



Comptroller General
of the United States

Washington, D.C. 20548

91-2 CPD 29

Decision

PR

Matter of: James W. Hudson & Associates

File: B-243277

Date: July 5, 1991

James W. Hudson for the protester.
Alton E. Woods, Esq., and Justin P. Patterson, Esq., Department of the Interior, for the agency.
Steven W. DeGeorge, Esq., and John Brosnan, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that agency should have selected protester as the most qualified firm under an architect-engineer procurement is denied where record does not demonstrate that the agency's evaluation was unreasonable or not consistent with the evaluation criteria.
2. Protest against selection of firm for negotiations leading to possible award of an architect-engineer contract on the basis that such firm is a large business is dismissed as untimely where notification of the project expressly allowed for proposals from large business firms.

DECISION

James W. Hudson & Associates protests the selection by the Department of the Interior, National Park Service (NPS), of Stone & Webster Engineering Corporation, a large business, as the firm with which to negotiate an architect-engineer (A-E) contract for value analysis services relative to design projects at various national parks. Hudson contends that it should have been the selected firm arguing that the evaluation of its proposal was improper, and that it should have been given preference over Stone & Webster because it is a small business.

The protest is denied in part and dismissed in part.

Generally, under the selection procedures set forth in the Brooks Act, as amended, 40 U.S.C. § 541 et seq. (1988), and its implementing regulations, Federal Acquisition Regulation (FAR) part 36.6, the contracting agency must publicly announce

requirements for A-E services. An A-E evaluation board established by the agency evaluates the A-E performance data and statements of qualifications already on file, as well as those submitted in response to the announcement of the particular project, and selects at least three firms for discussions. The board recommends to the selection official, in order of preference, no less than three firms deemed most highly qualified. The selection official then lists, in order of preference, the firms most qualified to perform the required work. Negotiations are held with the firm ranked first. If the agency is unable to agree with the firm as to a fair and reasonable fee, negotiations are terminated and the second-ranked firm is invited to submit its proposed fee. See generally FAR part 36.6, Asbestos Management, Inc., B-237841, Mar. 23, 1990, 90-1 CPD ¶ 325.

The subject procurement was advertised in the Commerce Business Daily (CBD) on September 24, 1990. Proposals were requested for an indefinite quantity contract for value analysis services for design projects at various national park locations. The CBD synopsis provided that proposals would be evaluated based upon four major evaluation criteria. These criteria were listed in the synopsis in descending order of importance as follows: (1) specific experience and qualification of personnel; (2) knowledge and recognition of the NPS mission and its consideration of cultural, historic, resource protection, and aesthetic constraints; (3) project organization; (4) special experience and technical competence. The CBD synopsis further provided that the procurement was open to small and large businesses and was subject to the Small Business Demonstration Test Program, Public Law 100-656.^{1/} Proposals were required to be submitted by October 26.

Twenty-eight proposals were submitted in response to the CBD synopsis. Following an initial evaluation, a "short-list" of six firms was developed which was comprised of those firms considered eligible for interviews by a selection board established by the agency. These firms were then interviewed, and on the basis of that information as well as the information presented in their proposals, the selection board voted for the three most qualified firms and ranked them in order of qualification. While Stone & Webster was the top-ranked firm, Hudson was not included in the group of the three most qualified firms.

^{1/} Public Law 100-656 established a 4-year test program under which small businesses compete against large businesses in unrestricted procurements in a number of designated industries. A-E services is one of the designated industries.

By letter dated February 5, 1991, the agency notified Hudson of the selection of Stone & Webster for negotiations. On February 15, Hudson protested this action to the contracting officer alleging that its proposal had not been evaluated in a fair and proper manner, and that Stone & Webster should not have been selected because it is a large business. Following a debriefing on February 21, the contracting officer formally denied the agency-level protest by letter dated February 28. On March 12, Hudson filed the instant protest with our Office, which essentially consisted of a cover letter enclosing a variety of correspondence including its agency protest and the agency's subsequent letter of denial.

As indicated above, there appears to be two grounds for Hudson's protest. First, the protester contends that its proposal was not properly evaluated. According to Hudson, its particular qualifications for this work, which should have been apparent from its proposal and interview, are incomparable. Hudson therefore questions the competence and impartiality of the selection board and basically disputes the evaluation findings disclosed to it in a debriefing. The second ground for protest is Hudson's complaint that Stone & Webster should not have been selected because it is a large business.

In reviewing a protest of an agency's selection of a contractor for A-E services, our function is not to reevaluate the offeror's capabilities or to make our own determination of the relative merits of competing firms. Rather, the procuring officials enjoy a reasonable degree of discretion in evaluating the submissions, and we limit our review to determining whether the agency's selection was reasonable and in accordance with the published criteria. Ward/Hall Assocs. A/A, B-226714, June 17, 1987, 87-1 CPD ¶ 605. The record must show that the agency's evaluation was unreasonable. This is not accomplished by the protester's mere disagreement with the agency's evaluation. IDG Architects, 68 Comp. Gen. 683 (1989), 89-2 CPD ¶ 236.

Here, we have no basis upon which to conclude that the agency's evaluation of proposals was either unreasonable or inconsistent with the criteria set forth in the CBD synopsis. According to the record, the protester was ranked the least qualified of the six firms interviewed. Specifically, the protester received from 45 to 70 points, out of a possible 100, in the technical evaluation, depending upon the board member. By contrast, Stone & Webster received ratings from 90 to 95 points. Each board member ranked Hudson the least qualified of the six firms interviewed. For example, Hudson was consistently downgraded for failure to submit a Standard Form (SF) 254 or 255 relative to one of its proposed major

subcontractors.^{2/} Absent this information, the evaluators found it very difficult to assess the qualifications of that proposed subcontractor. The consequential downgrading of Hudson's proposal was appropriate in view of the fact that this information was expressly required by the terms of the CBD synopsis. Additionally, the evaluators found the protester's oral presentation at the interview ineffective and indicative of a lack of particularly relevant experience. While the evaluators concluded that Hudson possessed a good understanding of the agency's mission and needs regarding the required A-E services, they determined that the same was not true of the proposed subcontractors. Additionally, the evaluators found serious logistical problems with respect to Hudson's proposed use of multiple subcontractors at multiple sites. Finally, they felt that the protester had not proposed adequate coverage of all disciplines needed for the project. In this respect, the evaluators were specifically concerned about the lack of a proposed historical architect or landscape architect.


The agency reports that the relatively low ranking given to Hudson was based upon a combination of these and other deficiencies discerned by the evaluators. While the protester disagrees with the agency's assessment of its proposal, and has submitted lengthy comments in response, there is no evidence in the record from which we can conclude that the evaluation was either unreasonable or inconsistent with the criteria set forth in the CBD synopsis. For example, Hudson admits failing to submit the required SF 254 or 255 for one of its proposed subcontractors and offers no facts to refute the other findings of the agency. Accordingly, we do not find merit to this aspect of the protest.

The protester also argues against the award to Stone & Webster because that firm is a large business. In this regard, the protester seems to contend that, as a small business, it should have received a preference in the evaluation and selection determination. We dismiss this argument as untimely raised. Under our Bid Protest Regulations, protests based upon alleged improprieties apparent in a solicitation must be filed prior to bid opening or the time set for receipt of initial proposals. 4 C.F.R. § 21.2(a)(1) (1991). Here, the CBD synopsis expressly allowed for the submission of proposals

^{2/} An SF 254, "Architect-Engineer and Related Services Questionnaire," is generally submitted annually by firms wishing to be considered for A-E contracts. It provides a description of the general qualifications of an A-E firm. An SF 255, "Architect-Engineer and Related Services Questionnaire for a Specific Project," is a supplement to the SF 254 reflecting job specific experience.

by large businesses and did not state that small businesses would receive an evaluation preference. If Hudson was disturbed by this, it was obliged to protest prior to the closing time stated in the synopsis in order to be timely.

The protest is denied in part and dismissed in part.


for James F. Hinchman
General Counsel