

DECISION



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

FILE: B-221230

DATE: February 13, 1986

MATTER OF: Delcor International

DIGEST:

GAO will not consider a protest against an agency's failure to conduct discussions by a protester clearly outside the competitive range.

Delcor International protests the award of a contract to Technology Management Corporation (TMC) under request for proposals (RFP) No. N68520-85-R-9065, issued by the Naval Air Logistics Center, Patuxent River, Maryland. The RFP contemplated awards of three separate lots of services. The protested award is for lot III, management support services, at the Naval Air Rework Facilities in Norfolk, Virginia, and Cherry Point, North Carolina.

Delcor protests that the contract was awarded without discussions or notification that its proposal contained any technical deficiencies. Delcor notes that its offered price of \$5,354,892 is much lower than the TMC \$6,469,624 award price. Delcor states that since the Navy declined to comment on the award decision or positively respond to requests for detailed information on the procurement, it is reasonable to presume its proposal did not contain any substantive technical deficiencies and was within the competitive range and discussions were required to be conducted.

We deny the protest.

Initially, Delcor complains that it did not receive its copy of the agency report on the protest within 25 working days of the filing of the protest as required by our Bid Protest Regulations, 4 C.F.R. § 21.3(c) (1985), and that it received the report 3 days after the due date. Delcor requests that we therefore not consider the agency's report in deciding the protest. However, our Office did receive

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the agency report within the 25 days provided in our Bid Protest Regulations. Since Delcor was provided 7 days from the date it received the report to submit its comments, it was not prejudiced by the Navy's failure to provide it with a copy of the report within 25 days. Under the circumstances, we will consider the agency's report in reaching our decision.

The Navy has not provided Delcor with any details about the evaluated deficiencies in its proposal or its relative technical standing. This documentation was provided to our Office with the agency report on the protest, but these attachments to the report were not sent to the protester. Additionally, we requested and obtained from the Navy Delcor's proposal and the technical evaluation worksheets detailing Delcor's evaluated score and deficiencies. In reaching this decision, we have considered in camera all of these documents, which are the subject of a request by Delcor under the Freedom of Information Act to the Navy.

Delcor argues that an award without discussions cannot legally be made to a higher priced offeror under the Competition in Contracting Act of 1984 (CICA), Pub. L. 98-369, 98 Stat. 1175. In this regard, CICA, at 10 U.S.C.A. § 2305(b)(4)(A)(ii) (West Supp. 1985), provides that an agency may award a contract without discussions "when it can be clearly demonstrated from the existence of full and open competition or accurate prior cost experience with the product or service that acceptance of an initial proposal without discussions would result in the lowest overall cost to the United States."^{1/}

The Navy contends, however, that Delcor cannot complain about any failure to conduct discussions since Delcor was clearly outside the competitive range. In this regard, discussions need only be held with those offerors within the competitive range. 10 U.S.C.A. § 2305(b)(4)(A) (West Supp. 1985).


Seven offerors proposed on this lot. The five highest technically ranked offerors received technical scores ranging from 72.8 to 50.5 points out of 80 points. Delcor received a score of 29, was ranked sixth out of the seven

^{1/} The statutory language prior to CICA did not require that the award result in the lowest overall cost to the government. 10 U.S.C. § 2305(g) (1982); Shapell Government Housing, Inc., et al., 55 Comp. Gen. 839 (1976), 76-1 C.P.D. ¶ 161; Sperry Corp., B-220521, Jan. 13, 1986, 65 Comp. Gen. ___, 86-1 C.P.D. ¶ ____.

offerors, and was found technically unacceptable. We have reviewed Delcor's proposal and the Navy's technical evaluation including the six evaluators' individual evaluation summaries and cannot conclude Delcor's proposal was unreasonably evaluated. Delcor received less than half of the assigned point values from all six evaluators for the evaluation categories of Understanding of Requirements, Personnel Qualifications, Corporate Experience, Project Management Approach, and Facilities.

The competitive range is determined by comparing the relative merits of all of the proposals on a particular procurement and even acceptable proposals can be eliminated from the competitive range when it is determined that they have no reasonable chance for award. Cosmos Engineers Inc., B-218318, May 1, 1985, 85-1 C.P.D. ¶ 491. Given Delcor's low technical score and the fact that five proposals were rated much higher, we believe that Delcor had no realistic possibility for award, even if discussions had been conducted with it. Since Delcor's proposal was unacceptable, its lower price would not require that it be included within the competitive range. ALM, Inc., et al., B-217284, et al., Apr. 16, 1985, 85-1 C.P.D. ¶ 433.

Inasmuch as Delcor is clearly not within the competitive range, we will not consider its protest of the agency's failure to conduct discussion and the protest is denied.

for 
Harry R. Van Cleve
General Counsel