

DECISION

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

FILE: B-221208 **DATE:** *March 13, 1986*
MATTER OF: Automated Sciences Group, Inc.

DIGEST:

If post-selection discussions have been conducted with the successful offeror regarding an extension of the proposed term of the contract, including an increase in the estimated quantity of the services to be performed, discussions should have been conducted with other offerors in the competitive range, especially where discussions could potentially affect the offerors' relative standing.

Automated Sciences Group, Inc., protests the award of a contract for microfilming and document destruction services to B&B Records Center, Inc., under request for proposals (RFP) No. BPD-84-3, issued by the Bureau of the Public Debt, Department of the Treasury. Automated principally contends that the contract that was awarded by Treasury materially differs from the contract that was competitively solicited. Automated states that these differing contractual terms were the result of post-selection discussions by the agency that were conducted solely with the successful offeror, without notice to the protester or other offerors.

We sustain the protest.

By amendment No. 4, with an effective date of May 24, 1985, the solicitation requested offers for the services from the "date of award through September 30, 1985," which was designated as the "basic contract period."^{1/} In

^{1/} This amendment followed a decision by our Office sustaining a protest by B&B in which B&B challenged its exclusion from the procurement for reasons unrelated to this protest. See B&B Records Center, Inc., B-215232, Mar. 27, 1985, 85-1 CPD ¶ 354.

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addition, the solicitation contained option provisions for a second year (October 1, 1985 through October 30, 1986) and a third year (October 1, 1986, through October 30, 1987). The solicitation provided that the total duration of the contract, including option periods, would not exceed 31 months from the date of initial award. The solicitation required offerors to submit separate prices for each of the 3 performance periods (basic contract period, first option period, and second option period) which were to be added together by the agency to arrive at a "total combined amount" for price evaluation purposes.

Four proposals were received by the July 15, 1985, closing date for receipt of proposals. After technical evaluation, Treasury determined that all proposals were within the competitive range and thereafter conducted discussions with each offeror. Treasury states in its agency report that during discussions, it advised offerors as follows:

"Each offeror was advised that there might be very little left of the base year, and that the starting date could well be the first option year. They were advised that their internal calculations should be based pro-rata on approximately ten(10) million documents; that there was no half year backlog."

However, the record does not contain any written notification by Treasury advising offerors of any such subsequent change and the solicitation was never amended to reflect a new starting date.

Best and final offers were received on August 21, 1985, with the following results and rankings:

<u>Firm</u>	<u>Price</u>	<u>Technical Points</u>	<u>Price Points</u>	<u>Total Points</u>
1. B&B	\$1,086,859.76	69.7	18.781	88.481
2. Automated	\$1,703,558.87	70.9	11.98	82.88
3. ADI	\$1,101,803.31	60.9	18.527	79.427
4. CIM	\$1,020,632.61	55.3	20.00	75.3

It is undisputed that Automated's best and final offer was based on a truncated base year reflecting the short period

remaining under the solicitation's stated basic contract period of "date of award through September 30, 1985." Further, while the solicitation contained an estimated quantity of 5,357,650 images for microfilming services in the base year and 10,725,300 images in each of the option years, Automated, following the oral instructions of Treasury, prorated the estimated quantity to reflect the short period remaining in the base year. Accordingly, Automated based its offer on only 618,767 images for a three week period that, in its judgment, realistically remained in the basic contract performance period without any "half-year backlog."

Nevertheless, after receipt of best and final offers, on October 16, 1985, Treasury awarded a contract to B&B with the base year from the date of award through September 30, 1986; the first option year, October 1, 1986, through September 30, 1987, and the second option year, October 1, 1987, through May 30, 1988. Thus, Treasury solicited a contract with approximately a 3-5 week "base year"; however, Treasury awarded a contract with approximately a 12-month "base year" and the last option period in the solicitation was extended into a subsequent fiscal year. Further, as stated above, Automated based its offer on 618,767 images for microfilming services in the base year and on 10,725,300 images for each option year. However, B&B's contract was based on an estimated 5,357,650 images in the base year and 10,725,300 images in each of the option years. Thus, at the time offerors submitted best and final offers, the maximum estimated quantity for microfilming services under the solicitation with the truncated base year was approximately 22,000,000 (based on a 3-5 week performance period and 2 option years), while the extended contract as awarded by Treasury to B&B contained an estimated quantity of almost 27,000,000 (based on approximately a 31-month performance period). Treasury has not explained to our Office when and why it changed the performance period after receipt of best and final offers or how it negotiated these changes with B&B.

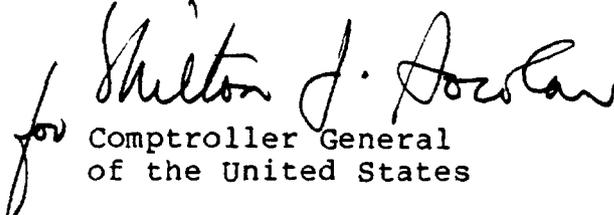
Based on this record, we are compelled to find that Treasury awarded a contract to B&B that was materially different in its duration from the contract that was competitively solicited. It is obvious that Treasury, after receipt of best and final offers, conducted discussions only with B&B. In this regard, discussions generally occur if an offeror is afforded an opportunity to revise or modify its proposal, regardless of whether such opportunity resulted from action initiated by the government or the offeror. See 51 Comp. Gen. 479 (1972). Further, if

discussions have been conducted with one offeror, it is required that discussions be conducted with all offerors within the competitive range, including an opportunity to submit revised offers. See PRC Information Sciences Co., 56 Comp. Gen. 768 (1977), 77-2 CPD ¶ 11. The competition should generally be reopened, even when the improper post-selection negotiations do not directly affect the offerors' relative standing, because all offerors are entitled to equal treatment and an opportunity to revise their proposals. Id.

Here, Automated argues that it would have submitted a significantly different price proposal had it been aware of the government's lengthened contract term. Based on this record, we have no basis to dispute this assertion. Accordingly, we sustain Automated's protest on this issue.

The only remaining question involves the choice of corrective action. In this connection, the record shows that Automated's offered price was 100 percent higher than the awardee's, and in fact increased for the second option period (the awardee offered a level price throughout). Thus, the protester had no substantial chance of receiving the award even if the award was consistent with the solicitation. Nonetheless, since the total term of the contract, including option periods and the resulting increase in the estimated quantity was improperly extended, we believe the most appropriate corrective action would be for the agency to refrain from exercising the second option (October 1, 1987 through May 30, 1988), and to let the award stand for the approximate period for which the competition was actually conducted.

The protest is sustained.


for Comptroller General
of the United States