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DECISION

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

FILE: B-202140

DATE: July 7, 1981

MATTER OF: AAA Engineering and Drafting, Inc.

DIGEST:

1. Attempt to award contract on basis of evaluation of technical and price proposals which disregards relative relationships of technical quality and price established in solicitation is material deviation from statutory and regulatory negotiation requirements.
2. Where evaluation criteria do not reflect Government's minimum needs, solicitation should be amended and offerors given opportunity to amend proposals, notwithstanding prior improper price disclosure.
3. Although improper price disclosure received in initial proposals may result in auction if negotiations are reopened, award based on continued negotiation would not be illegal so long as competitors are placed in competitive position they would have occupied prior to improper disclosure.

AAA Engineering and Drafting, Inc., protests the proposed contract award to The Forestry Association, Inc. (Forestry), under Request for Proposals (RFP) No. C50-80-2413 issued by the Department of the Interior, Bureau of Indian Affairs (BIA). The RFP's scope of work calls for forest mapping and area compilation of the Flathead Indian Reservation in western Montana. AAA essentially maintains that it was prejudiced by the fact that the evaluation criteria as stated in the RFP which emphasized technical merit over price were not followed in BIA's actual evaluation of proposals. We agree with the protester.

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The RFP contained the following evaluation criteria:

"* * * The criteria are listed in descending order of importance with No. 1 being of most importance * * *

"1. Qualifications and experience of the specific professional foresters and other key personnel who will be assigned to the job * * *.

"2. Demonstrated experience on the part of the offeror * * *.

"3. Total cost projection.

"4. Technical proposal from the standpoint of organization of work, methods and procedures for accomplishing the work, timetables, general portrayal to evaluators that the offeror's firm has a thorough understanding of the work * * *."

Since the RFP stated that the four criteria were listed in descending order of importance, the evaluation scheme should have placed significantly more emphasis on the technical considerations encompassed by the first, second, and fourth factors than on price. However, as discussed below, the record of actual evaluations indicates that the relative dichotomy between technical matters and price was not preserved.

BIA first ranked proposals technically without regard to price. A rating of excellent in the technical area was assigned a value of 8 points; above average, 6 points; satisfactory, 4 points. A rating of satisfactory was given to proposals which met the minimum RFP requirements. As a result of the technical evaluation, two offerors received 8 points each, three received 6 points each, two received 4 points each and four were found to be unsatisfactory.

Proposals ranked satisfactory or above for technical merit were then assigned evaluation points for price by the following method:

The mean (average) cost of \$82,200 was established from these proposals. Price proposals which deviated from the mean were assigned 1 point for each \$10,000 (rounded to the nearest \$10,000) below the mean. Price proposals above the mean were penalized 1 point for each \$10,000 deviation. The result of the evaluation after cost was considered was:

Offeror	Technical Points	Cost Points	Overall Score
1.	8	0	8
2.	8	-3	5
3.	6	3	9
4.	6	3	9
5.	6	-8	-2
6.	4	2	6
7.	4	6	10

Forestry (offeror number 7 in the above example) offered the lowest price proposal; BIA proposes to award Forestry a contract, notwithstanding its minimum technical ranking because, it states, its actual needs only require minimally acceptable technical quality.

An analysis of this scoring reveals that cost, which as the third-listed evaluation criterion should not have carried a weight in excess of 20-25 percent, counted for considerably more. For example, the protester's technical proposal was viewed as worth 1 1/2 times Forestry's technical proposal, while the protester's proposed cost was slightly more than twice Forestry's cost. Under an evaluation scheme which tells offerors, as we believe this one did, that technical matters will count 4 to 5 times as much as cost, the protester's higher technically rated but more expensive proposal should have received an overall higher score than Forestry's.

Interior, recognizing the deficiencies in this procurement, suggested to the Bureau that it amend the evaluation criteria to show its actual needs and the proper basis for award selection. In the final analysis, however, Interior determined this remedy to be impracticable because the Bureau had mistakenly disclosed all offerors' prices. Interior believes that if the RFP were now to be amended and offeror allowed to submit amended proposals, an auction situation would be created because of the price disclosure. Therefore, Interior concluded that award should be made to Forestry on the basis of its initial proposal as the

firm which best meets the actual needs of the Bureau, that is, minimally technically qualified at the lowest price. We do not agree with Interior.

Normally, in a negotiated procurement where an offeror's pricing or technical information is improperly disclosed, the contracting agency should attempt to make an award on the basis of initial proposals, if such award is otherwise proper. See RCA Corporation, 53 Comp. Gen. 780 (1974), 74-1 CPD 197. In the instant case, however, we believe that award on the basis of initial proposals would be improper because of two major defects in this procurement, which the agency acknowledges.

First, the Bureau's actual evaluation of offers did not follow the stated RFP evaluation criteria. In this respect, each offeror has a right to know whether the procurement is intended to achieve a minimum standard at the lowest cost or whether cost is secondary to quality. Signatron, Inc., 54 Comp. Gen. 530 (1974), 74-2 CPD 386. Competition is not served if the proposals are not evaluated in accordance with the relative values of technical excellence and price announced in the solicitation. Thus, once offerors are informed of the criteria against which their proposals are to be evaluated, it is incumbent upon the procuring agency to adhere to that criteria or inform all offerors of the changes made in the evaluation scheme. Genasys Corporation, 56 Comp. Gen. 836 (1977), 77-2 CPD 60. It is our view that it is a material deviation from the statutory and regulatory negotiation requirements to attempt to award a contract on the basis of an evaluation which in the final analysis has the effect of disregarding the relative relationship of technical quality and price established in the solicitation. See Signatron, Inc., supra.

Secondly, even if the Bureau had followed the RFP's stated evaluation criteria in considering the proposals, Interior concedes that these criteria exceeded or did not accurately state the actual requirements of the agency. Our Office has held that procurement agencies must state requirements in terms that will permit the broadest field of competition within the minimum needs required, and when the stated requirements are beyond the Government's actual needs, competition is restricted. Gardner Machinery Corporation; G.A. Brown Incorporated -- Request for Reconsideration, B-185418, September 25, 1978, 78-2 CPD 221.

Because of the above-stated defects, it is our view that the Bureau does not have the option to award to Forestry based on the evaluation of the initial proposals submitted. Therefore, the agency is faced with the alternatives of either cancellation and resolicitation or amending the existing RFP and continuing the present negotiation process.

With regard to Interior's concern that an auction situation would be created by the amendment of the RFP and continuation of the negotiation process after prices had been released, we have held in similar circumstances of improper price disclosure that the continuation of the negotiation process culminating in award would not result in an improper or illegal award, so long as all offerors were placed in the competitive positions they should have occupied prior to the improper disclosure. TM Systems, Inc., 55 Comp. Gen. 1066 (1976), 76-1 CPD 299; M. Bennett Ltd., B-198316, May 27, 1980, 80-1 CPD 363. As we said in TM Systems, Inc., supra:

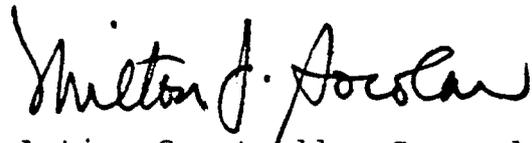
"We note that while * * * [the regulation] prohibits auctions, it does not describe any legal penalties or consequences attaching to an award resulting from an auction. While our Office does not sanction the disclosure of information which would give any offeror an unfair competitive advantage, we have also stated that we see nothing inherently illegal in the conduct of an auction in a negotiated procurement. * * * We believe that an award following * * * [the equalizing of competition by further disclosure] will be legal and proper."

Our approach in this area has been prompted by recognition that the known prices of competitors will likely influence prices received under resolicitation. When prices are so influenced, the integrity of the competitive procurement system has, to some extent, been affected, thereby causing more damage to the system than that following the results of an auction in these peculiar circumstances. M. Bennett Ltd., supra. As such, we prefer the continuation of an existing negotiation process to resolicitation.

Interior reports that the Bureau is withholding its proposed award to Forestry pending our decision. In this case where no proper award can be made on the basis of initial proposals due to evaluation deficiencies and where offerors have been placed in the same competitive position by the erroneous

disclosure of all prices, we recommend that the Bureau follow the original suggestions of Interior, that is, to amend the evaluation section of the RFP to state the actual needs of the Bureau and to allow the submission of revised proposals based on the RFP as amended. Furthermore, we recommend that the Bureau take steps to assure that any proposal evaluations follow the evaluation scheme disclosed in the amended RFP.

The protest is sustained.



Acting Comptroller General
of the United States