DECISION

THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-219340 DATE: August 1, 1985

MATTER OF: Aquidneck Management Associates, Ltd.

DIGEST:

Protest that an agency improperly reopened negotiations with the competitive range offerors after the receipt of best and final offers is denied. The contracting officer's mere exploration of the feasibility of reserving to the government the right to renegotiate option year prices, a proposed contracting approach ultimately abandoned, did not rise to the level of discussions where no offeror was given the opportunity to revise or modify its price proposal and where this contact clearly had no effect upon the acceptability of the best and final offers already submitted.

Aquidneck Management Associates, Ltd., protests the proposed award of a contract to Vanguard Technologies Corporation under request for proposals (RFP) No. KECS-85-005, issued by the General Services Administration (GSA). The procurement is for the acquisition of automatic data processing (ADP) technical assistance services for federal agencies in GSA's Region 1. Aquidneck principally contends that GSA improperly conducted discussions with the competitive range offerors after the receipt of best and final offers without affording the firms the opportunity to submit another round of best and final offers. We deny the protest.

Background

The RFP contemplated the award of a firm, fixed-price requirements contract for a 1-year period, with two 1-year renewal options. Offerors were required to submit technical and price proposals. Offerors were to price an hourly labor rate for various skill categories (ADP technical specialist, scientific analyst/programmer, ADP systems software specialist, etc.) on the basis of the government's total estimated annual hours requirement for each skill category in the three contract years.

As provided by attachment "A" to the solicitation, the contract was to be performed in response to task orders issued by the contracting officer. The contractor would prepare a specific proposal to accomplish the requirements of the task and would then negotiate with the contracting officer a finalized task order incorporating specifications, schedule, and prices. The two types of task orders contemplated were:

(1) project tasks--involving a task for which there would be one or more tangible products, issued on a firm, fixed-price basis for labor hours; and

(2) work-request tasks--involving tasks for which the performance or deliverable product would be relatively ill-defined or of relatively short duration (such as systems or applications software maintenance and ADP systems studies), issued on a labor hour, not-to-exceed-ceiling-price basis.

Four companies submitted initial proposals. After evaluation, three firms, including Aquidneck, remained within the competitive range. Discussions were then held with those firms, and best and final offers were requested and received. All three best and final offers were found to be fully acceptable.

GSA relates that during its routine audit of each of the competitive range price proposals, the auditors determined that the total annual volume of business of two of the three offerors would more than double if either firm received the contract award, and that this large increase would serve to reduce the firms' overhead and general and administrative expense factors with respect to their labor hour rates, thus potentially permitting a reduction in those rates. The auditors accordingly urged the contracting officer to consider the feasibility of an annual renegotiation of labor hour rates before exercising the renewal options.

Some 2 weeks after the receipt and evaluation of best and final offers, the contracting officer contacted Aquidneck and the two other competitive range offerors to ascertain if they would wish to submit new best and final price proposals if GSA reserved the right to renegotiate

labor hour rates before exercising the renewal options. According to GSA, all three firms responded that they would not wish to change their best and final prices if GSA reserved such a right. However, GSA states that it decided to abandon the concept of annual renegotiation because of the significant contract management and administration problems that were envisioned. Accordingly, awardee selection was based upon the best and final offers as originally submitted. GSA notes that the proposed contract to Vanguard Technologies contains no such reservation of the right to renegotiate prices for the option years.

Aquidneck contends that this contact with the competitive range offerors was improper because it constituted a reopening of negotiations without affording the firms the opportunity to submit new best and final offers. Aquidneck further asserts that the RFP's stated evaluation scheme was thus altered because GSA indicated that the option year prices might be renegotiated, and, in this regard, the firm believes that the evaluation scheme was rendered meaningless because the contracting officer stated during her contact with the firm that only the firm, fixed-price portion of the contract would be exercised during the option years. We find the protest to be without merit.

Analysis

As recognized by the Federal Acquisition Regulation, 48 C.F.R. § 15.611(c) (1984), it is a basic principle of federal procurement law that if discussions are reopened with one offeror after the agency's receipt of best and final offers, discussions must be conducted with all other offerors whose proposals are in the competitive range, and those firms must also be given the opportunity to submit another round of best and final offers. Mayden & Mayden, B-213872.3, Mar. 11, 1985, 85-1 CPD ¶ 290. Discussions occur when an offeror is afforded an opportunity to revise or modify its proposal, or when information requested and provided by an offeror is essential for determining the acceptability of the firm's proposal. Weinschel Engineering Co., Inc., B-217202, May 21, 1985, 64 Comp. Gen. _____, 85-1 CPD ¶ 574; Alchemy, Inc., B-207338, June 8, 1983, 83-1 CPD ¶ 621.

In this matter, we believe that the contracting officer's exploration of the possibility of renegotiating

option year labor hour rates with the competitive range offerors did not rise to the level of discussions. Although the competitive range offerors were asked whether this proposed contracting approach, if adopted, would cause them to change their best and final prices, no firm indicated that it would wish to do so. Aquidneck's own submission establishes that the firm foresaw no problem with its offer as submitted if in fact GSA went ahead with this approach. In any event, GSA decided not to pursue this possibility, and no firm, therefore, was given the opportunity to submit a revised price proposal. Moreover, since the best and final offers had already been evaluated as being fully acceptable, any responses made by the firms during this contact with the contracting officer did not affect the GSA's determinations of proposal acceptability. Weinschel Engineering Co., Inc., B-217202, supra.

Accordingly, it is our view that the contracting officer's exploration of a possible contracting approach, where that proposed approach was ultimately abandoned, clearly did not constitute a reopening of negotiations which would have required the submission of a new round of best and final offers. Aquidneck's mere speculation aside, there is simply no evidence in the record to suggest that any other firm was given the opportunity to submit a revised price proposal.

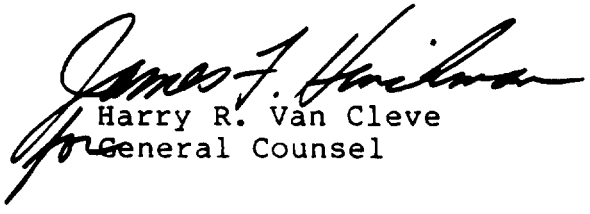
Since GSA decided not to reserve any right to renegotiate the proposed prices for the option years, we cannot accept Aquidneck's assertion that the agency thereby deviated from the RFP's stated evaluation scheme by indicating the possible utilization of such an approach. To the extent Aquidneck contends that the contracting officer stated during her contact with the firm that GSA would only exercise the firm, fixed-price portion of the contract during the option years, GSA responds that the firm has simply misconstrued the contracting officer's statement. GSA notes that there is no firm, fixed-price "portion" of the proposed contract; rather, as set forth earlier, the contract contemplates firm, fixed-price project task orders and work-request task orders on a labor hour, not-to-exceed-ceiling-price basis. According to GSA, the contracting officer merely reminded the three competitive range offerors of GSA's policy, as indicated in section A.3.g. of attachment "A" to the solicitation, that firm, fixed-price task orders were preferable to labor hour

task orders and would be utilized in performing the contract whenever reasonable.

We do not agree with Aquidneck that the contracting officer's statement as to the preference for project task orders means that the best and final offers did not reflect GSA's actual requirements and, therefore, that they were evaluated on an improper basis. Section A.3.c. of attachment "A" clearly provides that the contractor-generated proposals responding to the government's issued task orders "will include a detailed presentation of work hours by skill category," resulting in a final firm, fixed-price project task order or labor hour, not-to-exceed-ceiling-price, work-request task order. Where the price proposals contained the firms' labor hour rates for each skill category on the basis of the government's total annual hours estimates for each skill category, we see no merit in the assertion that the best and final offers did not fully reflect what was called for under the solicitation.

Since no firm was allowed to submit a revised price proposal and the award selection is based on the best and final offers originally submitted without any change in the terms of the solicitation, Aquidneck clearly was not competitively prejudiced by the contracting officer's contact with the competitive range offerors. See Emerson Electric Co., B-213382, Feb. 23, 1984, 84-1 CPD ¶ 233.

The protest is denied.



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