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Comptroller General
of the United States

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Washington, D.C. 20548

Decision

Matter of: D&M General Contracting, Inc.

File: B-252282.4

Date: August 19, 1993

Joel S. Rubinstein, Esq., Sadur, Pelland & Rubinstein, for the protester.

Millicent A. Warford, Department of Health and Human Services, for the agency.

Charles W. Morrow, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Where several offerors' proposals included in the competitive range failed to meet the solicitation's type size restriction, the procuring agency took appropriate corrective action in response to protest of an offeror who adhered to the type size requirement by reopening discussions and advising offerors during discussions to ignore any page or type size restrictions in submitting revised best and final offers.

DECISION

D&M General Contracting, Inc. protests any award under request for proposals (RFP) No. 263-91-P(CB)-0202, issued by the Department of Health and Human Services, National Institutes of Health (NIH), Bethesda, Maryland, for construction services. D&M alleges that NIH improperly waived the RFP's page limit and type size restrictions for various offerors and that D&M was prejudiced since its proposal adhered to these limits.

We deny the protest.

The RFP was issued on May 18, 1992, to procure construction services involving the management, planning, and execution of a broad variety of minor construction, alteration and rehabilitation projects at various NIH facilities. Section M of the RFP provided for award to the offeror offering the best overall value to the government based upon evaluating proposals against the RFP's evaluation criteria. The RFP listed management, worth 60 points, and price, worth 40 points, as the major evaluation criteria. As part of the proposal evaluation, the RFP required the submission of a

management proposal and a price proposal. With regard to the management proposal, the RFP instructions stated the following:

"Management proposals shall be limited to 75 pages. Pages in excess of this limitation will not be evaluated. Each page is one sheet, 8 1/2 x 11 inches, with at least one inch margins on all sides and double spaced lines. Use PICA size type or larger."

In response to the RFP, NIH received 14 proposals by the August 4 closing date. Following the evaluation of management and price proposals, NIH on November 19 established a competitive range composed of seven proposals, including D&M's. NIH conducted discussions with offerors in the competitive range and received best and final offers (BAFO) on December 9. On February 1, 1993, NIH made award to Brown and Root Services Corporation. This award was initially protested to our Office by D&M and another offeror for a variety of reasons, particularly that NIH failed to conduct meaningful discussions. On February 26, these protests were dismissed as academic because the agency proposed to take corrective action.¹

Before NIH had undertaken the proposed corrective action, D&M filed this second protest on April 23. D&M alleges that several offerors, including Brown and Root, were required to be disqualified from further consideration because their proposals violated the type size requirement of the RFP's page limit restriction. To this effect, D&M asserts that Brown and Root and other offerors' proposals utilized a type size smaller than PICA size and were not properly double spaced, which enabled those offerors to submit more detailed technical proposals. D&M argues that it was prejudiced since NIH downgraded D&M's proposal, which complied with the page limit restriction, for failing to provide sufficient technical detail that it would have provided but for the page limitation.

NIH's report in response to the protest confirms that five of the seven offerors' proposals, including Brown and Root's, violated the requirement to use PICA size type or larger. In light of this D&M protest, and in conjunction with the corrective action in response to the earlier protests, NIH informed all offerors, including D&M, during oral discussions on April 23 and 24 and in writing on April 28

¹The agency proposed to reopen discussions with all offerors in the competitive range, request revised BAFOs, and make award to the offeror which then reflected the best value to the government.

that no page limit restrictions would apply to the revised technical responses. Subsequent discussions have been conducted and BAFOs received on August 9. No award selection has been announced.

NIH contends that it has taken the appropriate corrective action in response to D&M's protest. D&M responds that in light of the agency's admission that several firms exceeded the type size limitation, the only appropriate relief is to either disqualify the firms that disregarded the requirement or, in the alternative, cancel the solicitation and resolicit with a new evaluation panel. D&M contends that simply allowing the agency to correct the error by the submission of new BAFOs is inappropriate because the evaluators will be tainted from the first impressions they received regarding the lack of details in D&M's initial proposal.

We generally will not object to corrective action which places all offerors in the same competitive posture they enjoyed prior to the defect in the source selection process. Henkels & McCoy, Inc., B-250875 et al., Feb. 24, 1993, 93-1 CPD ¶ 174. This is so because contracting officials have broad discretion to determine the corrective action necessary to ensure a fair and equal competition. Where, as here, award was made to an offeror whose proposal did not comply with RFP requirements, an agency is not required to eliminate the awardee from the competition, but may permit it to correct its proposal. Id.

Given the nature of the defect, we find that NIH's decision to reopen discussions and eliminate the page and type size restrictions for all offerors' BAFO technical responses was appropriate corrective action. We think that NIH's corrective action resolves any adverse effects and prejudice that the waiver of the type size restriction may have produced, since, as the result of discussions, D&M was provided the opportunity to compete equally without regard to a page limit. All offerors were placed in the same competitive position. See E.H. Pechan & Assocs., Inc., B-221058, Mar. 20, 1986, 86-1 CPD ¶ 278 (meaningful discussions need to be conducted to resolve prejudice caused by an uneven application of page limits).

Although D&M maintains that starting anew is the only appropriate corrective action if proposals are not disqualified since the evaluators may be tainted, the record contains no evidence that the evaluators have formed any bias against D&M resulting from the initial evaluation.² Government

²We note that in response to the earlier protest of D&M, the agency has already replaced two members of the source selection committee.
(continued...)

officials are presumed to act in good faith; accordingly, we will not attribute unfair or prejudicial motives to procurement officials on the basis of inference or supposition. Triton Marine Constr. Corp., B-250856, Feb. 23, 1993, 93-1 CPD ¶ 171. Here, D&M's basis for objecting to NIH's corrective action is nothing more than its speculation that the agency may act improperly. Speculation that an agency may act improperly is not a legal basis for challenging a procuring agency's proposed corrective action. PRC, Inc., 71 Comp. Gen. 530 (1992), 92-2 CPD ¶ 215.

The protest is denied.



JFH James F. Hinchman
General Counsel

² (...continued)

tion committee evaluation team in order to respond to D&M's concerns about bias.