

DECISION



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

FILE: B-221222 **DATE:** February 26, 1986
MATTER OF: Oceanprobe, Inc.

DIGEST:

1. Agency decision to terminate negotiations with small business offeror under solicitation for architect-engineer services need not be referred to Small Business Administration under certificate of competency procedures since agency decision is based on evaluation of offeror's qualifications relative to other offerors as prescribed by Brooks Act, 40 U.S.C. §§ 541-544 (1982), not a negative responsibility determination.
2. Agency's decision to terminate negotiations with the protester for architect-engineer services was not arbitrary or unreasonable where the agency discovered inaccuracies in the information in the protester's standard forms 254 and 255 material to the protester's ranking and, therefore, determined after evaluation of protester's actual resources and capabilities that another firm was ranked above the protester and in line for negotiations.

Oceanprobe, Inc. (Oceanprobe), protests the decision by the Department of the Army, Corps of Engineers, Charleston District, to terminate negotiations with Oceanprobe under solicitation No. DACW60-86-C-00 for vibracore sampling and engineering analysis of subsurface materials in Charleston Harbor. The solicitation was issued under the Brooks Act, 40 U.S.C. §§ 541-544 (1982), which prescribes procedures for acquiring architect-engineer (A-E) services.

The protester, a small business, contends that the termination of negotiations with it constituted a negative responsibility determination which should have been referred to the Small Business Administration (SBA) for a certificate of competency (COC) determination under 15 U.S.C. § 637(b)(7)(a) (1982). Oceanprobe also argues that the agency's evaluation of its offer supporting the decision to terminate negotiations with the firm was unreasonable.

We deny the protest.

Under the procedures for acquiring A-E services set out in 40 U.S.C. §§ 541-544 (1982), the contracting agency first must publicly announce its requirements. An evaluation board set up by the agency then evaluates the A-E performance data and statements of qualifications of firms already on file, as well as data submitted by firms in response to the specific project. Discussions then must be held with "no less than three firms regarding anticipated concepts and the relative utility of alternative methods of approach" for providing the services requested. The board then prepares a report for the selection official, ranking in order of preference no fewer than the three firms considered most qualified. The selection official makes the final choice of the three most qualified firms and negotiations are conducted with the highest ranking firm. If the contracting officer is unable to reach agreement with that firm on a fair and equitable price, negotiations are terminated and the second-ranked firm is invited to submit its proposed fee.

The subject solicitation was announced in the Commerce Business Daily (CBD) on June 10 and July 15, 1985. Ten firms responded and, after a review of all the information submitted, four firms were selected for further consideration. The Army began negotiations with Oceanprobe, initially considered to be the second most qualified firm, after negotiations with the most qualified firm were terminated because the SBA ruled that it was not a small business. The Army's initial evaluation of Oceanprobe was based on information in the standard forms (SF) 254 and 255 ^{1/} submitted by Oceanprobe regarding the experience and size of the firm and its capacity to accomplish the work in the specified time. The evaluation criteria used were those stated in the CBD announcements:

^{1/} SF 254 is the statement of qualifications submitted annually by firms wishing to be considered for A-E contracts. Among other things, it requires each firm to indicate its total number of employees by discipline. SF 255, a supplement to SF 254, lists a firm's additional qualifications with respect to the specific project. It requires the firm to list by discipline the number of personnel presently employed.

- (1) Professional qualifications necessary for satisfactory performance of required services.
- (2) Specialized experience and technical competence in the type of work required.
- (3) Capacity to accomplish the work in the required time.
- (4) Past performance on contracts with government agencies and private industry in terms of cost control, quality of work, and compliance with performance schedules.
- (5) Location in the general geographic area of the project and knowledge of the locality of the project.
- (6) Volume of work previously awarded to the firm by the Department of Defense.

As a result of an audit of Oceanprobe's proposal and facilities, the Army learned that much of the information contained in Oceanprobe's SF 254 and 255, which initially formed the basis of Oceanprobe's evaluation, was inaccurate. For example, Oceanprobe's SF 254 indicated that it had 12 employees, but the auditor determined that Oceanprobe had only two employees, the president and an administrative assistant. Oceanprobe's SF 255 stated that "Oceanprobe owns and operates its own Alpine-type pneumatic vibracoring device, [which] includes a jet pump for jetting and a reliable diesel-driven air compressor." However, the auditor discovered that Oceanprobe did not own a vibracore device, but merely planned to purchase one if it was awarded the contract, and Oceanprobe did not own a jet pump or compressor, but planned to rent them. In addition, the auditor determined that the operating supplies necessary for the job were not maintained in Oceanprobe's inventory, but would be purchased if Oceanprobe received the contract. Finally, the auditor determined that Oceanprobe planned to subcontract virtually all of the required contract work.

Based on this additional information, the Army decided that Oceanprobe's SF 254 and 255 did not accurately reflect the current composition of Oceanprobe's firm or Oceanprobe's true ability to perform the required work. In view of the actual personnel and equipment available, the Army determined that Oceanprobe was erroneously ranked above another firm,

Ocean Surveys. Accordingly, the Army terminated negotiations with Oceanprobe.

Oceanprobe contends that the Army's decision to terminate negotiations with it constituted a determination that Oceanprobe was not a responsible contractor; since Oceanprobe is a small business, the protester argues, the agency was required to forward its determination to SBA for a final decision on the protester's responsibility under the COC procedures. We disagree.

Unlike a responsibility determination, which concerns whether an offeror has the minimum capability to perform as required, the agency's evaluation in an A-E procurement focuses on each offeror's capability and qualifications relative to the other offerors. Therefore, under factual circumstances nearly identical to those here, we held that the agency's decision to terminate negotiations with a small business offeror for A-E services need not be referred to the SBA, since it is appropriate in negotiated procurements to use responsibility-related factors in making relative assessments of the merits of competing proposals. We concluded that, if a small business is found deficient in such situations, COC procedures do not apply. Richard Sanchez Associates, 64 Comp. Gen. 603 (1985), 85-1 C.P.D. ¶ 661.

Oceanprobe argues that, in deciding to terminate negotiations with Oceanprobe, the Army improperly utilized an unstated evaluation standard, in-house capability to perform. Oceanprobe contends that the Army improperly emphasized a requirement that the vibracore, its support vessel and the positioning equipment, all come from one entity.

While awards may not be based on criteria not made known to prospective offerors, North American Automated Systems, Co., Inc., B-216561, Feb. 15, 1985, 85-1 C.P.D. ¶ 203, an agency need not specifically identify various aspects of stated evaluation criteria if such aspects are reasonably related to the stated criteria. Quanta Systems Corp., B-218974, Sept. 20, 1985, 85-2 C.P.D. ¶ 312.

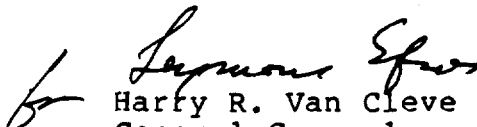
As stated above, Oceanprobe contends that the Army is overly concerned with in-house capability which allegedly is not a stated evaluation criterion. However, we believe that what Oceanprobe is asserting as in-house capability--adequate on board staffing and ownership of a vibracore unit and related equipment--reasonably relates to evaluation criterion No. 3, capacity to accomplish the work in the required time. The Army reasonably believed that having in-house capability,

purchase key equipment, would best ensure performance of the work in the required time. Therefore, in our view, the Army was not required to explicitly specify this type of capability prior to considering it. Quanta Systems Corp., B-218974, supra.

The Army discontinued negotiations with Oceanprobe because it was determined that the facts upon which the Army based its decision that Oceanprobe was the most qualified firm were inaccurate. Oceanprobe represented in its SF 255 that it owned a vibracore and related equipment. Oceanprobe has admitted that it did not own such a unit. Oceanprobe's SF 254 states that Oceanprobe has 12 employees, but the audit revealed that Oceanprobe only has two full-time employees. Although Oceanprobe contends that the auditor should have counted employees of three other businesses related to Oceanprobe through a common directorship, Oceanprobe essentially admits that the other listed "employees" do not draw their salaries from Oceanprobe. Under these circumstances, we believe that it was reasonable for the Army to conclude that Oceanprobe's in-house equipment capabilities and the employment status of all but Oceanprobe's two full-time employees were inaccurate. See Paul F. Pugh and Associated Professional Engineers, B-198851, Sept. 3, 1980, 80-2 C.P.D. ¶ 171.

Since Oceanprobe was initially ranked just slightly above Ocean Surveys under the criterion "capacity to accomplish work in the required time" and its overall ranking was slightly above Ocean Surveys', we find the Army's decision to change the rankings of the two firms, after discovering Oceanprobe's inaccuracies, to be reasonable and supported by the record. See Paul F. Pugh and Associated Professional Engineers, B-198851, supra; Arix Corp., B-195503, Nov. 6, 1979, 79-2 C.P.D. ¶ 331. Under the circumstances of this case, we do not believe that the Army acted arbitrarily in terminating negotiations with Oceanprobe. Arix Corp., B-195503, supra.

The protest is denied.


Harry R. Van Cleve
General Counsel