

DECISION

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

7960

FILE: B-192015

DATE: October 6, 1978

MATTER OF: Chauncey Bell and Associates, Inc.

DIGEST:

1. Protester reasonably withheld filing protest more than 10 days after receipt of agency letter advising unsuccessful offerors of award and procedure for requesting debriefing conference since information provided was not sufficient to apprise protester of basis for protest.
2. Where RFP indicates that both cost and technical factors would be considered in making award, although relative importance of technical vis-a-vis cost was not clear, highest technical score is not necessarily determinative factor in making award where proposals are essentially equal technically. No basis is seen for objection to agency's choice of proposal 4.2 percent less in technical scoring but priced \$148,060 less than proposal with highest technical score. However, agency's future RFP's should contain more explicit statement of relative importance of evaluation factors.

Request for proposals (RFP) No. H-4262, issued by the Department of Housing and Urban Development (HUD) on January 24, 1978, solicited proposals for the performance of a study of the departmental internal and external written and oral communications. The RFP designated February 13, 1978, as the final date for receipt of proposals. On April 25, 1978, HUD, by letter, advised the unsuccessful offerors, one of which was Chauncey Bell and Associates, Inc. (Bell), of the award on a fixed-price basis of contract No. H-4262 to Booz, Allen and Hamilton (Booz). At the same time, HUD advised the recipients of a formal debriefing in regard to the award which would be arranged it within the next 30 days such was requested.

Bell states that a debriefing was scheduled for May 10, 1978, but was canceled by HUD on that day, even though Bell had flown from San Francisco to Washington, D.C., specifically for said debriefing. At that time, Bell advises that it "checked through the Department [HUD] and felt we had some basis for protesting." On May 18, 1978, Bell filed its protest with HUD to which HUD, by letter dated June 2, 1978, responded essentially denying Bell's protest. Also, by letter received on May 24, 1978, Bell protested to our Office. Subsequently, Bell, through counsel, filed its protest with our Office by letter dated June 9, 1978, and at the same time requested an oral conference which was held on June 30, 1978. After the conference, HUD submitted its response which resulted in a supplemental report and comments thereto.

HUD contends that Bell's protest against an award to Booz is untimely pursuant to our Bid Protest Procedures (Procedures), 4 C.F.R. § 20.2(b) (1978), since Bell was informed by letter dated April 25, 1978, of award to Booz. We cannot agree. Section 20.2(b) of our Procedures provides that "protests shall be filed not later than 10 days after the basis for protest is known or should have been known, whichever is earlier." HUD's April 25 letter stated that a contract was awarded to Booz and advised Bell of the price of award and that a debriefing conference may be requested if Bell so desired. As noted above, Bell requested a conference that was scheduled but canceled. A protester may reasonably withhold filing a protest until it has had a debriefing from the contracting agency to learn why its proposal was not accepted where, as here, it is not apprised of a basis for protest prior to such a debriefing. Lambda Corporation, 54 Comp. Gen. 468 (1974), 74-2 CPD 312. Therefore, we conclude that Bell was not required to protest within 10 days of receipt of notice of the award to Booz. Accordingly, the merits of the protest are considered below.

The RFP provided that any proposal submitted would be evaluated in accordance with the following technical evaluation criteria:

	<u>Weight in Percent</u>
"A. Demonstrated experience and capability of the Offeror and	15

Weight in
Percent

- any proposed joint ventures, subcontractors, or consultants to provide the required services and to respond within time frame specified in Statement of Work as evidence by work performed of a similar nature by the company during the last 2 years.
- "B. Demonstrated knowledge, proficiency, and experience of personnel in designing, developing, and conducting paper work and communication management studies and analysis. 30
- "C. Demonstrated knowledge, proficiency, and experience of personnel in conducting paperwork management studies and analyses for improving the cost effectiveness and responsiveness of administrative support systems. 15
- "D. Emphasis which the organization's management will place on this effort as evidenced by its willingness to commit specifically identified personnel to the management and execution of assignments which will be forthcoming. 30
- "E. Understanding of services to be provided with a demonstrated clear insight into the concepts of the work statement and the typical tasks which may be performed." 10

In addition, the RFP advised, under its "Special Proposal Instructions" section, what each technical proposal should contain.

With respect to cost, the RFP provided:

"The reasonableness of the offeror's proposed labor and burden rates for each category of professional effort (as detailed on the enclosed Optional Form 60) will be considered together with technical evaluation factors listed above in determining the proposal which is most advantageous to the Government."

Further, contained within the "Special Proposal Instruction" section was the following additional information concerning cost and price analysis:

"Optional Form 60, Cost and Price Analysis should specify the following:

- "1. Proposed labor rates for identified project managers and principal investigators who will be responsible for the conduct of work under the contract.
- "2. Proposed labor rates for general labor categories, e.g., senior consultant, analyst, clerical.
- "3. All proposed burden rates with a breakdown of the associated indirect expense pools and an identification of the base against which they are being applied.
- "4. Travel costs.
- "5. Profit or fee."

It is one of Bell's arguments that "the tasks specifically required by the precise terms of the RFP cannot be performed, much less performed adequately, in anywhere near the number of man-hours provided for by an \$80,000 contract." In other words, Booz is not giving HUD the level of effort contemplated by the statement of work in the RFP. At the same time, Bell expresses its belief that since its proposal represents a different interpretation of the scope of work contemplated by the RFP than Booz's proposal, the RFP is vague. This belief is based on the fact that the RFP, in the "TASKS" section,

solicited proposals for the "identification of the current monthly and projected annual volume and type of communications in each of the major organizations (to be identified by the GTR)." Bell states that it interpreted this sentence to mean all of the major organizations in HUD, while a review of Booz's proposal reveals that its interpretation was less than the total number of HUD's major organizations. In support of its contention Bell points to the dollar difference between Bell's proposal (\$230,744) and Booz's proposal (\$82,684).

It is not the function of our Office to evaluate proposals and we will not substitute our judgment for that of the contracting officials by making an independent determination as to which offeror in a negotiated procurement should be considered acceptable and thereby receive an award. Julie Research Laboratories, Inc., 55 Comp. Gen. 374, 382 (1975), 75-2 CPD 232; Applied Systems Corporation, B-181696, October 8, 1974, 74-2 CPD 195. The determination of whether a proposal is technically acceptable and thus by definition meets the specifications of the RFP is a matter of administrative discretion which will not be disturbed absent a clear showing that the determination was arbitrary or unreasonable. METIS Corporation, 54 Comp. Gen. 612 (1975), 75-1 CPD 44; Gloria G. Harris, B-188201, April 12, 1977, 77-1 CPD 255.

HUD in its reports to our office has confirmed that in the opinion of its technical evaluation panel Booz's "proposal was a technically acceptable approach to [HUD's] requirements as set forth in the RFP." More specifically, we note that the panel in its final review report stated with respect to the strengths and weaknesses of Booz's proposal:

- "--Statements seem to be generally impressive but lacking in specifics.
- "--Seem to have the most practical proposal for what we want.
- "--Their Best & Final Proposal only stated what changes they made; very brief; indicates that they will not try to overburden us with paper.
- "--Know what they are talking about and know how to present it.
- "--They were the only ones that discussed how

management problems play a key part in implementation of a new system and that the key people must go along with it. "--They indicated that they could complete the job in 5 months, one month less than the 6-month contract period."

Based upon its evaluation, Booz received a technical rating of 79.2 as compared to 83.4 for Bell. It is clear from the foregoing that Booz's proposal, as well as Bell's, was considered responsive to the scope of work contemplated. While Bell contends that Booz must have proposed something less than contemplated in view of its low price, we find no basis in the record for concluding that the evaluation was not in accordance with the stated technical criteria or that it was arbitrary, unreasonable, or otherwise erroneous. Additionally, concerning Bell's contention that the RFP was vague, we do not believe that because two different methods of meeting the agency's needs were proposed and considered acceptable it necessarily follows that the RFP was ambiguous. Clearly the "TASKS" section did not specify the number of major organizations to be surveyed; therefore, it was left to the judgment of the offeror to specify the number to be surveyed and methodology to be employed.

Further, Bell argues that HUD used total price as the decisive factor in awarding a contract to Booz, which is contrary to the terms of the RFP. Bell contends that the RFP does not allow consideration of total price, only consideration of the reasonableness of the labor and burden rates. In furtherance of its contention, Bell argues that there was no determination that Booz's proposal was essentially equal technically to its proposal.

At the outset, we note that besides the cost and price provisions of the RFP quoted above, the RFP provided in the introduction (page 2) that "[c]ontracts will be awarded to the responsible offerors whose proposals are within the competitive range and determined to be the most advantageous to the Government, price and other factors considered." Further, the first cost provision quoted above provided only that the "reasonableness of * * * proposed labor and burden rates * * * will be considered together with technical evaluation

factors" (emphasis supplied) and not that such rates would be the only or controlling cost considerations. In making a selection, the agency must consider the relative importance which the RFP attaches to price or cost vis-a-vis technical factors. While the RFP did not contain any explicit statement as to the relative importance of total cost or price vis-a-vis technical factors, we believe that it did indicate that both would be considered in making a selection. Accordingly, Bell's contention that HUD was compelled, by the RFP, to consider only reasonableness of the labor and burden rates, to the exclusion of total cost, is without merit.


Concerning Bell's complaint that there was no determination that Booz's proposal was essentially equal technically to Bell's proposal, the record discloses that HUD's technical evaluation panel determined that both proposals would satisfy HUD's minimum needs, i.e., both were technically acceptable, but Booz "seem[s] to have the most practical proposal for what we [HUD] want." In addition, as noted previously, there was only a 4.2-percent difference in technical scores. Accordingly, we do not see any merit in this complaint. In these circumstances, with Booz's proposal costing the Government \$149,060 less than Bell's proposal and rated only 4.2 percent less in technical scoring, we are unable to conclude that HUD's decision to award to Booz had no reasonable basis. In this connection, we quote the following from our decision in Computer Data System, Inc.-- Reconsideration, B-187892, August 2, 1977, 77-2 CPD 67:

"* * * The reason, of course, is that when technical proposals are viewed as relatively equal, that is, when no one proposal is perceived as offering a distinct technical advantage, the technical evaluation does not provide any effective discriminator for source selection purposes. The fact that an agency may have used a numerical scoring scheme in performing the technical evaluation and assigned somewhat different scores to competing proposals does not mean that the higher rated proposal must be perceived as offering a technical advantage of any

significance. See Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976) and cases cited therein. Once the agency determines that a particular point spread in technical scores does not indicate the technical superiority of any one proposal, it is apparent that the technical evaluation criteria, no matter how heavily weighted vis-a-vis price, do not provide a meaningful basis for selection of a contractor. Under such circumstances, price obviously must become the determinative factor."

While we have no objection to the award by HUD, we do think that HUD's future RFP's for this type of study should contain a more explicit indication of the relative importance of the evaluation factors. Offerors are entitled to know whether a procurement is intended to achieve a minimum standard at lowest cost, whether cost is secondary to technical quality, or whether the two are of equal importance. See Signatron, Inc., 54 Comp. Gen. 530, 535 (1974), 74-2 CPD 386. An explicit statement as to the relative importance of the evaluation factors is preferable as a matter of sound procurement policy, because otherwise offerors are placed in the position of having to interpret the RFP's narrative description of the evaluation factors and reasonably judge their relative importance. See BDM Services Company, B-180245, May 9, 1974, 74-1 CPD 237. By letter of today, we are calling this observation to the attention of the Secretary of HUD.

The protest is denied.


Deputy Comptroller General
of the United States



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

J. H. ...
P. I.

B-192015

October 6, 1978

The Honorable
The Secretary of Housing
and Urban Development

Dear Madam Secretary:

This is in reference to a letter to our Office dated September 1, 1978, from the Deputy Associate General Counsel, Finance and Administrative Law Division, and prior correspondence, concerning the protest of Chauncey Bell and Associates, Inc., under request for proposals (RFP) No. H-4262.

Enclosed is a copy of our decision of today. While the protest has been denied, we believe, for the reasons indicated in the decision, that HUD's future RFP's for this type of study should contain a more explicit indication of the relative importance of the major evaluation factors. We suggest that the decision's observations on this point be brought to the attention of responsible procurement personnel.

Sincerely yours,

R. F. K. ...
Deputy Comptroller General
of the United States

Enclosure