



A LARGE CONSULTING SERVICES CONTRACT IS UP FOR GRABS AND THE STAKES ARE HIGH. THE CONSULTANT WILL HELP DEVELOP A KEY COMPONENT WITHIN A NEW HIGH-PROFILE PROGRAM BEING LAUNCHED LATER THIS YEAR. WITH INCREASING IMPATIENCE FOLLOWING MONTHS OF COMMITTEE PLANNING AND CENTRAL AGENCY PAPERWORK, THE MANAGER IS ANXIOUS TO BRING THE PROCESS TO A CLOSE. SOUND FAMILIAR?

AFTER THE OBLIGATORY POSTING ON MERX, AN EVALUATION COMMITTEE MEETS TO ASSESS THE THREE PROPOSALS RECEIVED.

BIDDER A is a complete unknown to the department. Always on the lookout for new and creative solutions, the committee members are anxious to read the proposal and are hopeful that the firm will have something innovative to offer.

BIDDER B is well known to the department and enjoys an excellent reputation. The principals within the firm are experts who have successfully completed several projects for various government agencies. The committee is pleased to see their envelope.

BIDDER C is also well known, but for all of the wrong reasons. There have been numerous problems on previous contracts with this firm, including poor quality work, late deliverables, and one dispute that had to be resolved by litigation.

Careful to ensure a fair evaluation, the committee is disappointed that **FIRM A** fails a mandatory requirement — they didn't document a qualification that they very likely had, but their newness to the bidding process results in them being screened out. Their proposal writers lacked a basic understanding of the constraints under which a government bid evaluation committee must operate — they failed to provide the committee with specific, tangible and written evidence of the firm's compliance.

FIRM B met the mandatory requirements, but it appeared to the committee as though the proposal had been cobbled together at the last minute. The proposed work plan was skimpy, the narrative didn't always relate directly to the RFP and, in the end, the proposal rated a bare pass. Part of the problem, the committee also realized, was that the RFP selection criteria were themselves weak in a number of areas, which led to wide scoring variations and considerable difficulty in achieving consensus. Final score for Firm B: 64/100.

FIRM C's bid was disappointingly well organized and thorough. Evidence of compliance was clearly articulated and the work plan a masterpiece — although the committee strongly doubted the firm could live up to its promises. Wisely, Firm C took the time during the RFP posting period to submit clarification questions to the department, and had factored the department's responses into their proposal (something neither Firm A nor Firm B had taken the time to do). Final score for Firm C: 75/100.

Although displeased with this result, the evaluation committee had very little room to manoeuvre. Overlooking Firm A's slip-up, giving the benefit-of-the-doubt to Firm B based on their strong reputation, or factoring in their prior knowledge of Firm C's previous problems with the department would not only be unethical, it would be an outright violation of the committee's obligations. Firm C had submitted a thorough and compliant proposal, and as far as the committee could tell the firm had made no false or misleading statements.

Looking for a way out, the committee chair approached Legal Services to see if the department could cancel the RFP and start over again, but was advised that such an action could lead to allegations of bad faith and a probable lawsuit. Stymied, they nervously awarded the contract to **FIRM C** and hoped for the best.

CONTRACTING DILEMMAS

WHY THE BEST DON'T ALWAYS WIN

So, what went wrong? We all know of cases where rules put in place to promote transparency, fairness and integrity can result in both unintended and undesirable consequences. We can't abandon rules. So how can we work within the rules to obtain the best possible results through the procurement process?

Clearly, the weaknesses in Firm A and Firm B's proposals didn't help matters. Nevertheless, stronger and more precisely crafted selection criteria within the department's own RFP would have gone a long way to avoiding the outcomes described above. By using vague and imprecisely worded point-rated criteria within their own RFP, the department effectively backed itself into a corner, thus enabling a 'talented' proposal writer to use this weakness to its own advantage.

Firm C knew that selection criteria worded in this manner would

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