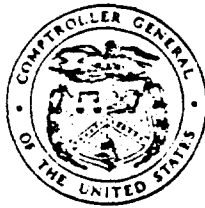


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DECISION



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

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FILE: B-215565 **DATE:** April 26, 1985
MATTER OF: Aurora Associates, Inc.

DIGEST:

1. Where solicitation required offerors to propose cost evaluation "multipliers" which reflected the offerors' indirect personnel costs but did not state how multipliers would be evaluated, procuring agency's use only of protester's highest cost multiplier in cost evaluation is inappropriate since: (1) offerors were entitled to assume that all offered multipliers proposed would be evaluated in some reasonable way and (2) it appears unlikely that protester would only use the staff represented by protester's highest cost multiplier.
2. Cost evaluation method which did not take offeror's direct costs into consideration during proposal evaluation is defective notwithstanding that procuring agency insists that it does not know what tasks it will require under contract or, consequently, the direct costs of those tasks.
3. Restriction of contract awards to minority firms is questionable when not done under procedures implementing section 8(a) of the Small Business Act, 15 U.S.C. § 637(a) (1982 and Supp. I, 1983) or any other statute authorizing such a contracting approach.

Aurora Associates, Inc. (Aurora), protests the cost evaluation scheme employed by the Agency for International Development (AID) under request for proposals (RFP) SOD/PDC-024. Aurora proposed to do the work on a joint venture basis. We sustain the protest.

AID issued the RFP for 13 "indefinite quantity" contracts for technical services in the design and evaluation of agricultural projects. Each contract would allow a

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successful offeror to perform at least \$3,000 (guaranteed minimum) and up to \$350,000 per year in agricultural design and evaluation work for a 3-year period under subsequent work orders issued by AID missions in the field. As a result of AID's evaluation, 13 contracts to other concerns have been awarded; however, Aurora was not awarded a contract.

AID's RFP provided that award would be made on the basis of "approximately 70 percent technical and approximately 30 percent price." Aurora and AID agree that cost was to be evaluated based on an RFP statement requiring proposers to "explain the indirect cost for full-time employees, intermittent employees, and consultants" who would be used to complete any work orders issued by AID mission offices. In addition to the RFP statement concerning categories of workers, the RFP contained Exhibit "B" which listed categories of work (from "Applied Anthropology" to "Agricultural Statistics") along with blank spaces for offerors to insert cost data for these categories. Exhibit "B" further informed offerors that they were to insert "indirect cost multipliers," calculated from a "composite of . . . daily salary rates (established at 1.00--the same for all offerors) . . . , indirect costs, G & A rate, and profit." Aurora's multipliers were 1.8 for its joint venture partner, 1.8 for Aurora's "intermittent consultants" and 2.8 for Aurora's full-time staff.

AID then used a mathematical formula which rewarded, in effect, those offerors who proposed lower cost multipliers.

In making calculations under this formula, AID used Aurora's highest cost multiplier of 2.8 to evaluate Aurora's cost proposal. In evaluating cost proposals, AID used the highest cost multiplier contained in an offeror's cost proposal because "AID [did] not know specifically what task the contractors will be asked to perform" so that AID selected the "worst-case scenario"--that is, the proposal's highest proposed cost multiplier. Nevertheless, AID did not evaluate daily salary rates. As indicated above, AID assumed for the purpose of cost evaluation that all offerors' daily rates would be the same.

Using Aurora's highest cost multiplier of 2.8, AID ranked Aurora last in cost. AID also reports that Aurora's technical proposal was "ranked nineteenth" out of the twenty proposals received. But the technical proposals were so closely ranked that if AID had used a cost multiplier of no more than 2.154 to evaluate Aurora's proposal, the company would have been eligible for award.

Aurora argues that AID's use of an offeror's highest cost multiplier was improper because the RFP allegedly provided that all cost multipliers would be used in the evaluation--rather than only the highest multiplier. And Aurora argues that, had all its cost multipliers been averaged appropriately, the multiplier used for cost evaluation would have been 1.8275 which would have made Aurora's proposal eligible for award. Aurora further argues that the use of its highest cost multiplier is not reasonable because that multiplier represents only the cost of "home office" staff which, according to Aurora, would never be exclusively used on any particular work order; further, Aurora states, the other categories of personnel described in its proposal would also be used to some extent.

AID simply argues, as noted above, that it was reasonable for it to use the "worst-case scenario" given that AID "cannot predict how much, when, or for how long these services will be needed" or "what skills, and therefore what people, will be needed."

We find that the RFP, while requiring offerors to furnish cost multipliers, was silent as to how these multipliers would be evaluated, stating only that offerors should "explain the indirect costs" for the various categories of employees and consultants proposed. Therefore, given the RFP's silence as to what would happen if an offeror proposed varying multipliers, as Aurora (and only Aurora) did, we think offerors were entitled to assume that all proposed multipliers would be taken into account in some reasonable way. See, e.g., Informatics, Inc., B-194734, Aug. 22, 1979, 79-2 C.P.D. ¶ 144, holding that when the relative weights of evaluation subcriteria are not indicated in a solicitation, offerors are entitled to assume that the subfactors carry equal weight.

AID did not take Aurora's three multipliers into account; instead it relied completely on one of them and ignored the other two on the grounds that it could not know the labor mix that would in fact be used. We think this is unreasonable here because, while AID may indeed not be in a position to know a precise skill mix or utilization rate, we find it unlikely that Aurora would use its home office staff exclusively for all work orders as AID assumed, since approximately 96 percent of the resumes of workers whom Aurora proposed for the contract were not home office

staff. Under the circumstances, we think AID's basing the cost evaluation solely on Aurora's highest multiplier resulted in an inaccurate cost picture of Aurora's proposal.

Aurora suggests that AID should have used a multiplier of 1.8275, which would result if Aurora's work plan (45 percent of the work for Aurora's joint venture partner (which is said to have a 1.8 cost multiplier); 52.25 percent for Aurora's "intermittent consultants" (involving a 1.8 cost multiplier); and 2.75 percent for Aurora's home office staff (involving a 2.8 cost multiplier) had been weighted as to cost multipliers. Although Aurora submitted resumes, 96 percent of which were for other than home office personnel, this work plan apparently was not set forth in Aurora's proposal and Aurora therefore was not legally bound to it; consequently, we cannot conclude that AID was obligated to use this particular weighting approach.

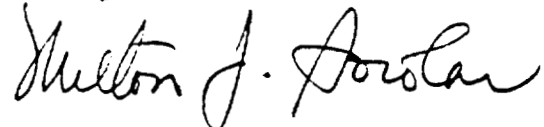
It is, of course, up to the agency to decide upon some appropriate, reasonable method for proposal evaluation; we will object to that method only if it produces a misleading result. See, e.g., Francis & Jackson, Associates, 57 Comp. Gen. 244 (1978), 78-1 C.P.D. ¶ 79; Umpqua Research Co., B-199014, Apr. 3, 1981, 81-1 C.P.D. ¶ 254. While we conclude that AID did not use a reasonable approach here, we do not conclude that the protester was entitled to award since it is not clear that under all reasonable approaches which AID might have adopted Aurora would have been in line for award.

Furthermore, we find additional deficiencies in AID's evaluation approach which call into question the validity of the awards made. It is well-settled that under the law cost must be given appropriate consideration before contract awards are made. See, e.g., RCA Service Company, B-208871, Aug. 22, 1983, 83-2 C.P.D. ¶ 221. Here, AID appears to have assumed that each offeror's direct costs were the same and therefore evaluated only their indirect costs. Indirect costs, however, are computed as a percentage of direct costs, so that an offeror with relatively high direct costs but a lower indirect cost rate may be more costly than a competitor with a higher indirect cost rate. AID's approach obviously does not take this into account. AID suggests that it cannot evaluate costs in any other way, stating that it just does not know what tasks each contractor will be asked to perform or for how long. Nonetheless, other agencies, in similar situations, have devised evaluation approaches that could be used to determine the "probable

relative cost . . . of accepting one proposal rather than another." Grey Advertising, Inc., 55 Comp. Gen. 1111, 1124-6 (1976), 76-1 C.P.D. ¶ 325 (where the agency developed a cost schedule based on a realistic, albeit hypothetical, performance plan. In short, from the limited record provided by AID in this case, we are not confident that the evaluation was in any way reasonably related to determining the likely relative cost of competing proposals.

Moreover, we note that in making its 13 awards, AID awarded 5 contracts on the basis of open competition, but reserved 4 awards for small businesses and 4 others for minority firms. While we do not question the small business awards, we do question the propriety of restricting awards to minority firms in the absence of specific statutory authority for such action. See Image 7, Inc., B-195967, Jan. 2, 1980, 80-1 C.P.D. ¶ 6; Atkinson Builders, Inc., B-193735, Sept. 11, 1979, 79-2 C.P.D. ¶ 186. Contract awards may be reserved for minority firms under the procedures implementing section 8(a) of the Small Business Act, 15 U.S.C. § 637(a) (1982 and Supp. I, 1983), which provides for awards, through the Small Business Administration, to socially and economically disadvantaged firms. We are not aware of other statutory authority, however, which would permit a federal agency to conduct, in effect, its own minority business set-aside. See Navajo Food Products, Inc., B-203201, Jan. 27, 1982, 82-1 C.P.D. ¶ 60; see also John Baker Janitorial, Inc., B-206292, Feb. 22, 1982, 82-1 C.P.D. ¶ 157; L.T. Photographic Reproductions, Inc., B-203952.2, Oct. 26, 1981, 81-2 C.P.D. ¶ 343.

For the above reasons, we sustain the protest. By separate letter, we are recommending that AID, rather than utilize the awarded contracts for 3 years as it apparently intended, recompile for its second and third year needs on the basis of the principles stated herein.

for 
Comptroller General
of the United States