



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Veco/Western Alaska Construction

File: B-243978

Date: September 9, 1991

David R. Trachtenberg, Esq., and James F. Nagle, Esq., Oles, Morrison & Rinker, for the protester.
Gregory H. Petkoff, Esq., and Eugene J. Kirschbaum, Esq., Department of the Air Force, for the agency.
Paula A. Williams, Esq., and Paul I. Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that the conduct of a limited procurement which resulted in the award of an interim contract provided an unfair advantage to the incumbent with respect to the subsequent award of a contract under full and open competition for the same services is denied where the record indicates that no inappropriate information had been disclosed, nor had any improper competitive advantage resulted from the interim award.
2. Agency conducted meaningful discussions where it reasonably led the protester into areas of its proposal that required amplification or clarification. Agency is not required to request submission of information specifically requested in the RFP which should have been included in protester's initial proposal.

DECISION

Veco/Western Alaska Construction, a joint venture, protests the award of a contract to Brown & Root Services Corporation under request for proposals (RFP) No. F65501-90-R0025, issued by the Department of the Air Force for its simplified acquisition of base engineering requirements (SABER) at Elmendorf Air Force Base, Anchorage, Alaska. The protester alleges that Brown & Root, as the incumbent on an interim SABER contract, was afforded preferential treatment by the agency, and that Veco/Western was not given an opportunity to compete on an equal footing.

We deny the protest.

BACKGROUND

The RFP was issued on December 10, 1990, under the streamlined source selection procedures contained in Air Force Regulation (AFR) 70-30. The RFP contemplated award of a fixed-price requirements contract for a base period of 1 year and four 1-year options. The RFP specified that proposals would be evaluated on the basis of price and three major technical evaluation areas listed in descending order of importance as: project management ability, company experience, and subcontractor support capability. Price proposals were to be evaluated by using the offerors proposed coefficient for work performed during standard working hours (multiplied by a percentage factor) added to the proposed coefficient for work performed during non-standard working hours (multiplied by a percentage factor) to determine a weighted coefficient. The RFP stated that price was of lesser importance than technical considerations in terms of determining the most advantageous proposal to the government.

The Air Force received 11 offers by the January 24, 1991, closing date. A source selection evaluation team (SSET), evaluated the proposals and found all proposals within the competitive range. The SSET used the color/adjectival evaluation rating scheme contained in AFR 70-30 under which proposals are rated as blue/exceptional, green/acceptable, yellow/marginal or red/unacceptable. In addition, each proposal was rated as presenting low, medium, or high risk. Veco/Western's initial proposal was rated second lowest technically and was given a moderate risk assessment; Brown & Root's initial proposal was one of the top three proposals and was given a low-risk assessment. Brown & Root's proposal had the lowest evaluated price and Veco/Western's had the second lowest evaluated price.

On March 6, discussion letters were sent to all offerors forwarding clarification requests (CRs) and deficiency reports (DRs) in accordance with AFR 70-30 § 25e. The discussion letters specified that responses to the CRs were due by March 18 and stated that "[if] you desire to have face-to-face discussions regarding the CRs and DRs you can make an appointment by notifying the Contracting Officer before 4:00[p.m.] on 12 Mar 91, at which time an appointment will be scheduled." Only three offerors, including Brown & Root, requested appointments to discuss their responses. Face-to-face discussions were held with these three offerors during the week of March 18-22. Veco/Western did not request an appointment to discuss the CRs but initiated telephonic discussions with the contracting officer concerning the substandard performance on other contracts which were

identified in its CRs. By letter dated March 29, the agency requested best and final offers (BAFOs) which were due by April 9, 1/ The evaluation of BAFOs resulted in an improvement in Veco/Western's technical rating in the area of project management ability, but its relative technical standing remained the same. Veco/Western had the lowest evaluated BAFO prices. Brown & Root's BAFO was the second highest technically rated proposal and its evaluated prices were the second lowest.

The SSET prepared a proposal analysis report and a cost comparison and value analysis package which were presented to the source selection authority (SSA). The SSA reviewed the reports and concluded, based on an integrated assessment of the technical considerations and evaluated prices, that Brown & Root's proposal offered the best value and was the most advantageous to the government. On May 1, the SSA issued his source selection decision and award was made to Brown & Root on May 3. This protest was filed with our Office on May 10.

1/ During this same period, the agency conducted a limited competition for an interim SABER contract on the basis of unusual and compelling urgency, an exception to the requirement for full and open competition under the Competition in Contracting Act of 1984. 10 U.S.C. § 2304(c)(2) (1988). A Justification and Approval (J&A) for using other than full and open competitive procedures was approved by the head of the contracting activity on April 18.

In the J&A, the contracting officer certified that the services were urgently needed to meet the operational deadlines to accomplish a beddown of F015E squadron fighters at Elmendorf AFB. Because of these immediate requirements, the competition was limited to two local contractors with prior SABER work experience, Brown & Root and the prior incumbent on the old SABER contract. On April 12, the Air Force awarded Brown & Root the interim SABER contract for a duration of 1 year or 30 days after the award of the new SABER contract. Veco/Western has a suit pending before the United States District Court, District of Alaska, challenging the propriety of this award, and the court has not indicated any interest in a decision from our Office in the matter. Accordingly, this decision will not address any issues concerning the propriety of the interim award. See Adams & Assocs. Travel Inc. et al., B-216673 et al., Feb. 1, 1985, 85-1 CPD ¶ 124.

PROTEST

Veco/Western contends that the award selection was flawed because the agency allegedly held discussions with Brown & Root at the time the interim SABER contract was negotiated and that this resulted in an unfair competitive advantage. Veco/Western also alleged for the first time in its comments filed on June 25 in response to the agency report, that the agency failed to conduct meaningful discussions with the firm; and that the procurement officials exhibited bias in favor of Brown & Root by affording it more meaningful, face-to-face discussions.

INTERESTED PARTY STANDING

The Air Force requests that we dismiss the protest, arguing that since the protester was not one of the three highest evaluated offerors, Veco/Western is not an "interested party" to maintain the protest. Under the Competition in Contracting Act of 1984, 31 U.S.C. § 3551(2) (1988), and our Bid Protest Regulations, 4 C.F.R. § 21.0(a) (1991), a protest may be filed only by an "interested party," defined as an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a contract or by the failure to award a contract. Determining whether a party is sufficiently interested involves consideration of a party's status vis a vis the procurement, Seals Servs., Inc., B-235523, June 20, 1989, 89-1 CPD ¶ 581, and the nature of the issues protested. Free State Reporting, Inc. et al., B-225531 et al., Jan. 13, 1987, 87-1 CPD ¶ 54. Here, the protester has alleged that Brown & Root received preferential treatment and that Veco/Western was deprived of a fair opportunity to compete. Since if the protest were sustained, the remedy would be to request another round of BAFOs under which the protester could participate, Veco/Western is an interested party.

UNFAIR COMPETITIVE ADVANTAGE

The Air Force points out that Veco/Western's allegation that the award to Brown & Root was tainted by discussions held between the Air Force and Brown & Root during negotiations on the interim SABER contract rests on factually inaccurate assumptions. In fact, because the award of the interim contract was based on price, no discussions--written or oral--were conducted with either of the two firms solicited. In addition, the procuring contracting officer for the interim contract was not assigned to the SSET for the new SABER solicitation nor was she involved at any time in the procurement process for those services. Accordingly, the agency argues that Brown & Root could not have obtained the alleged improper competitive advantage.

The record includes various affidavits submitted to our Office by the contracting officers for the two acquisitions, which substantiate the Air Force's position that the two acquisitions were conducted independent of each other and demonstrate that Brown & Root did not gain any improper access to competitively useful information in conjunction with the award of the interim contract. While Veco/Western also objects to the possible involvement in Brown & Root's experience rating as a result of receiving the interim contract award, we note that Brown & Root did not gain any relevant experience because of its incumbency since the BAFO at issue was received by April 9 and the interim contract was not awarded to Brown & Root until April 12. Accordingly, the allegations pertaining to the award of the interim contract provide no basis to question the propriety of the subsequent award of the follow-on SABER contract.

CONDUCT OF DISCUSSIONS

Veco/Western argues that the Air Force failed to conduct meaningful discussions with Veco/Western since the agency did not disclose that the firm had understaffed its key management positions and did not request information from the protester regarding its work experience on projects similar to SABER.

In order for discussions in a negotiated procurement to be meaningful, contract officials must advise offerors of deficiencies in their proposals and afford offerors an opportunity to revise their proposals to satisfy the government's requirements. Federal Acquisition Regulation (FAR) § 15.610; Elsinore Aerospace Servs., Inc., B-239672.6, Apr. 12, 1991, 91-1 CPD ¶ 368. However, where a proposal is considered acceptable and within the competitive range, the agency is not obligated to discuss every aspect of the proposal that receives less than the maximum possible rating. Space Servs. Inc. of Am. et al., B-237986 et al., Apr. 16, 1990, 90-1 CPD ¶ 392. Agencies are only required to reasonably lead offerors into those areas of their proposals which are of concern to the evaluators and which require amplification or correction. Jaycor, B-240029.2 et al., Oct. 31, 1990, 90-2 CPD ¶ 354.

Here, the SSET had determined that Veco/Western's initial technical proposal was acceptable but contained inadequate information that required clarification or a more detailed explanation. In the four CRs which were sent to Veco/Western, it was asked to amplify and clarify several areas of concern to the evaluators: how Veco/Western's proposed design/estimating staff could accomplish the anticipated workload; how would its quality control be increased to meet all the requirements in the quality control

plan; how would conflicts of interest or coercion by the project manager be prevented; what Veco/Western had done or would do to correct prior unsatisfactory work on other contracts; and what was the relationship between Veco/Western and the subcontractors listed in its proposal.

With regard to Veco/Western's proposed staffing of key management positions, the discussions were meaningful because the agency led the protester into this area of concern by requesting clarification of Veco/Western's design/estimating staff, a subfactor of the RFP's project management ability provision. The record shows that the protester did respond to this concern in its BAFO and that its technical rating in the area of project management ability improved as a result.

With respect to the allegation that the Air Force should have asked Veco/Western during discussions for information about its work experience on projects comparable to SABER, section L, paragraph 27(2) of the RFP, which was made a part of the evaluation criteria through amendment No. 001, required Veco/Western to furnish in its proposal relevant experience data for work performed which is comparable to the SABER requirements of this solicitation. Where information is specifically requested in a solicitation, contracting agencies are not required to remind an offeror during discussions to submit that information with its BAFO. Huff & Huff Serv. Corp., B-235419, July 17, 1989, 89-2 CPD ¶ 55. Moreover, to the extent that the agency downgraded Veco/Western for its lack of actual experience, discussions were not required because such experience cannot be improved as the result of discussions. Cosmos Engineers, Inc., B-220000.3, Feb. 24, 1986, 86-1 CPD ¶ 186. Consequently, the Air Force did not violate its obligation to conduct meaningful discussions by not referencing the protester's apparent lack of experience in managing multi-discipline/multi-project construction efforts. Huff & Huff Serv. Corp., supra.

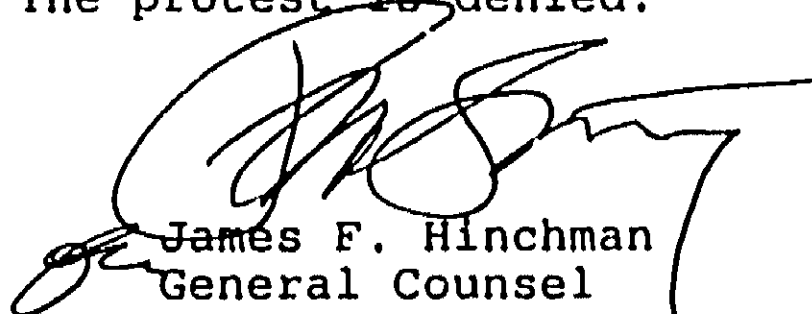
Veco/Western also objects to the agency's use of CRs, and the decision to hold face-to-face discussions on the CRs. The protester argues that the agency's use of CRs was misleading and that the CRs were vague and incomplete. In support of this assertion, Veco/Western notes that the FAR defines a clarification as a communication with an offeror for the sole purpose of eliminating minor irregularities, or apparent clerical mistakes in the proposal. FAR § 15.601.

Here, written discussions were initiated pursuant to Air Force Regulation 70-30, § 25.e which states that CRs, when issued after the competitive range determination, constitute discussions if data furnished in a proposal is inadequate or the proposal contains contradictory statements and the offeror is given the opportunity to revise or modify its proposal. This

regulation is consistent with FAR § 15.601 which states that discussions occur when an offeror is given an opportunity to revise its initial offer. See Thermal Reduction Co., B-236724, Dec. 7, 1989, 89-2 CPD ¶ 527. We therefore fail to see how Veco/Western was misled by the use of the term CRs since, as the protester concedes, and the record confirms, the CRs issued to Veco/Western addressed areas in the firm's proposal that were not simply minor irregularities, informalities or apparent clerical mistakes, and the protester was given an opportunity to submit a BAFO revising its initial offer.

Next, Veco/Western alleges that the Air Force knowingly misled the firm into discounting the importance of face-to-face discussions because the contracting officer allegedly stated that no member of the technical evaluation team would be present during such discussions. The protester asserts that Brown & Root was not similarly misled and the Air Force conducted meaningful discussions with Brown & Root. The contracting officer specifically denies making the statement in question to Veco/Western. The record indicates that all offerors were, in fact, invited to participate in face-to-face discussions regarding their CRs. Veco/Western elected to have telephone discussions rather than face-to-face discussions, while Brown & Root and two other offerors were the only firms who requested face-to-face discussions, which discussions were held with Air Force personnel including one member of the technical evaluation team. There is nothing in the record which suggests that the Air Force "lulled" Veco/Western into thinking that face-to-face discussions would be "futile," nor is there any evidence that the presence of a member of the technical evaluation team at the discussions with 3 of the 11 offerors had any improper impact on either the nature of the discussions, or on the technical evaluation.

The protest is denied.


James F. Hinchman
General Counsel