

Spungenberg



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Abt Associates, Inc.
File: B-226130
Date: April 28, 1987

DIGEST

1. Where a protester is advised of the reason its proposal was rejected, which forms the basis of its protest, it may not wait 2 months until a formal debriefing before protesting.
2. Source selection official is not bound by the recommendations and conclusions of a source evaluation board.

DECISION

Abt Associates, Inc., protests the award of contracts under request for proposals (RFP) HC-5743, issued by the Department of Housing and Urban Development (HUD), for technical support services for assisted housing research. Two cost-plus-fixed-fee indefinite quantity task order contracts were awarded under the RFP to the Urban Institute and Decision Information Systems Corporation (DISC).

We dismiss the protest in part and deny the remainder.

Four proposals were submitted in response to the RFP and the proposals of Abt, Urban and DISC were found within the competitive range. After discussions and the submission of best and final offers (BAFO), the offerors proposed the following estimated costs and the source evaluation board (SEB) awarded the following technical scores:

Urban	111.00	\$79,426
Abt	95.25	90,820
DISC	86.26	72,287

On July 22, 1986, the SEB recommended awards to all three offerors in the competitive range.

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On October 14, 1986, the source selection official "overruled" the SEB recommendation, and selected only Urban and DISC for awards. The source selection official found:

"In this procurement, much attention and 20 points were devoted to 'Demonstrated ability of the Proposer to conduct quality research within the contract time-frame and budget.' Because of [HUD's] limited budget it is essential that we secure contractors that are acutely sensitive to our budget constraints. The [SEB] did consider Abt's past performance in this area and rated them accordingly. However, subsequent to the Board's deliberations, it was revealed that Abt was requesting additional funding for a second overrun on their largest project with HUD, the Modernization Needs Study. The overrun request of \$289,000, in spite of repeated assurances that an additional overrun would not occur, materially impacts on the technical score received by Abt. Unfortunately, the Board could not incorporate this new, and material, information into their deliberations.

"Accordingly, I am 'conceptually rescoring' the Abt proposal and dropping their rank to third. The most recent experiences with Abt regarding overruns and changes in scope significantly reduce our confidence in the ability of Abt Associates to deliver the agreed upon product within the budget assigned."

On October 28, 1986, Abt was notified that it was not selected for award because of its most recent overrun on the Modernization Needs study contract and "the lack of confidence in Abt's ability to complete projects on time and on budget." Abt was also informed that no further information was available since awards had not yet been made, but that Abt could request a debriefing after award.

Abt protested to our Office on January 21, 1987, within 10 working days of being debriefed on its nonselection by HUD. Abt protests that the source selection official's "conceptual rescoring" of its proposal, which Abt learned about through documents received at the debriefing, was arbitrary and capricious since it considered information outside the proposal without the knowledge of the SEB or Abt. Abt claims that the alleged overrun on the Modernization Needs contract was caused in part by significant changes in the scope of that contract and that the source selection official did not give Abt an opportunity to explain the reasons for the alleged overrun. Abt contends that, in any

case, it addressed HUD's concerns in its BAFO by offering to perform assigned task orders on a fixed-price basis. Abt notes that although the SEB said that this offer should be considered where research needs are well-defined in advance, the source selection official did not consider this alternative offer in downgrading Abt's proposal.

HUD argues that Abt's protest is untimely under our Bid Protest Regulations since Abt was advised in the October 28 letter of the specific reasons it was not selected for award. HUD argues that Abt then knew the essential facts which are the subject of its protest and it was not entitled to wait for the formal debriefing before filing a protest.

Abt denies that the October 28 letter contains information on which to base a protest, since neither the identity of the awardees nor the reports of the SEB and source selection official were available until the January debriefing.

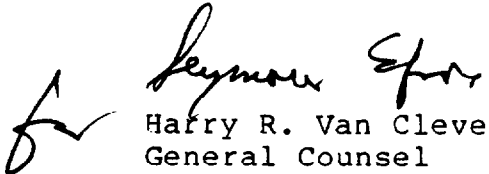
The essence of Abt's protest is that it should not have been downgraded because of its alleged overrun on the Modernization Needs contract. This basis of protest was untimely filed under our Bid Protest Regulations. This is so because HUD's October 28 letter specifically advised Abt of the facts forming the essential basis for Abt's protest, the cost overrun on the prior contract. That is, Abt was fully apprised of the specific reason its proposal was rejected.

In these circumstances, Abt was not entitled to await its January 1987 debriefing to garner additional information pertaining to the protest before filing. See Automation Management Consultants, Inc., B-219342, Sept. 24, 1985, 85-2 C.P.D. ¶ 328; Sperry Corp., B-225492, B-225492.2, Mar. 25, 1987, 87-1 C.P.D. ¶ _____. A protester may only await a formal debriefing before filing its protest where the information available earlier left uncertain that any basis for protest existed. Intelcom Educational Services, Inc., B-220192.2, Jan. 24, 1986, 86-1 C.P.D. ¶ 83. The identity of the awardees is not relevant to Abt's basis for protest. Accordingly, this protest basis is dismissed.

To the extent that Abt protests that the source selection official could not overrule the SEB recommendation and that she was required to positively consider the SEB suggestion regarding acceptance of Abt's unsolicited alternate offer to perform task orders on a fixed-price basis, these protest bases are timely since Abt was first apprised of the SEB report and source selection statement at the debriefing. See Intelcom Educational Services, Inc., B-220192.2, supra.

However, these protest bases are without merit. A selection official is not bound by the recommendations and conclusions of evaluators such as the SEB. Advance/Technology Systems, Inc., 64 Comp. Gen. 344 (1985), 85-1 C.P.D. ¶ 315; Master Security Inc., B-221831, May 9, 1986, 86-1 C.P.D. ¶ 447. As quoted above, the source selection official completely detailed her reasons for her decision not to follow the SEB's recommendation to select Abt for award. Also, the SEB suggestion that Abt could be awarded fixed-price task orders was limited to those situations where the studies were well-defined in advance.

Therefore, Abt's protest is dismissed in part and the remainder is denied.


Harry R. Van Cleve
General Counsel