer conforming to the solicitation will be most advantageous to the Government, price and other factors considered" (see Standard Form 33A), does not allow an agency to introduce new evaluation criteria where offerors were not given adequate notice. See Sigma Data Computing Corporation and Base Information Systems, Inc., B-186932, July 29, 1977, 77-2 CPD 59. Rather, the term is well defined in procurement law to refer to factors which are implicitly considered in any solicitation, such as ability to perform (responsibility), cost elements which will affect the overall cost of a contract to the Government, and any factors prescribed by law, regulation, or the public interest for the contracting agency's consideration. See B-174113, April 5, 1972; 37 Comp. Gen. 551 (1958); 28 Comp. Gen. 662 (1949); ASPR § 2-407.5 (1976 ed.); Federal Procurement Regulations § 1-2.407-5 (1964 ed. amend. 139).

We believe that the term "all other factors" as used in paragraph 1C.14(E) can only reasonably be considered in that same context. The Navy's November 11 and 23 explanations of the phrase are not inconsistent with that view. We do note, however, the Navy's explanations introduce certain elements actually related to the RFP's stated evaluation factors rather than the "other factors," specifically "responsiveness" and "conformity to the RFP." In this connection, although "responsiveness" is a concept not directly applicable to negotiated procurements (see TM Systems, Inc., 56 Comp. Gen. 300 (1977), 77-1 CPD 61); we believe it was intended by the Navy to refer to whether a proposal meets listed evaluation criteria.

In any case, as stated above, the consideration of "other factors" is implicit in an procurement. We cannot, therefore, consider that the failure to

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comprehensively list them either in the RFP or in response to JLA's request in any way precluded offerors from properly preparing their proposals. See B-174113, supra.

The protest is denied.

R. F. K. 11/14/88
Deputy Comptroller General
of the United States