

DECISION



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

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FILE: B-193227

DATE: March 16, 1979

MATTER OF: Jazco Corporation

[Allegation that RFP was Unduly Restrictive of Competition]
DIGEST:

1. Protest filed after closing date for receipt of proposals, which alleges that 1) wide scope of services solicited by RFP unduly restricts competition, 2) RFP's failure to specifically provide for awards to small and minority businesses violates Small Business Act and Federal antitrust laws, and 3) RFP was contrary to law because it failed to provide for consideration of cost is untimely and not for consideration on the merits since GAO Bid Protest Procedures require protest of such alleged solicitation deficiencies to be filed prior to closing date.

2. Protest alleging that selection of only one contractor violated terms of RFP is without merit, since while RFP stated that more than one contractor might be selected, there was no requirement that more than one contractor be selected.

Jazco Corporation (Jazco) has protested the proposed award of a contract to Stone & Webster Engineering Corporation (Stone & Webster) under request for proposals (RFP) No. EAS78-1, issued by Brookhaven National Laboratory (Brookhaven), a Government-owned facility operated by Associated Universities, Inc., under a cost-type prime contract with the Department of Energy (DOE). Jazco asserts, among other things, that the RFP was unduly restrictive of competition and that the failure of the RFP to specifically provide for awards to small or minority businesses violated the Small Business Act and Federal antitrust laws.

On July 5, 1978, Brookhaven issued an RFP for supplemental engineering assistance for its energy and environment department. The purpose of the solicitation

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was to competitively procure, on an as required basis, services which had often been procured on a sole source basis due to the lack of time in which to conduct a competitive procurement. The RFP provided that proposals would be evaluated on the technical capability of a firm to perform the diverse tasks set forth in the RFP (30 percent); the experience of the technical staff (20 percent); the experience of the firm (20 percent); a firm's ease of access to Brookhaven (15 percent); and the ability of a firm to meet Brookhaven's needs in a timely manner (15 percent). The RFP did not disclose the relative importance of cost in making an award. The RFP further provided that one or more contractors would be selected for award.

Twenty-six proposals were received by Brookhaven in response to the RFP. Technical proposals were evaluated by a proposal evaluation panel: the proposal submitted by Stone & Webster was rated first; that submitted by Jazco was rated twenty-fourth. Cost proposals were then evaluated by personnel from Brookhaven's Division of Contracts and Procurement who concluded that Stone & Webster's proposed labor rates were reasonable. On the basis of the technical and cost evaluations, Stone & Webster was selected as the proposed awardee.

Jazco essentially alleges that the wide scope of services solicited by the RFP, coupled with Brookhaven's lack of current and specific requirements for these services, unduly restricted competition. Jazco argues that small and minority businesses were not able to offer all the diverse services solicited by the RFP and asserts that only a few large corporations might be able to do so. Jazco also asserts that the failure of the RFP to specifically provide for awards to small and minority businesses is in violation of the Small Business Act and Federal antitrust laws. Jazco further alleges that the proposed selection of only one firm is contrary to the RFP and that the selection violates applicable procurement law and regulations because it was made without regard to cost.

DOE asserts that all of the issues raised by Jazco concern alleged solicitation deficiencies readily apparent from the face of the RFP which should have been

protested prior to the closing date for the submission of offers. DOE states that since Jazco did not file its protest until Jazco was notified that it had not been selected, that Jazco's protest is untimely under our Bid Protest Procedures, 4 C.F.R. § 20.2(b)(1) (1978). DOE further states that the issues presented by Jazco's protest are not "significant" and therefore Jazco's protest does not fall within the "significant issue" exception to our timeliness rules. Consequently, DOE argues that Jazco's protest should be dismissed.

We agree that most of Jazco's protest is untimely. Under our Bid Protest Procedures, a protest based upon an alleged impropriety in a solicitation which is apparent prior to the closing date for submission of offers must be filed with the contracting agency or our Office prior to the closing date for receipt of offers. 4 C.F.R. § 20.2(b)(1) (1978). Since the scope of the services being solicited, the lack of a small business or minority firm preference and the absence of an evaluation factor for cost were apparent from the face of the RFP, those matters should have been protested prior to the closing date for receipt of offers. As Jazco did not protest until after being notified that it was not selected for award, its protest dealing with those issues is untimely and will not be considered. However, we will consider Jazco's allegation that award to only one firm, Stone & Webster, was inconsistent with the RFP.

We recently held that while Federal statutes and regulations which apply to direct procurement by Federal agencies may not apply per se to procurement by prime operating contractors, the prime contractor's procurement must be consistent with and achieve the same policy objectives as the Federal statutes and regulations. Piasecki Aircraft Corporation, B-190178, July 6, 1978, 78-2 CPD 10. In other words, those practices must be in compliance with basic principles of Federal procurement law, i.e., the "Federal norm." Piasecki Aircraft Corporation, supra.

The "Federal norm", of course, requires that award be made in accordance with the provisions of the solicitation or other "ground rules" applicable to the

procurement. Cohu, Inc., 57 Comp. Gen. 759 (1978), 78-2 CPD 175; Union Carbide Corporation, 55 Comp. Gen. 802 (1976), 76-1 CPD 134. Here, we find no basis for finding a single award to be contrary to the terms of the RFP. While the RFP indicated that more than one contractor might be selected, Brookhaven was not required by the RFP to select more than one contractor. The protest, therefore, is denied.

(We note, parenthetically, that the failure of the RFP to indicate the role of cost in the evaluation also does not comport with the "Federal norm." See Fiber Materials, Inc., 57 Comp. Gen. 527 (1978), 78-1 CPD 422. Here, we believe the RFP should have stated that in addition to the technical evaluation, the cost proposals would be evaluated to determine reasonableness of the proposed labor rates. We further note that it does not appear Jazco was prejudiced by this omission in view of Jazco's relative technical standing. However, we are by separate letter bringing this matter to the attention of the Secretary of Energy.)


Deputy Comptroller General
of the United States