

DECISION



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

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FILE: B-184658

DATE: January 23, 1976

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MATTER OF: Design Concepts, Inc.

DIGEST:

1. Request for proposals does not conform to sound procurement practice where it fails to advise offerors of relative importance of major criteria to be discussed in technical proposals.
2. Award of fixed-price contract for interior planning services is not most advantageous to Government where method of evaluation results in selection of offeror having slight technical advantage at price exceeding four times protester's low offer, in absence of any indication that protester could not satisfactorily perform contract or that contractor's technical superiority warranted payment of substantially higher price.
3. RFP statement that price proposals for fixed-price contract would be "evaluated and allocated up to a maximum of 20 percent of possible points depending on dollar amount" clearly implied that highest point value would be assigned to lowest-priced, technically acceptable offeror and evaluation method failed to conform to RFP where price evaluation in fact employed form of mathematical error analysis in which arithmetic mean of all price offers received was assigned maximum point value, and deviations from mean were penalized by award of lesser point values.

This protest filed by Design Concepts, Inc., arose from General Services Administration (GSA) solicitation No. 3MPE-0064-DOL, for interior planning services for the Office of Federal Contract Compliance (OFCC), Department of Labor (DOL). The work was required in conjunction with and was the intended subject of a pilot study to assess the cost-effectiveness of interior planning and design utilizing an open plan concept, involving 14,000 to 20,000 square feet of space, providing office facilities for approximately 104 employees.

As envisaged, the project was to be substantially completed in a period of eight weeks. The contractor was required to develop and organize planning and design information adequate to permit: (1)

preparation of construction and engineering drawings, (2) budgeting of implementation costs, and (3) facilitation of OFCC coordination of its office relocation, including the purchase of necessary furniture and equipment, and the establishment of a continuing space management program in the new facility. Also, the contractor was required to prepare a report and evaluation of the program.

After advising offerors of the subjects which must be discussed in their technical and cost proposals, the RFP provided:

"ARTICLE X - BASIS FOR EVALUATION OF OFFERS

"For the purpose of determining the proposal that serves the interest of the Government, the proposals will be evaluated and rated as described below.

"An evaluation panel consisting of professionals from the GSA organization will be convened to review and rate the proposals.

"The procedure will be structured so as to weigh Technical Proposals at 80% and Price Proposals at 20% of the total.

"FIRST: Technical proposals will be opened, evaluated and scored prior to opening Price Proposals. A maximum of 80% of possible points will be allocated to the technical portion.

"Evaluation of Technical Proposals will be based on the Offeror's response to the technical criteria of this solicitation. A sample of the score card is included on the next page of this package.

"SECOND: The panel will determine the proposals which are considered to be technically responsive.

"THIRD: Price Proposals will be opened from those firms in the technically responsive group. Price Proposals from any non-responsive firms will be returned, unopened.

"Price Data will be evaluated and allocated up to a maximum of 20% of possible points depending on dollar amount.

"FOURTH: A total score will be computed for each offeror in the technically responsive group.

"ARTICLE XI- METHOD OF AWARD

"The firm with the highest total score will be Awarded the contract and notified accordingly.

"Unsuccessful offerors will also be notified."

Our review of the extent to which offerors were advised of the relative importance of the evaluation factors and the method used for evaluating proposals reveals serious deficiencies, the existence of which was acknowledged by GSA in its report to our Office.

The solicitation required each offeror to discuss in its technical proposal seven subcriteria under "General Information" and four subcriteria under "Project Information." Although offerors were advised that the technical proposal as a whole could account for as much as 80 percent of the possible 100-point score, no indication was given of the relative importance of the two major criteria comprising the technical proposal. We believe GSA would agree with our view that offerors should have been informed of the relative importance of at least these two major criteria. See AEL Service Corporation, 53 Comp. Gen. 800, 805, 74-1 CPD 217 (1974).

Technical scores for the 28 offerors, all of whom were deemed "technically responsive," ranged from an average of 47.1 to 73.1. The successful offeror, William A. Klene, Architect, received an average technical score of 67.8; the protester received 64.2. Prices offered ranged from the protester's \$3,625 to \$27,400, with Mr. Klene offering \$16,000. As the result of the method of price scoring utilized, which we discuss in detail below, Mr. Klene received 17.9 points for his price proposal while the protester received 3.4 points under the price criterion. Mr. Klene's total score of 85.7 was the highest received and resulted in the award to him in accordance with Article XI of the RFP, quoted above. The protester's total score was 67.6.

The result of this evaluation was that award was made to an offeror whose technical proposal was scored only about 5 percent higher than the protester's but whose price was approximately four-and-one-half times that of the protester's. There is no indication in the record that the protester could not have satisfactorily performed the contract, or that the technical superiority of Klene

warranted an award to him at a substantially higher price. In this regard, GSA has recognized that "where a fixed-price contract is contemplated, the use for evaluation purposes of a numerical rating in which cost to the Government is assigned points along with other factors does not in itself justify acceptance of the offer with the highest number of points without regard to price. 51 Comp. Gen. 153, 161 (1971)." The record therefore does not support the conclusion that award to Klene was most advantageous to the Government, price and other factors considered, as required by the procurement regulations.

The result obtained by the evaluation was attributable to the way in which the price proposals were scored. GSA commented upon this aspect of the evaluation as follows in its report to our Office:

"We consider, however, the method employed to evaluate the price proposals to be the most serious defect in the procurement. For purposes of evaluating price * * *, the arithmetic mean of the prices received from the technically responsive firms was established as the price which would receive the maximum of 20 points. The arithmetic mean in this case was * * * [computed by GSA to be \$14,930.30]. Offerors lost points if their price proposals deviated above or below the arithmetic mean. The amount of points lost depended on how great the deviation was. This resulted in the anomalous situation where Design Concepts, Inc., which submitted a technically responsive offer, received a low score on its price proposal because its price of \$3,625 was so far below the arithmetic mean * * *."

The successful offeror's price proposal of \$16,000 actually exceeded the mean.

GSA then concedes that:

"Since the Federal Procurement Regulations contemplate that the lowest cost to the Government is the most advantageous * * *, since we are unaware of any decisions of your Office approving price evaluation in this manner, and since it is inherently unfair to offerors whose prices are below the average, we believe the method to be improper."

The record indicates that the price scoring system employed a form of mathematical error analysis--measuring and penalizing the assumed "error"--based upon computation of the standard deviation

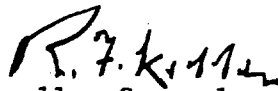
among price proposals submitted by technically responsive bidders. Examination of the evaluation method indicates that the method does not establish a unique ranking of acceptable prices. Except for a perfect score (20 points, for mean value), any price score may result from either of the two proposed prices--one greater, the other less than the mean price proposed. That this is so appears on the face of the Price Score Calculation Sheet. Proposals submitted at \$17,000 were awarded a price score of 16 points. A proposal more than \$4,000 less received a substantially similar score. As we observed above, this method resulted in Mr. Klene's price proposal of \$16,000 being awarded 17.9 points, while the protester's proposed price of \$3,625 was awarded only 3.4 points. It is difficult to see that this method bears any rational nexus to a determination that the resulting award would best serve the interests of the Government, especially where the procurement is intended to be the subject of a cost-effectiveness study.

The evaluation method clearly fails to conform to the plain purport of the solicitation. The RFP differentiated the technical and price phases of the evaluation, requiring that the technical and price data be submitted in separate envelopes. Article X stated that, "Price Data will be evaluated and allocated up to a maximum of 20 percent of possible points [100] depending upon dollar amount" (Emphasis added.). Article XI provided that, "The firm with the highest total score will be awarded the contract* * *." Nowhere did the RFP suggest that a form of mathematical error analysis would be employed, that mean price would be rewarded, and that low price would be penalized. On the contrary, the plain import of the RFP, construed in light of federal procurement policy, is that low price was to be rewarded and that points would be given on the basis of direct dollar cost savings to the Government. An offeror would reasonably assume that the maximum of 20 points would be assigned to the lowest priced, technically responsive offeror. Had the method of evaluation applied here been disclosed in the RFP, potential contractors would have been able to challenge the method prior to award.

In view of the serious deficiencies which occurred in this procurement, we would recommend that Mr. Klene's contract be terminated for the convenience of the Government and that the requirement be resolicited, if that were a practicable course of action. However, the performance schedule was relatively short and the contract was substantially performed by the time the protest was developed. Effective relief is therefore not available insofar as the instant contract is concerned, although GSA

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has indicated to our Office that it has taken remedial action to preclude similar errors in the future.



Deputy Comptroller General
of the United States