



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Trauner Consulting Services

File: B-248805

Date: September 28, 1992

Timothy A. Sullivan, Esq., and Eugene B. Cortese, Esq.,
Starfield & Payne, for the protester.
Roberta M. Truman, Esq., Department of Justice, for the
agency.
Paula A. Williams, Esq., Glenn G. Wolcott, Esq., and Paul
Lieberman, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Protest that agency improperly precluded protester from discussing its prior experience during interview process in procurement of engineering services is denied where protester submitted substantial written information regarding its experience and record shows that all offerors were treated equally in this regard.

DECISION

Trauner Consulting Services protests the selection by the Department of Justice, (DOJ) Federal Bureau of Prisons, of Youchak & Youchak, as the firm with which to negotiate an architect-engineer (A-E) contract for certain services at the Lewisburg federal penitentiary. Trauner alleges that the agency conducted interviews with the offerors in an improper and inequitable manner.

We deny the protest in part and dismiss it in part.

This procurement of A-E services was conducted under the selection procedures set forth in the Brooks Act, as amended, 40 U.S.C. § 541 et seq. (1988), and its implementing regulations, Federal Acquisition Regulation (FAR) Part 36.6. Under these procedures, after publicly announcing a requirement, the contracting agency must establish an evaluation board to evaluate performance data and statements of qualifications submitted by firms that wish to be considered. The evaluation board then conducts interviews with no less than three firms, ranks them, and submits the firms' qualifications to a selection official who selects the most highly qualified offeror; negotiations

are then conducted with that offeror. If the agency is unable to negotiate a satisfactory contract at a reasonable price with the preferred offeror, the agency enters into negotiations with the next ranked firm, and so on. See generally FAR Part 36.6.

On January 14, 1992, DOJ published an announcement in the Commerce Business Daily (CBD) seeking project controls engineer services to investigate and evaluate numerous contractor delay claims related to a major renovation project at the federal penitentiary in Lewisburg, Pennsylvania. The CBD notice listed the evaluation criteria to be applied,¹ and provided that firms interested in competing should submit Standard Forms 254 and 255.² The CBD notice also stated that the controls engineer must be registered in the state of Pennsylvania and "have primary office address in that state."

Several firms responded to the CBD notice, including Youchak and Trauner. After evaluating the submissions, the agency decided to conduct interviews with four firms including Youchak and Trauner. Trauner's interview was scheduled for March 25. Trauner states that, in anticipation of its interview, it prepared a presentation regarding its qualifications and experience. Trauner complains that, rather than permitting Trauner to make its presentation, the agency posed substantive questions concerning Trauner's proposed approach to the statement of work.³ Trauner states that, because its responses to these questions consumed most of the time that had been allotted for the interview, it was not permitted to make the formal presentation it had prepared.

¹The criteria and related weights were: capability, 40 percent; comparable experience and performance, 40 percent; knowledge of locality, 10 percent; and proximity to project, 10 percent.

²Standard Form 254, Architect-Engineer and Related Services Questionnaire, is the statement of qualifications submitted annually by firms wishing to be considered for A-E contracts. Standard Form 255, Architect-Engineer and Related Services for Specific Project, is a supplement to the Standard Form 254 and requires firms to furnish job specific experience.

³Trauner states that the agency asked questions such as "what the role of the consultant should be, whether the consultant should be on-site, and should the agency negotiate directly with the subcontractors."

After conducting the interviews, the agency ranked the four offerors; Youchak was ranked first and Trauner was ranked third.⁴ By letter dated March 30, Trauner was notified of Youchak's selection for negotiation of the A-E contract.

On May 20, the agency debriefed Trauner regarding the selection of Youchak. Trauner asserts that, during the debriefing, an agency official indicated that Youchak had been afforded an opportunity during its interview to discuss its experience, including litigation experience, and that this had been the basis for award.⁵ On the basis of the information provided during the debriefing, Trauner protests that the agency conducted its interview improperly and failed to afford Trauner equal treatment in the selection process. Trauner asserts that had it been afforded equal treatment, it would have been ranked first for contract negotiation.

The agency responds that during every interview, it sought substantive responses regarding the offerors' approaches to the statement of work, and maintains that all interviews were conducted in essentially the same manner. The agency specifically states that Youchak was not permitted to demonstrate its experience during its interview, other than what it demonstrated in response to the questions concerning its proposed approach, and that Trauner was similarly permitted to demonstrate its experience in responding to the agency's questions.⁶ In short, the agency maintains that it considered all information submitted by the offerors and that all offerors were treated equally.

⁴The agency argues that Trauner is not an interested party to protest since it is not next in line for negotiation of a contract. See 4 C.F.R. § 21.0(a) (1992). However, as discussed below, Trauner asserts that it would have been ranked first for negotiation of a contract had it been treated equally with Youchak; accordingly, we will consider its protest. See Mobile Telesystems, Inc., B-245146, Dec. 18, 1991, 91-2 CPD ¶ 560.

⁵The agency disputes Trauner's representations regarding the statements made during the debriefing and has submitted an affidavit from the individual quoted by Trauner which directly contradicts Trauner's representations. Since our Office is primarily concerned with the evaluation itself, not the debriefing, we need not resolve this dispute. See, e.g., JSA Healthcare Corp., B-242313 et al., Apr. 19, 1991, 91-1 CPD ¶ 388.

⁶The agency submitted affidavits from each of the three members of the evaluation board which discuss the substance of the interviews and substantiate the agency's position.

To the extent Trauner is protesting the agency's interview requirement that it respond to substantive questions regarding its proposed approach to the project, its protest is without merit. The FAR specifically obligates agencies conducting A-E procurements to hold discussions "regarding concepts and the relative utility of alternative methods of furnishing the required [A-E] services." FAR § 36.602-3. Accordingly, the agency's focus on substantive issues during the interview process was appropriate and proper.

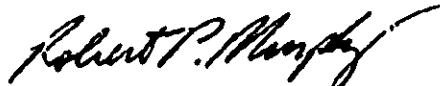
To the extent Trauner's protest alleges that Youchak was provided an opportunity which Trauner was denied, the record does not support the allegation. As noted above, the agency has submitted sworn statements detailing the substance of the interview it conducted with Youchak; Trauner has not submitted any persuasive evidence challenging the agency's statements. Moreover, the record establishes that all offerors, including Trauner, were permitted to provide unlimited information regarding their qualifications and experience through submission of the Standard Forms 254 and 255 and that, in fact, Trauner provided a substantial amount of such information which the agency considered. Specifically, Trauner furnished detailed information concerning the experience and qualification of the members of its professional staff and furnished a list of specialized services, including litigation support, it had previously provided. Accordingly, we find no factual basis for Trauner's allegation that it was afforded unequal treatment.

Finally, Trauner protests that selection of Youchak was improper because, according to Trauner, Youchak does not maintain its primary office in the state of Pennsylvania as required by the CBD notice.

Our Bid Protest Regulations require that protests based on other than apparent solicitation improprieties be filed within 10 days after the protester knew, or should have known, the protest basis. 4 C.F.R. § 21.2(a)(2) (1992). To ensure that long-standing timeliness requirements such as this one are met, we require protester to diligently pursue information that forms the basis for a protest. Continental Airlines, Inc., E-246897.3, Jan. 22, 1992, 92-1 CPD ¶ 105. Here, Trauner was notified of Youchak's selection on

March 30, but failed to raise this issue until May 25. Accordingly, this portion of its protest is untimely. 4 C.F.R. § 21.2(a)(2).

The protest is denied in part and dismissed in part.


for James F. Hinchman
General Counsel