

Comptroller General
of the United States

Washington, D.C. 20548

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Decision

Matter of: Anresco, Incorporated

File: B-259822

Date: April 20, 1995

DECISION

Anresco, Incorporated protests the exclusion of its proposal from the competitive range and the award of a contract to Woodson-Tenent Laboratories, Inc., under request for proposals (RFP) No. DAAK60-94-R-2017, issued by the Army Natick Research and Development and Engineering Center¹ for testing and nutrient analysis of Army foods.

We dismiss the protest.

The RFP provided that award would be made to the responsible offeror whose offer conforming to the solicitation was most advantageous to the government, or the "best value," cost or price and other factors considered. Ten proposals were received. After the initial evaluation, the contracting officer concluded that seven proposals, including Anresco's, had no reasonable chance for award, and thus eliminated them from the competitive range.

Anresco maintains that its proposal was unfairly evaluated and wrongfully eliminated from the competitive range because its status as the incumbent contractor in good standing was not given adequate weight in the evaluation.

The solicitation did not include a separate evaluation factor for past performance or any preference for incumbency experience; the agency thus could not evaluate Anresco's proposal based on pure incumbency considerations. Federal Acquisition Regulation § 15.608(a); Service Co. of Louis Rogers, Inc., B-248995.2, Nov. 16, 1992, 92-2 CPD ¶ 347 (in evaluating proposals, agency may apply only those factors specified in the solicitation). However, the record indicates that offerors' prior experience in fact was considered in connection with both the "Qualifications of Key Personnel" subfactor under the technical factor, and the "Previous Experience in the Field of Nutritional Analysis" subfactor under the management factor. Anresco does not

¹Since the RFP was issued, this agency has been renamed the Army Soldier Systems Command (Provisional).

allege that any specific areas of the evaluation under these subfactors was improper, and we find nothing to suggest that the evaluation was anything but reasonable. To the extent Anresco is arguing that the RFP should have provided an evaluation factor or preference for the purpose of specifically assessing incumbency-related experience, the protest is untimely. Under our Bid Protest Regulations, protests based upon such alleged solicitation improprieties which are apparent on the face of a solicitation must be filed prior to the deadline set for receipt of initial proposals. 4 C.F.R. § 21.2(a)(1) (1995); Gordon R. A. Fishman, B-257634, Oct. 11, 1994, 94-2 CPD ¶ 133.

Anresco maintains it should have been given an opportunity to correct any deficiencies in its proposal. However, since Anresco's proposal was eliminated from the competitive range, and Anresco has not successfully challenged that determination, the agency was not required to give Anresco an opportunity to correct its proposal deficiencies. There is no obligation to conduct discussions with an offeror whose proposal has been properly excluded from the competitive range. A. G. Crook Co., B-255230, Feb. 16, 1994, 94-1 CPD ¶ 118.

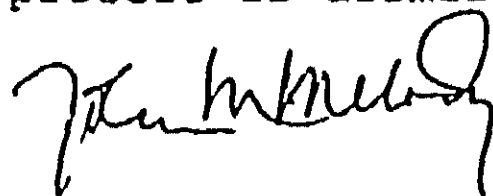
Anresco asserts that the Army erred in using the "best value" evaluation method in this procurement, and that award instead should have been made to the lowest priced competent offeror; it asserts that its price was substantially lower than that of the awardee. As stated above, challenges such as this, which are based on the propriety of the solicitation itself, are untimely, and will not be considered, where not filed prior to the closing date for receipt of initial proposals. See 4 C.F.R. § 21.2(a)(1); Gordon R. A. Fishman, supra.

Anresco claims that contracting officials acted in bad faith by encouraging Anresco to submit further information clarifying its proposal, which it did, allegedly in order to delay Anresco's protest, and by failing to notify Anresco of the July 14 award in a timely manner. There is no evidence that the agency's actions here were motivated by bad faith. In any case, while agencies are required to provide prompt notice of contract award, failure to do so is only a procedural defect; it in no way prejudiced Anresco, as its protest has not been found untimely based on the contract award date. See Paragon Dynamics, Inc., B-251280, Mar. 19, 1993, 93-1 CPD ¶ 248; Ross Aviation, Inc., B-236952, Jan. 22, 1990, 90-1 CPD ¶ 83. The same is true of the Army's alleged attempts to mislead the protester regarding protest requirements; irrespective of any delay, Anresco's protest has not been found untimely with respect to the May 10 notification of elimination from the competitive range. Moreover, Anresco, like all potential contractors,

was on constructive notice of our Regulations, as they are published in the Federal Register and Code of Federal Regulations. Keci Corp.--Recon., B-255193.2, May 25, 1994, 94-1 CPD ¶ 323. We note also that the RFP contained extensive information regarding protests at the agency level.

Anresco objects to the method of determining the competitive range; Anresco claims that the elimination of proposals rated "fair," such as its own, was arbitrary. The determination of whether a proposal is in the competitive range is principally a matter within the contracting agency's discretion, which we will not disturb absent a clear showing that it was unreasonable, arbitrary, or in violation of procurement regulations. Everpure, Inc., B-226395.2; B-226395.3, Sept. 20, 1988, 88-2 CPD ¶ 264. The Army established a competitive range of three proposals, consisting of two rated "excellent" and one rated "good," and determined that, relative to those three, Anresco's "fair" proposal had no reasonable chance for award. We have consistently defined the competitive range as consisting of all proposals that have a reasonable chance for award; a proposal need not be included when, relative to the strength of other proposals, it has no reasonable chance for award. Id. Hence, the competitive range was properly determined.

The protest is dismissed.



John M. Melody
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