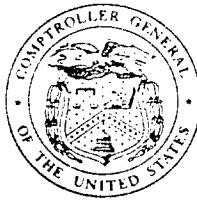


DECISION



12064 *Fitzmaurice*
THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548 *Proc. I*

FILE: B-195439

DATE: November 19, 1979

MATTER OF: Gruzen/Gersin *DLG-03364 that*

DIGEST:

[Protest Alleging Awardee's Proposal Does Not Satisfy Agency Requirements]
GAO will not question selection of firm for architectural engineering contract where procuring agency's evaluation is reasonable, based on published criteria and in accord with policy expressed in applicable statute.

DLG-03365
Gruzen/Gersin (G/G) protests the decision by the Department of Commerce (Commerce) to negotiate a contract with Finch, Alexander, Barnes, Rothschild and Paschal, Inc. (FABRAP), for architect-engineer (A-E) services to design the United States Pavilion for the 1982 Energy Exposition to be held in Knoxville, Tennessee. We have reviewed Commerce's evaluation of the FABRAP proposal and find no basis to question the decision to select FABRAP.

We note at the outset that our review is limited to examining whether the selection of an A-E contractor is reasonable. We will question the agency's judgment only if it is shown to be arbitrary. See Leyendecker & Cavazos, B-194762, September 24, 1979, 79-2 CPD 217; SRG Partnership, PC, B-188444, June 17, 1977, 77-1 CPD 438; Boyle Engineering Corporation, B-183355, June 10, 1975, 75-1 CPD 354.

Federal procurement of A-E services is governed by the provisions of the Brooks Bill, 40 U.S.C. §§ 541, et seq. (1976). Generally, the selection procedures prescribe that the requirement for A-E services be publicly announced. The contracting agency then reviews statements of qualifications and performance data already on file and statements submitted by other A-E firms responding to the public announcement. Discussions must be held with "no less than three firms regarding anticipated concepts and the relative utility of alternate methods of approach" for providing the services requested. The contracting agency then ranks

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in order of preference, based on published criteria, no fewer than the three firms considered most qualified. Negotiations are held with the highest-ranked firm. If the procuring agency is unable to reach agreement with that firm on a fair and equitable price, negotiations are terminated and the second-ranked firm is invited to submit its proposed fee. Leyendecker & Cavazos, supra; see also implementing regulations, Federal Procurement Regulations §§ 1-4.1000, et seq. (1964 ed. amend. 150).

Public notice of the Expo '82 project appeared in the Commerce Business Daily on December 12, 1978. Commerce mailed copies of the Theme Development Statement to 112 concerns. It received responses from 51. A screening committee evaluated the material submitted and selected 9 firms for further consideration. These firms were given the Facilities Program document and were later interviewed. From this group, the screening committee selected 5 firms it considered the most technically qualified. Each of the five was awarded a contract in the amount of \$5,000 to develop both a design for a building and the exhibits that would convey the Federal Government's energy story. Each contract included the final evaluation criteria which the Inter-Agency Architect-Engineer Evaluation Board (Board) would use to make the final selection.

After witnessing a presentation from each competitor and conducting a question and answer session, the Board evaluated the five design concepts it received and ranked FABRAP first and G/G second. It recommended that the contract be negotiated with FABRAP. The recommendation was accepted and negotiations began.

Upon learning of this, G/G filed a protest with our Office arguing that FABRAP's design does not comply with the mandatory circulation requirement set out in the Facilities Program document. This requirement, in pertinent part, provides:

"It is mandatory that the circulation concept of the facility be capable of handling 40-50,000 visitors per day over a sustained period of time."

FABRAP's proposal calls for a theater with a seating capacity of 1,000 persons for viewing a 25-minute movie. G/G believes that this film is an integral part of FABRAP's plan for the exhibition. It bases this belief on: 1) the proportion of FABRAP's budget allocated for the movie; 2) the proportion of the exhibit space allocated for the theater; and 3) the emphasis that FABRAP put on the role of the movie in its initial submission and subsequent interview with the Board. In light of this, G/G argues that, in order for FABRAP's design to meet the mandatory circulation requirement of 40,000 to 50,000 visitors per day, the theater must be able to accommodate up to 50,000 visitors per day. Since it is only capable of dealing with half the number, G/G believes that the FABRAP proposal fails to satisfy the mandatory circulation requirement. It concludes that the Board erred when it found FABRAP better qualified than G/G to perform the project. Consequently, it believes that the award to FABRAP should be canceled and negotiations opened with G/G.

Commerce, however, argues that FABRAP's design does satisfy the mandatory circulation requirement. It contends that this requirement applies to the pavilion as a whole and not to each segment of the facility. Therefore, Commerce believes that the Board was correct in recommending the FABRAP design since, even though the theater cannot accommodate up to 50,000 visitors per day, the full pavilion can.

There is nothing in the circulation requirement which indicates, as G/G argues, that each segment of an exhibit must be able to accommodate 40,000 to 50,000 visitors per day. It merely provides that the "circulation concept of the facility" meet the requirement. In evaluating FABRAP's circulation concept, the Board realized that the proposed theater could not accommodate more than 25,000 visitors per day, but believed that FABRAP's overall plan would meet the requirement.

G/G argues, however, that FABRAP's film presentation is such an essential part of the FABRAP exhibit that, if all the daily visitors are not given the opportunity to view the film, they will be denied the experience which the exposition is intended to convey. In support of this argument, G/G quotes part of the tape recording made of FABRAP's oral presentation to the Board which indicates that FABRAP considered the film central to its exhibit. Therefore, G/G believes that the Board was wrong in concluding that FABRAP met the circulation requirement.

However, the record indicates that, after evaluating FABRAP's proposal and entire oral presentation, the Board stated that both "the exhibits and film were seen as complete entities, complementing each other without relying on the other for support." Thus, the Board found nothing wrong with the theater having a capacity of only 25,000 visitors per day since it did not consider the film critical to the appreciation of the exhibit as a whole. It found the circulation requirement satisfied by the ability of FABRAP's entire exhibit to accommodate up to 50,000 visitors per day.

In our opinion, the evaluation of FABRAP's proposal is reasonable, based on published criteria and in accord with the policy expressed in the Brooks Bill. G/G disagrees with the evaluation. However, merely because a protester disagrees with a procuring agency's judgment does not render the judgment invalid. System Innovation & Development Corp., B-185933, June 30, 1976, 76-1 CPD 426.

Therefore, we find no basis to question the selection of FABRAP.

Protest denied.



For The Comptroller General
of the United States