



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Associated Chemical and Environmental Services,  
U.S. Pollution Control, Inc., and Chemical Waste  
Management, Inc.  
File: B-228411.3, B-228411.4, B-228411.5  
Date: March 10, 1988

### DIGEST

1. The government is not required to exclude from a competition a firm that might possess advantages and capabilities due to the prior experience of its parent company, if there is no evidence of preferential treatment by the government or access to information unavailable to other offerors, and the parent company did not prepare material leading predictably, directly and without delay to the work statement.
2. The disclosure of precise numerical weights in an evaluation scheme is not required where the solicitation clearly advises offerors of the broad scheme to be employed and gives reasonably definite information concerning the relative importance of the evaluation factors in relation to each other.
3. Where an agency states its specifications in terms of detailed design requirements set forth in clear and unambiguous terms in a request for proposals, and states that it will evaluate major areas of the specifications, a submission of "conceptual designs" prepared in response to the solicitation's proposal instructions that did not include the detailed designs required by the specifications is not sufficient.
4. An agency is not required to specify evaluation subfactors in a request for proposals (RFP) where those subfactors are reasonably related to or encompassed by the stated evaluation criteria, and offerors were on notice of the importance of the subfactors from the RFP itself.
5. Language in a letter from the agency and in an amendment to a solicitation giving notice to all offerors of a common cutoff date for receipt of offers has the intent and effect of a request for best and final offers where all offerors submitted revisions to their proposals and no offerors were prejudiced.

135281/041556

6. Where an agency led an offeror into the areas of its proposals that required amplification and afforded it the opportunity to submit a revised proposal, meaningful discussions were conducted.

---

## DECISION

Associated Chemical and Environmental Services (ACES), U.S. Pollution Control, Inc. (USPCI), and Chemical Waste Management, Inc. (CWM), protest the award of a contract to EBASCO Constructors, Inc., under request for proposals (RFP) No. DACA47-87-R-0034, issued by the Army Corps of Engineers for the interim removal and disposal of hazardous waste at Basin F, at the Rocky Mountain Arsenal in Colorado. The protests raise common issues: whether EBASCO has an organizational conflict of interest; whether the RFP properly informed offerors of the relative importance of the evaluation factors and whether those factors were used in selecting the successful offeror; whether the Corps properly and specifically requested best and final offers (BAFOs); and whether the Corps failed to conduct meaningful discussions with each of the protesters.

We deny the protests.

### Background

The RFP, issued on May 26, 1987, contemplated a firm, fixed-price contract for the cleanup of Basin F, a 93-acre hazardous waste surface impoundment located in the Rocky Mountain Arsenal, which is a 27-square mile chemical waste site approximately 10 miles from the center of downtown Denver. The work consists of the installation of a force main or vacuum truck liquid removal system to remove up to 4 million gallons of contaminated liquid to government-provided storage tanks; the treatment by absorption of contaminated sludge material; the installation of a waste pile at a designated location; the excavation and removal of the existing basin liner and all solidified waste material to the waste pile; the installation of surface impoundments and runoff control structures; and the recontouring of the excavated area to provide natural drainage after the work is completed.

The RFP required the submission of a three-volume technical proposal, to be evaluated in five areas, in descending order of importance: (1) operation and work plans; (2) price; (3) schedule; (4) experience, record of performance, and corporate commitments in organization and personnel; and (5) safety, health, and emergency response plan. The

solicitation stated that award would be made to the responsible offeror within the competitive range who received the highest point score using the established evaluation formula and whose offer had been evaluated as most advantageous to the government, technical, price, and other factors considered. The RFP also provided that award might be made on the basis of initial proposals, without discussions, and reserved the right to the Corps to accept other than the lowest offer.

The Corps received 11 proposals from 7 offerors on August 7, 1987. A 23-member source selection board evaluated the initial technical proposals (pricing data was not evaluated at this time), and determined that only four proposals were in the competitive range. The Corps conducted written discussions with these four offerors via letters of August 18, addressing twelve common questions to all offerors and a number of specific questions to individual offerors. The August 18 letters stated that the Corps required a letter of clarification in response to the questions as well as an affidavit from a surety with respect to performance and payment bonds. The four offerors responded by the August 26 closing date.

Because the Department of Labor, on August 26, issued a change in the wage rate determination applicable to the solicitation, the Corps issued Amendment No. 10 on August 31, increasing some of the wage rates and stating that proposals would be received until 4 p.m. on September 9. In addition, in response to considerations raised in the initial proposals, the Corps decided to encourage offerors to submit alternate vacuum truck liquid removal system proposals. Because of these changes, the Corps determined that it would redefine the competitive range to include all offerors. Accordingly, on August 31, the Corps notified all offerors that alternate proposals and responses to Amendment No. 10 were due by September 9, and kept the three offerors initially excluded from the competitive range clarification questions and a request for an affidavit from a surety, with a response required by September 9.

The Corps received 14 proposals from the 7 offerors. The source selection board reviewed the initial point scores and determined that no further discussions were necessary. Based on the final total point scores for all factors, the Corps awarded a contract to EBASCO for its alternate proposal--Contaminated Liquid Removal Base Bid--in the amount of \$21,939,429, on September 24. ACFS, USPCI and CWM, with proposals ranked 14th, 12th, and 10th, respectively, protested to our Office following award. The Corps has proceeded with contract performance.

## Conflict of Interest

All three protesters allege that EBASCO is ineligible for contract award because of work previously performed at the Rocky Mountain Arsenal by its parent company, Ebasco Services, Inc., that constitutes an organizational conflict of interest.

The protesters first assert that EBASCO, through its parent company, assisted in preparing the work statement for the RFP at issue or provided material leading directly to that work statement. They also contend that EBASCO enjoyed a competitive advantage as a result of preference and unfair action by the Corps because of EBASCO's access to Basin F data gathered under an Ebasco Services contract with the Army Materiel Command (AMC) that was not accessible to other offerors.

The Corps asserts that the design, work plan and specifications for the Basin F project were executed by Woodward-Clyde Consultants, a design contractor, and that neither EBASCO nor its parent company participated in the preparation of the work statement. The Corps admits that Ebasco Services did perform investigative work at the Arsenal, including Basin F, but indicates that EBASCO was only one of a number of firms whose work was incorporated into the work statement for informational purposes. The Corps further advises that the RFP provided, at three different places, the name, address and telephone number of the person to contact to obtain documents from the Rocky Mountain Arsenal library, including those prepared by Ebasco Services, all of which were either accessible to the public or available to potential offerors under this RFP despite their classified or restricted status. This information was reiterated, according to the Corps, at the preproposal conference. Furthermore, the Corps maintains, the RFP included all essential information known to the government concerning the contents and characteristics of the hazardous chemicals in Basin F, including any information previously gathered by Ebasco Services.

The Federal Acquisition Regulation (FAR) generally requires contracting officials to avoid, neutralize or mitigate potential significant conflicts of interest so as to prevent an unfair competitive advantage or the existence of conflicting roles that might impair a contractor's objectivity. FAR §§ 9.501, 9.504, and 9.505 (FAC 84-12); see ESCO, Inc., B-225565, Apr. 29, 1987, 66 Comp. Gen.     , 87-1 CPD ¶ 450. In particular, the FAR provides that if a contractor (1) prepares or assists in preparing a work statement to be used in competitively acquiring a system or

services, or (2) provides material leading directly, predictably, and without delay to such a work statement, then the contractor generally may not supply the system or services unless more than one contractor has been involved in preparing the work statement. FAR § 9.505-2(b)(1). This restriction is intended to avoid the possibility of bias where a contractor would be in a position to favor its own capabilities. Coopers & Lybrand, B-224213, Jan. 30, 1987, 66 Comp. Gen. \_\_\_\_, 87-1 CPD ¶ 100.

Furthermore, the mere fact of a prior or current contractual relationship with a firm does not in itself create an organizational conflict of interest for that firm or that firm's subsidiary. Ross Bicycles, Inc., B-217179, et al., June 26, 1985, 85-1 CPD ¶ 722, aff'd on reconsideration, B-219485.2, July 31, 1985, 85-2 CPD ¶ 110. A particular offeror may possess unique advantages and capabilities due to the prior experience of its parent company, and the government is not required to attempt to equalize competition to compensate for it, unless there is evidence of preferential treatment or other action. Ross Bicycles, Inc., B-217179 et al., supra.

We do not find that the Corps acted improperly in including EBASCO in the competition. It is undisputed that Woodward-Clyde Consultants, a development and design contractor, prepared the work statement for the RFP at issue and that EBASCO was not specifically employed to assist that firm. Ebasco Services was one of many contractors whose research material was used by Woodward-Clyde and ultimately incorporated by reference or specifically included in the work statement. The Corps has provided affidavits by the project managers from Woodward-Clyde and the Corps stating that EBASCO had no role in preparing the statement of work. Woodward-Clyde used the information contained in studies prepared by Ebasco Services and others that were available from the Arsenal library because those documents contained general information about hazardous materials for use on various Arsenal projects; the documents were not prepared specifically for inclusion in the RFP at issue. Although the Corps acknowledges that a few of the actions included in the RFP were among the recommendations provided in the general planning information of the Basin F closure plan prepared by Ebasco Services, that document did not lead directly and immediately to the RFP work statement since the procedures outlined were standard toxic waste cleanup procedures and did not provide any detail concerning the cleanup procedures that were so extensively detailed in the RFP. Moreover, not all suggestions raised in the closure plan were included in the RFP, and the RFP discusses many procedures not addressed in the closure plan.

In sum, EBASCO's parent company was only one of several contractors whose research materials on the Arsenal were ultimately incorporated by reference in the work statement, and the record does not demonstrate that specific reports prepared by Ebasco Services led directly to the work statement. On this basis, we do not think the Corps had to exclude EBASCO's offer from consideration for award.

The protesters second argument to support their position on this issue involves a 1984 indefinite delivery contract, No. DAAK11-84D-0017, between Ebasco Services and AMC, which the protesters argue is evidence that EBASCO had unfair access to Basin F composition information through its parent company. That contract consists of 27 task orders involving surveys and studies concerning environmental contamination at the Arsenal. Four task orders cited by the protesters involve Basin F work: (1) Task Order No. 13, the Basin F closure plan, prepared in December of 1985; (2) Task Order No. 17, issued January 24, 1986, involved the evaluation of the incineration feasibility of Basin F waste as part of a permanent Basin F remedy; (3) Task Order No. 27, issued March 12, 1986, involved a conceptual design for a landfill for the Arsenal; and (4) Task Order No. 31, Basin F Interim Action Support, issued in April of 1987. The objective of Task Order No. 31 is to sample and analyze soil, sludge, surface water and ground water in and around Basin F in support of the Basin F project, to assess the southern pool liquid to determine if it is treatable conventionally, and to provide technical expertise regarding the Basin F removal action (i.e., review design documents, provide consultant services).

The first three cited task orders either are not directly relevant to the award in issue and/or led to information included in the RFP or clearly available from the Arsenal library.<sup>1/</sup> The protesters assert that under Task Order

---

<sup>1/</sup> Task Order No. 13 was of a general nature, not specifically prepared for the interim cleanup of Basin F; did not involve sampling or testing of the contents of Basin F; and was specifically referenced in the RFP as available from the Arsenal library. Task Order No. 17 included taking one sample and preparing Basin F liquid volume measurements, and taking a sample and analyzing Basin F soil; was provided in the Appendix to the Safety Plan in the RFP; and was available from the Arsenal library. The concept design report for the Basin F landfill for this project, Task Order No. 27, was not prepared by Ebasco Services and was available to the public from the Arsenal library.

No. 31, however, Ebasco Services developed a chemical analysis program to be used to characterize Basin F liquids and solids, collected liquid samples from Basin F, and evaluated alternatives for the treatment of Basin F southern end liquid including backup calculations, schedule implications, and cost estimates, all of which were accessible to EBASCO through Ebasco Services, and not to other offerors.

The Corps contends that the information gathered under Task Order No. 31 did not allow EBASCO to determine the composition of the Basin F contents since Ebasco Services did not conduct chemical analyses of Basin F sludge, soil or overburden, conduct geotechnical work in Basin F, or provide the Corps with additional characterization of the Basin F sludge, as alleged by the protesters. Nor does the Corps believe that EBASCO's proposal contained information that indicated it had extensive additional knowledge of the Basin F site. Rather, another contractor, whose analysis was referenced in the RFP and was available at the Arsenal library, took the samples from Basin F. Moreover, the analysis of Basin F sludge was conducted, as stated above, by Woodward-Clyde and made available to offerors in the RFP itself.

The Corps notes that Ebasco Services did perform an analysis of two water samples taken from the southern pool of Basin F under Task Order No. 31 that indicated that the quality of the southern pool, which consists predominantly of rainwater runoff, was similar to that of the northern pool and thus no change to the Basin F Interim Action Project design was necessary, and that further treatability studies for the southern pool liquid were never conducted. The Corps states that the only other task conducted under Task Order No. 31 by Ebasco Services that relates to the interim, rather than the final, remediation of Basin F--an assessment of the liquid volume of the basin--provided information on the extent of surface elevation fluctuation of the contaminated liquid at different seasons of the year. This information appeared as elevation estimates in the RFP drawings; was reflected in the dates published in the RFP as preferred for commencement of the liquid pumping operation; and did not involve sampling of Basin F contents. AMC has informed the Corps that the remainder of Task Order No. 31, the sampling and analysis of contamination below the Basin F liner, has been deleted from the Ebasco Services contract.

We find that although Ebasco may have possessed an advantage due to the prior experience of its parent company on the AMC contract, the Corps was not required to neutralize that advantage since there was no evidence of preferential treatment of EBASCO or other action that gave EBASCO an

unfair competitive advantage. The record does not establish that EBASCO possessed any information on the composition of Basin F materials that was unavailable to other offerors. In this respect, we note that the protesters suggest that the Corps may have allowed EBASCO, through its parent, unrestricted access to Basin F so that the firm was able to gather unauthorized samples from Basin F; the record, however, does not support the contention and the Corps, which specifically denies it, points out that strict government security measures are maintained at the Arsenal because of the hazardous situation that exists there.

We therefore find that EBASCO did not have an undue competitive advantage over other offerors that required its exclusion from award consideration.

#### Evaluation Criteria

First, USPCI and CWM argue that the RFP's listing of five specific evaluation factors in descending order of importance was overly broad, a defect that could have been cured by providing the numerical weighting of the factors.

The solicitation provided that award of the contract would be made to the highest scored proposal on the basis of the five major evaluation factors, listed in order of importance: operation and work plan, price, schedule, experience, and the safety, health and emergency response plan ("SHERP"). The actual weights given to the evaluation factors were as follows: operation and work plans - 36 percent, price - 30 percent, schedule - 14 percent, experience - 11 percent, and SHERP - 9 percent.

A solicitation must clearly advise offerors of the broad scheme to be employed and give reasonably definite information concerning the relative importance of the evaluation factors in relation to each other. This, however, does not mean that the disclosure of the precise numerical weights to be used in the evaluation is required. Raytheon Support Services Co., B-219389.2, Oct. 31, 1985, 85-2 CPD ¶ 495.

We think the RFP's statement that proposals were to be evaluated in five decreasingly important areas gave offerors a reasonably definite outline of how proposals were to be judged. We recognize that the actual weights given to the evaluation factors did not decrease by equal percentages. Nevertheless, we do not think they were necessarily inconsistent with the RFP's stated scheme, or that they were

skewed in such a way as to lead us to conclude that offerors were misled about the evaluation scheme. See Raytheon Support Services Co., B-219389.2, supra; Bayshore Systems Corp., B-184446, Mar. 2, 1976, 76-1 CPD ¶ 146.

Second, ACES and USPCI allege that the Corps failed to follow the evaluation factors set forth in the RFP because the Corps, in evaluating proposals, focused not just on conceptual designs but on the offerors' responses to requirements set forth in the RFP design specifications and drawings. The protesters argue that most of these responses, at least in detailed form, were not actually required until after award or, in some cases, after the notice to proceed. The basis for this argument is that the RFP's proposal information section advised offerors that the operation and work plan should include only a "conceptual design" for each of the major aspects of the project. The protesters suggest that fully detailed plans were not actually due until the post-award plan review conference.

The RFP had approximately 250 pages of detailed design specifications including a summary of work, 9 additional appendices and a 135 page site-specific safety plan with 13 appendices and 25 drawings. The contract award section stated that any proposal not offering to provide all of the specific work contained in the RFP would not be considered to be in the competitive range.

The section of the RFP specifications relied upon by the protesters in support of their contention involves the pre-performance plan review conference. That conference is to be held following award and before notice to proceed, for the purpose of discussing the contractor's plans with the contractor's superintendent, quality control personnel, safety personnel and the contracting officer, to make sure that all persons involved understand the contractor's plans. The section contains a notation that certain plans are due 21 calendar days after award and others, 21 calendar days after notice to proceed, referring to the submission of the required 10 copies of each plan for the purpose of the conference.

We find no legal merit to the protesters' position. Simply put, we think it obvious that the fact that the selected offeror was to discuss its plans with the agency personnel at a point after award, and did not actually have to submit copies of plans before then, did not relieve a firm from submitting with its proposal a complete response to the RFP's extensive specifications and requirements. We do not see how ACES or USPCI reasonably could have expected the Corps to accept, in lieu of a full response, simply the mere statement that the offeror would comply with the

solicitation's extensive specifications, numerous drawings and appendices, and elaborate safety plan.

Moreover, the fact is that, no matter what ACES and USPCI might have thought when entering the competition, the Corps made it very clear to the firms, through the negotiations questions (which we discuss in the last section of this decision), what the RFP contemplated and the agency expected. We do not think the protesters could, at that point, rely on how they initially read the RFP, so we do not find they were prejudiced by the evaluation in that regard.

Third, the protesters allege that the Corps improperly evaluated offerors' schedules. CWM alleges that the Corps based its evaluation on three unidentified significant subfactors: target performance dates for the beginning of the liquid removal system pumping and its completion, and for the final completion of the contract. USPCI and ACES contend that the Corps deviated from the evaluation criteria by comparing the length of offerors' proposed schedules against each other rather than considering each offeror's schedule in light of its technical approach, and USPCI further alleges that the Corps considered submissions not required until after award in its evaluation. CWM also states that the Corps should not have downgraded its proposal with respect to schedule in the final evaluation since it had not altered its proposed schedule between the initial and final evaluations.

Schedule was the third most important factor in the evaluation scheme. The liquid removal system pumping schedule constituted 7 percent of the total technical points available (1,090): 5.25 percent allocated to the beginning date and 1.75 percent to the completion date. Contract completion constituted 4.5 percent.

The RFP instructions reflected the importance of schedule for specific parts of the project. They called for the submission of a schedule of work activities with up to 100 components, depicted in terms of calendar days reflecting both the start and finish of all activities and the final completion date of the work and listed the significant work activities involved in the project with the contaminated liquid removal system as the first of nine major work elements. The specifications stated that a detailed schedule of all work activities was required with beginning and completion dates for each major work element. Under Liquid Transfer Schedule, the RFP stated that the contamination liquid removal system should be completed and operational prior to September 15, 1987 (revised from September 1, 1987). The section further stated that the three tanks to receive the liquid would be ready by

September 15 and October 30, and the contractor should take all necessary measures to meet the deadlines. In addition, drawings of the surface impoundments included in the RFP noted that a construction period of 6 months (from December to May) was assumed. In addition, the minutes of the fully attended preproposal conference, which were provided to all offerors with an amendment to the RFP, emphasized the importance of completing the contaminated liquid removal during the fall, prior to winter weather delays and the addition of more liquid to the basin by spring rainfall. In response to questions concerning the preferred timeframe for work completion at the preproposal conference the Corps stated, "as soon as possible," again stressing the necessity to minimize the timeframe for completion of the project. Finally, during discussions, the Corps asked each offeror for details on steps it could take to reduce its overall construction timeframe and condense its schedule.

We find nothing improper in the Corps' evaluation of the schedule factor. It is clear from the numerous references to the importance of schedule in the RFP, at the preproposal conference, and in the discussion questions to all offerors, that a short period of performance was desirable. The Corps specified a desired performance goal date for the completion of the liquid removal system of September 15,<sup>2/</sup> and noted that a 6 month construction period was assumed in its calculations for the surface impoundments. Moreover, the Corps repeatedly emphasized the importance of a short timeframe because of the problem of weather delays and rainfall accumulation. In sum, we think that offerors were on notice of the importance of the target dates for the liquid removal system and of the short suggested timeframe for contract completion, and we find nothing wrong in the way the Corps considered those matters.

In addition, USPCI's contention that the Corps used submissions required after award in its evaluation of schedule, and CWM's contention that its schedule was improperly downgraded, are not correct. The evaluation sheets submitted for our review show that the Corps evaluated only the specific timetables proposed by each offeror for the various stages of the project. In addition, CWM's score as to schedule was reduced because other offerors improved their schedules in response to the

---

<sup>2/</sup> This date was extended due to delay in the procurement process. As a result, the Corps utilized number of days proposed for the various stages of the project in evaluating offerors' proposed schedules.

discussion question to all offerors to shorten the overall construction timeframe and condense their schedules.

#### Best and Final Offers

All three protesters allege that the Corps failed properly to request BAFOs from all offerors in the competitive range as required by FAR § 15.611(a) (FAC 84-16).

Generally, in negotiated procurements, agencies must conduct written or oral discussions with all responsible offerors within the competitive range before awarding a contract. Metron Corp., B-227014, June 29, 1987, 87-1 CPD ¶ 642. Upon completion of discussions, the contracting officer must request BAFOs. That request must include notice that discussions are concluded, notice that this is the opportunity to submit a BAFO, and a common cutoff date and time. FAR § 15.611(b). However, where an amendment to a solicitation does not specifically request offerors to submit their BAFOs, language giving notice to all offerors of a common cutoff date for receipt of offers has the intent and effect of a request for BAFOs. James R. Parks Co., B-186031, June 16, 1976, 76-1 CPD ¶ 384.

Here, the Corps conducted discussions with the four offerors in the original competitive range, requesting responses (termed "letters" of clarification" by the Corps) to the discussion questions by August 26. However, because of an August 26 change in the wage rate determination and its effect on offerors' proposed prices, and because of the Corps' decision to encourage the submission of alternate vacuum truck liquid removal system proposals, the Corps determined that it would include all offerors in the competitive range. Accordingly, the August 31 letters sent to all offerors included Amendment No. 10 (the wage rate modification) and gave notice that alternate proposals, responses to the discussion questions (if not already provided), the affidavit from a surety of intent to provide payment and performance bonds (if not already provided), and responses to Amendment No. 10, were required no later than September 9, 1987, at 4 p.m. Amendment No. 10, stated at the top of page 1: "Date for Receiving Proposals, 87 Sep 9" and in paragraph 3 of page 2: "Proposals will be received until 4:00 p.m., local time at place of receiving proposals, 87 Sep 9."

Although the Corps admits that it did not explicitly advise offerors that BAFOs were requested, it argues that because the RFP provided for the possibility of award on the basis of initial offers and because offerors were advised of a common cutoff date for the receipt of proposals, offerors were on notice that they should have provided their best

offers. Indeed, the Corps argues, all offerors were given the opportunity to respond, and did in fact respond to the agency's concerns.

It is clear that from the record that all offerors were treated equally by the Corps and that all offerors were given, and in fact understood, that they had the opportunity to revise their proposals in the technical, schedule and price areas. Neither ACES nor USPCI has asserted that it was prejudiced by the Corps' actions. CWM, which alleges that it would "in all likelihood" have lowered its price and improved its competitive position, would have had to reduce its price by more than 30 percent in order to have been in a position to have received the contract, and has not demonstrated or even asserted that it contemplated such a large price reduction. Accordingly, we do not find that any of the protesters was prejudiced by the Corps' failure specifically to request BAFOs, so that the failure provides no basis on which to object to the procurement.

#### Meaningful Discussions

The three protesters allege that the Corps failed to conduct meaningful discussions with each of them.

The requirement for discussions with all responsible offerors whose proposals are in the competitive range includes advising them of deficiencies in their proposals and affording them the opportunity to satisfy the government's requirements through the submission of revised proposals. FAR §§ 15.610(c)(2) and (5); Furuno U.S.A., Inc., B-221814, Apr. 24, 1986, 86-1 CPD ¶ 400. Agencies are not, however, obligated to afford offerors all-encompassing discussions, Training and Management Resources, Inc., B-220965, Mar. 12, 1986, 86-1 CPD ¶ 244, or to discuss every element of a technically acceptable, competitive range, proposal that has received less than the maximum possible score, Bauer of America Corp. & Raymond International Builders, Inc., A Joint Venture, B-219343.3, Oct. 4, 1985, 85-2 CPD ¶ 380, but generally must lead offerors into the areas of their proposals which require amplification. Furuno U.S.A., Inc., B-221814, supra.

#### (1) CWM

CWM alleges that the Corps' written discussions failed to point out certain deficiencies in the company's initial proposal which subsequently were addressed in the Corps' debriefing letter: CWM's schedule, its price, its operation and work plan, and its SHERP.

The weakness identified by the Corps in CWM's schedule concerned the amount of time required to begin the liquid pumping operation and to complete the entire project, making CWM the 10th lowest ranked offeror out of 11 on this evaluation factor, with 33 out of a possible 140 points. The Corps' discussion letter to CWM included a question addressed to all offerors concerning the ability to reduce the overall construction timeframe, minimize the impact of the addition of further liquids to the basin due to weather conditions, and condense the schedule. CWM declined to change its schedule in response to this question.

We think the Corps conducted adequate discussions with CWM with regard to schedule. CWM proposed the second longest schedule. The Corps emphasized the importance of a short timeframe in the RFP and the preproposal conference, as discussed above with regard to the evaluation criteria, and, in the discussion questions concerning schedule, clearly indicated that this was an area of CWM's proposal that needed revision. CWM had the opportunity to shorten its schedule and declined to do so.

With regard to price, the Corps did not raise this issue with CWM since it considered CWM's price to be reasonable and had included CWM in the competitive range. Agencies may inform an offeror that its cost is considered to be too high or unrealistic, FAR § 15.610(d)(3)(ii), but the record here contains no evidence that the Corps believed that CWM's costs were unreasonably high. In fact, CWM's proposal ranked eighth in price out of the 11 initial proposals, while the awardee's proposal ranked sixth, and CWM has not suggested any specific reasons why the Corps should have found CWM's price to be unreasonable or unrealistic.

The Corps noted three weaknesses in CWM's operation and work plan relating to the absorption process: its lack of unconfined compressive strength tests for the reagent formula, its lack of a schedule for post-processing tests of the same nature, and its proposal to mix clean soil with the sludge to be placed in the waste pile thereby increasing the size of that pile. The Corps' discussion questions were directly related to the weaknesses later identified by the Corps: clarification of CWM's tests for compressive strengths, its post-processing acceptance testing procedures, its proposed absorption process mix, and its specific additive dosages and ratios. We also note here that CWM ranked first in the initial technical evaluation anyway, and that the areas mentioned account for only 30 out of a possible 450 points.

(2) ACES

The second protester, ACES, also alleges that the Corps' written discussions failed to point out deficiencies subsequently addressed in the Corps' briefing letter concerning operation and work plan, SHERP, and schedule.

ACES first challenges the adequacy of the eight questions relating to its initial operation and work plan, where it received 192 out of a possible 360 points, and its SHERP, where it received 64 out of possible 90 points, making its technical ranking 10th out of 11 initial proposals. Most of the weaknesses later identified by the Corps concern ACES' lack of detail in its proposal, in particular as to ACES' in-situ absorption process and sources of the absorption agent, flyash, sample collection in the quality assurance-quality control plan, placement of material into the waste pile, and leachate pumping system, including the method of screening solids prior to pumping. Other weaknesses concerned ACES' utilization of phosphoric acid after processing, and its failure to include an air dispersion model required by the SHERP.

We find that the Corps did conduct adequate discussions with ACES on these matters by leading the firm into the areas of its proposal that required amplification. The Corps' discussion questions requested additional information on ACES' amount of absorption agent and its proposed absorbent-to-sludge ratio, and the control of emissions in ACES' in-situ absorption process; asked for an outline of ACES' quality assurance and control plan and inquired concerning frequency and methods of taking samples for testing of materials so as to assure that performance criteria are met during the absorption process; requested details regarding the system for placement of material into the waste pile; and asked for information on the pumping intake system and its cleaning. The Corps notes with regard to ACES' failure to list sources of its absorption agent that the RFP required, and the Corps required for evaluation of the adequacy of ACES' absorption process, information on the materials to be used and the quantities of each, as well as a design analysis and calculations, drawings and specifications. In addition, the Corps states that the RFP specifically noted in the design specifications that the supply of flyash was very limited. The Corps also asked questions about ACES' absorption agent calculations and other information relating to its use of flyash.

Further, the Corps did not address the adverse effect of phosphoric acid after processing because ACES raised this problem in its response to the discussion question. An agency is not required to reopen discussions concerning a

problem that arises in a BAFO. Inter-Continental Equipment, Inc., B-224244, Feb. 5, 1987, 87-1 CPD ¶ 122.

With regard to ACES' failure to include a required air dispersion model in its SHERP, specifications clearly required the submission of a site-specific air dispersion model, and the Corps in fact addressed the deficiency in discussions.

Finally, concerning ACES' schedule, ACES' proposal received the lowest initial score of all offerors because ACES proposed the longest timeframe. The Corps addressed the deficiency in ACES' schedule in the discussion question addressed to all offerors concerning the ability to reduce the overall construction timeframe and condense the schedule due to possible adverse effects of weather, and specifically asked ACES for details on timeframe and activities between award of the contract and beginning and completion of the liquid pumping operation. We think ACES clearly was on notice that its schedule was an area of its proposal that needed revision.

### (3) USPCI

The third protester, USPCI, also alleges that the Corps identified informational weaknesses in USPCI's proposal in its debriefing letter that were not revealed by the Corps to USPCI during discussions concerning the firm's operation and work plan and its SHERP, schedule, and experience.

USPCI first challenges the adequacy of the 11 questions addressed to all offerors and the 33 questions addressed to USPCI dealing with USPCI's operation and work plan, which received 111.5 out of 360 possible points, and its SHERP, which received 49.5 out of 90 possible points, giving USPCI the lowest technical score of the 11 initial proposals.

The weaknesses identified by the Corps concern USPCI's lack of design information or detail in its proposal and USPCI's failure to furnish an air dispersion model. The information weaknesses relate to all major areas of USPCI's proposal including the liquid pumping operation, the absorption process, the waste pile construction, material removal the runoff/runon control plan, and the quality control plan. The discussion questions posed by the Corps in the technical area were directed toward eliciting more specific, detailed information from USPCI. One general question asked for "more breakdown of all data called for in the RFP." Specific questions addressed to USPCI only or to all offerors were for more information (specifically mentioning that the problem of screening solids from the liquid was not addressed), on absorption post-processing acceptance

testing, on leachate pumping from the waste pile, material removal and runoff control. In fact, USPCI admits that it failed to provide the detailed information requested by the Corps because it determined that the RFP proposal instructions required conceptual designs only and that detailed plans were not required until after award. Other questions requested information that was required by the RFP but not included in USPCI's proposal concerning USPCI's utilities installation, its mobilization plan, its air dispersion model, the development of action levels and protective equipment for use in the event of a health or safety emergency, and the identification of work zones.

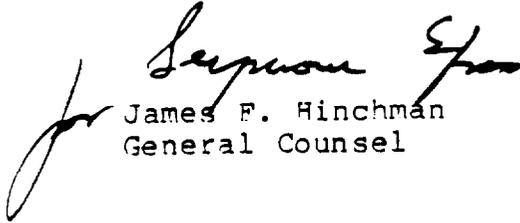
As was the case with the other protesters, we think this record establishes that the Corps met its responsibility to conduct meaningful discussions with USPCI with regard to the firm's operation and work plan and SHERP. The Corps led USPCI into the areas of its proposal that required amplification through both general questions requesting more detailed data and specific questions relating to gaps in each of the major technical areas of USPCI's proposal later cited as weaknesses.

USPCI also challenges the adequacy of discussions concerning its schedule, which received 74 out of 140 possible points and ranked fifth out of 11 proposals, and its experience, which received 20 out of 110 possible points and ranked last. The Corps, however, in effect addressed the deficiency in USPCI's schedule in the discussion question addressed to all offerors concerning the ability to reduce the overall construction timeframe and condense the schedules due to possible adverse effects of weather, and in the question to USPCI concerning the exact number of days after award that would elapse before beginning and completion of the liquid pumping operation. These discussion questions to USPCI put the firm on notice that this was an area of its proposal that needed revision.

Finally, the record shows the Corps did not address discussion questions to the deficiencies in USPCI's experience, corporate commitments or personnel because the agency felt that the requirement for this information was clearly stated in the RFP. We will not object to the Corps' decision. The RFP called for offerors to reference all comparable construction work and to include certain specific details; clearly required key personnel to be committed to the entire work effort; and asked for specific information concerning corporate commitments. USPCI addressed these areas in its proposal, listing its construction experience, specifically noting that it did not intend to commit its key personnel to the entire work effort, and supplying the required information regarding its corporate commitments.

We do not think the Corps had a duty to inquire further of USPCI as to this information, as the firm's proposal reflected business decisions on manpower allocation clearly requested by the solicitation.

The protests are denied.



James F. Hinchman  
General Counsel