

DECISION



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

FILE: B-217203 **DATE:** August 26, 1985
MATTER OF: Security Systems

DIGEST:

1. Allegation that the awardee cannot perform the contract in accordance with all its terms involves a matter of the awardee's responsibility; GAO will not review a contracting agency's affirmative determination of responsibility unless the protester shows possible fraud or bad faith on the part of contracting officials or alleges that the solicitation contains definitive responsibility criteria which have been misapplied.
2. Whether a contractor performs in accordance with all of the contract's terms is a matter of contract administration, which is the responsibility of the contracting agency, not GAO under its bid protest function.
3. GAO will only question agency's waiving or changing a contract's terms where the protester shows that the agency, prior to award, intended to alter the contract, or that the changed contract is materially different from the contract for which competition was held.
4. Affording the protester the opportunity to submit a best and final proposal and to delete unacceptable portions of its initial proposal constituted adequate discussions.
5. Contracting agency's disclosure of the incumbent contractor's subcontractors to new contractor is not improper as the names of the subcontractors were not confidential or proprietary.

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Security Systems (Security), the incumbent contractor, protests the Department of the Army's award of a contract to J.F. Goodson (Goodson) under request for proposals (RFP) No. DAKF10-84-R-0098, for the rental and maintenance of intrusion detection systems in 25 Army reserve centers in Georgia and Florida. The contract was awarded to Goodson on August 28, 1984 and Goodson commenced performance on October 1, 1984.

We dismiss the protest in part and deny it in part.

Security generally alleges that Goodson cannot perform the contract in accordance with all of its terms and that Goodson's equipment does not meet the requirements identified in the specifications. The agency reports that Goodson's equipment met the specifications. The protester challenges that statement, asserting that the equipment does not meet the specifications in several areas. The protester does not, however, indicate what any of those areas are. Consequently, we cannot conclude that the Army's position is incorrect. To the extent that Security otherwise challenges Goodson's qualifications to perform, Security's allegations involve a matter of responsibility. We do not consider protests of a contracting officer's determination that an offeror is responsible unless, unlike here, the protester shows possible fraud or bad faith on the part of contracting officials or alleges that the solicitation contains definitive responsibility criteria which have been misapplied. E.J. Murray Co., Inc., B-212107.3, Dec. 18, 1984, 84-2 CPD ¶ 680.

The protester also argues that, in performance, Goodson has failed to comply with the requirements of a Defense Intelligence Agency manual entitled "Physical Security Standards For Sensitive Compartmented Information Facilities." The requirements of this manual were not made a part of the RFP, and to the extent the protester argues they should have been, the protest is untimely. This issue involves a solicitation deficiency apparent prior to the closing date for receipt of proposals, and any protest of such a deficiency should have been filed before the closing date. 4 C.F.R. § 21.2(b)(1) (1984). In any event, whether an awardee meets its contractual obligations is a matter of contract administration which is the responsibility of the contracting agency and generally is not within the purview of our bid protest function. 4 C.F.R. § 21.3(g)(1) (1984).

Security argues that the agency gave Goodson an unfair advantage because the contracting officer's representative (COR) permitted Goodson, prior to award, to deviate from the RFP's requirements. Specifically, the RFP required either a contractor-operated alarm monitoring station or local police department monitoring. It did not allow for the use of answering services. The COR allegedly told Goodson it could use answering services and delay providing a contractor-operated alarm monitoring station where the local police department refused to monitor the intrusion system. The COR, however, denies having given Goodson such advice at any time before the award. Where the only evidence concerning an issue of fact is the conflicting statements of the protester and a contracting official, the protester has not met its burden of proving its case. Xerox Special Information Systems, B-215557, Feb. 13, 1985, 85-1 CPD ¶ 192. We therefore find no merit in the protester's assertion that the COR gave Goodson an unfair advantage.

The record does indicate that Goodson, contrary to the contract terms, was allowed to use an answering service at one of the reserve centers because of the telephone company's delay in scheduling necessary service. Also, the agency permitted Goodson to delay installation at other reserve centers. These matters also involve contract administration. When a contract is changed after award, we will question it only where the protester shows either that: 1) the agency, prior to award, intended to later alter the contract; or 2) that the altered contract is substantially different from the contract for which competition was held, and therefore should have been the subject of a new procurement. See E.J. Murray Co., supra. As indicated above, we have no basis to conclude that the Army awarded Goodson the contract with the intention of later changing the terms. Further, the delay in providing a monitoring station occurred at only 1 of 25 service centers and the installation delays at the other centers were less than a month. We conclude that these changes did not substantially alter the contract's requirements, but rather were within the scope of the awarded contract. See generally Cray Research, Inc., 62 Comp. Gen. 23 (1982), 82-2 CPD ¶ 376.

Security also contends that the agency exhibited unequal treatment in favor of Goodson in the conduct of negotiations. The record shows both offerors' initial proposals failed to meet some of the solicitation's requirements. Both were advised of the deficiencies in their proposals and given an opportunity to revise their proposals to satisfy the RFP's requirements. See Federal

Acquisition Regulation (FAR), 48 C.F.R. §§ 15.610(b) and 15.610(c)(2) (1984). In this regard, Security was given the option to delete certain conditions from its offer which otherwise might have required the rejection of its proposal. In addition, the record clearly indicates that the contracting officer requested best and final offers from both offerors. This, in itself, constitutes discussions or negotiations. Information Management, Inc., B-212358, Jan. 17, 1984, 84-1 CPD ¶ 76. Since Security's best and final offer was not rejected as technically unacceptable (the basis of award being the lowest priced technically acceptable offer), the adequacy of the discussions clearly is not an issue. We note that the Army was under no obligation to inform Security that its price was too high. See FAR, 48 C.F.R. § 15.610(d)(3)(ii); Griggs and Associates, Inc., B-205266, May 12, 1982, 82-1 CPD ¶ 458.

Finally, Security alleges that Goodson was wrongfully given a list of Security's subcontractors. The COR admits that after the award, he furnished Goodson with the names of three of Security's subcontractors. Although an agency cannot act unfairly or show favoritism toward one offeror, we are unaware of any procurement principle or regulation that prohibits the disclosure of procurement information which is not confidential or proprietary in nature. See Control Data Corp., B-197944, July 7, 1981, 81-2 CPD ¶ 7. Clearly, the names of the subcontractors Security used during its incumbency is not confidential or proprietary information, and under the circumstances we see nothing improper with the release of that information.

The protest is dismissed in part and denied in part.

for 
Harry R. Van Cleve
General Counsel