



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: National Association of State Directors
of Special Education, Inc.

File: B-233296

Date: February 22, 1989

DIGEST

Where contracting agency receives only two proposals, and exclusion of one proposal would essentially result in a sole-source procurement, contracting agency reasonably included the second proposal within the competitive range even if the proposal had serious deficiencies.

DECISION

National Association of State Directors of Special Education, Inc. (NASDSE), protests the award of a contract to the University of Kentucky under request for proposals (RFP) No. 88-051, issued by the Department of Education for the operation of the Federal Regional Resource Center.^{1/} NASDSE contends that the agency abused its discretion in including the Kentucky proposal within the competitive range.

We deny the protest.

The RFP, issued on June 1, 1988, contemplated the award of a cost reimbursement contract with an 18-month base period and an option for an additional 14-month period. The RFP provided that award would be made to the offeror whose proposal represents the combination of technical merit and cost most favorable to the government. However, the RFP stated that technical considerations were to be of paramount importance.

The agency received proposals on July 7 from NASDSE and Kentucky, and the proposals were then evaluated to determine the competitive range. NASDSE's technical proposal received

^{1/} The primary purpose of the Center is to assist six regional centers in providing special education programs throughout the United States. The Center serves as a central clearing house and provides training and technical assistance nationwide.

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an average score of 79.5 points out of a possible 100, and the proposal was deemed to be technically acceptable as submitted. However, the agency did find weaknesses in NASDSE's proposal, such as a lack of information concerning its proposed method for selection of a panel of experts, who were essential to the project. Kentucky's technical proposal received an average score of 69.5, reflecting the agency's major concerns that the Kentucky proposal failed to clarify the role and procedures of the Center. The evaluation panel determined the Kentucky proposal to be technically unacceptable and unanimously recommended to the contracting officer that only the NASDSE proposal be included in the competitive range. The contracting officer, however, determined that Kentucky's initial proposal was unacceptable as submitted, but susceptible of being made acceptable. After both offerors were included in the competitive range, both were determined responsible and both prices were considered reasonable.

The agency conducted discussions with both offerors to advise the firms of the various areas of deficiency in their proposals and sought responses to those concerns. After evaluation of both offerors' responses to technical questions, the agency rescored the proposals. Kentucky's average score increased from 69.5 to 85.6, and NASDSE's score increased from 79.5 to 88.3. While both offerors were found to be technically acceptable, some weaknesses still remained in both proposals. The agency therefore submitted a second round of technical and cost questions on various matters to both offerors and sought responses to these questions through the submission of best and final offers (BAFOs).

Upon evaluation of the BAFOs, both offerors were considered capable of providing the services, but the agency determined that Kentucky's BAFO was technically superior to NASDSE's BAFO. As to cost, NASDSE's overall cost, including the option period, was \$665,914, while Kentucky's overall cost was \$659,932. Accordingly, the agency selected Kentucky for the award, as the technically superior and lowest cost offeror. This protest followed on October 24.

NASDSE's contends that the contracting officer abused her discretion in including Kentucky in the competitive range. In this regard, NASDSE contends that based on the comments of the evaluation panel, as well as the questions posed to Kentucky during discussions, it is clear that Kentucky's initial proposal required major revisions ("major rewrite") and did not stand a reasonable chance of being selected for award. Therefore, according to NASDSE, the Kentucky proposal was not suitable for inclusion in the competitive

range. NASDSE argues that based on the evaluation panel's unanimous recommendation to reject Kentucky's proposal, and the panel's determination that Kentucky did not successfully demonstrate a thorough knowledge of the tasks to be performed, it was unreasonable for the contracting officer to include Kentucky in the competitive range.^{2/}

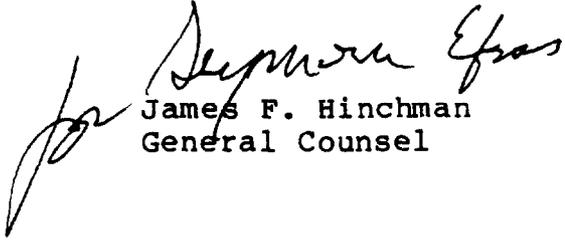
The purpose of a competitive range determination in a negotiated procurement is to select those offerors with which the contracting agency will hold written or oral discussions. Federal Acquisition Regulation (FAR) § 15.609(a) (FAC 84-16); S&Q Corp., B-219420, Oct. 28, 1985, 85-2 CPD ¶ 471. We have defined the competitive range as consisting of all proposals that have a "reasonable chance" of being selected for award, that is, as including those proposals which are technically acceptable as submitted or which are reasonably susceptible of being made acceptable through discussions. Information Systems & Networks Corp., B-220661, Jan. 13, 1986, 86-1 CPD ¶ 30; Fairchild Weston Systems, Inc., B-218470, July 11, 1985, 85-2 CPD ¶ 39. FAR § 15.609(a) mirrors this definition and provides that if doubt exists as to whether a proposal is in the competitive range, the proposal should be included. As a general rule, an agency should endeavor to broaden the competitive range since this will maximize the competition and provide fairness to the various offerors. See Cotton & Co., B-210849, Oct. 12, 1983, 83-2 CPD ¶ 451. Further, the determination of whether a proposal is in the competitive range is principally a matter within the contracting agency's reasonable exercise of discretion. Tracor Marine, Inc., B-222484, Aug. 5, 1986, 86-2 CPD ¶ 150.

As stated above, only two firms submitted proposals. Thus, elimination of Kentucky's proposal from the competitive range, as requested by the protester, would have resulted in the agency conducting essentially a sole-source procurement

^{2/} NASDSE, by subsequent letter dated December 7, also protests that the agency improperly engaged in technical leveling by assisting Kentucky in the development of its winning proposal. NASDSE bases this allegation on the questions posed to Kentucky by the agency during discussions. All technical questions posed to Kentucky and their responses thereto, as well as a copy of Kentucky's winning proposal, were provided to NASDSE on October 20. Under our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (1988), a protest must be filed within 10 working days of the date the protester was aware or should have been aware of the basis for its protest. Consequently, this issue first raised on December 7 is untimely.

with the protester. Under these circumstances, we think that the contracting officer, in the interest of full and open competition, reasonably included the second proposal within the competitive range even if the proposal had serious deficiencies which under other circumstances would have justified rejection of the proposal. Since the actions of the contracting officer enhanced competition, we will not object to the determination to include the Kentucky proposal in the competitive range.

The protest is denied.



James F. Hinchman
General Counsel