The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: SITEK Research Laboratories

File: B-228084

Date: December 28, 1987

DIGEST

1. Agency acted reasonably in conducting a site visit of each offeror's laboratory to gather further information to aid in the evaluation of proposals.

2. There must be irrefutable proof that an agency has a malicious and specific intent to injure a protester before we may presume bad faith.

DECISION

SITEK Research Laboratories protests the exclusion of its proposal from the competitive range and award of a contract to Microbiological Associates, Inc. (MAI), under request for proposals (RFP) No. NCI-CP-71084-58 issued by the Department of Health and Human Services, National Cancer Institute (NCI), for test tube evaluation of chemical candidates for testing in living animals.

The protest is denied.

Five proposals were received in response to the RFP. Following evaluation of the proposals by the Initial Technical Evaluation Group (ITEG), three proposals, including SITEK's, were forwarded to the Source Evaluation Group (SEG) for further evaluation, including consideration of the results of site visits to each of the offeror's facilities. The proposals were evaluated in accordance with the following criteria set forth in the RFP:

"Qualifications and Experience of Personnel	Weight
Training and experience in performance of these specific microbial and/or mammalian cell mutagenicity assays.	35

Awareness of Technical Considerations

Awareness of current status of mutagenicity assays as demonstrated by a discussion of potential problem. 25

Organizational Experience

Previous or ongoing experience with similar contracts of this magnitude and capability to provide administrative/clerical support. 20

Facilities and Equipment

Facilities and equipment shall be present for safe conduct of biological tests and biohazardous material handling." 20

SITEK protests that, based upon the initial evaluation, its technical proposal was highest rated and included in the first competitive range but following the site visit, it was excluded from the second competitive range. SITEK contends that the sole concern of NCI's site visit team was safety considerations. SITEK states that specific questions were raised concerning SITEK's employees use of respirators, the certification of SITEK's air hoods, SITEK's waste generator's identification number and the need to provide a copy of the waste disposal company's permit. SITEK alleges that it had no indication of any other concerns on the part of NCI. SITEK contends that the above four questions posed to it during the site visit were adequately answered.

SITEK also protests that since MAI did not have a laboratory as of the date NCI's site visit of MAI's facilities, MAI could not address any of the technical or safety concerns of NCI. SITEK also alleges that NCI delayed award until MAI completed its facility and that SITEK was not notified of its exclusion from the competitive range until almost 1-month later.

NCI disputes SITEK's interpretation of the site visit and claims that during the site visit, which lasted longer than 2 hours, other information was gained, not limited to these points, which had a major impact on SITEK's relative standing. NCI contends that the safety and quality assurance issues are critical to the successful performance of the sophisticated laboratory analysis required under the RFP. NCI states that the four questions which SITEK responded to in a post-site-visit letter were minor points which were not answered during the visit.

NCI states that safety and quality assurance issues do not only relate to facilities and equipment but have a bearing on qualifications and experience of personnel and also awareness of technical considerations. NCI's site team determined that at SITEK there were "unacceptable safety and contamination problems directly affecting evaluations of staff, plan, processes, and facilities," and these were found relevant to three of the four evaluation criteria. For example, even though SITEK's own records revealed that a sterility check of its incubator showed both bacterial and fungal colonies growing on the settling plates; no attempt had been made to decontaminate the incubator. When the failure to decontaminate was pointed out by the site team the senior SITEK technician merely responded that he guessed the decontamination ought to be done. Moreover, the team found SITEK's safety and quality assurance officer unfamiliar with safety and health regulations of the RFP and those imposed by government regulations. Various other deficiencies, such as the informal training of new laboratory employees, were noted. NCI states that the site visit centered on issues of safety, health and contamination, but SITEK either was unwilling or unable to understand these issues even after they had been explained to it.

With regard to NCI's reexamination of data prepared by two of SITEK's professional employees, including its proposed principal investigator, NCI contends that the evaluation plan places a great emphasis on the qualifications of the principal investigator and therefore, the quality of his past work was a proper subject for examination under the RFP. Moreover, contrary to SITEK's allegation, NCI states it also evaluated the performance of the awardee's principal investigator in the same manner.

Initially, we observe that while both SITEK and NCI couch the protest and the response thereto in terms of two competitive range determinations having been made, we do not find this to be an accurate portrayal of the events that occurred. Our review of the evaluation record shows that, in actuality, there was only one competitive range determination made by the SEG following the evaluation of the site visit information. From the time of the submission of proposals, the evaluation was an on-going process, gathering as much information as possible, leading to the competitive range decision after the site visits and a subsequent request for best and final offers from the two remaining offerors.

Our review of the evaluation record shows that all three offerors were considered acceptable based solely on their proposals as submitted and it was contemplated, following the site visits, that a second technical evaluation would occur, utilizing the data derived from the site visits. Following these site visits, which were necessary in view of the nature of the testing involved and the contract requirements, and the evaluation of the principal investigators, the SEG reconvened and determined that SITEK was technically unacceptable.

We do not find that NCI's concerns with SITEK's laboratory, equipment and personnel were unreasonable. NCI determined based on its site visit that SITEK's laboratory posed problems concerning health, safety and contamination. Also, SITEK's personnel either lacked the necessary knowledge or appeared unwilling to exercise due diligence in meeting the necessary standards. Moreover, SITEK's subsequent response to NCI on these issues failed to reassure NCI that the major deficiencies would be corrected. We think that SITEK did not adequately respond to NCI's concerns and NCI was justified in its conclusion.

Additionally, we find nothing improper in NCI's considering the evaluation of the offeror's principal investigator's past work as this bears directly on the principal investigator's experience in performance of these specific assays, the most heavily weighted performance criteria. Also, the other offerors were evaluated in the same manner.

Finally, there is no evidence that NCI deliberately delayed this procurement until MAI's facilities were ready. NCI has recounted the steps in the evaluation, negotiation and award process which reasonably support its position that there was no undue delay intended to benefit MAI.

Moreover, the record shows that NCI visited the site of MAI's new facilities and concluded that all procedures, systems, training, etc., were in place and that the remaining technical items, such as hoods, incubators and shakers, were to be transferred from the approved facility where the contract had been performed until May. Further, the record shows that the new facility was fully operational by the time of award. There must be irrefutable proof that an agency has a malicious and specific intent to injure a protester before we may presume bad faith. J. Carver Enterprises, B-227359, Sept. 3, 1987, 87-2 C.P.D. ¶ 220. Moreover, we have held that the failure to notify a firm

promptly that it is no longer in consideration for award is only procedural in nature and does not affect the validity of an otherwise properly awarded contract. Space Communication Co., B-223326.2, B-223326.3, Oct. 2, 1986, 86-2 C.P.D. ¶ 377 at 5.

The protest is denied.

James F. Hinchman
General Counsel