



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Dunn Engineering Associates

File: B-266273

Date: February 9, 1996

Robert A. Reiss for the protester.

Kathryn Weathers Belger, Esq., and Jean Maxwell, Department of Transportation, for the agency.

Peter A. Iannicelli, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that discussions were not meaningful because the agency did not inform the protester that evaluators were concerned that the protester's proposed level of effort was too low and that the protester had a history of performance problems is denied where the record of oral and written discussions shows that the agency led the protester to reexamine the amount of professional hours it proposed and advised the protester that the evaluators were concerned with the possibility of late delivery, and the protester had the opportunity to respond in a best and final offer.

DECISION

Dunn Engineering Associates protests award of a contract to Texas A & M Research Foundation by the Federal Highway Administration (FHWA) pursuant to request for proposals (RFP) No. DTFH61-95-R-00128. The protester contends that the agency's negotiations with it were not meaningful and led it to unnecessarily increase its offered price.

We deny the protest.

Issued on April 27, 1995, the RFP solicited proposals for developing a new, updated freeway management handbook that included current technologies and procedures on a variety of topics such as conceptual development, design, construction, operations, maintenance, work zones, and system expansion. The handbook will be used by asset owners as a reference document and training aid for freeway operations and management. The RFP contemplated award of a fixed-price contract and delivery of the handbook within 18 months after award. The RFP stated that proposals would be evaluated on two technical factors:

(1) responsiveness to the RFP's technical requirements and (2) sufficient resources to complete the job satisfactorily and on schedule, and on cost. The RFP stated that technical merit was considered more important than cost in the award

decision. The RFP also stated that past performance would be reviewed but was considered less important than technical merit or cost.

Four proposals were received by the June 8, 1995, closing date. After evaluating initial proposals, the agency determined that three were technically acceptable and included them in the competitive range. Negotiations were held with all competitive range offerors in July, and best and final offers (BAFO) were received from all three firms by the July 27 closing. After BAFOs were evaluated, the agency determined that Texas A & M's proposal represented the most advantageous offer because the proposal had received the highest technical score and offered the lowest total price. Accordingly, the contract was awarded to Texas A & M.

Dunn contends that the agency's discussions with it were not meaningful. Dunn states that in its letter notifying Dunn of the award the agency criticized the firm's proposal because the professional resources allocated to the effort were insufficient to satisfactorily fulfill the contract requirements on schedule. Dunn contends, however, that it was not told during discussions that this was a concern of the agency's evaluators. Dunn also states that, during negotiations, the agency requested more effort from Dunn's principal investigators, thus causing Dunn to unnecessarily increase its price.¹

Agencies are required to conduct meaningful discussions with all competitive range offerors. Stone & Webster Eng'g Corp., B-255286.2, Apr. 12, 1994, 94-1 CPD ¶ 306. Discussions are considered meaningful where contracting officials advise offerors of deficiencies in their proposals and afford offerors an opportunity to revise their proposals to satisfy the government's requirements. Id.

The agency in this case did hold meaningful discussions with the protester. The record shows that the evaluators prepared a number of discussions questions/requests for clarification for Dunn and based their discussions on them. Among other things, FHWA asked Dunn:

¹Dunn also asserts that the procurement should have been set aside for exclusive small business participation. Dunn raised this issue for the first time when it filed its protest with our Office. Under our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1995), a protest alleging an impropriety in a solicitation that is apparent prior to the time set for receipt of initial proposals must be filed before that time. Because Dunn did not protest that the RFP should have been set aside for small businesses until after the contract was awarded, this protest issue is untimely.

"Please discuss your rationale regarding the proposed professional staffing. The Government position is to request more effort from the PIs [principal investigators]."

FWHA also asked Dunn:

"Your company's past performance with FWHA has demonstrated problems with performance schedules and timeliness of deliverables. What actions have [you] taken to correct these deficiencies, and how would the Government's interests be protected if your company were to receive award."

Furthermore, Dunn stated in its protest letter to our Office that, during oral discussions, the contracting officer's technical representative stated

"I feel more comfortable with the addition of 240 hours in the Principal Investigator category, especially when added to the 190 hours contributed . . . at no cost to the government."

Thus, it is clear that, during written and oral discussions, FWHA properly led Dunn to reexamine the amount of professional hours it proposed and advised Dunn that the evaluators were concerned with the possibility of late delivery.

Moreover, Dunn's price increase was occasioned by the offeror's decision, in responding in its BAFO, to increase the number of hours its key employees would contribute to the contract effort, as opposed to trying to explain how it would complete the handbook on time with the staffing originally proposed. As a result, Dunn's proposed price also increased (from the \$245,798 total initially proposed to \$273,605); the evaluation record shows that Dunn's technical rating increased as well. While Dunn contends that it was coerced into unnecessarily increasing its price, as noted above an agency in conducting discussions is supposed to advise the offeror of deficiencies in its proposal, and through the BAFO process invite the offeror to revise its proposal in response. Stone & Webster Eng'g Corp., supra. That is all that happened here.

The protest is denied.

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