

13096 Proc. Law I



DECISION

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

FILE: B-196518

DATE: March 12, 1980

MATTER OF: A.R.&S. Enterprises, Inc. *NGO 1731*

DIGEST:

Where RFP fails to indicate agency's intention to award contract to lowest priced technically acceptable proposal and highest rated technical proposal is to be rejected because of its higher price, contracting officer should not make proposed award on basis of initial proposals to lowest priced technically acceptable offeror. Rather, solicitation should be revised to reflect actual selection criteria and offerors permitted to submit revised proposals.

A.R.&S. Enterprises, Inc. (A.R.&S.) protests the Army's proposed award of a contract to Commercial Maintenance, Inc. (Commercial) on the basis of initial proposals under request for proposals (RFP) DABT11-79-R-0036. The RFP solicited proposals for a fixed-price contract for complete housekeeping environmental services at the Dwight D. Eisenhower Army Medical Center, Fort Gordon, Georgia. *Accession DLG 04091*

After receipt of initial proposals, the Army established a competitive range of three offerors. Prices were evaluated for the base period and two one-year options.

	<u>TECHNICAL POINT SCORE</u>	<u>PRICE</u>
A.R.&S.	100	\$3,830,933.34
Stroh	80	3,638,107.44
Commercial	80	3,043,194.72

[Protest Against Contract Award]

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The Army proposes to award the contract to Commercial, without conducting any negotiations. In this connection, the RFP advised offerors that:

"If an offeror submits an offer which is clearly and substantially more advantageous to the Government than any other offer, the initial offer may be accepted without any written or oral discussions. Accordingly, each initial offer should be submitted on the most favorable terms, from a price and technical standpoint which the offeror is capable of submitting."

The protester argues that the offers of A.R. & S. and Commercial are substantially equal because Commercial's technical score is 20 percent lower than the technical score of A.R. & S., whereas Commercial's price is 20 percent lower than A.R. & S.' price. Consequently, the protester maintains that no offer was "clearly and substantially more advantageous to the Government" than any other, and the Army could not, under the RFP's initial proposal provision, make an award to Commercial on the basis of initial proposals. For the reasons stated below, we agree with the protester.

Although the RFP listed the technical evaluation factors in descending order of importance, it did not advise offerors of the relative importance of price in relation to the technical evaluation factors. The RFP merely informed offerors that price realism would be considered in establishing a competitive range and that "award [would] be made to the responsive, responsible offeror whose offer [would] be most advantageous to the Government, price and other factors considered." However, the Army now proposes to award the contract to the lowest priced technically acceptable offeror. In other words, it does not consider technical superiority to be advantageous once a proposal meets the minimum level of technical acceptability. On the other hand, the protester, contrary to this unstated selection criterion, chose to submit a technically

outstanding proposal on the assumption that technical superiority would be considered at least as much as any price advantage of a less technically advantageous proposal.

We have frequently stated that a reference to "price and other factors" without more does not inform offerors of the relative importance of price in relation to technical factors. Iroquois Research Institute, 55 Comp. Gen. 787 (1976), 76-1 CPD 123; Southern Methodist University, B-187737, April 27, 1977, 77-1 CPD 289. This language merely establishes that when making an award in a negotiated procurement, a source selection official cannot totally disregard price, 50 Comp. Gen. 110 (1970), and that price alone is not determinative since the reference to other factors includes consideration of the technical acceptability of proposals. Southern Methodist University, *supra*. Offerors are entitled to know, however, whether a procurement is intended to achieve a minimum standard at the lowest cost or whether cost is secondary to quality. Signatron, Inc., 54 Comp. Gen. 530 (1974), 74-2 CPD 386.

The Army states that when the RFP does not contain an explicit statement of the relative importance of cost and technical factors they are accorded substantially equal weight. As indicated above, however, the agency does not propose to accord equal weight to technical and price considerations because it proposes to award on the basis of the lowest priced proposal which is technically acceptable. Moreover, in both 52 Comp. Gen. 686 (1973) and University of New Orleans, B-184194, May 26, 1978, 78-1 CPD 401, even though the solicitations did not explicitly advise offerors of the relative importance of cost in relation to technical factors, they fairly notified offerors of the trade-off between price and technical factors and that price was important. In this case, however, while "price" is mentioned in the RFP, nothing indicates its relative importance. In these circumstances, since price is listed subsequent to the technical factors or merely mentioned in the evaluation scheme, an offeror might

reasonably conclude that price might not be controlling as between technically acceptable proposals and that technical superiority would be considered.

We conclude that offerors were prejudiced by this deficiency. Here, the record reveals that offerors took many approaches in their technical proposals, in four instances offering 103, 96, 115, and 71 employees, to meet the RFP's requirements. We think that the cost of work force size and associated indirect costs in this labor intensive service could have a significant impact on the offerors' technical proposal as well as price. If offerors had known about the Army's concern with price, they might have altered their proposals to reflect this fact. In addition, we note that although this procurement involves approximately 42,000 more square feet than the prior procurement, A.R.&S.' proposal price is less than its current contract price.

The Army has not made an award and we recommend that it amend the RFP and advise offerors that award will be made to the technically acceptable offeror which satisfies the needs of the Government at the lowest price. The Army should negotiate so that offerors in the competitive range may amend their proposals in the light of this new criterion.

The protest is sustained.

For the

Milton J. Asotari
Comptroller General
of the United States