



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Earth Resources Corporation--Reconsideration

File: B-248662.8

Date: April 13, 1993

Ronald K. Henry, Esq., and Jeffrey A. Stonerock, Esq., Baker & Botts, for the protester, M. Penny Ahearn, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Request for reconsideration is denied where based on new information that is speculative and, even if protester were correct that new information would have affected evaluation had agency considered it, information at most would have made protester's proposal equal to awardee's under one requirement; awardee would remain in line for award based on otherwise superior rating and substantially lower offered price.

DECISION

Earth Resources Corporation (ERC) requests reconsideration of our decision, Earth Resources Corp., B-248662.2 et al., Nov. 5, 1992, 92-2 CPD ¶ 323, in which we denied ERC's protest of the Department of the Navy's technical evaluation under request for proposals (RFP) No. N62472-92-R-0001, and resulting award of a contract to Waste Abatement Technology (WATEC) for the clean-up of a former cylinder disposal site at the Philadelphia Naval Base in Pennsylvania.

We deny the request.

As background, award was to be made to the offeror whose proposal was determined to represent the best value to the government, cost and other factors considered, with technical and price factors weighted equally. The technical evaluation was based on the following three equally weighted criteria: technical approach, management plan, and corporate experience. The three proposals received were rated technically in the following order: WATEC, Offeror A, and ERC. WATEC's and Offeror A's proposals were rated "acceptable" and "essentially the same." ERC's proposal was rated "not acceptable" for failure to satisfy all solicitation requirements. WATEC's estimated offered price of \$2,613,000 also was the lowest submitted; Offeror A's

price was slightly higher, and ERC's price of \$4,575,905 was 75 percent higher than WATEC's. The source selection board (SSB) determined that, even if given the opportunity to upgrade its technical proposal, ERC could not conceivably reduce its proposed price by the \$2 million necessary to become competitive. The SSB agreed that the two remaining proposals were relatively equal technically and concluded that WATEC, with the lowest price, offered the best value to the government. Consequently, award was made to WATEC on the basis of its initial proposal (as the RFP advised the agency might do).

In our November decision, we determined that the agency's view that ERC's proposal did not satisfy all solicitation requirements was reasonable. The solicitation specifically required offerors to propose their own utilities, while the protester proposed tying into the contracting activity's electrical power source. We also concluded that the agency properly rated WATEC's proposal superior to the protester's for proposing to mobilize cylinder testing equipment early in the contract (while ERC did not). Finally, we disagreed with the protester's argument that the awardee's offer was noncompliant with alleged solicitation requirements because the solicitation did not establish firm requirements in the areas alleged. It only established a basis for comparative evaluation of proposals.¹

ERC argues here that our belief that the Navy reasonably evaluated the firm's proposed electrical power method was based on incomplete information, and was incorrect. According to the protester, during contract performance WATEC was permitted to change its electrical power method from the generator-supplied method it had offered to one that tied into the contracting activity's electrical system, the method ERC proposed which the Navy found did not satisfy

¹In a subsequent decision, Earth Resources Corp., B-248662.5; B-248662.7, Dec. 29, 1992, 93-1 CPD ¶ 17, which is not the subject of this request for reconsideration, we determined that the agency's evaluation of the awardee's hazardous gas cylinder testing equipment as adequate to deal with gases likely to be encountered was reasonable. Contrary to the protester's argument, the RFP did not provide for evaluation on the basis of ability to deal with all conceivable gases that might be encountered, but instead was geared towards gases most likely to be encountered. The awardee's failure to provide its offered equipment at the time frame proposed in performing the contract did not provide a basis for finding that the awardee engaged in a "bait-and-switch" tactic, where there was no evidence, other than the protester's speculation, that the awardee offered the equipment knowing that it would not be available.

the RFP requirements. ERC believes that, had this switch in WATEC's electrical power method been disclosed by the Navy during the course of the protest, our Office would have had a basis for questioning the agency's evaluation of ERC's proposed electrical power method and, as a result, could have determined that the evaluation of ERC's proposal was unreasonable.

ERC's argument provides no basis to reconsider our decision. First, ERC has provided no evidence in support of its argument that WATEC was allowed to use the agency's electrical system for power. Instead, ERC states that WATEC uses the same subcontractor ERC proposed under its unacceptable electrical power approach, and relies on the assumption that the subcontractor must be using the same approach it was going to use for ERC.² This is not sufficient to warrant reconsidering our decision. 4 C.F.R. § 21.12(a) (1993); See Professional Safety Consultants Co., Inc.--Recon., B-247331.2, Sept. 28, 1992, 92-2 CPD ¶ 209.

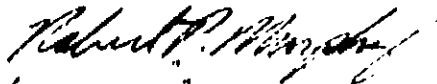
In any case, even if the protester were correct that WATEC switched power approaches and that this would have warranted an adjustment in the evaluation, this would not have affected the propriety of the award. In this regard, if ERC's proposal were upgraded to acceptable under the electrical power requirement, it would have been only equal to WATEC's under the requirement. As WATEC's proposal still would have been technically superior based on its early equipment deployment approach,³ and its price would remain substantially lower than ERC's (since the change in the

²ERC does present a brief declaration by Norman J. Abramson, ERC's Director of Government Programs, as purportedly supporting its argument. However, nothing on the face of this declaration appears to relate to the question of the power approach used by WATEC. Rather, the declaration recounts Mr. Abramson's visit to a company named MG Industries, Specialty Gas Division, and his examination of "a CRV-like unit for processing cylinders with inoperable valves." ERC does not explain how the declaration bears on its argument concerning WATEC's power source.

³Although the awardee ultimately did not deploy the equipment in the early time frame it proposed, we found in a prior decision that this did not render the evaluation invalid, since there was no evidence that the awardee had misrepresented the availability of its proposed equipment. Rather, as a result of a post-award change in circumstances, i.e., no cylinders were found at the site, there appears to have been no need for the proposed testing equipment. Earth Resources Corp., supra.

evaluation would not significantly change ERC's price proposal), WATEC would have remained in line for the award.

The request for reconsideration is denied.


for James F. Hinchman
General Counsel