



United States  
General Accounting Office  
Washington, D.C. 20548

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Office of the General Counsel

B-229699.2

June 3, 1988

The Honorable Denny Smith  
House of Representatives

Dear Mr. Smith:

This is in reference to your letter to our Office dated March 18, 1988, on behalf of Sammons, Ltd., concerning the firm's protest of a contract award to Environmental Training Consultants (ETC) under United States Forest Service request for proposals (RFP) No. R6-6-87-8. You state that neither the General Accounting Office nor the Forest Service initially assumed responsibility for responding to Sammons' October 1987 protest of the award, although after a number of inquiries by your office the Forest Service did respond, but by denying Sammons' protest. You further state that Sammons is now appealing the denial of its agency protest to our Office; enclosed with your letter is a March 16 letter prepared by Sammons which appears to be the referenced appeal.

With respect to Sammons' October protest, we noted in our December 8, 1987, response to your earlier inquiry that our Office had no record that the firm had filed a protest here. We since have found that Sammons sent us an informational copy of a protest the firm appeared to have filed with the Forest Service; we acknowledged receipt of this letter on October 28. The acknowledgment letter specifically advised Sammons that to be regarded as a protest to the General Accounting Office, a communication must specifically request a ruling by the Comptroller General. Sammons' October protest letter was not addressed to our Office and did not request a Comptroller General decision.

Regarding Sammons' appeal of the Forest Service's adverse decision, our Office has no record of that March 16 protest, which we note also is not addressed to our Office and does not specifically request a Comptroller General ruling. We nevertheless have reviewed the material you have provided, and we find that the firm's position has no legal merit.

Sammons basically contends that the Forest Service improperly conducted the procurement by unfairly allowing ETC to improve its "disqualified" proposal until the proposal was technically acceptable. Additionally, Sammons maintains that the contracting officer was biased against Sammons because the firm employs former Forest Service employees. Finally, Sammons contends that since its technical proposal was superior to that of ETC, the contracting officer should not have awarded the contract to ETC (on October 14, 1987), based on ETC's lower-priced proposal.

The RFP, issued on May 10, 1987, contemplated the use of negotiation procedures. Under those procedures, the contracting officer is charged with determining which proposals are in the competitive range for the purpose of conducting written or oral discussions. The competitive range includes all proposals that have a reasonable chance of being selected for award. During discussions, the contracting officer is required to advise an offeror of deficiencies in its proposal and to give the firm a further opportunity to satisfy the government's requirements. Then, upon completion of discussions, all offerors remaining in the competitive range submit best and final offers (BAFOs).


Sammons and ETC, the only offerors responding to the RFP, both submitted technical proposals which the Forest Service determined required additional information to be acceptable. The record indicates that the Forest Service, using accepted negotiation procedures, provided both offerors with the opportunity to improve their proposals in June and August, 1987. The second opportunity appears to have been prompted by the fact that ETC had not resolved all of the contracting officer's problems in its revised proposal, and by the Forest Service's concern that with only two offerors in the competition neither one should be excluded for correctable deficiencies. In this respect, an agency may reopen discussions after the submission of BAFOs if such action clearly is within the government's best interests, so long as they are reopened with all the offerors in the competitive range. Although Sammons contends that the Forest Service's conduct of the negotiations process was tainted by agency bias against Sammons, our review of the record discloses no evidence at all, other than hearsay and Sammons' own speculation, in support of its contention.

After the second round of BAFOs, the Forest Service determined that both offers were acceptable, and that contract award to ETC on the basis of ETC's lower price therefore would be in the best interest of, and most advantageous to, the government. Sammons' protest gives us

no reason to object to the Forest Service's decision, which is consistent with the advice in the solicitation that the contract would be awarded to the offeror whose proposal was technically acceptable and whose technical/cost relationship was the most advantageous to the government.

In sum, both offerors twice were given an equal opportunity to revise their proposals. We can find nothing wrong with the Forest Service's actions in these circumstances.

Sincerely yours,

  
for James F. Hinchman  
General Counsel