

DECISION



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

85-2 cpd 46

FILE: B-218546 DATE: July 12, 1985
MATTER OF: Fabrics Plus, Inc.

DIGEST:

1. A protest against application of evaluation criteria differs from a protest against allegedly deficient criteria, and GAO will consider the former timely when a protest is filed within 10 working days after the protester learns how an agency evaluated its proposal.
2. When a solicitation is silent as to the relative importance of cost and technical factors, they must be considered approximately equal, and GAO will sustain a protest where the agency instead considered them worth 20 and 80 percent, respectively.
3. A request for proposals with an estimate of orders totaling from \$100,000 to \$1,500,000, without further explanation, does not give offerors sufficient details to enable them to compete intelligently and on an equal basis.

Fabrics Plus, Inc., protests the award of a contract to Standard Textile Company, Inc., under request for proposals (RFP) No. TLD-01890-5, issued by UNICOR/Federal Prison Industries, Inc. The solicitation was for an indefinite-quantity contract under which purchase orders are to be issued for drapery measurement, presentation of fabrics, installation of draperies, and hardware services, all on a nationwide basis. The term of the contract is 1 year, with 2 option years.

Because solicitation deficiencies prevented offerors from preparing their proposals intelligently and the agency from evaluating them on an equal basis, we sustain the protest.

The original solicitation, issued on November 27, 1984, did not include any technical evaluation criteria. Although this was a negotiated procurement, UNICOR inserted the standard clause entitled "Contract Award--Formal Advertising" at page L-6 of the RFP. The clause stated, in pertinent part:

"The government will award a contract resulting from this solicitation to the responsible bidder whose bid, conforming to the solicitation, will be most advantageous to the government, price and other factors, specified elsewhere in this solicitation, considered."

On January 7, 1985, UNICOR amended the solicitation to include the following specific technical evaluation factors:

"(a) Specialized experience of the firm in the type of work required.

"(b) Capacity of the firm to accomplish the work in the required time.

"(c) Professional qualifications of staff assigned, including subcontractors.

"(d) Specific performance record on previous work for other government agencies or private industry."

The amendment was silent as to the relative weights to be accorded to these factors in relation to each other or to price.

The amendment also added two "specific bidding categories." Offerors were to insert unit prices per linear foot that were to encompass "all cost[s] required to complete the job" of (1) premeasurement and presentation of fabric swatch books and (2) installation, which also included removal of existing draperies. The installation category was divided into four items, one of which had five subitems. There was no estimated number of linear feet for any category, item, or subitem, so unit prices were not extended. The only indication of quantity was a statement in the original solicitation indicating that total orders would range from \$200,000 to \$1,500,000; the amendment lowered the minimum to \$100,000.

In its evaluation of the two proposals considered "responsive" to the solicitation (five others were rejected on grounds that price variables made evaluation impossible), UNICOR accorded proposed prices a weight of 20 percent. Each of the four specific technical evaluation factors also was accorded 20 percent, for a cumulative weight of 80 percent. UNICOR scored the proposals on a 100-point scale, applied the weights, and then averaged the results to obtain the following scores:

	<u>Fabrics Plus</u>	<u>Standard</u>
Specialized Experience	90(x 20=1800)	95(x 20=1900)
Capacity	96(x 20=1920)	98(x 20=1960)
Professional Qualifications	95(x 20=1900)	95(x 20=1900)
Specific Performance Record	95(x 20=1900)	95(x 20=1900)
Price	78(x 20=1560)	74(x 20=1480)
Average Evaluated Score	1816	1828

Without benefit of discussions, UNICOR then awarded the contract to Standard, the offeror with the highest number of points, stating that its offer was overall in the agency's best interest.

Protesting this award, Fabrics Plus first contends that UNICOR did not apply the evaluation criteria in a manner consistent with the RFP and, as a result, improperly evaluated its proposal. While UNICOR could have expressly provided for equal weight to be accorded to price and each of the other evaluation factors, because the solicitation was silent as to their relative importance, Fabrics Plus argues price should have been given a 50-percent weight and all other factors combined a 50-percent weight. The protester also alleges that UNICOR acted arbitrarily in scoring the proposals with regard to specialized experience.

UNICOR asserts that Fabric Plus' first basis of protest concerns alleged improprieties apparent on the face of the solicitation and is, therefore, untimely, since it was not filed until after the closing date for receipt of initial proposals. Filing by then is required by our Bid Protest Regulations, 4 C.F.R. § 21.2 (a)(1), (1985).

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We disagree. Our Office has held that where an RFP indicates that price will be considered, without explicitly indicating its importance in relation to technical factors, offerors may presume that cost and technical considerations are approximately equal in importance. Riggins Co., Inc., B-214460, July 31, 1984, 84-2 CPD ¶ 137; Medical Services Consultants, Inc. et al., B-203998 et al., May 25, 1982, 82-1 CPD ¶ 493. Given this presumption, Fabrics Plus could not have known from the face of the RFP that price would not be evaluated equally with technical considerations. Only upon receipt of a postcard on April 8 and after a telephone conversation with the contracting officer on April 9 was Fabrics Plus aware of the manner in which the evaluation factors had been applied and of the fact that the contract had been awarded to Standard. Fabrics Plus filed its protest with our Office on April 10, and we therefore consider it timely. Trellclean, U.S.A., Inc., B-213227.2, June 25, 1984, 84-1 CPD ¶ 661.

We find that Fabrics Plus' first basis of protest has merit. Since in the solicitation UNICOR indicated that price would be considered, but did not indicate its importance in relation to the specific evaluation factors added by amendment, price and technical factors could only have been accorded equal weight. Evaluation on any other basis was improper, since an award may not be based on factors not made known to prospective offerors. See North American Automated Systems Co., Inc., B-216561, Feb. 15, 1985, 85-1 CPD ¶ 203.

We sustain the protest on this basis and, therefore, need not consider the protester's allegations concerning the specialized experience evaluation factor.

Although they have not been protested, we believe other deficiencies in UNICOR's solicitation prevented offerors from preparing their proposals intelligently and the agency from evaluating them on a common basis. We note that the solicitation merely set forth \$100,000 minimum and \$1,500,000 maximum order limitations. There was no estimate of the number of linear feet of draperies to be installed or removed and no provision for prices that varied with the quantity ordered. There was no indication as to the amount of existing hardware that could be reused, or as to what would have to be replaced, yet offerors were to price different items depending on these variables. The subitems, i.e., installation in wood, plaster, concrete,

etc., also were not quantified. Nor was there any provision, in a solicitation for services on a nationwide basis, for geographical price fluctuations; travel expenses were not considered, nor were varying delivery charges. In short, offerors had to guess as to what UNICOR's requirements would be, with the \$100,000 to \$1,500,000 estimate as their only guidance.

A procuring agency must give offerors sufficient details in a request for proposals to ensure that the solicitation is free from ambiguity. Worldwide Marine, Inc., B-212640, Feb. 7, 1984, 84-1 CPD ¶ 52. Moreover, when the government solicits offers on the basis of estimated quantities to be utilized over a given period, those quantities must be compiled from the best information available and must accurately represent the agency's anticipated needs (although there is no requirement that the estimates be absolutely correct). See Union Carbide Corp., B-188426, Sept. 20, 1977, 77-2 CPD ¶ 204; Cf. National Mediation Board--Request for Advance Decision, B-209037, Oct. 8, 1982, 82-2 CPD ¶ 323 (in requirements contract, even though exact quantities to be procured are not known, solicitation must provide some basis for bidding). Estimates may be based upon records of previous work requirements or lists of past orders, if estimating future requirements is not possible. G & B Packing Co., B-204192, Apr. 20, 1982, 82-1 CPD ¶ 359. Failure to include any estimates at all of future requirements, or a reasonable alternative, constitutes a solicitation deficiency if the uncertainty and risk involved reach an unacceptable level and the government's interest in obtaining reasonable prices through adequate competition is not served. See Memorex Corp., B-212660, Feb. 7, 1984, 84-1 CPD ¶ 153. Here, we believe that the requirement for fixed prices that encompassed all costs required to complete the jobs listed in the different "bidding categories" without advising bidders as to the amount of work entailed constituted such a deficiency.

In analyzing whether the specifications adequately detail an agency's requirements or are excessively general and vague, we consider whether other proposals have been submitted that meet the minimum mandatory requirements of the RFP. Of the seven proposals submitted in this case, UNICOR summarily rejected five as "nonresponsive." The agency states that since they contained "price variables," it could not evaluate these offers. This response supports our conclusion that the specifications were too vague and

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general to describe the agency's needs accurately and that, as a result, there was an unacceptable level of uncertainty and risk in the solicitation that inhibited competition. See University Research Corp., B-216461, Feb. 19, 1985, 64 Comp. Gen. ~~A~~, 85-1 CPD ¶ 210.

In addition, given the lack of precise estimates-- which the agency has never stated it could not provide--we do not believe that UNICOR could determine which of the two offers that it attempted to evaluate would actually result in the lowest price to the government. Thus, regardless of the weight that price was given, the point scores for this factor may not have been correct.

The agency states that no purchase orders have been issued under the protested contract. Therefore, by letter of today to the Controller, Federal Prison Industries, Department of Justice, we are recommending that UNICOR terminate Standard's contract and issue a new RFP in which it clearly states the basis on which proposals are to be evaluated, including, so far as possible, quantity estimates and other information required for the intelligent preparation of proposals. In addition, if competitive negotiation (as distinguished from sealed bidding) is used, the solicitation clauses and procedures applicable to this method of procurement should be followed.

The protest is sustained.

Sheldon J. Arosan
for Comptroller General
of the United States