



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Advanced Seal Technology, Inc.

File: B-239191

Date: July 24, 1990

Elizabeth A. Kaiser, Esq., Saul, Ewing, Remick & Saul, for the protester.

Robert L. Mercadante, Esq., Defense Industrial Supply Center, Defense Logistics Agency, for the agency.

Joel R. Feidelman, Esq., Fried, Frank, Harris, Shriver & Jacobson, for John Crane, Inc., an interested party.

Richard P. Burkard, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest is denied where protester's allegations that agency conducted improper negotiations with one offeror and disclosed protester's price are unsupported by any evidence in the record.

DECISION

Advanced Seal Technology, Inc. protests the award of a contract to John Crane, Inc. under request for proposals DLA500-90-R-0113 (RFP 0113), issued by the Defense Industrial Supply Center (DISC) for pump packing. Advanced Seal alleges that agency personnel conducted improper negotiations with Crane during which the agency disclosed competitors' prices.

We deny the protest since the protester provides no evidence to support its assertions.

Prior to the issuance of RFP 0113, the agency issued RFP DLA500-89-R-0406 (RFP 0406) for the same product, described as NSN 5330-00-400-3514. The RFP also listed two preapproved products: Alco Products, Inc., part number 2250035 and Crane Packing Co., part number CFSP30015. Advanced Seal, which offered an alternate product, submitted the low priced offer of the six received. The contract specialist referred Advanced Seal's offer to the DISC Directorate of Technical Operations and Directorate of Quality Assurance to determine whether the Advanced Seal product would be

049074/141896

technically acceptable. The agency states that the engineering support activity began the process of evaluating Advanced Seal's product but could not project a completion date. The support activity therefore recommended that the procurement be made from existing, preapproved sources. The only other source in the competitive range, however, allowed its offer to expire. By letter dated December 12, 1989, the agency notified Advanced Seal that RFP 0406 would be canceled and that a new solicitation would be issued for the requirement.

On December 15, 1989, the contract specialist telephoned a representative of Crane to inquire why Crane had not submitted a proposal in response to RFP 0406. The representative replied that Crane probably had not received RFP 0406.

RFP 0113 was issued by DISC on December 29, 1989; closing date for receipt of proposals was January 29, 1990. The agency states that RFP 0113 was provided to 10 sources, including Crane, and the procurement was synopsized in the Commerce Business Daily. On January 26, the contract specialist again telephoned the Crane representative and asked whether Crane intended to submit an offer under the RFP. The representative replied that Crane intended to submit an offer. Five offers were received prior to the closing date; Crane submitted the low priced offer. The agency awarded the contract to Crane without discussions on February 16.

The protester alleges that it appears that the contracting officer negotiated with Crane for a reduced price. It asserts that the price offered by Crane is lower than the prices for which Crane has supplied the same or similar products in the past and that the agency had conducted improper negotiations with Crane in the past. Finally, the protester argues that the agency improperly conducted "discussions" with Crane to the exclusion of other offerors.

In response to these allegations, the agency has provided our Office with affidavits from the chief of the contracting section and the contract specialist stating that at no time did they or any other DISC employee disclose the price or relative standing of any offeror under the RFP. The agency also has provided copies of the contract specialist's telephone log for the telephone calls in question which support the contract specialist's affidavit. Moreover, the Crane representative who was contacted by the agency states in an affidavit that neither he nor any other employee of

Crane engaged in discussions with any representative of DISC or received any price information from DISC.

We will not sustain a protest against alleged improper price disclosures, bias or other wrongdoing by a contracting agency based upon speculation only. National Technologies Assocs., Inc.; JWK International Corp., B-229831.2, B-229831.3, May 13, 1988, 88-1 CPD ¶ 453; Illumination Control Sys., Inc., B-237196, Dec. 12, 1989, 89-2 CPD ¶ 546. Here, the protester has not provided any evidence to show that prices were disclosed but merely asserts that it appears that prices were disclosed. As stated, the agency contracting personnel involved in the procurement and the representative of Crane who was contacted by the agency have provided sworn affidavits denying the protester's allegations.

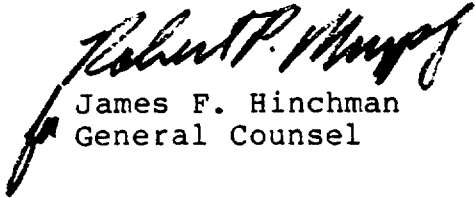
With respect to the alleged improper discussions, the record shows that the agency awarded the contract without discussions. There is no evidence in the record that the agency communicated with Crane after receipt of Crane's initial offer.

While Crane's price on the resolicitation was \$25 per unit lower than the protester's and lower than previous offers Crane submitted, in the absence of any probative evidence, we are not prepared to conclude, as the protester is willing to do, that this resulted from improper government conduct, rather than competition or a leak from within the protester's operations. In this connection, the protester advises that it believes a former employee now working for the second low bidder, who also underbid the protester, leaked pricing information to that firm.

Finally, in its comments to the agency's report, Advanced Seal argues that the agency improperly "determined" that Crane was a responsible offeror prior to Crane's submission of an offer. This argument is based on an affidavit contained in the agency's report in which the contract specialist states that the reason he contacted Crane was to ensure that "one responsible offer was received." We do not find that this statement constitutes a responsibility determination. The contracting officer, not the contract specialist, is charged under Federal Acquisition Regulation § 9.103(b) (FAC 84-18) with making the responsibility determination. Thus, assuming the statement is taken literally, that it was the contract specialist's opinion that Crane would be considered a responsible offeror, it is merely an opinion which has no binding effect on the agency. We do not find that the contracting specialist's statement concerning responsibility provides any basis to disturb the

award. The contracting officer ultimately did determine that Crane was a responsible offeror since the award of a government contract constitutes the contracting officer's affirmative determination of responsibility. See The Pratt & Whitney Co., Inc.; Onsrud Machine Corporation--Recon., B-232190.3, B-232190.4, Sept. 27, 1989, 89-2 CPD ¶ 275.

The protest is denied.



James F. Hinchman
General Counsel