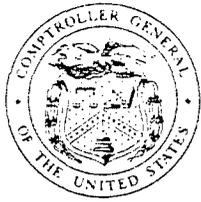


PL

13988

DECISION



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

FILE: B-196010

DATE: June 11, 1980

MATTER OF: Arawak Consulting Corporation

DIGEST:

1. In light of broad discretion afforded Small Business Administration (SBA) under "8(a)" program GAO reviews SBA actions in such procurements to determine that regulations were followed, but does not disturb judgmental decisions absent showing of bad faith or fraud. Where contracting agency acts on behalf of SBA in evaluating proposals and recommending contractor to SBA under 8(a) program, agency's actions will be reviewed under criteria applicable to SBA actions.
2. Agency's selection of offeror for award of 8(a) contract on basis of initial technical proposals without written or oral discussions contemplated by Federal Procurement Regulations is not legally objectionable since normal competitive procurement practices are not applicable to 8(a) procurements.
3. Agency failure to debrief unsuccessful offeror until month after request for debriefing is not improper where regulation specifies no time frame for debriefing and delay is attributed to unavailability of necessary agency personnel.
4. Although protester raises several objections to agency's evaluation of its proposal, since there is no indication in record of fraud or bad faith by agency evaluators there is no basis to object to the agency's determination.
5. Protest allegations not filed until more than 10 working days after basis for allegations was known or should have been known are untimely and ineligible for consideration under Bid Protest Procedures.

112527

~~110850~~

Protest Against Evaluation, Selection, and Award Process

4783

Arawak Consulting Corporation (Arawak) protests the evaluation, selection and award process used by the Department of Health, Education, and Welfare, now the Department of Health and Human Services (HHS), under request for proposals (RFP) No. 105-79-1200, which solicited services consisting of technical assistance, short-term training, and the conduct of an evaluation of youth participation and community services job development demonstration projects. 4662

4784 - Arawak, whose technical proposal was ranked second to that of the successful offeror, Dialogue Systems, Inc. (Dialogue), contends that the selection process was defective because HHS failed, prior to making an award, to conduct competitive negotiations that would have permitted Arawak the opportunity to correct any perceived deficiencies in its proposal. Arawak also argues that HHS failed to provide it with a debriefing until more than a month had elapsed following the selection of Dialogue for award. Finally, Arawak contends that its proposal was erroneously evaluated. For the reasons stated below the protest is denied.

This requirement was solicited as a set-aside under the authority of the "8(a)" program of the Small Business Act, 15 U.S.C. § 637(a) (1976), as amended by Public Law 95-507, 92 Stat. 1757, which authorizes the Small Business Administration (SBA) to enter into prime contracts with any Government agency having procurement powers, and to arrange for the performance of such contracts by letting subcontracts to socially and economically disadvantaged small business concerns.

HHS' regulations applicable to the procurement of technical services under the 8(a) program provide that, except in cases where SBA selects a firm for an 8(a) award, or where one 8(a) firm has exclusive or predominant capability or technical competence to perform the work within the time required, the selection of a contractor shall be made through "limited technical competition." In such cases written technical proposals may be required from the participating firms. 41 C.F.R. § 3-1.713-50(a)(2) (1979). Where limited technical competition is determined appropriate, the firms to be

included in the competition will be decided by HHS in consultation with SBA. 41 C.F.R. § 3-1.713-50(a)(4). Due to a potential adverse impact on the limited financial resources of these firms, usually no more than three to five firms should be nominated for the limited technical competition. 41 C.F.R. § 3-1.713-50(a)(6). In this instance, HHS, in consultation with SBA, selected three prospective contractors, including Dialogue and Arawak, for the limited technical competition.

Technical proposals from the three offerors were reviewed by a Technical Evaluation Panel (TEP). Dialogue was awarded the highest rating of 85.8 and Arawak was next at 72.4. These ratings, together with a TEP summary report, were forwarded to the HHS contracting officer for review to ensure that the evaluation criteria were properly applied. The contracting officer approved the TEP report and submitted copies of it to SBA with a request that HHS be permitted to obtain a cost proposal from Dialogue and conduct negotiations with that firm. As a result of those negotiations Dialogue received the award.

Because of the broad discretion afforded the SBA and the contracting agencies under the applicable statute and regulations, our review of actions under the 8(a) program is generally limited to determining whether the regulations have been followed and whether there has been fraud or bad faith on the part of Government officials. Orincon Corporation, 58 Comp. Gen. 665 (1979), 79-2 CPD 39; Kings Point Mfg. Co., Inc., 54 Comp. Gen. 913 (1975), 75-1 CPD 264.

HHS' regulations recognize that the ultimate responsibility for nomination of an 8(a) subcontractor is in the SBA, 41 C.F.R. § 3-1.713-50(a), and HHS indicates that it obtains SBA's approval before entering into negotiations with the successful firm. It is therefore our view that HHS was acting on behalf of SBA in dealing with the competing 8(a) firms and evaluating their proposals and that the scope of our review in this case, even with respect to the evaluation of proposals, is limited as described above. See Arcata Associates, Inc., B-195449, September 27, 1979, 79-2 CPD 228.

Arawak contends that HHS was obligated to conduct discussions with it to enable that firm to correct deficiencies in its proposal. Federal Procurement Regulations (FPR) § 1-3.804 (1964 ed. amend. 155) requires that in negotiated procurements written or oral discussions generally shall be conducted with all offerors in the competitive range. However, we believe that section 8(a) of the Small Business Act, to further a socio-economic policy of fostering the economic self-sufficiency of certain small businesses, authorizes a contracting approach which in general is not subject to the competition and procedural requirements of the FPR and the statutory provisions they implement. See Ray Baille Trash Hauling, Inc. v. Kleppe, 477 F.2d 696 (5th Cir. 1973); Eastern Tunneling Corp., B-183613, October 9, 1975, 75-2 CPD 218. See also Vector Engineering, Inc., 59 Comp. Gen. 20 (1979), 79-2 CPD 247. Consequently, since neither the applicable HHS nor SBA regulations require that discussions be held regarding an offeror's technical proposal, HHS did not act improperly by not conducting discussions with Arawak.

With regard to the debriefing of unsuccessful offerors under the "limited technical competition" procedure, HHS' regulations merely state that a debriefing, when requested in writing, shall be provided to an unsuccessful offeror. 41 C.F.R. § 3-1.713-50(b). In this instance, Arawak, by letter of August 1, 1979, requested a debriefing; The debriefing was conducted on August 30. HHS reports that the debriefing could not be held earlier due to the unavailability of both the project officer and his assistant. In view of the absence of any specified time frame for conducting a debriefing after receipt of a written request, and the absence of evidence of a deliberate delay by HHS, we do not believe that the agency acted improperly.

Arawak takes exception to the evaluators' criticisms of its technical proposal as set forth in the TEP report. For example, Arawak objects to the evaluators' judgments that the protester's use of a logistics coordinator in its proposed management plan was unnecessary and that Arawak lacked process evaluation staff expertise. Arawak also objects to the agency's finding that its proposal contained three informational insufficiencies or omissions and to an evaluator's comment that key proposed individuals do not represent a geographical cross-section. The protester argues that the "equal 13 point spreads" between each of the offeror's evaluation scores are statistically improbable and are somehow indicative of an improper evaluation.

Although it is clear that Arawak does not agree with the HHS evaluators' judgment in these instances, Arawak does not argue that HHS acted in bad faith or that fraud was involved in the evaluation process. We have reviewed the evaluation record and there is no indication of either bad faith or fraud. Thus, we have no basis to object to HHS' evaluation. See Jones Steel Erections, Inc., B-196800, December 4, 1979, 79-2 CPD 389.

Finally, Arawak has made several allegations which we consider untimely. These are predicated on various matters appearing on the individual rating sheets of the various members comprising the TEP or in Dialogue's proposal. The allegations are that Dialogue was accorded preferential treatment over Arawak through the waiver of various informational inadequacies in Dialogue's proposal whereas Arawak was held responsible for its informational deficiencies; Dialogue's proposal failed to include resumes for proposed sub-contract staff; Dialogue's "proposal authorship was not presented;" and the initial point scores on the proposals were changed several times.

Our Bid Protest Procedures, 4 C.F.R. Part 20 (1980), require that protest allegations be filed not later than 10 working days after the basis for protest is known or should have been known, whichever is earlier. 4 C.F.R. § 20.2(b)(2).

In this instance, Arawak's correspondence reveals that it received the individual rating sheets [and a copy of the Dialogue proposal] in February 1980; however, the protest allegations based on this information were not received by our Office until April 4, 1980. In view of their untimely filing, we decline to consider them.

The protest is denied in part and dismissed in part.



For the Comptroller General
of the United States