



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Suncoast Scientific Incorporated

File: B-240689.2

Date: March 13, 1991

L. Stephen Fikar for the protester.
Virginia W. Haddad, Esq., Department of the Air Force, for the agency.
C. Douglas McArthur, Esq., Andrew T. Pogany, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency failure to amend solicitation to disclose plans to buy desktop publishing system for successful offeror as government-furnished equipment did not prejudice protester whose proposal offered to supply similar equipment, where the agency selected higher-priced, higher-rated proposal in accordance with solicitation's heavy emphasis on technical factors; in view of de minimis cost impact of equipment, there is no reason to believe that resultant reduction in protester's proposed price would have affected award decision.

DECISION

Suncoast Scientific Incorporated (SSI) protests the award of a contract under request for proposals (RFP) No. F08635-90-R-0160, issued by the Department of the Air Force. The protester contends that the competition was unfair, in the absence of an amendment, because the incumbent contractor and eventual awardee, Oklahoma State University (OSU), was the only potential offeror who knew that the agency intended to upgrade government-furnished equipment (GFE) after award.

We deny the protest.

On February 26, 1990, the agency issued the solicitation for a cost-plus-fixed-fee contract for the production, updating and maintenance of Joint Munitions Effectiveness Manuals (JMEM) for the Air Force Development Test Center. Published under the auspices of the Department of Defense logistics commanders, the manuals provide real time nonnuclear munitions

effectiveness information for operational commanders and planners; the agency estimates that a contractor may have as many as 50 manuals in revision at any one time.

The solicitation provided for award to that offeror whose proposal was most advantageous to the government, based on price competition, but with "paramount consideration" given to technical/management factors. Technical/management factors included JMEM Experience and Understanding, Personnel Qualifications and Sufficient Manpower, Publications and Computer Qualifications, Facilities, Sample Special Task, Relocation/Phase-In Plan, and Data Management. The solicitation contained a list of GFE, which the agency would provide to the awardee.

The agency received two proposals on April 9, 1990, one from the protester and one from the incumbent, Oklahoma State University. As part of its proposal, the protester proposed to supply as contractor-furnished equipment (CFE) a new desktop publishing system, which promised economies and efficiencies in publication. The agency performed an initial evaluation of proposals, held discussions, and requested each offeror to submit a best and final offer (BAFO) by June 20.

The evaluation panel reviewed the BAFOs and provided the results of its review to the source selection authority (SSA), who made the determination that despite the protester's lower proposed price of \$7,736,298, nearly \$2.7 million less than the incumbent's proposed price, the risks of the protester's proposal and the technical superiority of the incumbent made the latter's proposal most advantageous to the government. Accordingly, the agency awarded a contract to Oklahoma State University on July 27. At this time, the agency also added a new desktop publishing system, similar to the one offered by the protester, to the list of GFE to be provided the incumbent.

On September 17, the protester advised our Office that it had recently learned that the agency had provided desktop publishing equipment to the incumbent and requested help in obtaining documents to clarify how the equipment was paid for and how long the agency had known that the equipment would be made available. On October 19, the agency advised the protester that it would have to seek this information under the Freedom of Information Act, which the protester did on October 19. On November 19, the protester received documentation indicating that the agency was providing the equipment as GFE and that the agency had been aware that the equipment would be made available for some months prior to award; this protest followed.

The agency reports that in the year prior to the issuance of the RFP, the incumbent contractor had suggested and the agency had attempted procurement of an automated desktop publishing system, to speed production of the manuals. The original request had been disapproved, but in January 1990, 1 month prior to issuing the solicitation, the agency applied again for permission to purchase the system, at an initial acquisition cost in excess of \$50,000, to supply to the contractor as GFE.

In May, while the agency was engaged in discussions with the protester concerning its proposal, the agency received approval of its purchase request. The agency did not advise the protester of its plans, although it did discuss the protester's proposal to provide the equipment as CFE. The agency learned that the protester intended to procure the system using a lease-to-ownership plan, charging the lease costs to the government as a general and administrative expense but making the final payment and assuming title. Nevertheless, the agency never advised SSI that it already planned to procure a desktop publishing system prior to receipt of the protester's BAFO.

The protester essentially argues that the agency's failure to advise potential offerors by amendment of its plans to provide the desktop publishing system as GFE discouraged other firms from submitting offers. The protester also argues that use of a desktop publishing system would affect nearly half of the proposed personnel on the project and nearly half of its cost and that use of a desktop publishing system would result in a significantly different approach to publishing the manuals. The protester also contends that it wasted time explaining its proposed system, on the assumption that such an explanation was necessary and that the necessity of paying for the system itself significantly increased its proposed cost. The protester generally argues that the competition was unfair.

As a general rule, agencies may not award contracts with the intention of significantly modifying them after award; rather, an award must be based on the requirements stated in the solicitation. Ingersoll-Rand, B-225996, May 5, 1987, 87-1 CPD ¶ 474; American Television Sys., B-220087.3, June 19, 1986, 86-1 CPD ¶ 562. Assuming that the agency should have advised offerors of its plans to furnish new GFE, however, the protester has presented nothing that would lead us to conclude that the competition would have been altered in any material respect had the agency done so. See Falcon Carriers, Inc., 68 Comp. Gen. 206 (1989), 89-1 CPD ¶ 96.

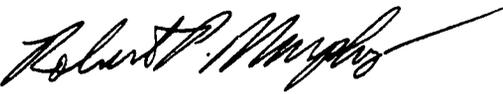
First, SSI is not the appropriate party to assert the interests of other firms who might have competed. Second, the quality of SSI's proposal was not compromised by the agency's failure to advise potential offerors of the new equipment, since the protester proposed to furnish essentially the same equipment. While the protester argues that it wasted time in demonstrating its capability with the proposed system, the record shows that SSI's efforts here constituted a recognized strength in the protester's proposal, for which the protester received credit in the technical evaluation. Since the protester proposed the same equipment as CFE that was later furnished as GFE, the record shows that the protester's proposal was not affected otherwise from a technical standpoint.

Third, the cost impact must be considered in light of the evaluation of proposals and the cost/technical tradeoff that resulted in the selection of OSU. In a previous decision, we found that the agency reasonably perceived technical risk in several elements of the protester's proposal, particularly its heavy reliance upon hiring incumbent employees to provide the necessary expertise for production of the manuals and the lack of any firm evidence that the protester could hire a significant number of incumbent employees. We found that the agency had properly considered risk, had justified its belief that the protester's proposal posed risks and that although the agency had offered the protester an opportunity to address the agency's concerns in the course of discussions, the protester had failed to do so. In short, we found that the SSA reasonably determined that the awardee's technically superior proposal outweighed any cost advantage represented by the protester's proposal and properly selected a higher-cost, higher-rated proposal for award. Suncoast Scientific Inc., B-240689, Dec. 10, 1990, 90-2 CPD ¶ 468.

Had the protester known it did not have to furnish a new desktop system, the cost advantage of its proposal obviously would have increased. However, the record indicates that the cost of the system is approximately \$50,000. In light of the SSA's view that a nearly \$2.7 million cost savings represented by the protester's proposal was outweighed by the technical superiority of OSU's proposal, we think there is no reasonable possibility that the selection decision would have been different had the agency advised the protester of its plans to furnish the desktop publishing system as GFE and the

protester's cost proposal been approximately \$50,000 less.
See Logitek, Inc.--Recon., B-238773.2 et al., Nov. 19, 1990,
90-2 CPD ¶ 401. Accordingly, we find no prejudice to the
protester in these circumstances.

The protest is denied.


for James F. Hinchman
General Counsel