



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Automated Sciences Group, Inc.

File: B-228913

Date: December 15, 1987

### DIGEST

1. Protester's proposal was properly rejected since in its best and final offer protester failed to correct significant deficiencies which the agency had brought to its attention.
2. Protest issues arising from agency debriefing, but initially raised for consideration by the General Accounting Office in protester's comments on an administrative report which concerns a previously filed, though related protest, will not be considered since they fail to comply with requirements for timely filing of protest under General Accounting Office Bid Protest Regulations.

### DECISION

Automated Sciences Group, Inc. (ASG), protests the award of a contract to Geodynamics Corporation under request for proposals (RFP) F04703-86-R-0117 issued by the Western Space and Missile Center (WSMC) at Vandenberg Air Force Base, California. The solicitation was issued to procure services necessary for Independent Verification and Validation (IV & V) of critical flight safety data systems used by WSMC. ASG contends that since its offer was determined to be in the competitive range, the award of the contract to Geodynamics at a cost higher than that proposed by ASG "is unwarranted and contrary to the best interests of the government."

We deny the protest.

### FACTS

WSMC provides range safety support to launch activities for Department of Defense high priority and critical launch programs and operations. IV & V services, rendered independently of the program developer, are required to objectively analyze, evaluate and test the systems during definition development, specification production, software design,

040862

development and testing. According to the Air Force, IV & V on critical data systems is only applied to software in which failures or errors occurring during a launch operation could seriously increase the risk to life and property, seriously impact a national defense program or create an international incident.

Issued as a 100-percent small business set-aside, the solicitation anticipated a cost-plus-fixed-fee contract for 30,720 manhours (on a level of effort basis) of IV & V services covering fiscal year 1988 and four 1-year options. According to the RFP, proposals would be evaluated based on three factors which are, in descending order of importance, technical merit, management capability and cost.

In response to the RFP, the Air Force received two proposals--that of the awardee and that of the protester. Although the Proposal and Evaluation Board determined both proposals to be in the competitive range, the record shows that Geodynamic's proposal was evaluated as technically acceptable with no deficiencies in any of the evaluated areas, though higher in cost (at an estimated cost-plus-fixed-fee amount of \$1,782,210 and \$9,808,437 with options) than that of ASG (at \$1,174,504 and \$6,492,466 with options), whereas ASG's proposal was found to contain several deficiencies. The Air Force formally advised ASG that its proposal failed to meet the RFP's minimum essential requirements and contained "numerous and serious technical deficiencies" that had to be satisfactorily resolved for ASG to be considered for award. The agency explains that ASG's proposal was retained in the competitive range in compliance with Air Force Regulation 70-15, Source Selection Policy and Procedures, which requires that doubt as to whether a proposal is in the competitive range be resolved by considering it within the competitive range to allow the firm an opportunity to correct the deficiencies.

The record shows that the Air Force conducted written and oral discussions with the protester, during the course of which ASG was apprised of six specific areas of deficiency in the technical and management aspects of its proposal. Following submission of best and final offers (BAFOs), the agency determined that ASG had failed to resolve five of the six areas of deficiency and was, therefore, not eligible for contract award. ASG essentially contends that because its proposal was included in the competitive range and was lower in cost than Geodynamic's proposal, award should have been made to ASG.

## DISCUSSION

The competitive range is comprised of those offerors in a procurement that have a reasonable chance of award. Federal Acquisition Regulation (FAR), 48 C.F.R. § 15.609(a) (1986); see Jack Faucett Associates, B-224414, Sept. 16, 1986, 86-2 C.P.D. ¶ 310 at 2. It is proper for an agency to include in the competitive range a firm whose proposal is considered to have a reasonable chance of receiving award, whether the proposal is considered acceptable or merely susceptible of being made acceptable. Telecommunications Specialists, Inc., B-224842.2, Feb. 26, 1987, 87-1 C.P.D. ¶ 221.

In this case, upon evaluation of offers the Air Force determined that ASG's proposal contained serious technical deficiencies that had the potential to be satisfactorily corrected. The agency properly opened discussions with ASG by providing it with written reports which, with reference to specific RFP requirements and the corresponding sections of ASG's proposal, identified those elements of the proposal that required attention. The agency further provided for oral discussions of those matters, following which it called for BAFOs.

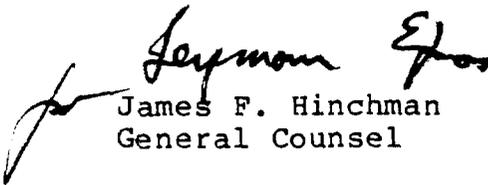
The protester indicates that it does not consider the agency to have made an effort to assure that ASG understood the stated deficiencies, but there is no indication of record that the agency refused or failed to answer any question raised by the protester during the discussions. We have held that discussions are adequate if, after making a diligent effort to identify deficiencies, the agency informs the offeror of its concerns and affords the offeror an opportunity to revise its proposal. Telecommunications Specialists, Inc., supra, 87-1 C.P.D. ¶ 221 at 4. The protester has provided no evidence that the agency failed to meet this standard.

A proposal that has not been made technically acceptable upon the submission of BAFOs properly may be rejected, and the proposal may not be considered for award, notwithstanding its lower proposed cost. See Louisiana Foundation for Medical Care, B-225576, Apr. 29, 1987, 87-1 C.P.D. ¶ 451. Under these circumstances, the cost proposed by the offeror becomes irrelevant since the proposal is ineligible for award. See Pacific Computer Corp., B-224518.2, Mar. 17, 1987, 87-1 C.P.D. ¶ 292 at 7; Louisiana Foundation for Medical Care, B-225576, supra, 87-1 C.P.D. ¶ 451 at 5.

In its October 21 comments on the administrative report, ASG takes issue with the deficiencies in its proposal as, it alleges, they were identified and discussed by the Air Force at a debriefing which convened on September 16. Under our

Bid Protest Regulations, for a protest to be considered by our Office it must be filed within 10 working days of the time the protester learned of the basis of protest. Those matters of contention which were not raised in ASG's protest as initially filed but were first raised in its comments on the agency report must independently meet the timeliness requirement. Since the comments were filed more than 10 working days after the debriefing, those issues are untimely and, therefore, will not be considered. See National Air Survey Center, Corp., B-227767, Oct. 14, 1987, 87-2 C.P.D. ¶ 356.

The protest is denied in part and dismissed in part.

  
James F. Hinchman  
General Counsel