



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: K-MAR Industries, Inc.

File: B-245922

Date: January 14, 1992

Philip C. Sevilla for the protestor,
Herbert F. Kelley, Jr., Esq., and Captain Gerald P.
Kohns, Esq., Department of the Army, for the agency.
Robert J. Heitzman, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Site visit by alleged representative of successful offeror, which included a conversation with contracting officer's representative, did not provide basis to overturn award. Conversation did not constitute improper competitive range discussions since it did not involve communication of information essential for determining acceptability of proposal nor did it provide offeror an opportunity to revise its proposal. Further, site visit was not otherwise prejudicial to protestor.

DECISION

K-MAR Industries, Inc. (KMI) protests the award of a contract to Gradney Helicopters, Inc. (Gradney) for aircraft maintenance at Fort Bliss, Texas, under request for proposals (RFP) No. DAKF49-91-R-0004. KMI contends that the Army and Gradney engaged in improper discussions through a site visit by a representative of Gradney, and that the site visit gave Gradney a competitive advantage.

We deny the protest.

The RFP was issued on April 10, 1991, and proposals were received from three offerors. Following the initial technical evaluation, KMI and Gradney remained in the competitive range. Written discussions were conducted with KMI and Gradney, and final technical evaluation of their proposals was completed on September 6. Best and final offers were requested on September 9 and were submitted by September 12. Gradney was awarded the contract on September 25.

On September 16 the President of Gradney requested J&J Maintenance, Inc., to investigate portable office trailers and other equipment that had been placed at the job site by the incumbent contractor in order to determine whether Gradney should lease this equipment if it was awarded the contract. J&J, in turn, asked a private consultant, Nelson Bell, to visit Fort Bliss in order to obtain the requested information.

Mr. Bell visited the job site on September 18. His visit included a conversation with the Army contracting officer's representative (COR), who was one of the officials responsible for technical evaluation of the proposals. According to the record before us, this conversation involved the condition of the portable office trailers and the COR's impressions of two of the incumbent contractor's employees. Mr. Bell and the COR also discussed their prior association at Fort Hood, Texas, and what each of them was doing now.

KMI alleges that Mr. Bell represented Gradney when he visited the job site and met with the COR; that the visit enabled Gradney to "reconnoiter" conditions at the job site in order to decide whether to withdraw its proposal; and that the meeting with the COR enabled Gradney to favorably impress a key member of the source selection committee by making verbal representations and promises.

The Army contends that Mr. Bell did not represent Gradney at the time of the site visit; that the conversation between Mr. Bell and the COR did not constitute discussions; and that the site visit was not prejudicial to KMI.

Irrespective of Mr. Bell's status when he visited the job site,¹ we conclude that his site visit did not affect the validity of the award.

We agree with the Army that Mr. Bell did not engage in discussions with the COR. Discussions include oral communications between the government and an offeror, whether or not initiated by the government, that involve information essential for determining the acceptability of a proposal or that provide an offeror the opportunity to revise or modify its proposal. Federal Acquisition

¹It appears that Mr. Bell was not actually employed by Gradney at the time of the site visit, although Gradney later hired him. On the other hand, Mr. Bell was, in effect, acting on behalf of Gradney during the site visit.

Regulation (FAR) § 15.601; Servrite International, Ltd., 69 Comp. Gen. 143 (1990), 90-1 CPD ¶ 15.

It is not evident from the record, and KMI does not explain, how information about whether or not Gradney was going to lease the trailers already on the site or retain employees of the incumbent contractor would be essential, or even relevant, to determining the acceptability of its proposal. Further, the site visit did not afford Gradney an opportunity to revise its proposal since final offers had already been submitted and evaluations were complete at the time it occurred. Cf., National Medical Staffing, Inc., B-242585.3, July 1, 1991, 91-2 CPD ¶ 1.²

Further, the record does not demonstrate that the site visit was prejudicial to KMI in any other way. KMI's contention that Gradney might have withdrawn its offer without the site visit is mere speculation lacking any probative value. See Leslie Building Associates, B-229815, Apr. 19, 1988, 88-1 CPD ¶ 381; IPEC Advanced Systems, B-232145, Oct. 20, 1988, 88-2 CPD ¶ 380. KMI's concern that the site visit afforded an opportunity to impress the COR as a member of the source selection team is mitigated by the fact that the COR already had completed his evaluation.

Finally, KMI alleges that various affiliations between Gradney, Mr. Bell, and J&J Maintenance, Inc., tainted the procurement. We interpret this as an allegation of bad faith on the part of the contracting officer. There must be very strong proof that an agency has a malicious and specific intent to injure a protester before we will find bad faith. G.K.S. Inc., 68 Comp. Gen. 589 (1989), 89-2 CPD ¶ 117. KMI has offered nothing approaching such proof in this case.

Accordingly, the protest is denied.

for *James F. Hinchman*
James F. Hinchman
General Counsel

²The COR does appear to have violated FAR § 15.413-1(b) in providing Mr. Bell information concerning the condition of the trailers and his impressions of the incumbent contractor's personnel. However, both Mr. Bell and the president of Gradney state that this information was not conveyed to Gradney. In any event, as noted above, final offers had been submitted by the time the information was obtained.