



Comptroller General
of the United States

Washington, D.C. 20548

147169

Decision

Matter of: Consultants & Designers, Inc.

File: B-247923.2

Date: July 22, 1992

Arthur J. Newfield for the protester,
John S. Pachter, Esq., Jonathan D. Shaffer, Esq., and
Julie E. Chung, Esq., Smith, Pachter, McWhorter &
D'Ambrosio, for PRC, Inc., an interested party.
Richard L. Dunn, Esq., Defense Advanced Research Projects
Agency, for the agency.
Paula A. Williams, Esq., Glenn G. Wolcott, Esq., and Paul I.
Lieberman, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

1. Protest that RFP provisions were unduly restrictive is dismissed where alleged improprieties were apparent from the face of the solicitation, but protester did not file its protest until after receiving notice of award to another offeror.
2. Agency properly eliminated protester's proposal from the competitive range where agency reasonably determined that the proposal failed to meet mandatory requirement of the RFP.
3. Allegation that procurement favored incumbent due to incumbent's greater understanding of the government requirements does not state a valid basis for protest.
4. Agency's failure to promptly notify protester that its proposal had been excluded from the competitive range does not affect the validity of an otherwise proper award.

DECISION

Consultants & Designers, Inc. (C&D) protests the award of a contract to PRC, Inc. under request for proposals (RFP) No. MDA972-91-R-0004, issued by the Defense Advanced Research Projects Agency (DARPA) for support services for the Undersea Warfare Office (UWO). C&D protests that the RFP provisions were unduly restrictive; that DARPA

improperly excluded C&D's proposal from the competitive range; that the procurement was skewed in favor of the incumbent; and that DARPA failed to give C&D prompt notice regarding its exclusion from the competitive range.

We dismiss the protest in part and deny it in part.

The UWO was created to stimulate and coalesce technologies related to maintaining the undersea superiority of the United States. To accomplish its mission, the UWO requires a scientific, engineering, and technical assistance (SETA) contractor with specialized skills to provide necessary technical engineering support and a full-range of program management functions to ensure that the selected technology developments proceed on schedule and within cost. This RFP was issued to meet that requirement.

The RFP contemplated award of a cost-plus-fixed-fee contract and sought separate cost and technical proposals. The RFP stated that, in selecting an awardee, technical factors would be significantly more important than cost, and provided that technical proposals would be evaluated in the following areas: personnel capabilities and availability; administrative support; and management expertise. The RFP also stated that the proposals must each contain an adequate transition plan, demonstrating that the UWO support services could be smoothly transferred from the incumbent contractor to the offeror within 75 days of contract award; the RFP provided that failure to submit an adequate transition plan would be cause for elimination from the competition.

On or before the October 1, 1991, closing date, DARPA received proposals from eight offerors, including C&D and PRC. As evaluated, PRC's proposed cost was \$27,288,382; C&D's proposed cost was \$22,142,861. By memorandum dated January 6, 1992, the chairman of the technical evaluation team reported that, out of 75 points possible, PRC's technical proposal received 59.05 and C&D's proposal received 25.10 points. By memorandum dated February 12, 1992, the contracting officer determined that C&D's proposal should be excluded from the competitive range. The memorandum stated that C&D's proposal was technically unacceptable for failing to provide an adequate transition plan as required by the solicitation. After discussions were conducted, a contract was awarded to PRC on February 27, and C&D was notified of the award by letter dated March 3. This protest followed.

C&D first protests that "the RFP placed extraordinarily stringent requirements on the location and occupancy date of a contractor facility." This issue is not timely raised. Our Bid Protest Regulations provide that protests based on alleged improprieties in the solicitation which are apparent

prior to the time set for receipt of initial proposals must be filed prior to that time. 4 C.F.R. § 21.2(a)(1) (1992). The closing date for submission of proposals was October 1, 1991. C&D timely submitted its proposal, but failed to challenge the RFP provisions until March 1992, after it received notice of award to PRC. Since the RFP provisions challenged by C&D were clearly apparent from the face of the solicitation, this portion of the protest is dismissed as untimely.

C&D next protests that the agency erred in eliminating its proposal from the competitive range. C&D asserts that, to the extent its technical proposal was found deficient, those deficiencies could have been corrected through discussions. C&D also asserts that since its proposed cost was low, C&D's exclusion from the competitive range was improper.

In evaluating C&D's proposal, the agency evaluators determined that C&D failed to provide an adequately detailed transition plan. In this regard, the RFP required offerors to "describe in detail how the transition of support from the present site and contractor will be designed to cause little or no disruption to ongoing program activities," and stated that offerors who do not submit a transition plan "which in the opinion of the government will assure . . . full transition of program responsibilities from the incumbent contract to themselves . . . will not be considered for award." The evaluators found that, among other shortcomings, C&D's transition plan failed to address transition of anti-submarine warfare (ASW) programs and unmanned undersea vehicle (UUV) programs--two of the three general programs identified in the RFP statement of work for which the contractor would be responsible. In addition to the deficiencies in C&D's transition plan, the agency evaluators found that C&D's technical proposal failed to address critical milestones; did not identify the junior engineers C&D intended to hire; failed to discuss availability of support staff; and did not indicate any plan or commitment to use small disadvantaged businesses in performing the contract. As a result, overall, C&D's technical proposal was rated lowest of the eight technical proposals submitted.

The evaluation of technical proposals and the resulting determination as to whether a proposal is in the competitive range is a matter within the discretion of the contracting agency, since the agency is responsible for defining its needs and the best method of accommodating them. Delta Ventures, B-238655, June 25, 1990, 90-1 CPD ¶ 588. In reviewing protests against these determinations, our Office will not reevaluate the proposal for the purpose of

substituting our judgment for that of the agency, Institute for Int'l Research, B-232103.2, Mar. 15, 1989, 89-1 CPD ¶ 273, and we will not disturb the agency's determination unless it was unreasonable or inconsistent with the evaluation criteria listed in the RFP. Id.

We have reviewed C&D's proposal, along with the agency's evaluation of that proposal, and conclude that the agency had a reasonable basis for excluding the proposal from the competitive range. In addition to the deficiencies in C&D's transition plan, as noted above, C&D's technical proposal contained numerous weaknesses and deficiencies which would have required the proposal to be substantially rewritten in order to qualify for award. Procuring agencies are not required to include a proposal in the competitive range if it would have to be substantially rewritten in order to qualify for award. See Violet Dock Port, Inc., B-231857.2, Mar. 22, 1989, 89-1 CPD ¶ 292; Aquila Technologies Group, Inc., B-224373, Oct. 30, 1986, 86-2 CPD ¶ 500.

C&D next protests that the procurement was skewed in favor of the incumbent because only the incumbent had first-hand knowledge of the government's requirements. C&D's allegations in this regard fail to state a valid basis for protest. It is not unusual for a contractor to enjoy an advantage in competing for a government contract by reason of incumbency, and such an advantage, so long as it is not the result of preferential treatment or other unfair action by the government, need not be discounted or equalized. Liberty Assocs., Inc., B-232650, Jan. 11, 1989, 89-1 CPD ¶ 29. Here, C&D complains that the incumbent gained an advantage due to its greater understanding of the government's requirements, not because of any preferential treatment or unfair action by the government. Accordingly, this portion of its protest is dismissed as it does not provide a basis for protest. 4 C.F.R. § 21.3(m).

Finally, C&D protests that DARPA failed to timely notify the firm that its proposal had been excluded from the competitive range. Section 15.1001 of the Federal Acquisition Regulation (FAR) states:

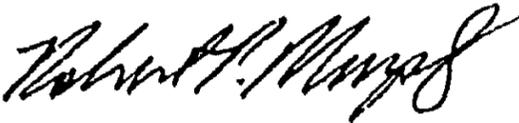
"(a) General. The contracting officer shall promptly notify each offeror whose proposal is determined to be unacceptable or whose offer is not selected for award, unless disclosure might prejudice the Government's interest.

(b) Preaward notices. . . . [W]hen a limited number of offerors have been selected as being within the competitive range (see 15.609), the contracting officer, upon determining that a proposal is unacceptable, shall promptly notify

the offeror. The notice shall at least state (i) in general terms the basis for the determination and (ii) that a revision of the proposal will not be considered."

C&D was excluded from the competitive range by memorandum dated February 12; C&D was notified of the contract award to PRC by letter dated March 3, received by C&D on March 5. Although the agency may have failed to comply with the prompt notification requirements of FAR § 15.1001, there is no evidence that C&D was prejudiced by the late notice and, by itself, late notice to a technically unacceptable offeror does not affect the validity of an otherwise proper award. See, e.g., Cinpac, Inc., B-243366, July 15, 1991, 91-2 CPD ¶ 57.

The protest is dismissed in part and denied in part.


for James F. Hinchman
General Counsel