

Proc I

DECISION



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

9925

FILE: B-192964

DATE: April 23, 1979

MATTER OF: Program Resources, Inc.

[Protest of Contract Award by NASA For Animal Care Services]

DIGEST:

1. Under NASA procurement procedures, "discussions" are limited essentially to proposal clarification, after which contract is "negotiated" with selected offeror, i.e., is definitized in price and terms. GAO has recognized this procedure as one approach to meeting requirement at 10 U.S.C. § 2304(g) (1976) for written or oral discussions in negotiated procurement.
2. Protest that RFP evaluation factor was vague, filed after closing date for receipt of initial proposals, is untimely under section 20.2(b)(1) of GAO's Bid Protest Procedures, and will not be considered on merits.
3. After conducting "discussions" as defined in NASA procurement procedures with four offerors in competitive range, and subsequent evaluation, NASA selected offeror that was superior in only discriminating evaluation factor for "negotiation" of contract. Where record does not support argument that "discussions" with protester were improperly limited in scope and content, protest against selection is denied.

CNG 00913

Program Resources, Inc. (PRI), protests the award by the National Aeronautics and Space Administration (NASA) of a cost-plus-fixed-fee, level-of-effort contract, to Bionetics Corporation (Bionetics) for animal care services at Ames Research Center. ACC 00899 DLG 00090

Request for proposals (RFP) No. 2-27002 (HFE) for the effort, issued on June 9, 1978, provided that proposals would be evaluated in accordance with NASA Procurement Regulation § 3.804-2. The RFP also advised that NASA's Source Evaluation Board

005062

(SEB) Manual would be used as a guide in evaluations, and that the source evaluation procedures, particularly those relating to the conduct of written or oral discussions with offerors determined to be in the competitive range, were further defined by NASA Procurement Regulation Directive (PRD) No. 70-15 (Revised December 3, 1975).

Under the referenced procurement procedures, "discussions" are held with offerors in the competitive range, limited to pointing out ambiguities, uncertainties, and instances in which some aspect of the proposal fails to include substantiation for a proposed approach. These "discussions" are not to include weaknesses inherent in a proposer's management, engineering, or scientific judgment, or which are the result of a lack of competence or inventiveness in preparing the proposal. The successful offeror is then selected for "negotiation," the process of definitizing contract price and terms.

The RFP listed four groups of factors for evaluation: mission suitability, cost, experience and past performance, and "other factors." Only the mission suitability factors were to be weighted and scored numerically. They were defined in general terms as factors which "indicate \* \* \* the merit of the work or product to be delivered, including, as appropriate, both technical and management factors." The RFP set out in detail specific areas that would be evaluated in each of the four groups, and the relative weight, for numerical scoring purposes, of each mission suitability factor.

Seven proposals were received by the July 12 closing date. After an initial evaluation, four, including PRI's, were included in the competitive range. The evaluation disclosed no real differences among the four regarding either experience and past performance factors or "other factors." However,

there were substantial differences in the mission suitability numerical scores: Bionetics received 830 points, PRI received 330, and the other two offerors received 466 and 345. Detailed cost and pricing reviews were deferred until the conclusion of written and oral discussions.

Discussions were conducted on August 31 and September 1, after which revised proposals were submitted and evaluated. There were no significant changes regarding experience and past performance factors or "other factors." In addition, the proposed costs as evaluated were all within 10 percent of each other. Bionetics' mission suitability score increased to 840, which resulted in an adjective rating of "excellent." That rating is used by NASA to describe a proposal that "is significantly superior to that normally expected \* \* \* [and] contains major strengths and no major weaknesses." Although PRI's numerical score also increased, to 353, the resultant adjective rating was "poor," which describes a proposal that "contains significant deficiencies/weaknesses which appear difficult to correct \* \* \* [and] a high risk that proposal could not satisfy the mission." The other two mission suitability scores were 480-"fair," and 466-"poor."

In view of Bionetics' high mission suitability score, and since that group of factors was the only one in which the evaluators found any discriminator among the proposals, Bionetics was selected for final negotiation, and was ultimately awarded the contract.

PRI protests that NASA's procurement procedures as described above, whereby "discussions" are limited essentially to clarification of proposals, after which a contract is "negotiated" with the selected offeror, "violates the spirit and letter of public contract law," and is "directly contrary to the principle of maximum competition which underlies federal procurement."

The protest on this issue is untimely under section 20.2(b)(1) of our Bid Protest Procedures, 4 C.F.R. part 20 (1978) (Procedures), since it was filed after the closing date for receipt of initial proposals. Nevertheless, we point out that we have recognized NASA's procedure as one approach to meeting the requirement at 10 U.S.C. § 2304(g) (1976) for written or oral discussions. See our review in GTE Sylvania, Inc., B-188272, November 30, 1977, 77-2 CPD 422, at pp. 35-44, of the evolution of the procedure. See also 50 Comp. Gen. 1 (1970), and B-173677(2), March 31, 1972 (summarized in 51 Comp. Gen. 621 (1972)).

PRI also contends that, in any event, our Office should review "the substantiality of the first stage discussions \* \* \* [and] the importance of the matters relegated to the second stage and to negotiation with a single offeror." PRI argues:

"\* \* \* The only apparent differences were in cost and in a vague area which NASA calls 'Mission Suitability.' \* \* \* cost factors would seem to have had a major significance and should not have been discussed with only one offeror \* \* \* particularly where-- as here--the competing proposals are otherwise very close."

*Certainly* To the extent that PRI is arguing that the mission suitability factors were not sufficiently defined in the RFP, that matter should have been protested prior to the closing date for receipt of initial proposals, and will not be considered on the merits. See section 20.2(b)(1) of our Procedures.

We have recognized that the NASA procedure could result in the type of situation that PRI argues existed in the present case, and which would conflict with the requirement

of 10 U.S.C. § 2304(g) (1976). In Sperry Rand Corporation, 54 Comp. Gen. 408, 411 (1974), 74-2 CPD 276, we stated:

"\* \* \* Considered in the abstract, potential conflicts between the procedure and the statutory requirement can be envisioned; for instance, \* \* \* a situation where the discussions are so limited in scope and content that they amount to little more than a ceremonial exercise with the meaningful discussions transposed almost entirely into the final negotiations phase."

However, the record does not support PRI's argument on this issue.

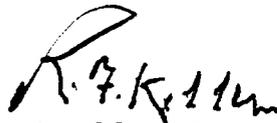
A memorandum prepared by the contracting officer concerning discussions held with PRI on August 31 indicates that PRI's two representatives gave a brief oral synopsis of their understanding of the RFP's requirements and how they would fulfill them if selected. They were then furnished a list of nine questions regarding the firm's technical proposal, to which they responded orally.

We have no basis upon which to object to the extent of those "discussions." PRI does not suggest that any other technical matters should have been raised by NASA. In addition, PRI has not shown that its proposed costs necessitated clarification and, therefore, inclusion in the "discussions." In any event, since PRI's proposed costs were the lowest of the four offerors', we do not see how the firm was prejudiced in this regard.

Accordingly, the selection for "negotiation" of Bionetics, the firm submitting an offer superior in the only discriminating evaluation factor, was proper. Riggins & Williamson Machine Company;

ENSEC Service Corporation, 54 Comp. Gen. 783 (1975),  
75-1 CPD 168. In this connection, in view of the  
mission suitability score differences, PRI is not  
correct in the assertion that after "discussions"  
and evaluation the competing proposals were "very  
close."

The protest is denied.



Deputy Comptroller General  
of the United States