

Formica



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: System Planning Corporation

File: B-244697.4

Date: June 15, 1992

Charles F. Hengels for the protester.
Kenneth B. Weckstein, Esq., Epstein Becker & Green, P.C.,
for Thomson Financial Networks, Inc., an interested party.
George Conril Brown, Esq., Richard M. Humes, Esq., and Eric
Rosenberg, Esq., Securities and Exchange Commission, for the
agency.
John Formica, Esq., and James A. Spangenberg, Esq., Office
of the General Counsel, GAO, participated in the preparation
of the decision.

DIGEST

The General Accounting Office (GAO) will not object to
corrective action proposed by the agency in response to a
GAO decision, sustaining a protest and recommending the
reopening of discussions, where the agency limits the
information offerors may submit and restricts the scope of
revisions offerors may make to their proposals in response
to the discussions; such action will rectify the informa-
tional deficiency, on which the agency's initial evaluation
was found flawed, and will do so without raising the
possibility of technical leveling or transfusion.

DECISION

System Planning Corporation protests the determination of
the United States Securities and Exchange Commission (SEC)
under request for proposals (RFP) No. SECHQ1-90-R-0014,
issued for the operation of the SEC's Lost and Stolen
Securities Program,¹ to limit discussions to information

¹The program is authorized by the Securities Exchange Act of
1934, as amended, to curb organized crime's trafficking in
stolen and counterfeit securities. See 121 Cong. Rec. 6,185
(1975). The more than 23,000 participating entities, finan-
cial institutions (brokerage houses and banks) and others,
use the program to (1) report the theft and loss of
negotiable securities (stocks and bonds), and (2) to inquire
as to the true ownership of securities coming into their
possession. The program contractor maintains a computer
(continued...)

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regarding the offerors' financial stability, and the SEC's failure to request best and final offers (BAFO).

We deny the protest.

The RFP, issued on August 31, 1990, solicited for a no-cost-to-the-government contract² for 1 year with 4 option years. The solicitation provided for the evaluation of proposals in three areas--technical, management, and business. It required offerors to provide technical and management proposals, and "[i]nclude audited financial statements" to facilitate the agency's evaluation of the offerors' proposals under the management evaluation subfactor, "[f]inancial stability of the company."

The SEC received proposals from System Planning Corporation, the Securities Information Center (SIC) division of Thomson Financial Networks, Inc., and Cavalier Computing by the RFP's March 15, 1991, closing date. All three proposals were included in the competitive range, discussions were held, BAFOs submitted, and award made to SIC.

System Planning Corporation and Cavalier Computing filed protests with our Office on July 18 and July 3, respectively, objecting to the SEC's evaluation of the protesters' and awardee's proposals and the selection of SIC for award.

In Cavalier Computing; Sys. Planning Corp., 71 Comp. Gen. 71 (1991), 91-2 CPD ¶ 446, we determined that the protesters were not accorded the same treatment that SIC received vis-a-vis the evaluation of the offerors' "financial stability." In this regard, we found that the agency had effectively waived for SIC the requirement that it submit an "audited financial statement" for evaluation purposes while downgrading Cavalier's proposal because it did not include an audited financial statement and downgrading System Planning

¹(...continued)

data base of lost, counterfeit, and stolen securities based on financial institution reports and inquiries. When an inquiry matches the identifying number of a previously reported lost security (this is referred to as a "hit"), the program contractor provides the inquirer with the identity of the entity that reported the particular security as lost. The "hit" may also be reported to the Federal Bureau of Investigation.

²The contract is similar to a concession contract in that the contractor provides services to the public at no cost to the government. The contractor charges the public user fees for program services that reimburse the contractor's start-up and operating costs.

Corporation's proposal on the basis of the information contained in its audited financial statement. We sustained the protests on the basis of our conclusion that this unfair and unequal treatment in the evaluation process affected the selection decision. We recommended that the agency reevaluate the proposals in light of the RFP requirements to determine what information was necessary to satisfy its concerns and fairly evaluate proposals, and to conduct discussions and request new BAFOs if necessary. The numerous other grounds of protest asserted by Cavalier and System Planning Corporation relating to the agency's evaluation of the proposals were either dismissed as untimely or denied as lacking merit.

In response to our decision and recommendation, the agency requested in late January 1992 that offerors submit comprehensive information concerning their financial stability for evaluation under the RFP's financial stability evaluation subfactor. The agency advised offerors that because their cost and technical approaches to the RFP had been disclosed during the bid protest to our Office, creating the "danger of impermissible cost and technical leveling if offerors [were] permitted to revise their proposals in areas other than that identified by the [General Accounting Office] GAO as requiring corrective action," the submission of information unrelated to their financial stability or revisions to other areas of their proposals was "not desired or permitted."

System Planning Corporation protests that the SEC's request that offerors submit information concerning only their financial stability improperly restricts the scope of revisions that offerors should be able to make to their proposals. The protester argues that because the agency has effectively reopened discussions, it must permit offerors to revise any aspect of their proposals they desire. System Planning Corporation further argues that the agency's restriction on the information offerors are permitted to submit is inappropriate because the offerors have not been provided with an opportunity to update their proposals since the submission of BAFOs.

The protester is correct in its assertion that as a general rule offerors in response to discussions may revise any aspect of their proposals they see fit--including portions of their proposals which were not the subject of discussions. American Nucleonics Corp., B-193546, Mar. 22, 1979, 79-1 CPD ¶ 197. In appropriate circumstances, an agency may decide to limit the revisions offerors could make to their proposals after the conduct of discussions. See, e.g., Metron Corp., B-227014, June 29, 1987, 87-1 CPD ¶ 642 (agency may request BAFOs on the basis of cost and price revisions alone where the agency has determined that the

initial technical proposals do not contain significant uncertainties or deficiencies), aff'd on other grounds, Metron Corp.--Recon., B-227014.2, Sept. 25, 1987, 87-2 CPD ¶ 299; see also URS Int'l, Inc., and Fischer Eng'g & Maint. Co., Inc.; Global-Knight, Inc., B-232500; B-232500.2, Jan. 10, 1989, 89-1 CPD ¶ 21 (agency improperly failed to inform protester during discussions of a deficiency in its proposal under the "resource and workforce" evaluation subcriterion, and GAO recommended that discussions be reopened with only the protester and that the protester, in the submission of its BAFO, be limited to addressing only the deficiency in its proposal under the "resources and workforce" subcriterion).

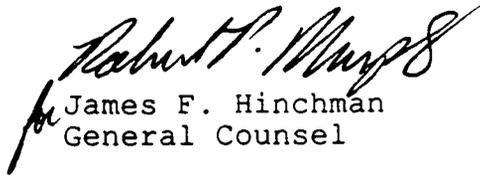
Under the circumstances here, we believe it appropriate for the SEC to restrict the offerors' submissions to information concerning their financial stability. As noted previously, our Office found the agency's evaluation of the offerors' proposals flawed only as it related to the financial stability evaluation subfactor, and did not, despite the protesters' assertions to the contrary, find any other aspect of the agency's evaluation unreasonable. There is no indication that the responses to the financial stability evaluation subfactor affected any other aspects of the proposals, including cost. The corrective action proposed by the agency will provide it with the information necessary to reasonably evaluate the proposals under the financial stability subfactor. Further, it will do so without raising any concerns as to the possibility of technical transfusion or leveling³ due to the disclosure of significant aspects of the offerors' proposals during the previous protest.⁴

³Technical transfusion refers to "[g]overnment disclosure of technical information pertaining to a proposal that results in improvement of a competing proposal," and technical leveling refers to "helping an offeror bring its proposal up to the level of other proposals through successive rounds of discussion, such as pointing out weaknesses resulting from the offeror's lack of diligence, competence, or inventiveness in preparing the proposal." Federal Acquisition Regulation § 15.610(d).

⁴The agency has pointed out that, during the course of the prior protest, information concerning the offerors' costs/fees was disclosed, as was information concerning the relative merits of the proposals in the areas of record maintenance, cost reasonableness and realism, volume estimates, remote access, resumption of operations, security compliance, optical character readers, correction of false hits, knowledge of the securities industry, batch processing, response to inquiries from certain forms, and audit trail information.

As to the protester's argument that the agency's proposed corrective action is inappropriate because the offerors have not been provided with the opportunity to update their proposals since the submission of BAFOs, we note that there is no indication that the SEC's requirements, as set forth in the RFP have changed, and we are unaware of any authority which requires an agency to reopen discussions and provide for the submission of BAFOs merely because of the passage of time. See DLI Eng'g Corp.--Recon., 65 Comp. Gen. 34 (1985), 85-2 CPD ¶ 468.

The protest is denied.


for James F. Hinchman
General Counsel