

01405

Jerold Cohen

Proc. I

DECISION



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

FILE: B-186880

DATE: December 23, 1976

MATTER OF: Design Concepts, Inc.

DIGEST:

1. Protest alleging that RFP price evaluation method was improper, and that price proposals should have been given more emphasis than provided in RFP is untimely, since it was not filed prior to closing date for receipt of initial proposals.
2. Where record shows that evaluation of technical proposals was comprehensive and objective, and provided reasonable basis for selecting most advantageous proposal, protest that evaluation was biased is denied, since determination of relative merits of proposals is responsibility of contracting agency and will not be disturbed by GAO unless clearly shown to be arbitrary or contrary to statute or regulations.
3. Where solicitation states that award will be made on basis of highest total numerical score, adding technical and price scores, award to offeror with other than highest total score would be improper, notwithstanding that such offeror may be competent and may have submitted lower price proposal than highest scored offeror.

Design Concepts, Inc. (DCI), protests the award of a contract for space planning research services to Facility Sciences Corporation (FSC) under request for proposals (RFP) No. PRM-76-01, issued by the General Services Administration (GSA). DCI contends that the RFP's method of evaluating price was improper, that price should have received greater emphasis in proposal evaluation, and that technical proposals were scored in a biased manner.

The RFP provided that technical proposals would be evaluated before price proposals to determine which technical proposals were "contractually responsive," after which only the price proposals of those that were so determined would be opened. Technical proposals

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were weighted at 80 percent, with an 80-point maximum, and price proposals at 20 percent (20 points maximum). Award was to be made to the offeror with the highest total score. The score for the price proposals was to be determined by assigning the lowest price 20 points, then dividing each of the other prices into the lowest price and multiplying the result by 20.

Twenty-three proposals were received. All were considered "contractually responsive." Technical scores ranged from a low of 18 to a high of 70 for FSC. The second high technical score was 49. The lowest priced proposal of \$6,465 was scored at 20 points for price and 24 points for its technical proposal for a total of 44 points. DCI's price of \$21,500 received a score of 6, and its technical score was 41, totalling 47. FSC's total score was 74 points. Award was made to FSC on the basis of initial proposals, without discussion of such proposals, pursuant to paragraph 10(g) of the Solicitation Instructions and Conditions.

Concerning the RFP's method of price proposal evaluation and the weight given the price proposals, section 20.2(b)(1) of our Bid Protest Procedures, 4 CFR part 20 (1976), provides in part:

"Protests based upon alleged improprieties in any type of solicitation which are apparent prior to * * * the closing date for receipt of initial proposals shall be filed prior to * * * the closing date for receipt of initial proposals. * * *"

Both the method of evaluating and the weight given price proposals were described in the RFP and were, therefore, apparent to DCI prior to June 7, the closing date for receipt of initial proposals. Accordingly, the protest, filed in our Office on July 6, is untimely regarding those matters.

We note, however, that in our recent decision, Design Concepts, Inc., B-186125, October 27, 1976; 76-2 CPD 365, we considered a protest by DCI against GSA's use of the same price evaluation formula in another solicitation and suggested that GSA review the formula and the circumstances to which it will be applied before using it in future procurements of a similar nature.

In regard to its contention that the technical proposals were not fairly evaluated, DCI questions why, in a solicitation for a space planning and research guide for the Federal Government, FSC's score for the factor concerning relevant experience was higher than DCI's since FSC allegedly cited no experience in preparing Federal

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space guidelines, whereas DCI listed space guides prepared for Federal agencies for office environments which DCI contends are exactly parallel to that required by the present RFP. DCI states:

"* * * It is difficult to imagine how experience in the private sector can be more relevant than that in the Federal sector when under consideration for government work when the solicitation itself stresses the need for familiarity with GSA procedures."

DCI also suggests that its low rating for the team leader factor is related to the fact that DCI has recently filed a series of protests with our Office concerning GSA's procurement practices. Further, DCI expresses its belief that DCI and more than half of the other offerors are as qualified as FSC to perform the required services, and that GSA should, therefore, have awarded the contract to that competent firm offering the lowest price. In this connection, DCI questions why all offerors except one scored poorly, that one, FSC, being "* * * merely a group which includes firms which have been awarded highly irregular GSA planning contracts in the past * * *." In regard to this last point, it appears that FSC is a member of an association of professional facility planning and design firms known as The Planning Collaborative.

In response to DCI's first contention concerning bias, GSA states in part:

"The [technical evaluation] panel gave higher scores for job experience if the job was primarily to develop a guideline (handbook, study or other document) that incorporated descriptive and technical data related to various aspects of space programming and planning, such as workstation analysis and design, space allowance standards, space requirements determinations, and space planning concepts. The client for whom the offeror prepared the guideline was not particularly important to the panel but rather, it was the research effort and content that mattered. * * * the experience factors are where FSC was clearly superior to DCI."

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Concerning the rating given DCI's team leader, GSA states:

"Relevant experience on the part of the team leader was considered to be experience in developing organizational space guidelines and planning processes, and in directing and accomplishing large space programming jobs and research studies. The team leader proposed by FSC was superior to the team leader proposed by DCI in the pertinent areas, accordingly, FSC received a higher score."

Finally, GSA states that, even assuming offerors other than FSC may have been well qualified, FSC's proposal " * * * was clearly technically superior to any other proposal received and * * * award to FSC was to the best advantage of the Government, price and other factors considered. * * *"

It is not the function of our Office to evaluate proposals or to independently determine their relative desirability for award under a negotiated procurement. Such determinations are within the discretion of the contracting agency and will be questioned by our Office only upon a clear showing of unreasonableness, favoritism or a violation of procurement statutes and regulations. Houston Films, Inc., B-184402, December 22, 1975, 75-2 CPD 404; TGI Construction Corporation, et al., 54 Comp. Gen. 775, 779 (1975), 75-1 CPD 167.

Although DCI disagrees with GSA's evaluation of its proposal in a number of respects, as well as with GSA's evaluation of other proposals received, on the basis of GSA's position as stated above and after a review of the technical evaluations of DCI and FSC, we are satisfied that such evaluations were not biased, as contended, but were comprehensive and objective and provided a reasonable basis for selecting the most advantageous proposal. The fact that DCI does not agree with that judgment does not render it invalid. See TGI Construction Corporation, et al., supra; Honeywell, Inc., B-181170, August 8, 1974, 74-2 CPD 87.

Finally, in regard to DCI's belief that award should have been made to the competent offeror submitting the lowest price proposal, in a negotiated procurement, award must be consistent

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with the evaluation criteria set forth in the solicitation. Gray Advertising, Inc., 55 Comp. Gen. 1111, 1123 (1976), 76-1 CPD 325. Here, offerors were clearly advised that award would be made on the basis of the highest total score.

As stated above, FSC received an overall score of 74 points out of 100, and the next highest score was 53 points. Moreover, disregarding the price proposal scores arrived at by use of what we consider to be a questionable method of evaluation, FSC's technical score exceeded all others by at least 21 points. In view thereof, GSA's decision to make an award to FSC was proper.

Accordingly, the protest is denied.

In a supplemental letter, DCI has requested our "comments" on the validity of another procurement that was negotiated on a public exigency basis. However, it is the practice of our Office to consider the propriety of awards only when they are presented as protests under our Bid Protest Procedures.


Deputy Comptroller General
of the United States