

DECISION



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

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FILE: B-216789

DATE: January 16, 1985

MATTER OF: Robert Wehrli

DIGEST:

1. Agency's failure to include protester's proposal in the competitive range based on the agency's evaluation of the proposal regarding understanding of the scope of work, depth of related experience, and capability of staff was not arbitrary or in violation of applicable statutes and regulations.
2. Obligation of agency to notify all bidders of the reasons for awarding a contract to other than the low bidder is inapplicable to negotiated procurements.

Robert Wehrli protests the award of a cost-plus-fixed-fee contract to ISC Incorporated under request for proposals (RFP) No. MDA903-84-R-0080 for an "Architects and Engineers Incentive Study" issued by the Department of the Army, Defense Supply Service--Washington. Mr. Wehrli contends that his proposal was not properly evaluated in accordance with the evaluation criteria in the solicitation.

We deny the protest.

The RFP sought offers for conducting:

"a study of means by which the Department of Defense can motivate designers of facilities to produce more economical designs and reward those who are successful."

The solicitation provided that award would be made to the offeror whose proposal was evaluated as the most superior technically with a realistic estimated cost. The lowest realistic estimated cost would be determinative only if two or more proposals were substantially equal. Technical evaluation factors were listed, in descending order of importance, as follows: (1) applicability of methodology,

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(2) depth of experience in related project activities, (3) understanding the scope of work, (4) appropriateness of work plan and format for deliverables, and (5) capability, based upon the qualifications and utilization of staff. The Army used an evaluation scheme in which these technical factors were weighed 30 percent, 25 percent, 15 percent, 15 percent and 15 percent, respectively.

Under this scheme, the Wehrli offer received a technical score of 239, placing seventh out of 20 offers. The technical evaluation panel did not consider the Wehrli offer to be technically acceptable or capable of being made so, and thus not within the competitive range. The Army conducted discussions with the three firms with the highest initial scores (368, 344 and 317), and, after receiving best and final offers, awarded a contract to ISC.

The agency conducted a debriefing with Mr. Wehrli at his request, and explained two major deficiencies in his proposal. Mr. Wehrli's offer received a relatively low score for the factor of understanding the scope of work. This was because Mr. Wehrli proposed to examine the reasons for inaccurate cost estimating rather than exclusively focusing upon incentives for encouraging economical design. The emphasis upon cost estimating also resulted in a lower score with respect to the application of methodology. The Army also concluded that Mr. Wehrli and his staff had not previously conducted the type of study desired. Consequently, the Wehrli proposal received relatively low scores for depth of related experience and for capability based upon staff qualifications and use.

Mr. Wehrli takes exception to the two deficiencies cited by the Army. His contentions are generally that the technical evaluation panel failed to adequately read and understand his proposal, and that, in particular, the chairman of the panel failed to do so. He also states that, since he offered the lowest cost, the Army violated its obligation to inform other bidders that an award had been made to other than the low bidder. Federal Acquisition Regulation (FAR), § 14.408-1(a)(3), 48 Fed. Reg. 42184 (1983) (to be codified at 48 C.F.R. § 14.408-1(a)(3)).

In reviewing complaints about the evaluation of a technical proposal, and the resulting determination of whether an offeror is within the competitive range, our function is not to reevaluate the proposal and to make our own determination about its merits. That determination is

the responsibility of the contracting agency, which is most familiar with its needs and must bear the burden of any difficulties resulting from a defective evaluation. Procuring officials have a reasonable degree of discretion in evaluating proposals, and we will not question their decision unless it is shown to be arbitrary or in violation of the procurement laws and regulations. Essex Electro Engineers Inc.; ACL-Filco Corporation, B-211053.2; B-211053.3, Jan. 17, 1984, 84-1 C.P.D. ¶ 74; Information Network Systems, B-208009, Mar. 17, 1983, 83-1 C.P.D. ¶ 272. Additionally, the protester bears the burden of affirmatively proving its case--the fact that a protester does not agree with an agency's evaluation does not render the evaluation unreasonable. Id.

The RFP clearly states that the purpose of the proposed study is to develop recommended methods for motivating architect-engineers to look for cost savings in design. The objective of the study is to:

" . . . (1) obtain a complete and objective analysis of the laws, regulations, contract provisions and procedures governing Architect-Engineer design contracts with the Department of Defense to determine if they permit, (or should be changed to permit) the offering of incentives to A-Es for economical design; (2) obtain the opinions of the professional societies representing A-Es as to the desirability of offering incentives for economical design and how such incentives might be developed and (3) develop recommendations as to the degree and type of incentives that should be offered to encourage economical design, with objective and positive means by which good performance in achieving economical design can be measured and recommendations as to any changes in law, regulation, contract provisions or procedures necessary to permit offering incentives and the policy statements and strategies necessary to put such incentives into effect."

In a discussion of the RFP scope of work requirements in his proposal, Mr. Wehrli devoted considerable attention to the causes and consequences of poor cost estimating. The protester contends that the agency does not know the accuracy of architect-engineer cost estimates, and that accurate cost estimates are essential for the application and

assessment of incentives for savings in design. Mr. Wehrli also argues that his intention to include a study of ways for improving the accuracy of cost estimating should not have lowered his technical score, since he proposed to submit an issues paper and interim guidelines to the Army before proceeding with the study. At that time the Army would be able to redirect his efforts.

While accurate cost estimates may be among the factors which are important for a system of low cost design incentives to work well, it is the agency's responsibility to assess its needs, and the solicitation clearly sought a study of incentives for economical design, not a study of ways to improve cost estimates. We consider the agency's judgment that Mr. Wehrli's emphasis on cost estimating is a substantial deficiency to be reasonable. Mr. Wehrli's proposal to submit study plans to the Army before proceeding is not relevant to the two technical evaluation factors affected by his emphasis on cost estimating: understanding the scope of work and application of methodology. The evaluation in connection with the agency's competitive range determination was conducted to determine the merits of Mr. Wehrli proposal as it was submitted and did not concern possible future changes which could be made.

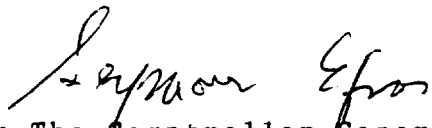
The Army gave relatively low scores to the Wehrli offer with regard to depth of experience in related project activities and capability, based upon the qualifications and utilization of staff. The agency evaluators did not believe that either Mr. Wehrli or his two professional assistants had previously participated in studies of corporate motivation and methods for influencing corporate action. The protester apparently concedes this fact, but argues that his experience in complex studies of customer satisfaction based upon direct interviews was related to the proposed project. Also, based upon statements made by the chairman of the technical evaluation panel at the debriefing conference and "zero" scores which the panel chairman gave the Wehrli proposal for depth of related experience and staff capability, the protester claims that the chairman did not know that the protester was a psychologist as well as an architect and an engineer. Mr. Wehrli contends that a misunderstanding of his education and experience caused the low scores by the panel chairman, which in turn influenced the scoring by other panel members.

We have reviewed the Wehrli proposal as well as the technical evaluation panel's scoring records for all proposals, and do not find irregularities in the evaluation of the Wehrli proposal. It was not unreasonable or arbitrary for the agency to conclude that Mr. Wehrli's offer was deficient in the experience and qualifications of proposed staff. The chairman's scores for all proposals were on the average lower than those of other panelists, and were the lowest for one-half of the proposals. Scoring of technical proposals is inherently subjective, and we do not conclude from the chairman's scores or their relation to other scores that the evaluation was unreasonable. See Devel and Associates, Inc., B-212962, Apr. 25, 1984, 84-1 C.P.D. ¶ 477; Diversified Data Corporation, B-204969, Aug. 18, 1982, 82-2 C.P.D. ¶ 146.

The protester states that another deficiency was raised in the debriefing--that his proposal did not contain "a psychological and management approach." He responds by an analysis of the extent to which the proposal uses psychological and managerial terms and concepts. The Army's report and the records of the technical evaluation panel do not reflect a separate issue regarding the absence of a psychological or management approach.

Mr. Wehrli has not met his burden of establishing that the agency's evaluation of his proposal was arbitrary or in violation of applicable statutes or regulations. Further, the regulation that Mr. Wehrli believes requires the Army to notify all bidders of the reasons for not awarding to the low bidder, FAR § 14.408-1(a)(3), applies to formally advertised procurements and not to negotiated procurements.

The protest is denied.


For The Comptroller General
of the United States