



Comptroller General  
of the United States

1139168

Washington, D.C. 20548

## Decision

**Matter of:** Stabro Laboratories, Inc.

**File:** B-256921

**Date:** August 8, 1994

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David N. Ebbert for the protester.  
Charles H. Burr, Esq., for The Bionetics Corporation, an interested party.  
David H. Doro, Esq., and Timothy A. Beyland, Department of the Air Force, for the agency.  
John L. Formica, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

The Department of the Air Force properly made award based on initial proposals without conducting discussions where the request for proposals, read as a whole and in a manner that gives effect to all of its provisions, advised offerors that the award of the contract may be made based on initial proposals and the agency properly determined that discussions were unnecessary.

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### DECISION

Stabro Laboratories, Inc. protests the award of a contract to The Bionetics Corporation under request for proposals (RFP) No. F42650-92-R-0036, issued by the Department of the Air Force for the management and operation of the precision measurement equipment laboratory at Hill Air Force Base (AFB), Utah. Stabro argues that the agency improperly made award upon initial proposals without conducting discussions.

We deny the protest.

The RFP stated that award would be made to the responsible offerer, whose conforming offer was determined to be the most advantageous to the government, cost and other factors

considered. The following evaluation factors and subfactors were listed in descending order of importance:

- 1) Technical
  - a) Manning
  - b) Knowledge of the statement of work
  - c) Planning
- 2) Quality & Safety
- 3) Management<sup>1</sup>

Offerors were informed that their proposals would be evaluated under a color/adjectival rating scheme for each of the listed evaluation factors,<sup>2</sup> and would be evaluated for proposal risk to assess the risk associated with an offeror's proposed approach, and for performance risk to assess the probability of successful performance based on the offeror's past and present performance.<sup>3</sup> The RFP also provided that cost/price would not be separately evaluated under the color/adjectival rating scheme but would be evaluated for reasonableness, realism, and completeness.

The RFP incorporated Federal Acquisition Regulation (FAR) § 52.215-16, Alternate III, which states that the government intends to award a contract without discussions and encourages offerors to submit their best offers in their initial proposals. This clause also reserves the agency's right to conduct discussions if determined to be necessary.

The agency received 10 proposals, including those of Stabro and Bionetics. Bionetics and three other offerors were evaluated as "blue/exceptional" overall with low proposal risk, while Stabro was essentially evaluated as unacceptable overall. Specifically, Stabro's proposal was evaluated as "red/unacceptable" with "high" proposal risk under the "Technical" evaluation factor, and "green/acceptable" with "low" proposal risk under the "Quality & Safety" and "Management" evaluation factors. The agency concluded that Stabro's proposal "would require [an] extensive rewrite"

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<sup>1</sup>The RFP also stated subfactors for the Quality & Safety and Management evaluation factors. These subfactors have not been included here as they are not relevant to the protest issues raised.

<sup>2</sup>The color/adjectival ratings were blue/exceptional, green/acceptable, yellow/marginal, and red/unacceptable.

<sup>3</sup>The evaluation ratings for proposal risk and performance risk were high, moderate, and low.

with regard to its expressed understanding of the specific tasks required to be performed in accordance with the RFP, and that Stabro's proposal "demonstrates that [Stabro] lacks proper understanding of the requirements of this section" of the SOW. In addition, the Air Force found that Stabro failed to provide the cost/price information requested by the RFP, and the agency was therefore unable to evaluate the completeness, realism, and reasonableness of Stabro's offer of \$5,356,468. Because Stabro did not provide contract line item pricing or summary pricing schedules in its price proposal as required by the RFP, the Air Force questioned whether Stabro had "read the [price] proposal instructions," and concluded that Stabro's price proposal was "[v]ery weak."

The agency concluded that discussions were not necessary. Bionetics's proposed price of \$5,094,296 was the lowest price received, and Bionetics's proposal had been evaluated as "blue/exceptional" overall with "low" proposal risk; accordingly, the agency determined that Bionetics's proposal represented the best overall value to the government. Award was made to Bionetics on March 29, 1994, and this protest followed.

Stabro contends that the agency could not make award to Bionetics without conducting discussions and affording offerors the opportunity to submit best and final offers. In support of its argument, Stabro points to amendment No. 0002 to the RFP, which set forth the following preproposal questions and answers:

"Question:

"Is fact-finding contemplated by the Government? If so, in what forms (written responses, visitations, face-to-face sessions at Hill AFB, other?)

"Answer:

"Yes, written responses are anticipated.

"Question:

"Does the Government contemplate the use of Best and Final Offer (BAFO) process?

"Answer:

"Yes."

Stabro contends that these questions and answers obligate the agency to conduct discussions prior to making an award. Stabro claims that it was "prepared to tender an offer that was significantly lower than [its] original proposal."

The Air Force responds that the questions and answers in amendment No. 0002 do not obligate it to conduct discussions. Rather, the agency argues, these questions and answers, when read consistently with FAR § 52.215-16, Alternate III, simply express the agency's "expectations and contemplations [at the time of the preproposal conference]" that discussions may be necessary. The agency contends that although it indicated that it believed that discussions might be necessary, this did not invalidate the other solicitation provisions that informed offerors that the government intended to make award without discussions.

Where, as here, a dispute exists as to the actual meaning of a particular solicitation provision, our Office will resolve the matter by reading the solicitation as a whole and in a manner that gives effect to all its provisions; to be reasonable, an interpretation of a solicitation must be consistent with such a reading. Ebasco Constructors Inc., B-231967, Nov. 16, 1988, 88-2 CPD ¶ 480.

Although amendment No. 0002 included the questions and answers referenced above, it did not remove FAR § 52.215-16, Alternate III, from the solicitation, or change the express terms of this clause. Therefore, the questions and answers must be considered in the context of the RFP which included FAR § 52.216-15, Alternate III. Considered in this context, the questions and answers can only reasonably be considered to mean that while award on the basis of initial proposals was likely, the possibility of written discussions and a BAFO request existed. Stabro's interpretation of the questions and answers is unreasonable because it reads out of the RFP the FAR § 52.215-16, Alternate III, clause. Simply put, we do not agree with the protester that the questions and answers, when considered in light of the

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"Information disseminated during the course of a procurement that is in writing, signed by the contracting officer, and sent to all offerors, meets all the essential elements of a solicitation amendment and will therefore bind both the offerors and the agency. Automation Management Consultants Inc., 68 Comp. Gen. 102 (1988), 88-2 CPD ¶ 494. Because the questions and answers quoted above and set forth as an attachment to amendment No. 0002 to the solicitation meet this standard, they became a part of the RFP and offerors were entitled to rely on the information contained therein.

solicitation read as a whole, precluded the agency from making award on initial proposals and required that the agency conduct discussions.

With regard to the propriety of the contracting officer's decision that discussions were not necessary here, we note that while the regulations which authorize award without discussions provide the contracting officer with the discretion to decide in a particular procurement whether discussions need to be held, that discretion is not unfettered. The Jonathan Corp.; Metro Mach. Corp., B-251698.3; B-251698.4, May 17, 1993, 93-2 CPD ¶ 174. The decision that discussions are not necessary must be reasonably based on the particular circumstances of the procurement, including consideration of the proposals received and the basis for the selection decision. Id.

Bionetics's proposal was not only rated as blue/exceptional, but was the lowest-priced offer of the 10 proposals received by the agency. Specifically, Bionetics was found to have "proposed a comprehensive understanding of the [SOW]," with the agency concluding that there was no need to conduct discussions with Bionetics because Bionetics's proposal did not contain any weaknesses. Because the awardee's low-priced proposal received the highest overall technical rating possible under the evaluation scheme set forth in the RFP, and did not contain any weaknesses, the agency's determination to make award based on initial proposals without discussions was reasonable. See A Plus Servs. Unlimited, B-255198.2, Jan. 31, 1994, 94-1 CPD ¶ 52.

Stabro alleges that the agency was biased in favor of Bionetics and requests that our Office "conduct a prompt and searching investigation of the award of this contract." Our Office does not conduct investigations as part of our bid protest function. Caelus Devices, Inc.--Recon., B-241336.3, Dec. 14, 1990, 90-2 CPD ¶ 491. We have reviewed the record, and find no credible evidence of bias or bad faith on the part of the agency, nor has Stabro offered such evidence. Prejudicial motives will not be attributed to contracting officials on the basis of unsupported allegations, inference, or supposition. Avogadro Energy Sys., B-244106, Sept. 9, 1991, 91-2 CPD ¶ 229.

The protest is denied.

/s/ Ronald Berger  
for Robert P. Murphy  
Acting General Counsel