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DECISION



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

FILE: B-202473

DATE: March 9, 1982

MATTER OF: Analytical Services, Inc.

DIGEST:

Agency should have apprised protester of the need to submit clarifying information and the basis on which proposals would be evaluated. On the record before us, we are unable to state that the protester was not prejudiced by the agency's failure to provide this information.

Analytical Services, Inc. (Anser), protests the award of a contract to Arthur D. Little, Inc. (Little), under request for proposals No. MDA903-80-R-0129 issued by the Defense Supply Service (DSS). The solicitation contemplated a cost-plus-fixed-fee, level-of-effort contract for the necessary personnel, facilities, equipment and materials to provide quick-response analyses concerning the Tri-Service Medical Information Systems. DSS considered the four proposals submitted to be approximately equal in technical merit and awarded the contract to Little based on low proposed costs.

Anser contends the award was improper because DSS did not evaluate proposals on the same basis. We sustain the protest because DSS failed to advise Anser of the basis on which proposals would be evaluated.

The solicitation required offerors to describe the resources and personnel committed to the contract and to provide detailed cost breakdowns for each of the 3 years of the contract as well as for the total 3 years. The estimate in the RFP of the level of effort required was 57 staff-years of professional effort. Although some of the proposals offered levels of effort considerably different from the Government's estimate, DSS considered all of the proposals to be adequate. DSS evaluated the best and final cost proposals both

on the basis of each offeror's actual proposed staff-years and, by adjusting the levels of professional effort and related costs, on the basis of 57 staff-years of professional effort.

Anser contends that this evaluation was improper because DSS treated a category of personnel known as "research associates" inconsistently in its evaluation of Little's and Anser's proposals.

The issue here arises from the different ways in which these two competitors account for personnel. Little considers its research associates to be professionals and described in its proposal the services and hours which its research associates would provide. Anser, on the other hand, considers only its senior personnel as professionals and includes research associates in an indirect cost pool entitled "Senior Management and Support Staff" which also covers secretaries, technical illustrators, support staff managers, library assistants, senior reproduction equipment operators, senior technical secretaries, and several other categories of personnel. Anser's cost and technical proposals, as a consequence, describe in detail only the services to be provided by Anser's senior personnel and provide no description or breakout of Anser's proposed research associate services.

DSS attempted to compensate for the several different approaches to employee classification used by the various offerors by using its own classification of professional vs. nonprofessional employees. DSS defined professionals to include employees performing other than data collection, secretarial support, and graphics services and applied this common base to all proposals to determine the cost of obtaining 57 man-years of professional effort. This method of evaluation was not spelled out in the request for proposals.

DSS evaluated Little's proposal by dividing Little's projected total costs by the number of hours devoted to "professional services" as DSS defined them--including research associate hours--to arrive at an overall cost per hour of professional time. On the other hand, DSS divided Anser's total costs by only the professional hours identified in Anser's proposal, without the

addition of research associate hours, etc., because DSS could not ascertain the extent to which Anser intended to provide the research associate and other "DSS-professional" services hidden in Anser's cost pool. The effect of DSS's failure to allow for these additional services in the computation of Anser's professional hours was to raise Anser's hourly rate.

Anser objects to this disparate treatment of proposals.

We think the real question here is not whether DSS evaluated Little's and Anser's research associates differently, which DSS concedes that it did, but whether Anser was provided a fair and equal opportunity to compete for this contract by being apprised of the necessity to submit more detailed information. On balance, we think that Anser was not provided such an opportunity.

The record before us contains a copy of handwritten notes prepared by a DSS negotiator for use in negotiations with Anser on its cost proposal. These notes contain a brief discussion of Anser's cost pool expense allocation followed by the statement that "There are no hours listed for the Senior Management and technical support" and the question: "Are the direct labor hours for this category included in the estimated hours shown on the [Department of Defense Form No.] 633's or how do these people contribute in a direct manner to the performance of this contract?" DSS contends that this question should have put Anser on notice that DSS required additional information. We disagree.

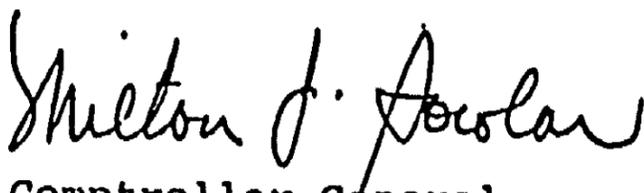
When a solicitation fails to disclose an important requirement or factor to be used in the evaluation of proposals, at a minimum the procuring agency must clearly and explicitly advise offerors during discussions of the omission in order for the discussions to be meaningful. Joule Technical Corporation, B-197249, September 30, 1980, 80-2 CPD 231. We think DSS's question, noted in the paragraph above and which appears to have been the only reference to this problem during DSS's discussions with Anser, falls short of this standard. Consequently, we conclude that DSS failed to conduct meaningful discussions with Anser.

Furthermore, we disagree with DSS that Anser was not prejudiced by the lack of meaningful discussions, which DSS presumes from Anser's failure to indicate in its protest just how many hours of research associate time Anser in fact intended to provide. The details of DSS's cost evaluation were provided to us for our use but have not been disclosed to Anser. We think it would be patently unreasonable to place the burden on Anser to respond to an assertion which hinges on details about which Anser has been kept in the dark. Our own recomputations of DSS's cost analysis, based on several different assumptions concerning the likely level of research associate services which Anser might have provided, indicate a substantial possibility that Anser may well have been prejudiced by DSS's failure to communicate exactly what information was needed. In these circumstances, we cannot conclude that Anser was not prejudiced.

The protest is sustained. DSS should initiate a new procurement for these services, with clear advice in the solicitation of the definition of "professionals" which DSS will use in its evaluation. Little's contract should be terminated when award is made under the new procurement.

By letter of today, we are advising the Secretary of the Army of our recommendation.

This decision contains a recommendation for corrective action to be taken. Therefore, we are furnishing copies to the Senate Committees on Governmental Affairs and Appropriations and the House Committees on Government Operations and Appropriations in accordance with section 236 of the Legislative Reorganization Act of 1970, 31 U.S.C. § 1176 (1976), which requires the submission of written statements by the agency to the Committees concerning the action taken with respect to our recommendation.

for 
Comptroller General
of the United States