

DECISION**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548****FILE:** B-221230.2; B-221249.2; **DATE:** February 24, 1986
B-221250.2**MATTER OF:** Tracor Applied Sciences, Inc.**DIGEST:**

Where the top ranked offeror was suspended after proposal evaluation, but prior to award, and this suspension was terminated on same date as the award to the second ranked offeror, the contracting officer, who was unaware of the termination of suspension, properly exercised her discretion in awarding the contract to the second ranked offeror.

Tracor Applied Sciences, Inc. (Tracor), protests three awards to Support Systems Associates, Inc. (SSAI), under request for proposals (RFP) No. N68520-85-R-9063, -9064, and -9065, issued by the Naval Aviation Logistics Center, Patuxent River, Maryland. Each RFP solicited three lots of services. The SSAI awards were for Lot I of the RFP's, engineering/technical services in support of the Weapons Systems Support Departments of various Naval Air Rework Facilities.

Tracor protests that it should have received the awards as the highest technically ranked and lowest priced offeror on the RFP's. Tracor states that it was apparently eliminated from consideration because it was suspended from contracting by the Navy. However, Tracor contends that because this suspension had been removed prior to the SSAI awards, it should have received the awards. Tracor claims that the awards to SSAI, after eliminating Tracor from the competition, were tantamount to sole-source awards. In this regard, Tracor claims that none of the legal prerequisites of sole-source contracting were adhered to, e.g., obtaining certified cost or pricing data from SSAI. Finally, Tracor claims the SSAI contracts may be fatally flawed because they were executed by a former government employee.

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-- We deny the protests.

The RFP's were issued on April 15, 1985, and proposals were received on May 30, 1985. Four proposals were submitted on RFP -9063, two on RFP -9064, and three on RFP -9065. Tracor received the highest technical score on each of the RFP's (70, 75, and 73.8 points, respectively, on a 80-point scale) while SSAI's technical score was second highest (55, 57 and 53.2 points, respectively). The other offerors' technical scores were much lower. Tracor's and SSAI's proposed prices were very close; SSAI was low on one RFP and Tracor was low on two RFP's and they received the same weighted score for price on two RFP's and were within one point on the other RFP.

Tracor was selected for all three awards. However, while awaiting receipt of the equal employment opportunity clearance and funds, the contracting officer was notified that Tracor had been suspended from contracting by the Navy effective October 16, 1985. Authorization was immediately given to proceed to award to SSAI, the second ranked offeror. After receiving the necessary clearances, the contracting officer awarded the three contracts to SSAI, without discussions, at approximately 8:35 a.m., on November 22, 1985.

Meanwhile, Tracor and the Navy had reached an agreement which terminated the Tracor suspension. This agreement was executed by Tracor on November 21, 1985, and the Navy reports that the cognizant Navy official executed the agreement at approximately 11:50 a.m., on November 22, 1985, the same day as the awards. At Tracor's request, the Navy office handling the suspension informally apprised the procuring activity at approximately 5:15 p.m., on November 22, 1985, that Tracor's suspension had been terminated. The procuring activity told the Navy official that the awards had already been made. On November 25, 1985, the procuring activity was formally advised by telefax that Tracor's suspension was "terminated effective this date."

The agreement between the Navy and Tracor to terminate the suspension was agreed to be "effective upon the date of the last signature to this agreement." Tracor contends that its suspension was therefore terminated at the beginning of the day, 12:00 a.m., on November 22, 1985, before the SSAI contract awards were made at 8:35 a.m. In support of this

proposition, Tracor cites a number of cases concerning civil procedure, insurance law, and statutory construction which indicate that a date set forth in documents is construed to begin on the first moment of the day and that the law does not take notice of fractions of a day.

The Navy and SSAI argue that since Tracor was suspended, it is not an interested party under our Bid Protest Regulations, 4 C.F.R. §§ 20.0(a), 21.1(a) (1985). See e.g., Space Dynamic Corporation, B-220168.2, Nov. 29, 1985, 85-2 C.P.D. ¶ 620 (suspended contractor is not an interested party). However, the suspension and bar to Tracor's eligibility had been removed prior to the protest and indeed is the primary issue of the protest. Therefore, Tracor is an interested party under our Bid Protest Regulations. Cf. Ikard Manufacturing Company, B-213017, July 23, 1984, 84-2 C.P.D. ¶ 80 at 2 (suspended protester may request that protest be reopened when its suspension is terminated.)

We have recognized that it is within the contracting officer's discretion to make awards to firms that were suspended or debarred at the time they submitted their bids or proposals so long as the firms were not ineligible at the time of contract award. Bauer Compressors, Inc., B-213973, Apr. 23, 1984, 84-1 C.P.D. ¶ 458; Kings Point Mfg., Co., Inc.; et al., B-210389, et al., Dec. 14, 1983, 83-2 C.P.D. ¶ 683. However, the Department of Defense, Federal Acquisition Regulations Supplement, 48 C.F.R. § 209.405(a)(1), provides in pertinent part:

" . . . proposals, quotations or offers received from any listed [debarred or suspended] contractor shall not be evaluated for award or included in the competitive range, and discussions shall not be conducted with such offeror, unless the Secretary concerned or his authorized representative determines in writing that there is a compelling reason to make an exception."

Therefore, it is clearly within the contracting officer's discretion to reject the proposal of a suspended contractor, even if this status is being reconsidered. See Atkinson Engineering Company, B-208148.5, Aug. 30, 1983, 83-2 C.P.D. ¶ 278.

The record indicates that the contracting officer was unaware that the Tracor suspension was or would be lifted on November 22, 1985, when the awards were made. Indeed, the contracting officer was only notified effective November 25, 1985, that the suspension would be lifted. The regulations clearly permitted the contracting officer to reject Tracor from further consideration when she was apprised of its suspended status absent a compelling reason. Under the circumstances, we believe the contracting officer acted within her discretion in making the awards to SSAI, even assuming the effective time of the termination of the suspension was prior to award. Since the awards were proper, the SSAI contracts need not be disturbed.

Under the circumstances, we do not believe the awards to SSAI under the competitive solicitations constituted de facto sole-source awards. When Tracor, SSAI and the other offerors submitted their proposals and when the proposals were evaluated, Tracor was not suspended. Consequently, SSAI's proposals, submitted and evaluated in a competitive environment, did not result in de facto sole-source awards. It follows that the contracting officer could utilize Tracor's proposal to establish adequate price competition in order to obviate the requirement for certified cost and pricing data. See INTASA, B-191877, Nov. 15, 1978, 78-2 C.P.D. ¶ 347.

Finally, the Navy and SSAI have adequately established the propriety and authority of the person that signed the SSAI contracts and Tracor has not responded to this explanation.

In view of the foregoing, the protests are denied.

for *Seymour Efron*
Harry R. Van Cleve
General Counsel