

GAO

United States General Accounting Office
Washington, DC 20548

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Office of
General Counsel

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In Reply
Refer to: B-193227

FEB 8 1979

[Protest of Proposal Rejection by Department of Energy]

Mr. Shariff M. Khan
Jazco Corporation DLG 000476
53 North St. Pauls Road
Hempstead New York 11550

Dear Mr. Kahn:

We have received your letter of January 22, 1979, concerning your protest of the rejection of your proposal which was submitted in response to RFP No. EAS 78-1, issued by the Brookhaven National Laboratory, which is operated by Associated Universities, Inc. under the latter's management contract with the Department of Energy. I think it would help us to resolve your protest if I responded to some of your concerns. ACC 01466

Brookhaven has selected Stone and Webster Engineering Corporation for the award of this contract. Award of the contract has been withheld pending the resolution of your protest. The Department of Energy notified Stone and Webster of your protest and has provided that company with a copy of the department's report on your protest. Stone and Webster has commented upon your allegations by letter of December 8, 1978. since the record does not show you were sent a copy I am enclosing a copy with this letter. DLG 00039

In your letter of January 22, you object to the Department of Energy's notifying Stone and Webster of your protest because "Stone and Webster is a potential customer of Jazco rather than a competitor." You express concern that your relationship with Stone and Webster will be "damaged" by Stone and Webster's knowledge of your protest. ACC 01466



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Letter Rest.

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It is not uncommon for firms which have other business relationships to find themselves in competition for a Government contract. Irrespective of what other relationships exist between Jazco and Stone and Webster, it is clear that insofar as RFP No. EAS 78-1 is concerned, they are competitors. Both firms submitted proposals in response to the RFP and you have protested the rejection of your proposal. A contract which otherwise would have been awarded to Stone and Webster last Fall has not been awarded because of your protest.

I am enclosing for your convenience a copy of the procedures which govern our consideration of bid protests. These procedures are intended to provide for the consideration of bid protests, in a manner which is fair to all parties whose economic interests are affected. Section 20.3(a) of our procedures provides that we shall notify the contracting agency when we receive a protest.

" * * * requesting the agency to give notice of the protest * * * to all * * * proposers who appear to have a substantial and reasonable prospect of receiving an award if the protest is denied. The agency shall be requested to furnish * * * copies of the protest documents to such parties * * * ."

The following section, 20.3(b), generally provides that material submitted by a protester shall not be withheld from an interested party.

Since Stone and Webster is an interested party, the Department of Energy was acting in accord with our procedures when it notified that firm of your protest, provided it with copies thereof (since nothing was designated as proprietary) and with the agency report for comment.

You also object to any release of your letter of January 22, 1979 on the basis that it may damage your firm's relationship with Stone and Webster as a potential customer. We cannot withhold information on this

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basis. a firm cannot, in effect, protest anonymously in order to protect other business relationships. As an interested party, Stone and Webster is entitled to receive copies of your submissions, except for those portions which are proprietary. The fact that the filing of a bid protest may offend a potential commercial customer does not in itself make the submission proprietary.

You may, if you wish, withdraw your January 22 submission. In that event, we will return it to you it will not be given to Stone and Webster and will not be considered by our Office in arriving at a decision. You may also consent to its release to Stone and Webster, whereupon we will send that firm a copy and consider the arguments you have made to the extent it is appropriate. Should you do neither, or reaffirm your present position, I must advise you that your January 22 submission will not be considered by our Office. It would be unfair for us to decide the propriety of a proposed award to Stone and Webster on the basis of documents upon which that firm has not had the opportunity to comment.

I understand that you and the attorney assigned to this case, Mr. Pogany, have agreed that your final comments will be filed by February 17, 1979. In these comments you should state your position with regard to the release of your January 22 submission.

In your protest letters, you have proposed a number of changes in Federal procurement statutes and regulations, primarily regarding minority and small business concerns. In its report to our Office, the Department of Energy observed.

"* * * it is our belief that the GAO protest procedure is being perverted by Jazco. GAO should make clear to this protester that it will not allow itself to be used as a forum for the protester to attempt to influence the Federal legislative and regulatory processes in matters totally unrelated to the specifics of the procurement involved in the protest."

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You have taken strong exception to this statement, apparently largely on the basis of the characterization of your actions as a "perversion" of our procedures. Leaving aside the use of that term, I must advise you that the Department of Energy is correct insofar as it is suggesting that a bid protest is an inappropriate forum in which to advocate general changes to procurement laws.

Our consideration of bid protests is predicated upon our statutory duty to pass upon the legality of the expenditure of public funds. See 31 U.S.C. §§ 71, 74 (1976). A bid protest is a challenge to the propriety of a current, specific expenditure of those funds. In this case, the proposed award of a contract to Stone and Webster under RFP No. EAS 78-1. The decision which you will receive from this Office will be concerned with those issues you have raised which are appropriate for our consideration and timely filed and which relate to that award. I think you should be aware that we do not propose to discuss other matters which you have raised, such as the conduct of past procurements, the wisdom of certain programs of the Department of Energy, and proposed changes to procurement statutes and regulations. As you have recognized, the latter are more appropriate for consideration by the Office of Federal Procurement Policy and the Congress.

Copies of this letter are being furnished to Stone and Webster and to the Department of Energy.

Sincerely yours,

John F. Mitchell

John F. Mitchell
Deputy Assistant General Counsel

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