

Zuckerman
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DECISION



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

FILE: B-189784

DATE: December 21, 1977

MATTER OF: United States Management, Incorporated

DIGEST:

1. Where instructions to offerors contained in RFP advises that "major consideration shall be given to technical proposals, as well as price," there is no basis to conclude that award of cost-type contract would be based solely on technical criteria.
2. Contention that cost evaluation of proposal of \$19,902 violates Cost Accounting Standard 402 is without merit since Standard is not applicable to negotiated contracts under \$100,000.
3. Postaward notice to unsuccessful offerors is a procedural requirement which does not affect the validity of an award and the failure of an agency to notify protester until the 11th working day after award is not an "unlawful concealment of the contract award."
4. Where record shows that there is no basis to conclude that agency actions deprived unsuccessful offeror from receiving an award to which it was otherwise entitled, offeror would not be entitled to proposal preparation costs.

United States Management, Incorporated (USM) protests the award of a cost-plus-fixed-fee (CPFF) contract by the the Department of Labor under request for proposals (RFP) No. 4A-77-29 to Science Management Incorporated (SMI). The RFP calls for a program to provide training in project management for key personnel in the Bureau of Labor Statistics. The contract, for an estimated cost and fixed-fee of \$19,902, was awarded to SMI on July 1, 1977.

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Protester asserts that the "evaluation of the offers was unlawful" because it failed to comply with the evaluation criteria set forth in the RFP. Protester reads the RFP as providing that the evaluation would be made solely on technical criteria, and that on that basis it was entitled to award because its proposal was technically superior.

The "Instructions to Offerors" set forth in the RFP stated in pertinent part that:

"Offerors are advised that major consideration shall be given to the evaluation of technical proposals, as well as price, in the award of a contract hereunder."

Offerors were thereafter advised to furnish separate Technical and Business Management Proposals. Within the "Technical Proposal Instruction" section of the RFP, offerors were advised of the technical evaluation criteria which were to be used for determining "technical merit". Set forth within the "Business Management Proposal Instruction" section of the RFP were instructions for the submission of cost and pricing data. Other than the above quoted portion of instructions to offerors, no further mention of the relative weights to be accorded to technical and cost considerations was made in the RFP.

As the protester notes, contracting agencies should advise offerors of the relative importance of cost to technical factors, because offerors are entitled to know whether a 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. In this regard, where the solicitation stated that "major consideration shall be given to the evaluation of technical proposals, as well as price," it is reasonable to conclude from this that both factors were to be accorded essentially equal importance. Moreover, if USM entertained any doubts as to the meaning of the instructions, it should have sought clarification prior to the date set for receipt of initial proposals. 4 C.F.R. 20.2(b)(1) (1976). There is certainly no reason to conclude that only technical factors were to be considered in the award evaluation.

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Protester also claims that the "cost evaluation was unlawful in that the contracting officer gave consideration to 'Project Manager' (in the direct labor category) whose 136 hours were bid at zero cost, but may be charged to G&A, thus constituting double counting or a violation of Cost Accounting Standard 402." In addition, protester claims the contracting officer "gave consideration to 400 clerical hours in derogation of the technical evaluation."

We note that Cost Accounting Standard 402 calls for "consistency in allocating costs incurred for the same purpose", so that "[a]ll costs incurred for the same purpose, in like circumstances, are either direct costs only or indirect costs only with respect to a final cost objective." 4 C.F.R. 402.40 (1977).

"The purpose of this standard is to require that each type of cost is allocated only once and on only one basis to any contract or other cost objective. The criteria for determining the allocation of costs to a product, contract, or other cost objective should be the same for all similar objectives. Adherence to these cost accounting concepts is necessary to guard against the overcharging of some cost objectives and to prevent double counting. Double counting occurs most commonly when cost items are allocated directly to a cost objective without eliminating like cost items from indirect cost pools which are allocated to that cost objective." 4 C.F.R. 402.20 (1977).

A review of the record shows that of the professional hours considered in the evaluation, 136 were proposed at no cost, and, we assume, more than likely will be charged as an indirect cost. Standing alone, we do not believe such charge would violate Cost Accounting Standard 402, since the 136 hours are proposed to be performed by the president of the corporation whose salary may be allocated as an indirect cost. However, the president will also perform certain services for which a direct charge will be made. In that regard, depending on SMI's cost accounting procedures, this may or may not be a violation of the Standard. For example, if the class of employees

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involved accounts for its time on the basis of duties actually performed and, as a result, the employees' costs are normally allocated to indirect costs except in the performance of specific duties for a particular contract which may require their specific services, such an accounting practice would not violate the Standard, because the employees are consistent in allocating costs incurred for the same purpose. In any event, Cost Accounting Standard 402 is not applicable to contracts under \$100,000 and thus would not be applicable in this case.

Our examination of the record shows that protester's technical proposal was rated 15 percent higher than SMI's, but at an estimated cost and fee which was 32 percent higher than SMI's. In addition, when the 136 "professional hours" not directly charged to the contract are deleted from the proposal, SMI's proposed professional hours remain significantly higher and at a lower average hourly cost than those proposed by USM. Thus, while the 136 hours should not have been considered by the contracting officer in his technical evaluation, under the evaluation criteria of this proposal, where cost and technical considerations are of essentially equal importance, the protester was not prejudiced thereby. Moreover, the clerical hours proposed (substantially less than the 400 asserted by the protester) were not considered in the technical evaluation.

USM also complains that disclosure of the award was "unlawfully concealed until a July 19, 1977 letter notification was received" by it on July 22, 1977. The Department, on the other hand, believes that the 11 working days between the award and the dispatch of notice was "a normal and routine response time."

Federal Procurement Regulations 1-3.103(b) (1976) provides that:

"Promptly after making awards in any procurement in excess of \$10,000, the contracting officer normally shall give written notice to the unsuccessful offerors that their proposals were not accepted* * *."
(Emphasis added.)

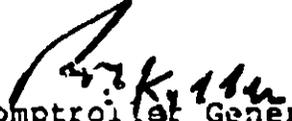
While we cannot say that the 11 days taken by the agency to prepare and mail the notices to unsuccessful offerors

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comported with the requirement to "promptly" notify such offerors, we do not find that any offeror was prejudiced thereby. We have held that postaward notice to unsuccessful offerors is a procedural requirement and does not affect the validity of a contract award. Systems Analysis and Research Corporation, B-187817, April 12, 1977, 77-1 CPD 253. We therefore cannot conclude that notice of the award was "unlawfully concealed" from the protester.

Finally, since on the record before us, we do not conclude that the agency's actions deprived USM from receiving an award to which it was otherwise entitled, USM would not be entitled to proposal preparation costs as requested. International Finance and Economics, B-186939, October 25, 1977, 77-2 CPD 320.

The protest is denied.


Deputy Comptroller General
of the United States