Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Applied Communications Research, Inc.

File: B-270519

Date: March 11, 1996

Terrence M. O'Connor, Esq., for the protester.
Joshua A. Kranzberg, Esq., David H. Scott, Esq., and William R. Hinchman, Esq., Department of the Army, for the agency.
Paula A. Williams, Esq., and John Van Schaik, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that proposal submitted by awardee should have been disqualified from the competition based on alleged misappropriation and use of the protester's equipment and proprietary information is dismissed since protest concerns a dispute between private parties which General Accounting Office does not consider.

DECISION

Applied Communications Research, Inc. (ACR) protests the award of a contract to Tricom Research, Inc. under request for proposals (RFP) No. DAAD05-95-R-9043 (RFP-9043), issued by the Department of the Army for a quantity of video transceivers. ACR contends that Tricom obtained the award of this contract through material misrepresentation of the ownership of equipment and proprietary information belonging to ACR, and that this alleged misrepresentation requires termination of the contract. ACR also alleges that the agency failed to perform an adequate analysis of Tricom's prices.

We dismiss the protest.

The Army issued an earlier solicitation, RFP DAAD05-95-R-9025 (RFP-9025), for a sole-source award to ACR for 15 sets of miniature video transceivers. Tricom responded to that RFP with a proposal signed by Mr. John Wright, president. The contract specialist contacted Mr. Wright to inquire if ACR had changed its name and was told that Tricom was a newly formed company controlled by Mr. Wright which manufactures and sells some of the same products as ACR. The contract specialist sent Tricom's proposal to the requiring activity for technical evaluation.

Meanwhile, a pre-award survey was conducted to review the technical and financial capabilities of Tricom and to determine the relationship between Tricom and ACR. The survey team was given a tour of Tricom's facility and a demonstration of its video transceiver. While there, the survey team learned that Tricom was a company formed by Mr. Wright, an engineer who had developed the video transceiver for ACR, and concluded that the company had the necessary technical skills, experience, and financial resources to perform the contract. The survey team also learned that Tricom and ACR were separate companies.

ACR was contacted by the agency to determine the firm's interest in competing for the acquisition. As a result, RFP-9025 was canceled and RFP-9043 was issued to Tricom and ACR as the contracting officer believed both companies possessed the technical data required to produce the transceivers. As issued, the new solicitation contemplated award of a firm, fixed-price contract to the responsible offeror submitting the lowest-priced, technically acceptable proposal. Both companies submitted timely proposals; Tricom offered the lowest price of $350,370, while ACR's price was $477,000. At the request of the contracting officer, Tricom verified its prices. Subsequently, the contracting officer determined that Tricom was a responsible offeror. This determination was based on Tricom's adequate financial resources, its satisfactory record of performance under two recent Air Force contracts, and the determination that the contractor's experience, technical skills, equipment, and facility were adequate to perform the required work. The contract was awarded to Tricom as the lowest-priced, technically acceptable offeror.

ACR bases its protest on several intentional misrepresentations allegedly made by Tricom that materially influenced the Army's consideration of its proposal. Specifically, the protester alleges that Tricom falsely represented to the pre-award survey team that it owns certain resources (product parts, testing equipment and documentation) which, ACR insists, belong to ACR. The protester also asserts that as a newly formed company, Tricom's own resources are so limited that the firm cannot produce the video transceivers without access to ACR's resources. In addition, the protester alleges that Tricom improperly diverted to itself a contract opportunity properly belonging to ACR when it "intercepted" the original RFP intended for ACR and appropriated the solicitation for Tricom.[1]

ACR's contentions involve matters which are simply not appropriate for resolution in our forum. Although ACR's protest is cast primarily in terms of intentional misrepresentations by the awardee affecting the integrity of the procurement process, the protest actually presents a dispute between private parties concerning

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[1]The agency and the awardee both dispute ACR's claim that Tricom misrepresented the ownership of certain assets the firm had in its possession at the time of the pre-award survey or ACR's status as a viable competitor.

the alleged misappropriation and use of the protester's equipment and proprietary information which our Office will not consider. See, e.g., Olin Corp., B-252154, Mar. 9, 1993, 93-1 CPD ¶ 217, aff'd, Olin Corp.--Recon., B-252154.2, June 3, 1993, 93-1 CPD ¶ 428. Other allegations concern the contracting officer's affirmative determination of Tricom's responsibility, which will not be reviewed by our Office absent a showing of possible fraud or bad faith on the part of procurement officials, or that definitive responsibility criteria in the solicitation may have been misapplied. Bid Protest Regulations, section 21.5(c), 60 Fed. Reg. 40,737, 40,742 (Aug. 10, 1995) (to be codified at 4 C.F.R. § 21.5(c)); see, Deutsch Metal Components, B-255316, Feb. 17, 1994, 94-1 CPD ¶ 122; 4th Dimension Software, Inc.; Computer Assocs. Int'l, Inc., B-251936; B-251936.2, May 13, 1993, 93-1 CPD ¶ 420. No such showing has been made here.

ACR's contention that the agency's analysis of Tricom's price proposal was inadequate also provides no basis for protest. Where, as here, a fixed-price contract is contemplated and there are no stated criteria for a price realism analysis or the evaluation of an offeror's understanding, a protester's claim that another offeror has submitted an unreasonably low price is not a valid basis for protest. SAIC Computer Sys., B-258431.2, Mar. 13, 1995, 95-1 CPD ¶ 156. Moreover, the offeror's ability and capacity to perform at the price proposed is a matter of the offeror's responsibility, the affirmative determination of which, as stated above, we will not consider except in circumstances not involved here. Envirosol, Inc., B-254223, Dec. 2, 1993, 93-2 CPD ¶ 295.

Accordingly, the protest is dismissed.

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