

DOCUMENT RESUME

03628 - [A2653022]

[Protest against Award of a Fixed Price Contract]. B-189397.  
September 20, 1977. 7 pp. + 2 enclosures (2 pp.).

Decision re: Helmut Guenschel, Inc.; by Robert F. Keller, Deputy  
Comptroller General.

Issue Area: Federal Procurement of Goods and Services (1900).  
Contact: Office of the General Counsel: Procurement Law II.  
Budget Function: General Government: Other General Government  
(806).

Organization Concerned: Rogay Models, Inc.; Smithsonian  
Institution.

Authority: 55 Comp. Gen. 244.

The protester objected to the award of a fixed price contract to the second low bidder. Offerors were clearly advised by the request for proposals that the contents of the written proposals would be a critical factor in the evaluation of proposals. The agency was not arbitrary in concluding upon the basis of the written proposals that the second low offeror possessed greater experience in the area of graphics. In negotiation of a fixed price contract, price need not be the controlling factor. (Author/SC)

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**DECISION**



Roger Ayer  
Proc. II  
**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20540

**FILE:** B-189397

**DATE:** September 20, 1977

**MATTER OF:** Helmut Guenschel, Inc.

**DIGEST:**

1. Offerors were clearly advised by RFP for fabrication and installation of museum sales shop that contents of written proposals would be critical factor in evaluation of proposals. Agency was not arbitrary in concluding upon basis of written proposals that second low offeror possessed greater experience in area of graphics.
2. In negotiation of fixed price contract, price need not be controlling factor, and agency may make award to second low offeror whose price is less than \$400 higher than that of low offeror for \$17,000 contract, in order to obtain benefit of awardee's superior graphics experience.

Helmut Guenschel, Inc. (Guenschel) protests the award of a contract to Rogay Models, Inc. (Rogay) for the fabrication and installation of the Spacearium Sales Shop in the Smithsonian Institution's (Smithsonian) National Air and Space Museum under request for proposals (RFP) FN-705500. Award was made to Rogay, without discussions, on the basis of its initial proposal although Guenschel's offer, allowing for price discounts, was approximately \$400 lower than Rogay's and Guenschel's proposal on a 100 point scale scored within 2.6 points of Rogay's (Guenschel=94, Rogay=96.6). The Smithsonian has withheld issuance of its Notice to Proceed pending our resolution of this matter.

Under the terms of the solicitation, the contractor is to erect a partition across the rear of an existing room. Behind the partition is a storage area equipped with a built-in desk, shelves, and a movable library ladder. In front of the partition is a small retail sales area for which the contractor is to furnish and install display cabinets and shelving. Included within the work is a silk screened emblem and sign containing the words "Spacearium Shop" in four languages. In addition, a super-graphic consisting of a 20-inch wide band in four colors extends across three walls.

The RFP instructed offerors to:

"\* \* \* submit proposals which are fully and clearly acceptable without additional explanation or information since the Government may make final determinations as to whether a proposal is acceptable or unacceptable solely on the basis of the proposal as submitted."

With regard to evaluation criteria and the basis for award, the solicitation provided:

"Proposal, will be evaluated by criteria set forth in the specification document Section II and the following:

- a. Experience = 40%
- b. Approach = 5%
- c. Sub-contractor = 10%
- d. Capability = 10%
- e. Cost = 30%
- f. Ability to meet installation schedule = 5%

The Contractor with the highest score will be considered most favorably for award.

For the purpose of thoroughly and fairly evaluating proposals the above criteria are weighted and judged by the Government according to a predetermined point system.

Such evaluation is to be conducted by a board to be appointed by the Contracting Officer. The findings of the board will be of an advisory nature and subject to review by the Smithsonian Institution's General Counsel.

#### 9. BASIS FOR AWARD

A contract will be negotiated with the offeror presenting the most acceptable proposal. The Smithsonian Institution anticipates the award of a firm fixed-price contract. Therefore, the

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proposal to be submitted should set forth complete price information including a cost breakdown.

The Smithsonian Institution reserves the right to make award without further negotiations, therefore offerors should fully submit responsive proposals which reflect their best priced offer, etc."

Section II of the specifications reads, in pertinent part, as follows:

**"SELECTION CRITERIA**

2.01. The Smithsonian Institution will expect to receive the following minimum requirements from proposals submitted. Award will be based on evaluation of the response to these requirements and judged by the Government according to a pre-determined point system.

A. Proof of Experience (Photographs, descriptions, written sources for reference, etc.)

\* \* \* \* \*

D. Capabilities:

- (1) Number and background of key personnel to be assigned to this project.
- (2) Number and specialty of supporting personnel.
- (3) In-plant facilities." (Emphasis added.)

Six proposals, ranging in price from \$16,775 to \$38,389, were received. Guenschel's low proposal consisted of a 2-1/2 page letter. In its proposal, Guenschel responded as follows to the RFP's request for "Proof and Experience":

"We have done work for the Smithsonian Institution for more than 8 years. The major projects included:

1. Ceramics Hall, MHT [Museum of History & Technology]

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- 2. Postal History Department, MHT**
- 3. Military Department, MHT**
- 4. Hall of Newsreporting, MHT**
- 5. Air Plane Model Display Cases, Air and Space**
- 6. Dibner Library of Rare Books, MHT**
- 7. Museum Sales Shop, Arts & Industry Building**

**We believe to have an excellent reputation with the Smithsonian for excellent workmanship and performance."**

**Guenschel's letter also contained a description of some details of the work and an outline of the firm's plan for scheduling the work. Most of the rest of the proposal consisted of a series of brief, conciusionary statements:**

**"Our capabilities should be well known by the Air and Space Museum design department. \* \* \*.**

**"Our facilities and staff can easily handle a project fifty times bigger.**

**"Besides woodworkers, we have people experienced in laminate plastic work, metal work, including machining of special parts or hardware.**

**"Our manufacturing facilities have wood, plastic, and metal fabricating shops.**

**"We have done all this type of work before."**

**Rogay's second-low proposal (\$17,568 with 2 percent-20 day discount) was 41 pages long and was transmitted by a 2-page cover letter. In addition to a general discussion of the firm's history, organization and capabilities, 17 pages of the proposal were devoted to descriptions of prior contracts Rogay had performed. This portion of the proposal included 2 black-and-white and 13 color photographs of displays and exhibits Rogay had built for Government and commercial customers other than the Smithsonian. The remainder of the proposal was devoted to resumes of key personnel, a number of which are shown to have graphic arts and silkscreening experience.**

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Our review of the proposal evaluation committee's rating sheets shows that the criterion under which Rogay gained the advantage over Guenschel was "Experience." It is clear from the record before us that the graphics portion of the work was the discriminator between these two competitors insofar as "Experience" was concerned and that Rogay's proposal was effective in persuading the evaluation committee that Rogay was superior in this regard. The committee has offered the following rationale in support of its recommendation that Rogay receive the award:

"The final tabulation, prepared by averaging total scores of the Committee, indicated that a very close competition in the amount of 2.4 points existed between the top two competitors. While each member had his own opinion (each evaluator scores his sheet independently), the points vary only slightly between the two top competitors; however, the Committee was unanimous in the category of experience. Both organizations have very fine reputations in the industry. [Guenschel] is known (with ample proof within the NASM) to be one of the nation's finest cabinet builders. Rogay Incorporated has an equally fine reputation in exhibits production. The Committee considered the visual impression (aesthetics and ambiance) more important than the differences in construction techniques (both firms are capable of good cabinetry); therefore, in the category of experience, Rogay Incorporated scored more highly."

In its initial report to our Office, the Smithsonian expressed its view that while graphics

"represented only a small portion of the cost of this procurement, as a practical matter [they] represent an element of great importance. It is the graphics which will attract and delight the visitors. The remainder of the work, although important, only are functional devices for storage of items. Because of this importance, the evaluation board rated the Rogay proposal slightly higher in the category of 'experience.' The proposals make it clear that Rogay is better-qualified in graphics work than is Guenschel. \* \* \*"

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• The Smithsonian further stated that:

• " \* \* \* Even a cursory review of the proposals submitted by each indicates the materials submitted by Guenschel in response to Section II of the Specifications is cursory, at best, and relies to a considerable extent on a listing of completed Smithsonian contracts. On the other hand, Rogay submitted a detailed and extensive 'technical proposal' which included color photographs of prior work. This difference in approach to this procurement is important since it enabled the evaluation board to appreciate the experience and capability of these firms to execute graphics.

Guenschel argues that the evaluation of its proposal was improper for two reasons: (1) the evaluation was a "beauty contest" among proposals in which adequate consideration was not given to Guenschel's prior work for the Smithsonian, and (2) the emphasis placed by the Smithsonian on graphics was disproportionate to its dollar value and inconsistent with the RFP, which did not indicate that graphics was an unusually important aspect of the work.

We believe the RFP's "Instructions to Offerors" that proposals should be "fully and clearly acceptable without additional explanation or information" clearly placed offerors on notice that the contents of their written proposals were a critical factor in the selection of a contractor. We think it is entirely reasonable for an agency to require a complete written exposition of an offeror's experience and capabilities upon which to base an evaluation.

The long and short of what occurred here is that Rogay's written proposal conveyed to the reader more of a sense of that firm's abilities than did Guenschel's proposal, which relied to a large extent on individuals' familiarity with its past work. Certainly, Guenschel's past work was favorably considered, since Guenschel received an average score of 36 out of a maximum 40 points for "experience." (Rogay's average score under that criterion was 39.33.) The evaluation committee simply did not find Guenschel's written presentation of its experience, especially in the area of graphics, as persuasive as Rogay's. Based upon our review of the proposals, we do not believe this was an arbitrary conclusion.

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As for Guenschel's second basis for protest, the protester is correct in stating that the RFP did not single out graphics, which was of relatively small dollar value, as an especially important aspect of the work. However, we think it is fair to say that the Smithsonian desired all aspects of the project to be done well: the specifications call for the work to be done "in accordance with the best practice prevailing for the work of the various kinds."

It appears that both of these offerors were regarded as essentially equal in experience insofar as the construction of shelving and cabinets was concerned. However, as we have stated above, Rogay's written proposal did exhibit a greater graphics capability than did Guenschel's, which resulted in Rogay receiving a slightly higher rating. The Smithsonian determined that it was worth \$382 more (giving effect to the prompt payment discount offered by Rogay) to obtain this superior ability. As we have consistently recognized, in the negotiation of fixed-price contracts, price need not be the controlling factor, and award may be made to a higher priced, higher technically rated offeror. Bell Aerospace Company, 55 Comp. Gen. 244 (1975), 75-2 CPD 168.

Accordingly, the protest is denied.

Deputy

  
Comptroller General  
of the United States





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

Roger Ayer  
Proc. II

IN REPLY  
REFER TO: B-189397

September 20, 1977

The Honorable Charles McC. Mathias, Jr.  
United States Senate

Dear Senator McC. Mathias:

This is in further reference to your communication in which you expressed interest in Helmut Guenschel, Inc's protest against the Smithsonian Institution's actions with regard to request for proposals FN-705500.

Enclosed is a copy of our decision of today which will further explain our position on the matter as well as the correspondence which you originally forwarded to us.

Sincerely yours,

Deputy

  
Comptroller General  
of the United States

Enclosures



Roger Ayer  
Proc. II

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

IN REPLY  
REFER TO B-189397

September 20, 1977

The Honorable Clarence D. Long  
Member, United States  
House of Representatives  
200 Post Office Building  
Chesapeake and Washington Avenues  
Towson, Maryland 21204

Dear Mr. Long:

This is in further reference to your letters of August 1 and  
September 1, 1977, concerning the protest of Helmut Guenschel,  
Inc., Middle River, Maryland.

Enclosed is a copy of our decision of today.

Sincerely yours,

Deputy

  
Comptroller General  
of the United States

Enclosure