

DECISION



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

61463

FILE: B-184485

DATE: September 10, 1976

MATTER OF: North Bay Human Development Corporation

98059

DIGEST:

1. Where protester was aware of typographical error in solicitation well in advance of due date for submitting proposal, no prejudice occurred as result of such error.
2. Oral cost estimates allegedly furnished offeror by agency officials have no effect where RFP cautions offerors that oral explanations are not binding and prohibits offeror communication with agency officials not named in solicitation. Moreover, record shows that protester could not have been prejudiced even if misled by oral advice since estimate of cost of performance is not controlling in selecting contractor for cost reimbursement type contract and selection was made on basis of superior technical proposal.
3. Where RFP contained description of criteria for proposal evaluation, proposal scoring scheme, numerical importance of each evaluation factor, and general procedures to be followed in selecting contractor, protester was adequately informed of importance of evaluation criteria and the contractor selection process.
4. Contention that procuring activity should have provided offerors with information pertaining to composition of contractor selection committee prior to award is without merit because neither procurement law nor implementing regulations require contracting agency to furnish such information prior to award and because no prejudice resulted from the lack of such information.
5. Determination by contracting officials that unsuccessful offeror's proposal was not the most advantageous to the Government in that it was technically inferior to other proposals and offered the highest estimated cost of performance will not be questioned in absence of clear showing that such determination was arbitrary, biased, or a violation of procurement law and regulations.

6. Protest by unsuccessful offeror concerning issuance of competitive solicitation because protester allegedly had been promised award on sole-source basis is denied. Generally, Government contracts are required by law to be made on competitive basis, if possible.

The North Bay Human Development Corporation (North Bay) protests the award of a contract to the Western Economic Development Corporation (WEDCO) under request for proposals (RFP) No. 5-36685. This RFP was issued by the Department of Commerce in conjunction with the Office of Minority Business Enterprise (OMBE) and sought proposals to furnish technical assistance to minority businesses in named California counties for a period of 1 year.

The protester raises a number of issues generally pertaining to the manner in which proposals were solicited and evaluated. Each of the protester's objections is discussed, in turn, below.

The solicitation contemplated award of a cost reimbursement type contract under which the contractor would not receive a fee or profit. Five proposals were received and a technical evaluation of proposals, from which cost information was extracted, was made by a committee of four evaluators pursuant to the criteria contained in the solicitation. Three offerors, including the protester, were determined to be within the competitive range and negotiations were conducted with them. The final technical ratings and the estimated cost of each proposal within the competitive range are as follows:

	WEDCO (Contractor)	NEDA	North Bay
Score	65	65	55
Estimated Cost	\$118,230	\$119,760	\$157,850

WEDCO was selected for award in preference to the protester on the basis of its superior proposal and its lower estimated cost of performance.

North Bay contends that the solicitation was defective in that it contained erroneous and misleading information as to which counties would be serviced under the contract. In this connection, the RFP called for the rendition of technical assistance to minority businesses in various named California counties, including the

county of "Sonora." "Sonora," a town, was erroneously included in the RFP as a result of a typographical error, the intended county being "Sonoma." Although it does not appear that the error was formally corrected by the contracting agency, North Bay, being generally familiar with OMBE's requirement, became aware of the error and submitted a proposal to provide technical assistance to minority businesses in the counties actually intended to be serviced. Under these circumstances, we are unable to find that the error was prejudicial to North Bay or otherwise placed them on an unequal competitive footing with WEDCO. See EG&G, Incorporated, B-182566, April 10, 1975, 75-1 CPD 221.

North Bay alleges that the contractor selection and evaluation process was never explained and that its inquiries were not satisfactorily answered prior to award. The protester also challenges the presence of OMBE's Senior Regional Field Officer on the selection committee.

The record shows that the solicitation provided a detailed description of the criteria for evaluating proposals, advised offerors of the scoring scheme to be employed in proposal evaluation, specified the numerical importance of each evaluation factor, and generally explained the procedures which would be followed in selecting the contractor. We believe this information satisfied the general requirement that the RFP advise offerors of the broad scheme of scoring to be employed in the contractor selection process and provide offerors with information relating to the relative importance of evaluation factors. See Sperry Rand Corporation, Univac Division, B-179875, September 12, 1974, 74-2 CPD 99. Since this data was in the solicitation, and North Bay should have been familiar with it, we find no merit to protester's assertion to the contrary. See AMF Incorporated Electrical Products Group, B-181732, May 28, 1975, 75-1 CPD 318 and cases cited therein.

North Bay also argues that OMBE should have provided offerors with information concerning the composition of the contractor selection committee prior to award. Although it appears that North Bay was advised of the existence of a selection committee composed of OMBE contracting specialists and of the identity of at least one of the selection committee's members, neither procurement statutes nor implementing regulations require the procuring activity to furnish offerors such information.

In support of its challenge to the inclusion of OMBE's Senior Regional Field Officer on the contractor selection committee, the protester alleges that this member of the committee was biased and unfamiliar with the needs of the regions to be serviced by the contract. However, we believe the composition of the selection committee is a matter within the sound discretion of the contracting agency and note that the agency states that senior field officers are generally included on selection committees for contracts to be let within their regions by virtue of their position and because of their familiarity with specific regional needs and the potential contractors who might best serve those needs. See Department of Labor Day Care Parent's Association, 54 Comp. Gen. 1035, 1038 (1975), 75-1 CPD 353. The protester has offered no specific information to substantiate its allegation of bias on the part of this member. Moreover, the record shows that three of the four evaluators consistently gave higher ratings to the successful offeror than to the protester. Accordingly, we find no merit to the protester's objections in this regard.

As for the protester's allegations that OMBE refused to consider its experience in the communities to be served by the contract, the record shows that each of the evaluators did evaluate North Bay's involvement in community service programs in the counties to be served and considered such involvement a positive aspect of North Bay's qualifications. However, the evaluators also noted that North Bay, unlike WEDCO, lacked direct experience in offering the particular services contemplated by the RFP, namely technical assistance in the development of minority owned business.

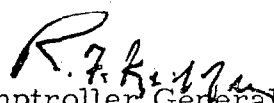
North Bay also implies that its high cost estimate of \$157,850 was attributable to statements by the OMBE Regional Office explaining that offeror cost estimates below \$150,000 could not be considered adequate to do the job. While this allegation is unverified by the record, we point out that paragraphs 3 and 21(d) of the Solicitation Instructions and Conditions cautioned offerors that oral explanations would not be binding and directed offerors to communicate only with the contracting officials designated by the solicitation, specifically prohibiting preaward contact between offerors and other OMBE representatives. Moreover, Section II of the Instructions for Proposal Preparation clearly required offerors to develop their cost estimates as they believed appropriate for the work to be done and best suited to the characteristics and capabilities of the offeror and the offeror's knowledge of the geographic area to be served by the contract. Even assuming that the protester

was misled regarding the funding for the project, it does not appear that North Bay was prejudiced thereby since the offeror selected was technically superior, in addition to offering a lower cost estimate. In selecting the contractor for a cost-reimbursement type contract, estimated costs of contract performance should not be considered as controlling, the primary consideration being which contractor can perform in a manner most advantageous to the Government. Federal Procurement Regulations § 1-3.805.2.

Upon our review of the record, we have found no evidence to indicate that proposals were not evaluated in accordance with the evaluation criteria set forth in the RFP. It is not the function of this Office to evaluate proposals or to substitute our judgment for that of the contracting officials by making independent determinations as to which offeror should be rated first and thereby receive the award. Applied Systems Corporation, B-181696, October 8, 1974, 74-2 CPD 195. Moreover, the procuring activity's determination that a proposal is not the most advantageous to the Government is a matter of administrative discretion that will not be questioned where, as here, the protester makes no clear showing that such determination was arbitrary, unreasonable, or a violation of the procurement statutes and regulations. METIS Corporation, 54 Comp. Gen. 612, 615 (1975), 75-1 CPD 44; Value Engineering Company, B-182421, July 3, 1975, 75-2 CPD 10.

Finally, the protester alleges that OMBE improperly issued the solicitation on a competitive basis rather than make award to North Bay on a sole-source basis as it had allegedly promised to do. The short answer to this objection is that generally, Government contracts are required by law to be made on a competitive basis, if possible, and the protester has raised no reason for departing from that rule in this case.

Accordingly, the protest is denied.


Acting Comptroller General
of the United States