



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-177542 (5)

May 23, 1973

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Braddock, Dunn and McDonald, Incorporated
1920 Aline Avenue
Vienna, Virginia 22180

Attention: Earle C. Williams
President

Gentlemen:

Reference is made to your letter dated April 2, 1973, and prior correspondence, protesting against an award to another firm under request for proposals (RFP) No. DAAB07-72-R-0469, issued June 30, 1972, by the United States Army Electronics Command, Fort Monmouth, New Jersey.

The solicitation was for systems engineering and research analysis investigation to develop a technical interface plan in support of the General and Amphibious Military Operations Program (GAMO). The procurement called for approximately six man-years of labor during a twelve month period and a cost-plus-fixed-fee contract was contemplated. The procurement was negotiated pursuant to 10 U.S.C. 2304(a)(11), which authorizes negotiation of a contract where experimental, developmental or research work is involved. Braddock, Dunn and McDonald, Incorporated (BDM), was one of three firms who submitted an acceptable proposal. Although cost negotiations were held with each offeror who submitted an acceptable proposal, no technical negotiations were held. Logicom, Incorporated (Logicom), received the highest technical rating and was awarded a contract, although its negotiated cost proposal was highest of the three technically acceptable offerors.

The RFP included the following provision relative to the basis for award:

BASIS FOR AWARD

Any award to be made will be based on the best over-all proposal with appropriate consideration given to Technical Proposal, Past Performance/Management, and Cost Consideration in that order of importance.

PUBLISHED DECISION
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[Protest of Army Contract Award]

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Of the three factors set forth above, Technical Proposal is by far the most important, and is of greater weight than the other two factors combined.

Of the last two factors, Past Performance/Management bears the greater weight.

To receive consideration for award, a rating of no less than "acceptable" must be achieved in each of the three factors.

You contend that since BDM's technical proposal was acceptable and its cost proposal was substantially lower than Logicom's, no award should have been made without first conducting technical negotiations with BDM. In this connection, you contend that based upon informal discussions with agency personnel subsequent to award, it is evident that some areas of your technical proposal were misinterpreted and that negotiations would have clarified your intent and improved your technical score. Furthermore, you contend that the RFP provisions relative to "Statement of Work", "Basis for Award", and the listed technical factors and subfactors, provided the basis for technical discussions. Therefore, you contend that the agency's position that technical discussions were not practicable because of the possibility of transfusion of another offeror's methodology indicates that either the above RFP provisions were inadequate for evaluation purposes or the proposals were evaluated against a revised Statement of Work. Finally, you contend that your cost proposal is realistic and, therefore, award to BDM, either on the basis of the present technical evaluation or after technical discussions, would result in the most advantageous contract.

It is reported, and confirmed in the file furnished our Office, that prior to the receipt of proposals an evaluation plan was developed for application by each of the evaluators from each of the services and the two agencies participating in the GAMO program. Under this plan each evaluator was required to evaluate the proposals on the basis of each of the six technical factors listed in the RFP, describe the strengths and weaknesses in each of the six areas, and assign a raw score within a stated range. The raw score was then multiplied by the weight

B-177542

assigned to the six areas for the total weighted score. Based upon this analysis, you received a technical merit rating of 68, compared to 85 for Logicon and 82 for Computer Sciences Corporation (The third firm in the competitive range).

It was the contracting officer's decision, after discussion with technical personnel, that negotiations should be limited to price because it was felt that technical discussions would have compromised the proposals of the offerors through transfusion of ideas, methodology, and concepts. In this connection, the CAHO Management Office advised the contracting officer that since there was no predetermined approach or methodology for accomplishment of the task of developing the technical interface concepts, the evaluation involved comparing the methodologies proposed by the various offerors. Therefore, it was felt that any effective technical negotiations would result in a discussion of comparative weaknesses and strengths and possibly divulge an offeror's approach. For example, it is pointed out that it became obvious during evaluation that technical interface concepts could be developed without the development of an extensive cost-effectiveness model as proposed by you. However, it was felt that discussion of this point with you would likely provide you information gained from review of other proposals. Furthermore, it is reported that it became obvious that your approach placed a major dependence upon the CAHO Management Office for definition of methodology, and it was believed that discussion of this weakness would reveal that other offerors indicated that they would develop the methodology. It is also reported that the same rationale applied to your commitment of personnel which was not considered adequate, but the discussion of which would have alerted you to the approach of other offerors.

Furthermore, a cost analysis of each of the acceptable proposals was conducted and only Logicon was considered realistic. It is reported that your proposal was considered unrealistic primarily because it was felt that you understated the composite labor. When adjustment was made for this and other deficiencies, your evaluated costs exceeded the evaluated costs of both Logicon and CSC. Therefore, it was concluded that you would be in line for award only if both Logicon and CSC were rejected.

B-177542

The requirement that written or oral discussions be held with all offerors within the competitive range is found in 10 U.S.C. 2304(g), and it is our view that such negotiations should be conducted under competitive procedures to the extent practical and that they be meaningful in order that competition is maximized. However, in 51 Comp. Gen. 621 (1972), we recognized that the statute should not be interpreted in a manner which discriminates against or gives preferential treatment to a competitor and that the disclosure to other offerors of one offeror's innovative solution to a problem is unfair. Thus, where there is a research and development procurement and the offeror's independent approach to solving a problem is the essence of the procurement, technical negotiations must be curtailed to the extent necessary to avoid technical "transfusion".

The instant procurement calls for a research and development effort, requiring the development of a technical interface concept plan. The statement of the evaluation criteria (particularly "understanding the work required, the problems involved, and proposed approach to fulfillment of contract") and the "Engineering Approach" (completeness, understanding of problems, and feasibility of approach) make it clear that the specifications are primarily performance oriented in order to obtain the respective offerors' independent approaches in attaining the performance desired. Therefore, it is clear in our opinion that the failure to engage in technical discussions resulted not from a lack of adequate standards for evaluation in the RFP, but rather from the fact that the agency was interested in the offerors' independent approaches and out of concern that discussions would result in technical transfusion.

While we view the decision to conduct no technical discussions in a given case as a matter requiring close scrutiny, we believe that the validity of such decision must be determined in light of all the circumstances and with regard to whether there is an opportunity for such discussions to be meaningful. Although your technical proposal had been determined acceptable, we note that it received a score of only 68 as compared to 65 and 82 for the other acceptable proposals. Also, the Chairman of the GAMO Interface

B-177542

Coordinating Committee stated in a memorandum to the Chief, JCS Executive Agent's Management Office - GAMO, that your proposal should be considered only "if Logicon and Computer Sciences Corp. are found to be unacceptable by the Contracting Officer for reasons other than technical." In these circumstances, and in view of the fact that the list of deficiencies furnished our Office indicate that your proposal was considered as evidencing a lack of understanding of the problem and was weak in approach to the problem based upon comparison with the two higher rated proposals, we believe that inclusion of your proposal in the competitive range was of doubtful validity. Moreover, while we are of the view that certain deficiencies or clarifications could have been discussed with you, we are also of the view that such discussions would not have been meaningful insofar as improving your position in view of the restraints on such discussions necessitated by the risk of technical transusion and in view of your marginally acceptable proposal. In this connection, as noted above, the major weaknesses in your proposal were deficiencies only in comparison with relative strengths in other proposals. As stated in the above cited case, we believe it would be unfair to "help one proposer through successive rounds of discussions to bring his original inadequate proposal up to the level of other adequate proposals by pointing out those weaknesses which were the result of his own lack of diligence, competence, or inventiveness in preparing his proposal." In these circumstances, we do not believe the failure to conduct technical discussions with your firm provides our Office a basis for objecting to the award as made. 52 Comp. Gen. 198 (1972).

Furthermore, the fact that your cost proposal was the lowest does not, in our opinion, require the conclusion, as you contend, that it was to the Government's advantage to either conduct technical discussions with your firm or award you the contract on the basis of your technical proposal. In view of the fact that the contract will be performed on a cost-plus-fixed-fee basis, evaluated costs rather than proposed costs provide a sounder basis for determining the most advantageous proposal. Since the Logicon cost proposal was determined the most realistic as provided in the RFP, there is no basis for our Office to agree with your contention.

B-177542

Accordingly, your protest is denied.

Sincerely yours,

Paul G. Dembling

For the Comptroller General
of the United States