

**DECISION**

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

FILE: B-185361

DATE: April 1, 1976

MATTER OF: Kinton, Incorporated

## DIGEST:

1. Allegation, raised after award, that RFQ did not adequately describe evaluation factors is untimely under § 20.2(b)(1) of GAO Bid Protest Procedures which requires protests based on alleged improprieties in solicitation, which are apparent prior to closing date for receipt of initial proposals, be filed prior to such closing date.
2. Protest that negotiations did not provide meaningful guidance as to correcting shortcomings of initial proposal is denied as record reflects discussions and award were conducted in good faith and either protester misinterpreted content of discussions or procuring activity was not clear as to what was expected of final proposal evidencing lack of clear communication.

The United States Army Research Institute for the Behavioral and Social Sciences (ARI) issued request for quotations (RFQ) No. DAHC19-75-Q-0007. The RFQ contemplated a contract for a study entitled "A Performance Based Training and Evaluation System for the Combat Arms."

Three proposals were received in response to the RFQ on June 5, 1975. Following a determination that two of the proposals were within the competitive range, negotiations were conducted with these offerors and on November 7, 1975, award was made to the Human Resources Research Organization (HumRRO).

The other offeror in the competitive range, Kinton, Incorporated (Kinton), has protested the award to our Office. The protest is based on contentions by Kinton that the RFQ did not adequately describe the factors and their weights by which the proposal would be evaluated and that during negotiations, ARI did not point out deficiencies in the Kinton proposal so that it could properly submit a revised proposal meeting ARI's needs.

Regarding the first allegation that the RFQ did not adequately describe the evaluation factors and their weights, we find this contention to be untimely. Under § 20.2(b)(1) of our Bid Protest Procedures (40 Fed. Reg. 17979 (1975)), a protest based upon alleged improprieties in a solicitation, which are apparent prior to the closing date for receipt of initial proposals, shall be filed prior to the closing date. As Kinton's protest was filed after the award of the contract, this ground of protest is untimely and will not be considered further.

Concerning Kinton's second contention it argues that it was prejudiced by the failure of the ARI negotiating team to conduct meaningful discussions with Kinton to point out and clarify the deficiencies in its proposal.

Kinton states that this failure on the part of ARI is evidenced by the fact that identical written questions were given to both HumRRO and Kinton at the negotiation sessions with only one question directed specifically towards Kinton's proposal. A review of the questions given to both offerors at the negotiating sessions shows that 13 identical questions were propounded, 2 different questions relating to the same area of the proposals, and 2 additional questions were asked of Kinton that were not given to HumRRO. ARI responds that while the questions were similar, they accurately reflect the shortcomings of both proposals found by the ARI technical evaluation team. Based on the foregoing, our Office cannot object to the questions posed during the negotiations.

Kinton also contends that the oral discussions with ARI during the negotiation session did not provide meaningful guidance as to the perfection of its proposal.

The major reason the proposal of Kinton was downgraded technically was the type of personnel offered and the man-hour estimate contained in the proposal was not consistent with the estimate in the statement of work in the RFQ.

The statement of work stated that the level of professional effort was estimated to be 7 professional man-years (14,000 man-hours). The initial proposals of both offerors were consistent

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with this estimate and the final proposal of HumRRO continued to follow the estimate. However, the final proposal of Kinton showed a total effort of 7 man-years but 2.8 man-years was for production or support personnel and only slightly more than 4 professional man-years.

Kinton argues that it was told at the negotiation session that its man-hour estimate was "O.K.," and that more junior personnel should be utilized as the contract was primarily a production effort. Also, it was advised that additional senior personnel were needed in specified areas. Therefore, it increased its senior personnel in these areas and decreased other senior personnel where junior personnel could be utilized. While doing this, Kinton attempted to keep the man-hour estimate the same as in its initial proposal because of the advice that it was satisfactory.

ARI has a different interpretation as to what occurred during the negotiations. Based on the negotiations, ARI expected to see a rise in the level of senior or professional man-years instead of the decrease which occurred in Kinton's final proposal. ARI states that while the production of materials is required to accomplish the research, the statement of work and the negotiation questions clearly show that the primary effort of the contractor must be on research rather than production.

Upon our review of the written questions given Kinton during the negotiations, we cannot say that these clearly answered the question of whether the contract was mainly one of production or research. Also, the written memorandum of the negotiation session does not show what was said in regard to the above dispute. Based on the record before our Office, it appears that the main problem was either that the negotiators for ARI did not make clear what was expected of the final proposal or Kinton misinterpreted what was said during the negotiations. A lack of clear communication seems to have been the crux of the problem. While our Office, with the information presently before us, cannot resolve this dispute, we believe the record adequately shows that the negotiation and award of the contract were conducted in good faith by ARI. Award was made to HumRRO, which, while being the higher priced proposal of the two submitted, was rated technically superior to the Kinton proposal. Such an award is within the discretion of

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the procuring activity after a determination that the superiority of a proposal is advantageous notwithstanding its higher price. Riggins & Williamson Machine Company, Incorporated, B-182801, March 21, 1975, 75-1 CPD 168.

Finally, Kinton argues that it could have raised the technical merit of its proposal if it was certain what importance cost would play in the evaluation of the proposals. As this ground of protest involves the adequacy of the evaluation factors, which we held, supra, to be untimely, it also will not be considered further.

Accordingly, the protest is denied.

[Deputy]

*R. F. Kettner*  
Comptroller General  
of the United States