

DECISION



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

FILE: B-220449 **DATE:** March 24, 1986
MATTER OF: Pease & Sons, Inc.

DIGEST:

1. There is no basis to question agency's selection of contractor for the design and construction of a commissary, where the awardee's proposal offered the best cost to quality point ratio and the initial protest filed by the fourth-ranked offeror does not state how evaluation was inconsistent with criteria set forth in solicitation.
2. Specific challenges to agency's point scoring of protester's and awardee's proposals, first raised orally at bid protest conference 6 weeks after protester had been debriefed by agency and first submitted in writing in post-conference comments, are untimely. Allegations should have been filed within 10 working days of the debriefing.
3. Allegation that agency violated Competition in Contracting Act of 1984 by not conducting discussions with "all" offerors is without merit where record shows that agency did conduct discussions with both offerors in the competitive range, from which the protester was excluded.

Pease & Sons, Inc. (Pease) protests the award to Hoffman Construction Company of Washington (Hoffman) of a firm-fixed-price contract under request for proposals (RFP) No. DACA67-85-R-0036 issued by the Army Corps of Engineers, Seattle District (Corps). Pease contends that it should have received the award because it offered a lower cost proposal than the awardee. Further, Pease contends that the Corps made award without discussions in violation of the Competition in Contracting Act of 1984 (CICA), 41 U.S.C.A. § 253b(d)(1)(B) (West Supp. 1985).

We deny the protest in part and dismiss it in part.

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Background

The Corps issued this RFP using the one-step turnkey method for the design and construction of a military commissary at Fort Lewis, Washington. Offerors were required to submit separate cost and technical proposals and the RFP specified that award would be made to that responsible offeror whose proposal was determined to be the best in terms of cost per quality point ratio and in the best interests of the government. The RFP cautioned that award would not necessarily be made to the offeror with the lowest cost proposal.

Evaluation of technical proposals was to be based on the following evaluation criteria listed in descending order of importance:

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| 1. Building engineering and installed equipment quality | 50% |
| 2. Building design | 20% |
| 3. Site engineering | 10% |
| 4. Site design | 10% |
| 5. Energy conscious design and engineering | 10% |

The solicitation stated that after quality points were assigned to technical proposals, the price rating would be determined by the following formula:

$$\frac{\$ \text{ Price}}{\text{Quality Point Rating}} = \$ \text{ Per Quality Point}$$

The Corps received six proposals by the August 22, 1985, deadline for receipt of initial technical proposals. Following evaluation of all six proposals, negotiations were then conducted with the two offerors who were determined to be in the competitive range based on the technical evaluation and cost. These two offerors were those who offered the most advantageous price per quality point. Hoffman's initial proposal received the highest technical ranking of 600 points and was at a price of \$9,739,000, which resulted

in a price per quality point of \$16,232. The other firm included in the competitive range received a score of 529 points for its technical proposal and at a price of \$8,992,000, it earned a price per quality point of \$16,998. Excluded from the competitive range were those proposals ranked 3 through 6 in the technical evaluation, with scores ranging from 451 to 372 points.

Among the proposals excluded from the competitive range was that of Pease which, with a technical score of 451, ranked third out of six in the technical evaluation. Pease's price of \$8,156,870 was second low. Therefore, in terms of price per quality point, the protester's proposal was the fourth highest at \$18,086. After negotiations, the Corps determined that Hoffman's proposal was in the best interests of the government considering both technical quality and price and made award to Hoffman on October 30, 1985, in the amount of \$9,960,000. In comparison with the protester's proposal, the Corps paid approximately 22 percent more for a facility whose quality it judged almost 40 percent better.

By letter dated October 31, 1985, the protester was notified of the award and, at its request, a debriefing conference was held on November 13, 1985. According to the Corps, it explained that the purpose of the 2-hour meeting:

"... was to answer any questions the firm had, to relay the perceptions of the technical evaluation team regarding their proposal, to provide the firm with an opportunity to review the winning proposal, and to give guidance to assist the firm in making a better response next time since the Corps intends to do more turnkey projects in the future."

Pease was given "a matrix comparing the maximum points that could be achieved, the winner's points and their points broken out by category," "a list of strong and weak points developed by the evaluation team" and "an opportunity to review the winning proposal." The debriefing ended with a question-and-answer session.^{1/} Pease's initial letter of

^{1/} Although Pease may not have been satisfied by the information it received at the debriefing, we fail to understand its assertions that the Corps had offered "no explanation" for the difference in evaluation results and that its reasons for making an award to Hoffman were "unknown."

protest was dated the following day and received by us 1 day later.

In its initial correspondence, Pease advanced two general grounds for protest: (1) that the Corps improperly accepted an offer at a higher price than Pease offered; and (2) that in contravention of CICA, the Corps made award without discussions with "all" offerors.

We think the protester's reasoning with respect to the first ground for protest may be summarized as follows: the relative importance of cost and technical factors was not specified in the RFP, as a result of which offerors did not know how the price per quality point ratio was to be used in the award decision and could not tell whether the Corps intended to achieve a minimum standard at the lowest cost or whether cost was secondary to quality. "More importantly," the protester asserts, where, as here, the RFP indicates that both technical and cost factors are to be evaluated, and there is no contrary indication, both factors are approximately equal in weight. Thus properly evaluated, Pease's cost advantage would have overcome any technical superiority of Hoffman's offer. In fact, since both firms offered a "similar product,"^{2/} "the record cannot contain any justification" for paying \$1.8 million more for the Hoffman design. Pease concludes that Hoffman's contract should be terminated for the convenience of the government and award made to Pease.

As for this basis for protest, the Corps argues that Pease's assertion that price should have been the determinative factor is misplaced, since the RFP specifically provided for the consideration of technical quality through the cost per quality point evaluation scheme. Pease's objections to the solicitation's proposal evaluation provisions, the agency maintains, are untimely because they were not filed prior to receipt of proposals. And, since Hoffman's proposal was the most highly rated under the

^{2/} This idea is variously stated in Pease's protest: both offerors "were offering to provide the exact end product--a fully usable grocery store in strict compliance with the "RFP;" Hoffman's design was "only slightly or no better than" Pease's design; the two designs were "equivalent;" "architecturally, structurally and mechanically" the two are "virtually identical." At the same time, however, Pease characterizes Hoffman's design as "gold plated."

cost per quality point evaluation scheme set forth in the RFP, award properly was made to that firm.

Discussion

The protester's assertions that the solicitation's proposal evaluation scheme was unclear and that one could not tell from the RFP whether the Corps "intended to achieve a minimum standard at the lowest cost or whether cost was secondary to quality" are untimely. These concerns should have been raised prior to receipt of initial proposals, when any deficiency which may have existed could have been corrected without harm to the competitive process, not after the competition has been completed and the results known. See 4 C.F.R. § 21.2(a)(1) (1985).

In any event, we are not persuaded that the terms under which proposals would be evaluated were as unclear as the protester suggests. As the Corps points out, "cost per quality point" is an established method for evaluating major design-and-construct projects such as this and the evaluation methodology was set forth in detail in the RFP. We do not believe one reasonably could conclude that the Corps only was seeking a "minimum standard at the lowest cost" in view of a number of solicitation provisions to the contrary, including the advice, under the heading "Design Freedom," that "Innovative, creative or cost-saving proposals which meet or exceed [design and construction] requirements are encouraged and will receive additional quality points accordingly."

Under the evaluation scheme contained in the RFP, Hoffman's price of \$16,232 per unit of quality ("quality point") represented the best value to the government. The protester's price of \$18,086 per quality point ranked fourth out of six. Absent evidence of mathematical error in the price computation, in order to establish its entitlement to award, the protester must demonstrate that the technical evaluation was inconsistent with the criteria stated in the RFP, i.e., that Hoffman's technical score should have been lower or Pease's greater, or both, such that the price per quality point ratio would change in Pease's favor.

In its initial letter of protest, Pease spoke in generalities and addressed none of the specifics of the

technical evaluation of proposals. It "[questioned] whether the Corps really needs a 'gold plated' commissary, asserted (as we indicated above) that its proposed facility was "similar" to the awardee's, and--in what amounts to a reversal of the usual burden of proof--suggested that it was the Corps' obligation to establish the reasonableness of its selection. Pease did not, however, discuss any particular evaluation criterion nor attempt to show why the scores assigned to it or to Hoffman may have been in error. For example, under the criterion "Energy conscious design and engineering," Pease fared poorly when compared to Hoffman, a fact disclosed during, and the subject of some discussion at, the debriefing which preceded the filing of Pease's protest; yet there is no mention of this matter in the protest. We therefore have no basis on which to conclude that the Corps' selection of Hoffman was unreasonable based on Pease's initial protest.

At the conference on this protest held on December 30, 1985, Pease for the first time challenged with specificity the agency's evaluation of its proposal and Hoffman's, and its position in this regard was not definitively reduced to writing until it filed its post-conference comments simultaneously with the Corps' on January 10, 1986. Although Pease knew of these specific grounds for protest as of the time of the debriefing, it failed to raise these issues within 10 working days from that date as required by our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1). Consequently, we will not now consider these bases of protest.

Pease's second basis for protest is that the Corps violated 41 U.S.C.A. § 253b(d)(1)(B) (West Supp. 1985) by making award to Hoffman without conducting discussions with "all" offerors. This argument is without merit. The Corps did conduct discussions with the two offerors which it determined were within the competitive range, which is all that it was required to do. See Federal Acquisition Regulation, § 15.610(b) (FAC 84-5, Apr. 1, 1985).

The protest is denied in part and dismissed in part.

fu *Raymond E. Fros*
Harry R. Van Cleve
General Counsel