



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Communication Network Systems, Inc.

File: B-255158.2

Date: February 8, 1994

Paul Vibhandik for the protester,
F. Jefferson Hughes, Esq., Department of Commerce, for the
agency.

M. Penny Ahearn, Esq. Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

1. Where protester submits a response to the agency report and fails to address certain issues raised in the protest and responded to in the report, General Accounting Office considers such issues abandoned.

2. Protest that agency miscalculated protester's technical/management proposal does not provide a basis for overturning the award where, even if agency had evaluated proposal in manner asserted, awardee's technical/management score remained 16.8 percent higher, technical/management was weighed more highly than cost in the evaluation, and its slightly higher cost was determined reasonable and worth the premium.

DECISION

Communications Network Systems, Inc. (CNS) protests the award of a contract to System Technology Associates (STA) under request for proposals (RFP) No. 52RANR400004, issued by the Department of Commerce for systems research and development support for the Forecast Systems Laboratory, National Oceanic and Atmospheric Administration. CNS alleges that Commerce improperly evaluated its proposal and failed to conduct meaningful discussions.¹

¹As background, the procurement here is one of four related procurements conducted concurrently by Commerce and for which a single consolidated evaluation was performed and a single set of award documents produced. CNS also challenged the other three procurements in a protest filed at the General Services Administration Board of Contract Appeals

(continued...)

We dismiss the protest.

The RFP, issued as a competitive set-aside under section 8(a) of the Small Business Act, 15 U.S.C. § 637(a) (1988 & Supp. III 1991), contemplated award of a cost-plus-fixed-fee level-of-effort contract.² The solicitation provided that award would be made on a best value basis and listed the following evaluation factors in descending order of importance: (1) management and financial approach; (2) organization, personnel, and facilities; and (3) quality and responsiveness of proposal. The first factor was more important than the second and the third of less importance than the first and second. Cost was to be evaluated for reasonableness and offerors were informed that superior technical or management features were more important than the lowest overall cost.

By the closing date for receipt of initial proposals, three section 8(a) firms submitted proposals. Written discussions were held with all offerors and best and final offers (BAFO) were submitted. After evaluation of BAFOs, the Source Evaluation Board (SEB) determined that STA's proposal provided the best overall value to the government, and recommended award to the firm based on its substantially higher technical/management rating and reasonable cost. The source selection official concurred, and determined that STA's slightly higher proposed cost of \$3,886,692 was worth the premium over the other offerors' proposed costs--CNS proposed \$3,853,353 and the third offeror proposed \$3,325,081. Award was made to STA on September 23, 1993.³ This protest ensued.

¹(...,continued)
(GSBCA). CNS protested the fourth solicitation to our Office rather than the GSBCA because the services do not involve the use of automated data processing equipment, as is required by the Brooks Act, 40 U.S.C. § 759 et seq. (1988), for the filing of a protest with the GSBCA.

²Section 8(a) of the Small Business Act authorizes the Small Business Administration to enter into contracts with government agencies and to arrange for performance through subcontracts with socially and economically disadvantaged small business concerns. Federal Acquisition Regulation (FAR) § 19.805 and 13 C.F.R. § 124.311 (1993). We review competitive 8(a) procurements to ensure that they conform to applicable federal procurement regulations. See Morrison Constr. Servs., Inc., 70 Comp. Gen. 139 (1990) 90-2 CPD ¶ 499.

³The SBA notified Commerce that STA was eligible and competent to perform as an 8(a) firm and authorized Commerce to implement final award.

CNS alleges that the agency failed to conduct meaningful discussions and improperly evaluated the firm's proposal in a number of areas. CNS also maintains that the agency was biased against the firm and that the awardee, STA, improperly had access during the procurement process to CNS' proprietary information. Commerce, in its report to our Office on the protest, responded to all of CNS' allegations arguing that they were without merit. In commenting on the agency report, the protester did not address the agency's response to any of the protest issues except the allegation that the agency improperly evaluated CNS' employee benefits package. Where a protester fails to address in its comments issues to which the agency report responded, we consider those issues abandoned by the protester and will not consider them. Arjay Elecs. Corp., B-243080, July 1, 1991, 91-2 CPD ¶ 3; The Big Picture Co., Inc., B-220859.2, Mar. 4, 1986, 86-1 CPD ¶ 218.

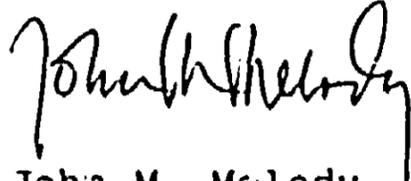
The only remaining issue is the propriety of the evaluation of CNS' employee benefits package. According to CNS, Commerce improperly downgraded CNS based on the belief that CNS' employees were not vested in their 401(k) retirement plan contributions prior to 5 years of employment. This argument does not provide a basis for sustaining the protest.

The benefits packages were evaluated under the management and financial approach factor; this factor was comprised of six subfactors, including organizational policies, under which consideration would be given to six areas, one of which was benefits packages. The organizational policies subfactor was allocated 15 percent of the total available evaluation points. (These points were not specifically allocated to each of the six considerations thereunder.) In the BAFO evaluation, CNS received 7.5 percent, or half, of the total available points under this subfactor. CNS' final total score was 55 percent, compared to STA's 74 percent.

Given STA's 19-percent scoring advantage, even if the evaluation was flawed as asserted, there is no reason to believe that this affected the award. As indicated, employee benefits was only one of six considerations under the subfactor organizational policies and, since the RFP did not specify otherwise, presumably was worth 2.5 percent (i.e., 1/6 of the available 15 percentage points). Thus, even if we assume that CNS received none of the available points in the evaluation and we now increase its score by the full 2.5 percent, the resulting total score of 57.2 percent remains significantly below STA's score of 74 percent. Since the technical/management evaluation factors were designated in the RFP as more important than cost, there simply is no basis for concluding that the agency would have changed its conclusion that STA's

superiority outweighed CNS' slightly lower cost. Consequently, the alleged deficiency in the evaluation of CNS' proposal does not provide a basis for questioning the award. See Environmental Techtonics Corp., B-254260, Dec. 1, 1993, 93-2 CPD ¶ ____.⁴

The protest is dismissed.



John M. Melody
Assistant General Counsel

⁴In its comments on the agency report, CNS addresses issues first raised in a supplemental protest (B-255158.4) which we dismissed as untimely on January 5. The protester's further comments on these arguments therefore will not be considered.