



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Booz, Allen & Hamilton Inc.
File: B-236476
Date: December 4, 1989

DIGEST

1. Procuring agency's communications with offeror concerning required small and disadvantaged business subcontracting plan relate to offeror's responsibility and do not constitute discussions or require that revised proposals be solicited from all offerors.
2. Agency is not required to conduct a second round of best and final offers (BAFOs) where a substitution is made for one key employee who resigned from the awardee's firm after BAFOs but before award, and where the contracting activity reviewed the resume of the substituted employee and determined it to be technically acceptable.
3. It is not inherently improper for an awardee to recruit and hire personnel employed by the prior incumbent contractor.
4. A challenge to the determination that the awardee was the lowest priced offeror, not raised until 2 months after the award was made, is untimely where the protester has not shown why it earlier did not know, or should not have known, of the issue; General Accounting Office Bid Protest Regulations do not contemplate the unwarranted piecemeal presentation or development of protest issues.

DECISION

Booz, Allen & Hamilton Inc. protests the award of a contract to Honeywell Federal Systems, Inc., under request for proposals (RFP) No. F05603-88-R-0010, issued by the Department of the Air Force for operation and maintenance of the Air Force Space Command's Management Information System, SPACENET. Booz, Allen--the incumbent contractor--principally complains that the Air Force improperly reopened negotiations only with Honeywell after the receipt of best and final offers (BAFOs). We deny the protest in part and dismiss it in part.

The RFP, issued December 30, 1988, provides for a phase-in period during September 1989, a basic period for 1 year thereafter, and then three 1-year priced options. Under the RFP, firm fixed prices were to be offered for phase-in, phase-out, basic operation and maintenance of the system, data, and training. In addition, offerors were to propose hourly rates for various categories of employees whose services might be needed on a requirements basis. Finally, there were some relatively minor cost-reimbursable items (travel, certain supplies and maintenance) for which the Air Force entered its own estimates in the RFP schedule which were uniformly applied to all offerors. The RFP provided that award would be made to the responsible offeror submitting a technically acceptable offer and the lowest evaluated price.

After proposals were received on April 24, and were evaluated by a technical proposal evaluation board, deficiency reports (DRs) and clarification requests (CRs) were issued on May 18 to those offerors whose proposals were susceptible of being made acceptable. Following the receipt of the responses to the DRs and CRs oral discussions were conducted. BAFOs were requested from the offerors on June 28 and were submitted by July 12. On July 24, Honeywell, the apparent low offeror, was asked to, and did, provide revised technical/management pages to incorporate their previously-submitted DR and CR responses into their proposal. At that time Honeywell also submitted the new resume of a different individual for the position of Senior Systems Analyst. The contract was awarded to Honeywell on August 4. Booz, Allen filed a protest in our Office on August 8.

Booz, Allen generally alleges that the Air Force improperly reopened negotiations only with Honeywell, in that the Air Force permitted Honeywell, after the close of negotiations: (1) to correct its deficient small and disadvantaged business subcontracting plan and (2) to submit major key personnel substitutions.

The Air Force acknowledges that it contacted Honeywell concerning elements of its subcontracting plan after BAFOs were submitted; it notes, however, that none of the offerors complied with the goals set out in the solicitation. The agency states that it did not address this issue during discussions because it was necessary only for the successful offeror to correct its subcontracting plan.

Once an agency holds discussions with any offeror, it must do so with all offerors in the competitive range. Federal

Acquisition Regulation (FAR) § 15.610(b) (FAC 84-16). However, the request for or providing of information that relates to offeror responsibility, rather than proposal acceptability, does not constitute improper discussions or require that revised proposals be solicited from all offerors. A.B. Dick Co., B-233142, Jan. 31, 1989, 89-1 CPD ¶ 106. Because the requirement for an acceptable small and disadvantaged business subcontracting plan generally is applicable to the "apparently successful offeror," FAR § 19.702(a)(1) (FAC 84-50), we have viewed this requirement as relating to an offeror's responsibility. See A.B. Dick Co., B-233142, supra; Southeastern Center for Electrical Eng'g Educ., B-230692, July 6, 1988, 88-2 CPD ¶ 13. Since communications relating to an offeror's responsibility do not constitute discussions it follows that an agency request for an updated or revised subcontracting plan does not constitute discussions or require that revised proposals be solicited from all offerors.

Booz, Allen next contends that the awardee improperly made major key employee substitutions after submitting its BAFO, which was evaluated based on the qualifications of the employees named in the BAFO.

The record shows that Honeywell did not make major key employee substitutions, but, when its senior systems analyst left the firm after BAFOs had been submitted, informed the agency of that departure and provided the resume of a replacement individual for that one position, which person was found technically acceptable.

We think Honeywell acted properly in advising the contracting agency of this substitution before award was made, rather than allowing the agency to continue to believe that the individual still was with the firm when in fact he was not. See Omni Analysis, 68 Comp. Gen. 300 (1989), 89-1 CPD ¶ 239. In addition, since the contract was to be awarded to the lowest priced, technically acceptable offeror and technical acceptability was rated on a pass/fail basis, the substitution of a resume of another, adequately qualified individual could not improve Honeywell's chance for award, because it was already technically acceptable.

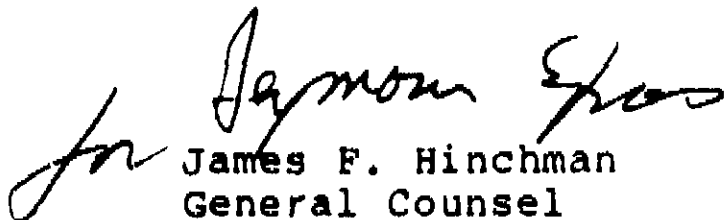
Booz, Allen also alleges that Honeywell has contacted Booz, Allen employees and that this demonstrates that Honeywell lacks the requisite qualified personnel to perform the contract. The solicitation requires the contractor to provide personnel possessing certain minimum education and experience qualifications. Offerors were required to submit resumes for evaluation as part of their technical/management proposals. Honeywell's proposal was determined to be

technically acceptable, and we have no reason to conclude that its key personnel were not adequately qualified. Moreover, to the extent that the protester argues that it was improper for Honeywell to recruit Booz, Allen's employees, we have recognized that it is neither unusual, nor inherently improper for an awardee to recruit and hire personnel employed by an incumbent contractor. Applications Research Corp., B-230097, May 25, 1988, 88-1 CPD ¶ 499.

In its comments in response to the agency report, Booz, Allen for the first time alleges that "if its proposal had been evaluated under the current [Defense Contract Audit Agency]-approved indirect rates and bidding strategies, Booz, Allen would have been the low bidder." The protester provides no further explanation of this basis for protest, which has no immediately apparent correlation to the record before us. In any event, we find this issue to be untimely raised. Our Bid Protest Regulations require that a protest be filed within 10 working days after the basis of the protest is known or should have been known. 4 C.F.R. § 21.(a)(2) (1989). Where a protester initially files a timely protest and later supplements it with new and independent grounds of protest, the latter raised allegations must independently satisfy the timeliness requirements. Joseph L. De Clerk & Ass'n, Inc.--Request for Reconsideration, B-233166.3, Apr. 6, 1989, 89-1 CPD ¶ 357. Our Regulations do not contemplate the unwarranted piecemeal presentation or development of protest issues. Id.

Here, award was made to Honeywell as the lowest priced, technically acceptable offeror on August 4, and Booz, Allen's protest was filed within a few days thereafter. Nevertheless, Booz, Allen did not question the conclusion that Honeywell was the lowest priced offeror until 2 months later. In the absence of any explanation as to why Booz, Allen did not know, or should not have known, of this issue earlier, the protest is dismissed as to this issue.

The protest is denied in part and dismissed in part.


James F. Hinchman
General Counsel