Thanks

The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Hoffmann Research Associates

File: B-225357

Date: February 25, 1987

DIGEST

1. Where on basis of protest as initially filed, General Accounting Office cannot conclude that it was unreasonable of agency to exclude from the competitive range the protester's proposal, which ranked 6th of 11 technically, protester's lower estimated costs would not require that it be included in the competitive range.

2. Specific objections to the evaluation of the protester's proposal, first raised in protester's comments on administrative report, but which are based upon information provided at a debriefing held after protester's initially filed protest but more than 10 days before comments were filed in the General Accounting Office are untimely and will not be considered on the merits.

DECISION

Hoffmann Research Associates (HRA) protests the award to Advanced Research Resource Organization (ARRO) of a cost-plus-fixed-fee contract under request for proposals (RFP) No. MDA903-86-R-0214 issued by the Department of the Army, Defense Supply Service-Washington (DSS-W), for a job analysis study of Army military and civilian comptroller jobs. HRA alleges that its proposal was "substantially equal" to that of the awardee, but that HRA's proposal was wrongfully eliminated from the competitive range and the contract unjustifiably awarded to ARRO at an estimated 77 percent higher cost.

We deny the protest in part and dismiss it in part.

The solicitation provides that award will be made to the responsible offeror whose conforming offer "is determined to be the best overall response, price or cost and other factors considered." The solicitation further provides for the technical evaluation of proposals under the following three

categories, in descending order: technical adequacy, personnel qualifications, and organizational experience. While the solicitation does not specify maximum point scores to be allocated for the stated evaluation factors, it does state that of the three categories, technical adequacy is most important, but personnel qualifications and organizational experience together will be given greater weight than technical adequacy. The solicitation also stated that cost proposals would be subordinate to technical considerations, and would be evaluated separately from technical proposals, but would not be assigned numerical weights. The record shows that 11 proposals were received, two of which were determined to be within the competitive range.

By letter dated September 11, 1986, the agency informed HRA that its proposal had been "evaluated in accordance with the evaluation factors" set forth in the solicitation, and that "[b]ased upon this evaluation, it has been determined that your proposal will not be included in the zone of consideration." HRA responded to the notice by letter dated September 18, in which it requested a debriefing and informed the agency that it would protest the award of a contract at a cost which exceeded the cost proposed by HRA. By letter dated September 26 (which HRA states it received on October 7), the agency informed HRA that the contract was awarded to ARRO on the basis of the evaluation factors set forth in the solicitation. The letter further indicated that the contract price exceeded that which HRA proposed by $153,309, and stated:

> ". . . the evaluation panel's determination . . . reflect[s] . . . only upon the aspects of the manner in which you would conduct this particular project, as presented in your proposal."

On October 10, HRA filed with our Office a protest in which HRA contended, in general terms, that because of its prior experience in performing a similar Army contract, the completeness of its proposal, and lack of latitude for "unique approaches to the research design," its technical proposal must have been substantially equal to the awardee's. Since the proposals probably differed only as to "minor aspects," HRA argued, the Army's award at a higher estimated cost than the protester's was improper.

The Army initially argues that HRA's October 10 protest is untimely under 4 C.F.R. § 21.2(a)(2) (1986) because it was not filed within 10 days of the date HRA was informed by the

Army's September 11 letter of the exclusion of its proposal from the competitive range. HRA contends that its protest is timely since it was filed within 10 days of October 7, when HRA first learned of the protest basis--that the Army improperly excluded its "substantially equal" proposal from the competitive range and awarded the contract at a higher estimated cost. HRA states further that prior to October 7, it was not able to state a specific basis for protest as required by our Bid Protest Regulations, 4 C.F.R. § 21.1(c)(4), because of the "vague generalities" stated in the Army's September 11 letter and the agency's alleged unwillingness to discuss the specific reasons for excluding HRA's proposal. We resolve this issue in favor of the protester.

Under 4 C.F.R. § 21.2(a)(2), to be timely a protest must be filed within 10 days after the basis of protest is known or should have been known. A protest must, however, set forth a detailed statement of the legal and factual grounds of protest, 4 C.F.R. § 21.1(b)(4), and is subject to dismissal for failure to comply with this requirement. We have held that where the information available to a potential protester leaves uncertain whether there exists a basis for protest, a protest filed within 10 days of the event by which the offeror should or does become aware of the specific grounds for the protest is not untimely. See Dynalectron Corp.--Request for Reconsideration, B-219664.3, May 13, 1986, 86-1 C.P.D. ¶ 452 at 3-4; Raytheon Support Services Co., B-219389.2, Oct. 31, 1985, 85-2 C.P.D. ¶ 495 at 6. But cf., Continental Telephone Co. of California, B-222458.2, Aug. 7, 1986, 86-2 C.P.D. ¶ 167, where the protest was untimely even though the protester argued, unpersuasively, that it was unable to provide sufficiently specific details earlier. In this instance we find that HRA's protest that the agency improperly excluded its proposal from the competitive range is timely since it was filed within 10 days after the protester learned of the agency's award to an offeror whose contract cost was higher than that which the protester proposed.

Concerning the merits of the protester's argument that its allegedly substantially equal proposal was improperly excluded, the record shows that among the 11 proposals received, HRA's proposal ranked sixth in the overall technical evaluation. HRA received a total technical score of 50 points (out of a possible 100), which was 16.6 points lower than the awardee's technical score. In view of these evaluation results, which based on the general allegations made in HRA's October 10 letter we cannot conclude were unreasonable, HRA's proposal was not determined to be

substantially equal to the awardee's proposal. Thus, as between HRA and the awardee, the awardee's technically superior proposal was the determinative factor for award. Since HRA's proposal was unacceptable, its lower estimated cost would not require that it be included within the competitive range. See Delcor International, B-221230, Feb. 13, 1986, 86-1 C.P.D. ¶ 160. HRA's October 10 protest is, therefore, denied.

On October 24, the agency debriefed HRA concerning the evaluation of its proposal. Based on information obtained at the debriefing, HRA first raised a number of detailed and specific objections to the technical evaluation of its proposal in the comments responding to the administrative report, which HRA filed in our Office on December 4. In the comments the protester contends that it was improperly and unfairly evaluated and that the technical deficiencies cited by the evaluation panel at the debriefing are either non-existent or so trivial that they easily could have been clarified. The protester expresses the view that the panel should have known that it would perform certain tasks not discussed in its proposal because it had done them in a previously-awarded Army contract for the performance of another job analysis "virtually identical" to that being solicited in the subject procurement. The protester further alleges in its comments that the proposal was downgraded because the evaluation committee chairman was professionally incompetent to judge certain aspects of the proposal and was biased against the firm because of disagreements that arose between HRA and the same panel committee chairman, who served as the contracting officer's representative during the performance of the previous contract.

The Army argues that the specific allegations concerning the evaluation of the proposal raised in HRA's comments on the administrative report are untimely because the protester learned of these matters at the October 24 debriefing and, therefore, should have protested them within 10 days of the debriefing.

We agree. As we previously stated, a protester may delay filing a protest if the information it has is insufficient to afford a statement of legally sufficient grounds of protest or, indeed, to determine whether a protest basis exists. However, the protester must file its protest within 10 days of the time it becomes aware of the protest basis. Thus, we have held that a protest is timely where it was filed within 10 working days of a debriefing at which the protester became

aware of details regarding the evaluation of its proposal which, prior to the debriefing, were unavailable. Intelcom Educational Services, Inc., B-220192.2, Jan. 24, 1986, 86-1 C.P.D. ¶ 83 at 4.

On the other hand, where the protester learns of details which form the basis of a protest or, as here, additional bases of protest not previously stated, such protest issues are subject to the requirement for being filed in our Office within 10 days of the time the protester knew or should have known of those bases, even though our decision on an earlier filed protest by the same firm concerning the same procurement is still pending. See Pease and Sons, Inc., B-220449, Mar. 24, 1986, 86-1 C.P.D. ¶ 288 at 6.

Documents submitted by HRA show that all of the new issues it raises in its comments on the administrative report (which it alleges the agency refused to discuss prior to the debriefing), were addressed at the October 24 debriefing. We thus conclude that the protest issues HRA filed on December 4, based on information obtained at the October 24 debriefing, are untimely and, therefore, will not be considered. 4 C.F.R. § 21.3(f).

for Seymour Efros

Harry R. Van Cleve
General Counsel