



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Corporate America Research Associates, Inc.  
File: B-228579  
Date: February 17, 1988

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### DIGEST

Protester, initially selected to receive award, was not prejudiced when agency reopened negotiations (and requested a second round of best and final offers) upon discovery that protester's proposal did not include required letters of commitment from proposed employees; since the letters of commitment were material for evaluation purposes, agency could only permit protester to furnish them through discussions, and not through clarification contacts.

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### DECISION

Corporate America Research Associates, Inc. (CARA) protests the Department of the Navy's decision to reopen negotiations and request a new round of best and final offers (BAFOs) under request for proposals (RFP) No. N00612-86-R-0688, for referral and counseling services for the Naval Construction Battalion Center in Gulfport, Mississippi. CARA objects that, after first designating the firm as the apparent successful offeror, the Navy then mistakenly concluded that CARA's proposal contained previously overlooked material defects that required the agency to reopen discussions with all offerors. We deny the protest.

The solicitation provided for award to be made to the responsible offeror submitting the low, technically acceptable proposal; evaluation of the qualifications of proposed personnel was listed as the most important criterion for determining technical acceptability. The solicitation specified minimum educational and experience qualifications for the eight categories of personnel to be utilized in performing the contemplated contract. Offerors were required to submit resumes for all personnel who would work on the contract, and to furnish with their proposals "[r]esumes, Certified transcripts and associated letters of intent. . .[for] all key personnel in support of the staffing plan." Where a proposed employee was not currently

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employed by an offeror, the offeror was required to provide, along with the resume, "a signed commitment of employment from the proposed employee in order that credit may be received for that individual."

After evaluating the initial proposals received in response to the solicitation, the Navy advised offerors of the perceived deficiencies in their proposals and requested the submission of BAFOs. Based upon its evaluation of BAFOs, the agency initially determined that CARA had submitted the low, technically acceptable proposal. Thereafter, one of the unsuccessful offerors, Behavioral Educational Training Associates (BETA), filed an agency-level protest of the proposed award alleging, among other things, that CARA had submitted resumes of at least three people currently employed by BETA without also providing the letters of intent or commitment required by the RFP.

Upon subsequent review of CARA's proposal, the Navy determined that CARA in fact had not submitted letters of intent or commitment for any of its proposed personnel. In view of this previously overlooked deficiency in CARA's proposal, the Navy advised offerors that it was reopening negotiations. CARA thereupon filed an agency-level protest of that decision. Upon the denial of that protest, CARA filed this protest with our Office.

CARA claims that, for each of the eight employees proposed for work on the contract, it submitted a resume and a letter signed by the individual expressing interest in being considered for employment by the firm, and that the failure of these letters to conform exactly to the solicitation requirement for letters of commitment was no more than a minor informality or irregularity that the Navy should have waived or permitted CARA to correct. According to CARA, the Navy's decision instead to reopen negotiations with all offerors was not in the best interest of the government and will prejudice CARA by providing other offerors with the opportunity to displace it as the low, acceptable offeror.

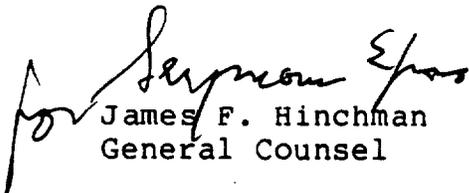
As noted above, the solicitation required offerors proposing individuals not currently employed by the offeror to provide a signed letter of commitment from each proposed employee before the offeror could receive credit for that individual under the most important evaluation criterion--staff qualifications--for determining technical merit. The Navy explains that, in order to assure that offerors are evaluated on a common basis, that is, on the basis of the actual staff likely to perform the contract, the agency must reasonably be assured--by means of letters of commitment--that the proposed employee has accepted the offeror's terms of employment and is willing to work for the offeror.

Obviously, such a requirement is not satisfied by an individual's mere expression of interest in possible employment by the offeror without any evidence of agreement on the terms and conditions of employment or of a commitment to work for the offeror on the project. See generally Development Alternatives, Inc. B-217010, Feb. 12, 1985, 85-1 CPD ¶ 188, and Management Services, Inc., 55 Comp. Gen. 715 (1976), 76-1 CPD ¶ 74. Accordingly, we do not agree that the protester essentially complied with the RFP requirement.

When an offeror is given the opportunity to revise or modify its proposal, or when information requested from and provided by an offeror is essential for determining the acceptability of the firm's proposal, the agency is conducting discussions. Discussions are to be distinguished from a request for clarifications, which is merely an inquiry for the purpose of eliminating minor uncertainties or irregularities in a proposal. Federal Acquisition Regulation § 15.601 (FAC 84-28); see Motorola, Inc., B-225822, June 17, 1987, 87-1 CPD ¶ 604. Where post-BAFO discussions are conducted with one offeror, they must be conducted with all offerors in the competitive range. Keystone Engineering Co., B-228026, Nov. 5, 1987, 87-2 CPD ¶ 449. Since the letters of commitment were material for evaluation purposes, the Navy could only permit CARA to provide the letters through discussions and not through clarification contacts.

Therefore, we find the request for another round of best and final offers to be legally unobjectionable.

The protest is denied.

  
James F. Hinchman  
General Counsel