

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

61027

FILE: B-185956

DATE: June 24, 1976

MATTER OF: Metcor Incorporated

98398

DIGEST:

1. Allegation of irregularities in negotiation process is now academic since solicitation was canceled.
2. GAO has no authority under Freedom of Information Act to determine what information must be disclosed by other Government agencies.
3. Where offeror filed protest with EPA concerning, in part, qualifications of four-member technical panel, and solicitation was subsequently canceled, and then reissued, fact that two of four members of new panel were on first panel did not prejudice offeror in resubmission of proposal, since substance of protest to EPA was not known to panel, and no evidence of prejudice has been presented.
4. GAO has no authority to require withholding of award pending decision by this Office on bid protest.

Request for proposals (RFP) number WA 76-E039 was issued on October 21, 1975, by the Environmental Protection Agency (EPA). Proposals were due on November 24, but this date was extended by amendment to December 15. Proposals were technically evaluated and each technically acceptable offeror was asked to provide an oral presentation and capability demonstration.

By letter to EPA dated January 23, 1976, Metcor Incorporated (Metcor) protested any award under the solicitation. In its protest, Metcor questioned why the contracting officer was not present at Metcor's oral presentation, questioned the competence of the technical panel that heard Metcor's oral presentation, and cited a number of alleged irregularities in the negotiation procedures employed by EPA.

On February 4, the contracting officer determined to cancel RFP No. WA 76-E039 "* * *" due to inadequate technical evaluation criteria and revisions in the Government's requirements." The RFP was reissued on February 9 as RFP No. WA 76-E263. Again, each offeror determined to be technically acceptable after a written evaluation was requested to provide an oral presentation and capability demonstration.

By letters dated February 23 and May 14, Metcor filed a protest with this Office regarding RFP No. WA 76-E263. Much of Metcor's protest, however, concerns RFP No. WA 76-E039. In addition to presenting the same allegations that were the subject of its protest to EPA, Metcor indicates concern with what action, if any, EPA has taken to insure that those alleged irregularities will not be repeated. Metcor also requests certain information concerning RFP No. WA 76-E039 under the Freedom of Information Act; argues that it was prejudiced in the second solicitation because its oral presentation was conducted by essentially the same technical panel that reviewed Metcor's proposal under RFP No. WA 76-E039; questions why it was not informed of the membership of the technical panel for RFP No. WA 76-E263 so that it could have "saved * * * the cost of resubmitting * * * [its] proposal;" and protests EPA's decision to proceed with the award of a contract under RFP No. WA 76-E263 before resolution of Metcor's protest by this Office. Award was made on April 21 to Gray Associates & Co.

Metcor's allegations of irregularities concerning RFP No. WA 76-E039 became academic when that solicitation was canceled. See Maxwell Laboratories, Inc., B-184639, December 12, 1975, 75-2 CPD 390. We need not, therefore, consider those issues. We note, however, that EPA recognized the absence of the contracting officer from the oral presentations as a deficiency in the negotiation process and, accordingly, a contracting officer was present during the oral presentations under RFP No. WA 76-E263.

Concerning Metcor's request under the Freedom of Information Act, our Office has no authority under such Act to determine what information must be disclosed by other Government agencies. See Dewitt Transfer and Storage Company, 53 Comp. Gen. 533 (1974), 74-1 CPD 47.

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In regard to the membership of the technical panels, we have been advised by EPA that each of the panels was comprised of four individuals and that only two of those were members of both panels. In any event, we find no evidence of any prejudice to Metcor in the evaluation of its resubmitted proposal. In this connection, we have also been advised by EPA that no member of the panel reviewing RFP No. WA 76-E263 knew the substance of Metcor's protest of January 23.

Finally, regarding the award to Gray before resolution of Metcor's protest to this Office, our bid protest procedures provide in pertinent part:

"§ 20.4 Withholding of award.

"When a protest has been filed before award the agency will not make an award prior to resolution of the protest except as provided in the applicable procurement regulations. * * *"

The record contains the appropriate findings and determinations by the contracting officer as required by Federal Procurement Regulations § 1-2.407-8(b)(4) (1964 ed. amend. 68). Moreover, we have recognized that we have no authority to require the withholding of an award pending a decision by our Office on a bid protest. 51 Comp. Gen. 787, 792 (1972).

In view of the above, the protest is denied.


Deputy Comptroller General
of the United States