



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: National Technologies Associates, Inc.;
JWK International Corporation
File: B-229831.2; B-229831.3
Date: May 13, 1988

DIGEST

1. Contracting officer may reopen negotiations by requesting new best and final offers when it is clearly in the government's best interest to do so. Reopening of discussions was not unreasonable when, based on evaluation of protester's best and final offer, Navy's contracting office had insufficient information to determine whether protester should be awarded the contract given perceived deficiencies in its proposal relating to proposed personnel and length of proposed workweek.
2. Allegation that competitor obtained improper knowledge of protester's proposal prices because competitor stated it had "strong reasons" to suspect it had a competitive pricing advantage over all other offerors is speculative since competitor's statement is also likely to have been prompted only by surmise rather than by improperly obtained price information.
3. Protester who admits that contracting agency has properly corrected mistakes in contracting process by directing that negotiations be reopened for the benefit of the protester and all other competitors is not entitled to any other remedy.

DECISION

JWK International Corporation protests the decision of the Department of the Navy, Naval Air Systems Command, to proceed with another round of discussions under request for proposals (RFP) No. N00019-87-R-0059, for certain support services. In addition, National Technologies Associates, while conceding that the Navy's decision to proceed with another round of discussions "has put the procurement on a fair and equal footing," argues that the "procedural improprieties of the Navy's past actions suggest that the GAO should determine if some remedial action is required."

We deny the protests.

The Navy reports that eight proposals were received and that the initial technical evaluation of proposals "presented National as the only fully technically acceptable offeror." However, upon further evaluation by the procurement review board which had been convened to review the technical evaluation, the Navy found that National "had not proposed 100 percent coverage of the total hours." National, JWK, and two other firms were thereafter included in a request for best and final offers. Upon receipt of best and final offers, the Navy evaluated them and "again found National to have submitted an acceptable proposal." In fact, the procurement review board then recommended to the Source Selection Authority that award be made to National.

The Source Selection Authority then performed an independent evaluation of proposed employee and labor rates and "deemed [National's proposal to be] unacceptable due to unbalanced labor rates and the inclusion of 50 hours per week as competitive time bid." The Navy then informed National and the other competing offerors that JWK was being considered for award under the RFP, in order to permit the filing of any challenges to JWK's small business size status. National protested the proposed award on other grounds. In response to National's protest, the Navy performed yet another evaluation of JWK's proposal, as a result of which the Navy concluded that "JWK had not proposed sufficient personnel to fulfill the total hours required" and had proposed a 45-hour workweek without giving adequate explanation as to how this 45-hour workweek approach would be successful.

In view of this reevaluation, and the Navy's decision that further information from JWK was needed, the Navy decided on a general reopening of negotiations, thereby giving rise to JWK's protest. Responses to the second request for best and final offers has not been completed.

While JWK generally alleges that there is a "conspicuous absence of evidence [to support] the Navy's reopening of discussions after the Navy's decision to award the contract to JWK," the company does not specifically contest the Navy's evaluation findings concerning deficiencies in its proposed personnel and in the proposed duration of the workweek.

The evaluation of proposals is a responsibility within the discretion of the contracting activity, since it is responsible for defining its needs and the best methods of

accommodating them. Maxima Corp., B-220072, Dec. 24, 1985, 85-2 CPD ¶ 708. Further, we have held that, in reviewing an agency's evaluation, we will not evaluate the proposal de novo, but instead we will only examine the agency's evaluation to ensure that it had a reasonable basis. Syscon Corp., B-208882, Mar. 31, 1983, 83-1 CPD ¶ 335.

Based on our review of the record, the Navy's evaluation of JWK's first best and final offer does not appear unreasonable. This evaluation indicates that the Navy's earlier evaluation of JWK's proposal was flawed in not taking proper notice of certain defects in JWK's best and final offer and there is no showing that this evaluation is erroneous in any way.

JWK's general questioning of the Navy's second evaluation does not, in itself, show that the Navy's evaluation was unreasonable as it is well-established that the protester's mere disagreement with the contracting agency's evaluation does not render the evaluation unreasonable. See General Management Systems, Inc., B-214246, Sept. 25, 1984, 84-2 CPD ¶ 351.

As the Navy points out, a contracting officer may reopen negotiations by requesting new best and final offers where it clearly is in the government's best interest to do so. See Federal Acquisition Regulation § 15.611(c); Scientific Systems, Inc., B-225574, Jan. 6, 1987, 87-1 CPD ¶ 19. Specifically, in the cited regulation an example of circumstances permitting reopening of negotiations is where "it is clear information available at that time is inadequate to reasonably justify contractor selection." Clearly, given the Navy's evaluation of JWK's first best and final offer, the Navy had insufficient information to determine whether JWK should be awarded the contract and reopening of discussions was permitted.

JWK also argues that reopening of negotiations is improper because National has previously stated to the Navy that it "ha[d] strong reasons to believe National's cost proposal was the lowest of all technically acceptable, best and final submissions." JWK argues that this statement shows that National has improperly come into knowledge of the details of JWK's price submissions to the Navy. The Navy states that it has not disclosed JWK's prices and argues that JWK's assertions are speculative.

There is no evidence to show that JWK's prices have been improperly disclosed especially given the Navy's general denial of any price disclosure. Although JWK argues that National's statement to the Navy is proof in itself of an improper disclosure, the statement is also consistent with a

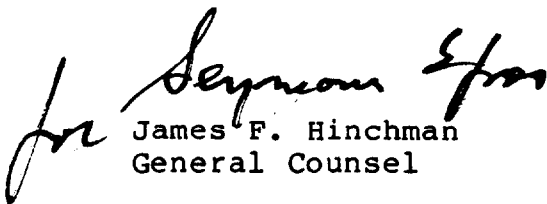
view that National's "strong reasons" to suspect its price advantage were based on surmise only and not necessarily based on improper knowledge obtained through a Navy price leak as JWK insists. It is well-settled that we will not sustain a protest against alleged improper price disclosures by a contracting agency based upon speculation only. Electra-Motion, Inc., B-229671, Dec. 10, 1987, 87-2 CPD ¶ 581.

JWK's protest is denied.

As we indicated above, the Navy responded to National's initial protest of the proposed award to JWK by reopening discussions with all offerors. We then dismissed National's initial protest. In subsequent correspondence National appears to suggest that the discussions should be held only with it, and limited to the reasonableness of its cost proposal, or an "auction" would ensue. In its comments on the agency report, however, National conceded that "the second round of [best and final offers] has put the procurement on a fair and equal footing" but suggests that in view of unspecified "improprieties" it perceives in the past conduct of this procurement that our Office "should determine if some remedial action is required."

As discussed above, the reopening of negotiations appears reasonable, and the Navy's action will afford National an equitable opportunity to compete for the requirement. Consequently, any other possible remedy, such as the recovery of bid protest costs, is inappropriate. Green Plant Enterprises, Inc., B-227060.2, Oct. 16, 1987, 87-2 CPD ¶ 366.

National's protest is denied.


James F. Hinchman
General Counsel