

Jennin. Oll



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Stewart-Warner Corporation
File: B-235774
Date: October 5, 1989

DIGEST

1. Discussions were meaningful where agency imparted sufficient information to protester to afford it a fair and reasonable opportunity in the context of the procurement to identify and correct any deficiencies in its proposal.
2. Protest alleging that contracting agency officials acted unfairly and in bad faith in determining what option quantities would be used in evaluation of price proposals is denied, where there is no evidence that contracting officials intended to harm the protester and the record shows that the decision concerning what option quantities to use for evaluation purposes was made well before offerors were required to submit initial proposals.

DECISION

Stewart-Warner Corporation protests the Navy's award of a contract for production of the AN/APX-100(V) Identification Friend or Foe Transponder^{1/} and related items to Allied-Signal, Inc., pursuant to request for proposals (RFP) No. N00019-88-R-0131, issued by the Naval Air Systems Command (NAVAIR). Stewart-Warner charges that the Navy did not conduct adequate discussions with the firm and, thus, Stewart-Warner effectively was denied an opportunity to correct any perceived deficiencies in its technical proposal. Stewart-Warner also alleges that NAVAIR manipulated the option quantities used in the evaluation to insure award to Allied-Signal.

^{1/} The AN/APX-100(V) transponder is a multi-service, multi-platform receiver-transmitter which provides flight information for the civilian and military air traffic control radar system. Its primary military purpose is to identify aircraft as being a friend or foe when approaching or traversing a defended zone.

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We deny the protest.

The RFP issued on October 20, 1988, requested proposals for production of certain firm quantities during the base contract year and contained options for additional quantities over the next 5 years. The contract was to be awarded on a firm, fixed-price basis. The RFP stated that offers would be evaluated on the basis of both technical and price factors with technical factors being significantly more important than price. The RFP also advised that price proposals would be evaluated for reasonableness and that for evaluation purposes price would be "the sum of the prices proposed for the firm and most likely option quantities that will be exercised under the contract."

Fifty-two sources were solicited, and offers were received from 3 firms (Stewart-Warner, Allied-Signal, and United Telecontrol Electronics, Inc. (UTE)), by the December 29 closing date. After evaluation of initial proposals by a procurement review board, all three offers were determined to be in the competitive range. In February 1989, NAVAIR officials conducted on-site visits of each offeror's facilities. NAVAIR adjusted the evaluation scores given the initial technical proposals where appropriate based upon the observations of its representatives during the site visits.

Based upon its evaluation of initial proposals and the on-site inspections, NAVAIR's technical evaluation team identified deficiencies in each proposal and developed questions for discussions with each offeror. Written discussions were initiated in March when each offeror was provided a list of perceived deficiencies and was given an opportunity "to confirm, revise, correct, support or supplement" their initial proposals. Offerors submitted responses to the discussions questions by March 29. Best and final offers (BAFOs) were requested and were received from all three offerors by April 7.

BAFOs were evaluated regarding price and technical merit. Allied-Signal's offer was rated highest in technical merit and was also the highest priced offeror. Stewart-Warner's BAFO was rated second-highest on technical merit and its total evaluated price was considerably lower than Allied-Signal's. However, the procurement review board determined that Allied-Signal's proposal was superior to the other two firms' proposals and recommended that the contract be awarded to Allied-Signal. The contracting officer concurred in the procurement review board's recommendation, concluding that the advantages inherent in the extra technical merit of Allied-Signal's proposal outweighed the lower prices of the

other two offers. Therefore, on May 16, 1989, the contracting officer awarded the contract to Allied-Signal.

After receiving notification of the award, Stewart-Warner filed its initial protest in our Office on June 6.^{2/} NAVAIR did not debrief Stewart-Warner until June 29.

The protester contends that the Navy failed to hold meaningful discussions with the firm. Specifically, Stewart-Warner asserts that NAVAIR's letter initiating discussions and purporting to contain questions concerning perceived deficiencies in the firm's proposal was "so generalized and uninformative as to amount to a sham." As Stewart-Warner's proposed price was considerably lower than Allied-Signal's proposed price, the protester contends that NAVAIR essentially made award on the basis of initial proposals to other than the lowest priced offeror without holding meaningful discussions with all firms in the competitive range.

The Competition in Contracting Act of 1984, 10 U.S.C. § 2305(b)(4)(B) (1988), as implemented in Federal Acquisition Regulation § 15.610(b), requires that written or oral discussions be held with all responsible offerors whose proposals are in the competitive range. For competitive range discussions to be meaningful, agencies must point out deficiencies in proposals unless doing so would result in technical transfusion or leveling. URS Int'l, Inc., and Fischer Eng'g & Maintenance Co., Inc.; et al., B-232500 et al., Jan 10, 1989, 89-1 CPD ¶ 21.

Although agencies are not obligated to afford offerors all-encompassing discussions, or to discuss every element of a technically acceptable proposal that received less than the maximum possible score, they still generally must lead offerors into the areas of their proposals which require amplification. Id. Discussions should be as specific as practical considerations will permit in advising offerors of the deficiencies in their proposals. Id. The actual content and extent of discussions are matters of judgment primarily for determination by the agency involved, and our

^{2/} After receipt of evaluation documents concerning its own proposal in connection with the present protest, Stewart-Warner filed a second protest with our Office by letter dated August 15, 1989, alleging that NAVAIR's evaluation of proposals was not in accord with the RFP's evaluation scheme. The second protest will be resolved in a future decision after we have heard all arguments addressing this later-raised issue.

Office will review the agency's judgments only to determine if they are reasonable. Technical Services Corp., B-216408.2, June 5, 1985, 85-1 CPD ¶ 640.

The record shows that the Navy sent Stewart-Warner a letter identifying 12 areas of the firm's initial proposal as deficient or as reflecting uncertainties that needed to be resolved. Five of the identified "areas of concern" were based upon the price proposal; seven dealt with perceived technical deficiencies. The protest concerns only the technical discussion questions.

We have reviewed all of the discussion questions and all evaluation documents in light of the protester's arguments; however, we will discuss only a few examples in the following discussion. Based upon our examination of the record, we find that NAVAIR did, in fact, hold meaningful discussions with Stewart-Warner.

The RFP stated that proposals would be evaluated on five technical factors, listed in descending order of importance as: Engineering, Quality Assurance, Manufacturing, Logistics, and Management/Relevant Past Experience. NAVAIR actually evaluated proposals on a total of 31 technical subfactors within the 5 evaluation factors.

NAVAIR's initial evaluation of Stewart-Warner's proposal, as modified by the evaluators after they had visited Stewart-Warner's facility, rated the proposal as "satisfactory with low to medium risk" on all factors except Logistics which was rated as "marginal with medium to high risk." Thus, it is appropriate that our first example be the discussion regarding the area of Logistics.

The RFP required that proposals describe an offeror's plan for implementing an integrated logistics support (ILS) program. Among other things, proposals were to describe the ILS organizational structure, functional interfaces, and the relative positions (particularly between the ILS manager and the project engineer); resumes of key personnel were to be provided.

NAVAIR'S evaluators rated the protester's initial proposal as marginal (65 percent) in the ILS Management evaluation subfactor, because the proposal did not identify a logistics support analysis (LSA) manager within the ILS organization, and because the individual identified as the ILS manager did not appear to possess the appropriate qualifications. In its discussions letter (Area of Concern No. 7), the agency stated, "Please elaborate on ILS Management identifying key personnel and their qualifications."

When Stewart-Warner responded with more detail on its proposed ILS organization identifying the LSA manager and provided additional evidence of the ILS manager's qualifications for that position, the evaluators revised upward their evaluation of the proposal in the ILS Management subfactor to satisfactory (72 percent).

The next example also concerns the Logistics evaluation factor. The evaluators rated Stewart-Warner's initial proposal as marginal (60 percent) on the ILS Planning subfactor, because the evaluators found that Stewart-Warner had proposed to develop a new, comprehensive maintenance plan instead of merely revising the present maintenance plan provided by the government. The evaluators also rated the initial proposal as marginal (55 percent) on the Design Interface/LSA Program subfactor, because the evaluators judged that Stewart-Warner was proposing to prepare logistics support analysis reports in accord with the wrong military standards.

NAVAIR's discussions letter (Area of Concern No. 5) stated:

"Elaborate on the Integrated Logistics Support (ILS) portion of your proposal including areas of risk and risk reductions. What ILS test will be performed in support of the APX-100 maintenance plan? What standards will be used to prepare Logistics Support (LSA) and LSA report? Please elaborate."

The Navy reports that, in response, Stewart-Warner demonstrated that it would prepare LSA reports to the correct military standards and that it would perform only the required work (i.e., revise the government-furnished maintenance plan). Accordingly, Stewart-Warner's rating on the Design Interface/LSA Program subfactor was upgraded to satisfactory (75 percent).

The Navy also reports that there was a typographical error in the discussion question--it should have asked what ILS "tasks," rather than "test," Stewart-Warner would perform. The agency further reports that, as the evaluators identified this error prior to their final evaluation, NAVAIR upgraded Stewart-Warner's score for the ILS Planning subfactor to highly satisfactory. We note that the record also reflects that Stewart-Warner's rating for the ILS Warranty subfactor increased from marginal (57 percent) for the initial proposal to a rating of satisfactory (76 percent) for the BAFO as a result of the site visit and discussions.

The third example relates to the Quality Assurance evaluation factor. Among other things, the RFP required offerors to provide a matrix of quality programs indicating which areas were fully developed and which areas were yet to be developed in compliance with certain military standards, including WS-6536E High Reliability Soldering.

Although Stewart-Warner's initial proposal was evaluated as satisfactory on all four subfactors under the Quality Assurance evaluation factor, the discussions letter directed Stewart-Warner to an area of the initial proposal the agency viewed as a weakness (Area of Concern No. 1) and stated, "Provide proof of Navy approval of your WS-6536 lesson plan."

Stewart-Warner responded by providing documentation showing that its lesson plan for WS-6536E had been approved by the Navy. The Navy reports that it was satisfied by the documentation provided and upgraded Stewart-Warner's rating on the quality assurance programs evaluation subfactor.

One of the basic functions of discussions is to disclose deficiencies. In evaluating whether there has been sufficient disclosure of deficiencies, the focus is not on whether the agency described deficiencies in such intimate detail that there could be no doubt as to their identification and nature, but whether the agency imparted enough information to the offeror to afford it a fair and reasonable opportunity in the context of the procurement to identify and correct deficiencies in its proposal. See Eagan, McAllister Assocs., Inc., B-231983, Oct. 28, 1988, 88-2 CPD ¶ 405. The degree of specificity necessary in disclosing deficiencies to meet the requirement for meaningful discussions is not a constant, but rather, varies according to the degree of specificity of the solicitation. Id. Therefore, where a solicitation sets forth in great detail what is required of an offeror, discussions may be more general and still give an offeror a fair and reasonable opportunity to identify and correct deficiencies. Id.

In our view, the present record supports a finding that the Navy held meaningful discussions with Stewart-Warner. While in some instances the written discussions were rather general in nature, there is nothing inherently improper in the agency's use of general statements as long as the discussions were designed to guide Stewart-Warner to those portions of its proposal that required clarification or modification. As the above examples show, the Navy's written discussions reasonably should have led Stewart-Warner into the areas of its proposal that were in need of revision or amplification. This is particularly so because

the present RFP was very specific in describing exactly what offerors were expected to provide in their proposals in each area of the statement of work. See Joule Technical Corp., B-197249, Sept. 30, 1980, 80-2 CPD ¶ 231. Moreover, as the above examples show, in some cases the discussions were very specific as to what Stewart-Warner needed to provide in order to improve its proposal (e.g., the discussion concerning Navy approval of a WS-6536 lesson plan).

The evaluators apparently assessed Stewart-Warner's initial proposal as having few technical deficiencies, since the proposal received a rating of satisfactory on every evaluation factor except Logistics. We think it is significant that three of the seven Areas of Concern set forth in the discussions letter pointed the protester to perceived weaknesses in its initial proposal in the Logistics area. Based upon the examination of Stewart-Warner's facility and the firm's response to the discussions letter, Stewart-Warner's BAFO improved in the Logistics area considerably. In fact, the record shows the protester's BAFO was rated overall as satisfactory (71.25 percent) on Logistics, whereas the initial evaluation resulted in a marginal (61.75 percent) rating for this factor. Evidently, NAVAIR's discussion imparted sufficient information for Stewart-Warner to improve its proposal in what had been the only area of its initial proposal that was rated less than satisfactory.

Similarly, the Navy evaluated Stewart-Warner's BAFO as having improved in five of the seven areas that were the subject of the discussions letter. In the other two Areas of Concern (related to Subcontractor/Vendor Selection and Depot Repair Support), the record shows that the Navy did, in fact, tell the protester in general terms that its initial proposal was in need of amplification in these areas and the protester did respond to the discussions inquiry. However, the evaluators apparently were not satisfied with the additional information provided by the protester, at least not to the degree that they would upgrade their evaluation score.

In sum, we conclude that the agency did offer Stewart-Warner a fair and reasonable opportunity to identify and revise any weaknesses in its proposal. The information provided to Stewart-Warner in the discussions letter obviously led the firm into the areas of its proposal requiring correction or clarification as evidenced by the improved evaluation scores Stewart-Warner's BAFO received in most of the discussions areas. Regarding the two subfactors in which Stewart-Warner did not improve, it appears that the agency generally led Stewart-Warner to the area needing improvement, but the

agency and the protester simply do not agree as to whether the revisions merited an improved evaluation score.

Accordingly, we conclude that the discussions between NAVAIR and Stewart-Warner were meaningful.

Upon receipt of the agency's report on its initial protest, Stewart-Warner raised a second issue relating to the manner in which NAVAIR evaluated price. The RFP did not state exactly what option quantities would be purchased by the agency; instead, the RFP required offers to be based upon "step-ladder" option quantities that could be ordered by the agency in future years. For example, on line item 0100 for transponders to be provided during fiscal year 1989, offerors were required to state their prices for quantities of 1-50 units, 51-250 units, 251-500 units, and 501-750 units. The protester points out that Allied-Signal offered uniform prices regardless of the quantity ordered, while Stewart-Warner proposed lower unit prices for larger quantities. Stewart-Warner charges that NAVAIR evaluated price on the basis of low quantities of options being ordered in order to make Allied-Signal's evaluated price total more competitive with Stewart-Warner's and UTE's evaluated price total.

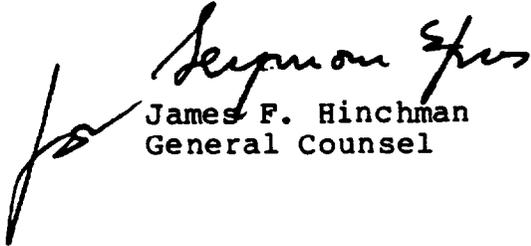
To the extent that Stewart-Warner is alleging that NAVAIR officials acted unfairly and in bad faith by adjusting the most likely option quantities after examining the price proposals in order to make Allied-Signal's proposal more price competitive,^{3/} the argument is without merit. In order to prove bad faith on the part of procurement officials, the protester would have to show that their actions were done with the specific intent to harm the protester. See Techplan Corp., 68 Comp. Gen. 12 (1989), 89-1 CPD ¶ 452; Seaward International, Inc., 66 Comp. Gen. 77 (1986), 86-2 CPD ¶ 507.

Here, there is no evidence of any such intent. The record shows that the most probable option quantities were based upon projections of the needs of the Navy, Army, Air Force and Coast Guard. The record also reveals that the most likely option quantities used for evaluation of proposals were, in fact, compiled no later than November 29, 1988, well before the December 29 closing date by which offerors were required to submit their initial proposals. Thus, at the time the most likely option quantities were calculated,

^{3/} We note that Allied-Signal's total price was still considerably higher than Stewart-Warner's total price even as evaluated by NAVAIR.

contracting officials did not know with certainty what firms would submit proposals nor did contracting officials have any knowledge of how potential offerors would structure their price proposals. Accordingly, we find no evidence that NAVAIR officials acted in bad faith in determining what option quantities would be used to evaluate offerors' prices.

The protest is denied.

A handwritten signature in cursive script, appearing to read "James F. Hinchman".

James F. Hinchman
General Counsel