

DECISION



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

FILE: B-219667.2 **DATE:** February 6, 1986
MATTER OF: Koehring Company, Speedstar Division

DIGEST:

1. Agency decision to resolicit after termination of a contract due to procurement irregularities, rather than to make an award under the original solicitation, is not objectionable where the agency intends to revise the evaluation scheme and possibly the purchase description for the equipment being procured.
2. Recovery of proposal preparation costs and the costs of pursuing a protest is inappropriate when the protester is afforded an opportunity to compete in a reprocurement.

The Speedstar Division of Koehring Company protests actions of the United States Army Troop Support Command in regard to the procurement of truck-mounted water well drilling systems. Koehring originally protested a July 30, 1985 award to the George E. Failing Company under request for proposals (RFP) No. DAAJ10-85-R-A023. Before resolution of this protest, the Army terminated the contract with Failing on grounds that deficiencies in the statement of evaluation factors in the RFP and application of those factors during proposal evaluation made any award under the RFP improper.

The Army states that it is revising the evaluation scheme for the well drilling systems and may also revise the purchase description to reflect its needs more accurately; it then expects to resolicit. Koehring now alleges that the Army should instead reinstate the original solicitation and award a contract to Koehring under it.

We deny the protest.

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The RFP, issued November 23, 1984, indicated the Army would award a requirements contract for between 6 and 20 well drilling systems. The solicitation listed four factors for evaluation of proposals: technical understanding and compliance, management, logistics, and cost. Technical understanding and compliance, the most important factor, was accorded half the total weight of all evaluation factors. It was divided into a number of subfactors, of which one, "evaluation of system components," was in turn divided into three components (well drilling machine, support vehicle, and well completion kit) and 35 subcomponents. While the solicitation stated that within each factor subfactors were listed in order of importance, it did not provide any order of importance or evaluation weight for the components and subcomponents.

The Army received three proposals and found those of Koehring and Failing to be technically acceptable. On July 25, 1985, after evaluation of best and final offers, the contracting officer determined that an award should be made to Failing. While Failing's evaluated price was approximately 6 percent more than Koehring's, the contracting officer concluded that Failing's offer was most advantageous to the government for two reasons. First, Failing proposed to provide drilling and support vehicles with "roll on/roll off" capability, i.e., a well drilling system that could be driven on and off transport aircraft without disassembly. The Army believed this would not only reduce the number of aircraft required to transport the well drilling systems but also enhance rapid deployment, lower maintenance, and increase safety in loading and unloading. Second, the contracting officer found that the Koehring system did not have the required capability of being loaded onto transport aircraft and unloaded using only equipment provided with the system. Accordingly, the Army awarded the contract to Failing, and Koehring submitted a protest shortly thereafter.

During consideration of Koehring's protest, the Army concluded that its evaluation of proposals had not been in accord with the evaluation scheme set forth in the solicitation. The agency states that the evaluation factors did not specifically include air transportability or otherwise support the emphasis placed upon "roll on/roll off" capability. The Army also states that it should have indicated the relative weights to be given system components in evaluating technical understanding and compliance.

The agency issued a stop-work order to Failing on August 22 and terminated the contract on September 17, 1985.^{1/} As noted above, the Army states that it intends to revise the RFP evaluation scheme and possibly the purchase description for the well drilling system in order better to reflect its actual needs before resoliciting.

Koehring argues that it is in the government's best interest to reinstate the original solicitation and to award Koehring a contract under it, rather than to resolicit. The protester asserts that its well drilling systems is reasonably priced and meets the Army's actual needs; that the aspects of Failing's system that the Army is considering for inclusion in the RFP requirements are developmental and unproven; and that a resolicitation would inevitably delay meeting an urgent Army requirement.

The record does not support Koehring's position. As the Army points out, air transportability was a requirement of the purchase description and in fact was considered by some of the evaluators in the award selection even though it was not listed as a factor in the evaluation. In addition, the solicitation did not disclose the relative importance in proposal evaluation of systems components, although assignment of points ranged from 3 to 30 points per component in the actual evaluation. As a result, the Army concluded that the offerors were not sufficiently on notice of the award factors and their relative importance. To remedy the situation, the Army plans to revise the solicitation evaluation provisions and to resolicit offers. This is consistent with prior decisions of this Office, see e.g., Hemford Co., B-216811, Feb. 8, 1985, 85-1 CPD ¶ 167, and therefore we see no reason to object.

As an alternative to award, Koehring requests proposal preparation costs and the costs of filing and pursuing its protest on grounds that the contract was improperly awarded to Failing in the first instance. The Competition in

^{1/} Failing did not protest the termination of its contract. In a letter to our Office dated November 18, filed as a party interested in Koehring's protest, the firm stated its beliefs that the initial award was proper and that the contract should be reinstated. Since Failing did not indicate that it intended to submit a separate protest, we have considered its views only to the extent they are relevant to issues raised by Koehring.

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Contracting Act of 1984, 31 U.S.C.A. § 3554 (West Supp. 1985), and our Bid Protest Regulations, 4 C.F.R. § 21.6 (1985), provide authority for our Office to grant such costs. In view of our above conclusions, and since Koehring at a minimum will be given an opportunity to compete when the Army resolicits, recovery of either proposal preparation costs or the costs of filing and pursuing the protest is inappropriate here. See 4 C.F.R. § 21.6; Galveston Houston Co., B-219998.4, Nov. 4, 1985, 85-2 CPD ¶ 519.

The protest is denied.

for *Raymond C. Cleve*
Harry R. Van Cleve
General Counsel