LELKOWITZ

Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Ross Aviation, Inc.

File: B-236952

Date: January 22, 1990

DIGEST

1. Mere fact that two or more offerors proposed to utilize the same subcontractor to perform a portion of the required work does not establish that the offerors engaged in price collusion and thus does not establish that the offerors falsely certified in their offers that they independently arrived at their prices.

2. Agency's failure to consider past performance of offeror in evaluation is unobjectionable where offeror failed to address that past performance in its proposal.

3. Agency's failure to promptly notify unsuccessful offeror of award is a procedural defect that does not affect the validity of a contract award.

DECISION

Ross Aviation, Inc., protests the Department of the Air Force's award of a contract to UNC Support Services Corporation (UNC), under request for proposals (RFP) No. F05611-89-R-0100. Ross claims that UNC was ineligible for award for violating its Certificate of Independent Price Determination. Ross alternatively argues that the agency's evaluation of proposals was not conducted in accordance with the stated evaluation factors. We deny the protest.

The solicitation requested offers for aircraft maintenance and sailplane towing services at the United States Air Force Academy, including all necessary services on four types of aircraft. The solicitation provided that proposals were to be evaluated on the basis of technical, management and cost factors, with technical and management considerations being more important than cost. Five offerors responded to the solicitation. The agency, on the basis of initial proposals and actual demonstrations of the towing capabilities of the

various proposed aircraft, included all five in the competitive range and requested best and final offers (BAFOs) from each. A final rating and ranking of the BAFOs was then conducted. UNC's proposal received an overall rating of exceptional and, specifically, was found to have demonstrated a total, in-depth grasp of the requirements and a strong ability to perform in an exceptional manner. On the other hand, Ross's proposal was found to be marginal due to inadequacies in both its technical approach and management plan. Consequently, although Ross offered the low total price of $9,948,092.30, as compared to UNC's high price of $11,980,807.25, the source selection official awarded a contract to UNC on the basis that its proposal provided the best overall value to the government.

Ross first alleges that UNC improperly represented in its proposal that it arrived at its price independently. In support of this contention, Ross points out that UNC and two other offerors proposed to utilize the same subcontractor, Fisher Agency, Inc., to perform the solicitation's required towing services. Ross considers this to be evidence that UNC falsely certified in its BAFO that its price was arrived at independently, and concludes that UNC's proposal therefore should have been rejected.

A Certificate of Independent Price Determination, Federal Acquisition Regulation (FAR) § 52.203.2, is generally required to be included in all solicitations and is designed to prevent collusive bidding. This provision requires an offeror to certify that it has arrived at its price independently, has not disclosed its price to other competitors, and has not attempted to induce another concern either to submit or not to submit an offer for the purpose of restricting competition. An allegation of collusive bidding raises, in the first instance, a matter for consideration by the contracting officer in determining the responsibility of the proposed awardee. See Acme Prod., Inc., B-231846, July 13, 1988, 88-2 CPD ¶ 47.

The circumstances described by Ross here do not establish collusive bidding between UNC and other participants in the competition. The alleged relationship between UNC and other offerors by virtue of their proposing a common subcontractor does not preclude the firm from competing under independent pricing clause; this provision only requires that competing concerns prepare their offers independently and without consultation with each other. See King-Fisher Co., B-228316; B-228309, Oct. 13, 1987, 87-2 CPD ¶ 353; Ace Reforestation, Inc., 65 Comp. Gen. 151 (1985), 85-2 CPD ¶ 704. Similarly, Fisher's decision to participate in this procurement as a subcontractor, and its agreement with

various offerors to establish such an arrangement, in our view was no more than a business judgment; again, the fact that a firm is proposed as a subcontractor by more than one offeror is not prohibited, and it does not by itself establish illegal collusion. Ross has presented no evidence, beyond its speculation, that UNC did not arrive at its price independently, and we will not assume that this was the case. See Ace Reforestation, Inc., 65 Comp. Gen. 151, supra. Accordingly, we find that the agency's determination that UNC did not violate its certification and its resultant determination that UNC was responsible were reasonable and made in good faith.

Ross also argues that UNC ignored the solicitation's requirement for submitting a single, consolidated offer for the entire work effort; Ross claims that UNC and Fisher actually were independent contractors that submitted separate and distinct offers for segregable contract elements. Our review of UNC's proposal, however, clearly shows this not to be the case. UNC and Fisher in fact contemplated a rather typical prime contractor/subcontractor relationship, with UNC, as the prime, having a direct contractual relationship with the Air Force, with the intention of subcontracting with Fisher for a portion of the required work effort. There is nothing in this arrangement inconsistent with the solicitation.

Ross next questions the Air Force's downgrading of its proposal with respect to its technical approach and management plan. Ross finds its evaluation in this regard perplexing given that for a period of approximately 12 years it successfully performed under a prior contract two key tasks encompassed under the subject solicitation, namely, maintenance of the UV-18 Twin Otter aircraft, and maintenance of the Academy's sailplanes. Ross concludes that it clearly had both the corporate and actual experience to perform the required services, and that its proposal, although perhaps lacking the "glitter" of UNC's, addressed in sufficient detail each of the solicitation's key requirements.

In reviewing protests against allegedly improper technical evaluations, our Office will not substitute its judgment for that of the contracting activity, but rather will examine the record to determine whether the agency's judgment was reasonable and in accord with listed criteria and whether there were any violations of procurement statutes or regulations. See ORI Inc., B-215775, Mar. 4, 1985, 85-1 CPD ¶ 266. We find that the Air Force's evaluation of Ross's proposal was proper under this standard.

The record reveals that Ross was consistently downgraded under many of the technical subfactors for failure to adequately address the solicitation's requirements. For instance, Ross received marginal ratings with respect to all aspects of its proposed towing plan, predominately marginal and unacceptable ratings for the portion of its proposal dealing with the T-41 aircraft, and marginal and unacceptable ratings for certain aspects of its proposal dealing with soaring operations. The one exception to these low ratings was in the area of its proposal dealing with the UV-18 aircraft, for which it received either exceptional or acceptable ratings. Additionally, Ross received similar mediocre ratings for its management plan. Specifically, Ross received marginal ratings for all aspects of its management plan, except for the subfactor dealing with efficiency of proposed personnel plan, for which it received an unacceptable rating.

We have examined Ross's proposal and find that, except for that portion of its technical proposal dealing with the UV-18 aircraft, it indeed appears to have lacked sufficient detail regarding most other aspects of its technical approach and management plan. In this regard, while Ross described in detail its overall management and operation plan, including parts management and personnel allocation, for the UV-18 portion of its proposal, it did not do the same for the other areas of its proposal, failing to include details for such key requirements as aircraft maintenance and pilot scheduling. Similarly, Ross failed to address how it would handle certain contingencies, such as the resignation of key employees or the acquisition of certain difficult to find spare parts.

Ross' position that its proposal does adequately address all solicitation requirements (merely without the "glitter"), is based in large measure on its view that it had previously demonstrated its capabilities during performance of previous contracts for the Academy. We note, however, that there is no basis for favoring a firm with presumptions based upon prior performance--all offerors must demonstrate their capabilities in their proposals. See Del-Jen, Inc., B-216589, Aug. 1, 1985, 85-2 CPD ¶ 111. Here, the solicitation specifically required offerors to address four major technical tasks and two management areas; the Air Force was under no obligation to determine an offeror's capabilities in any of these areas if they were not adequately addressed in the offeror's proposal.

We conclude that the Air Force justifiably found that Ross' proposal lacked necessary detail regarding its intended technical approach and management plan, and that this

deficiency precluded a higher rating. Accordingly, we think the Air Force's awarding Ross a marginal overall rating was reasonable. Furthermore, given Ross's relatively low rating, we see nothing unreasonable in the Air Force's ultimate decision to select UNC's superior proposal for award notwithstanding its extra cost. See Jeffrey A. Cantor, B-234250, May 30, 1989, 89-1 CPD ¶ 517.

Finally, Ross complains that the Air Force did not immediately notify it that award had been made under the subject RFP, and that this failure effectively denied it the opportunity to invoke the stay provisions of the Competition in Contracting Act of 1984, 31 U.S.C. § 3553(d) (Supp. V 1987). However, while agencies are required to provide prompt notice of contract award, we generally view tardiness in notifying unsuccessful offerors as a procedural defect that does not affect the validity of a contract award. Vista Scientific Corp., B-231966.2, Dec. 27, 1988, 88-2 CPD ¶ 625. In any event, since we find that the agency's award to UNC was proper, Ross was not harmed by this late notice.1/

The protest is denied.

Seymour Efros

for James F. Hinchman
General Counsel

1/ Initially, Ross also complained that the solicitation requirement for an actual demonstration of the flying capabilities of certain proposed aircraft placed it at a competitive disadvantage with respect to the other competitors. In its comments to the agency's report, however, the protester did not attempt to rebut the agency's response to this allegation; therefore, we consider Ross to have abandoned this basis of protest. See Prison Match, Inc., B-233186, Jan. 4, 1989, 89-1 CPD ¶ 8.