Comptroller General
of the United States

Washington, D.C. 20548

Decision

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Matter of: Harry A. Stroh Associates, Inc.

File: B-274335

Date: December 4, 1996

Gilbert J. Ginsburg, Esq., and Raymond Fioravanti, Esq., Epstein, Becker & Green, P.C., for the protester.
Donald E. Barnhill, Esq., and Joan K. Fiorino, Esq., East & Barnhill, for Ace Maintenance & Services, Inc., an intervenor.
Thomas J. Duffy, Esq., and Terence Cleary, Esq., Department of the Army, for the agency.
Andrew T. Pogany, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Where a request for proposals sets forth the provisions of Federal Acquisition Regulation § 52.215-16, Alternate II (FAC 90-31), advising offerors of the agency's intent to award without conducting discussions, contracting agency may properly do so, provided the contracting officer reasonably determines that discussions are unnecessary. Contracting agency reasonably determined to award to the offeror which submitted the technically superior proposal at a fair and reasonable price based on initial proposals, despite protester's arguments that a possibility existed that its inferior technical proposal could eventually become, through discussions, the best value proposal.

DECISION

Harry A. Stroh Associates, Inc. (Stroh) protests the award of a fixed-price contract, on the basis of initial proposals, to Ace Maintenance & Services, Inc. under request for proposals (RFP) No. DABT11-96-R-0001, issued by the Department of the Army for complete housekeeping services at several hospitals and clinics. Stroh contends that the agency unreasonably failed to conduct discussions by making award on the basis of initial proposals.[1]

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[1]In its comments on the agency report, the protester withdrew certain other issues initially raised in its original protest.

We deny the protest.

The RFP, issued on March 27, 1996, provided that award would be made to the offeror whose proposal provided the best value to the government considering the evaluation factors set forth in Section M of the RFP. The RFP contemplated a base year performance period with four 1-year option periods. The technical evaluation factors, in descending order of importance, were as follows: (1) technical management/organization; (2) staffing; (3) past performance/experience; (4) business management; and (5) technical and management transition. The RFP stated that price would not be assigned a numerical score but would be considered of equal importance to the combined technical evaluation factors. The RFP also stated that "[a]ll efforts will be made to evaluate the proposals without conducting discussions and requesting [b]est and [f]inal offers."[2]

The agency received 13 proposals by June 5, 1996, the closing date for receipt of initial proposals. The technical proposals were evaluated by a source selection evaluation board (SSEB) with the following results:[3]

Offeror	Technical	Price
Ace	[Deleted]	$21.6 million
Offeror A	[Deleted]	[Deleted]
Stroh	[Deleted]	[Delteted]
Offeror B	[Deleted]	[Deleted][4]

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[2]Section L of the RFP incorporated by reference Federal Acquisition Regulation (FAR) § 52.215-16 (FAC 90-31), entitled "CONTRACT AWARD (OCT 1995)--Alternate II," which provides that the government "intends to evaluate proposals and award a contract without discussions. . . . Therefore, each initial offer should contain the offeror's best terms from a cost or price and technical standpoint."

[3]The SSEB used a numeric scale of [deleted]. We show the results for the four highest ranked offerors.

[4]The independent government estimate (IGE) was [deleted]. Although a fixed-price contract was contemplated, the RFP did require certain price support data from offerors to validate whether proposed prices were consistent with the technical proposals. The agency conducted a price analysis which included a comparison of Ace's price to the current contract as adjusted for additional requirements, general and administrative rates, profit rates and a comparison to other offerors' prices and the IGE.

Based on the evaluation results, the SSEB made the following recommendation to the source selection authority (SSA):

> "[A] thorough evaluation of all the proposals revealed that Ace Maintenance Services, Inc. had a technically superior proposal and should be awarded the contract without discussions.
>
> "[T]he board evaluated all other proposals as not acceptable for inclusion in the competitive range. The board felt that deficiencies noted were not correctable within the time frame for contract award. Therefore, it was unanimously agreed upon by the Board to not establish a competitive range but to rather make contract award to the offeror who demonstrated the most complete understanding of the Government scope of work and [Performance Work Statement (PWS)] requirements."

The SSA reviewed the evaluation results. With respect to Ace, she found, among other things, that the firm's procedures manual and technical proposal were very well organized, structured following the PWS and the Quality Assurance Surveillance Plan, and clearly demonstrated a thorough understanding of the PWS and the concept of total disinfection cleaning vital in hospital housekeeping. She also determined that Ace's staffing matrix was clear and concise, and "very close" to the IGE annual hours. In contrast, she determined that Stroh's procedures manual conflicted with the PWS and that the firm's Quality Control Program met minimum needs but did not demonstrate a full understanding of the government's requirements. Further, she found that Stroh's staffing matrix did not show hours adequate to meet all requirements since certain "shift leaders" were not shown, and assignments were not made to cover many areas of the hospital. She concluded as follows:

> "Based on the significant superiority of Ace's proposal and their price being considered fair and reasonable, it is determined that it is not to the government's advantage to conduct discussions."[5]

The agency awarded the contract to Ace on August 16, 1996. This protest followed.

Where, as here, an RFP sets forth the provisions of FAR § 52.215-16, Alternate II (FAC 90-31), advising offerors of the agency's intent to award without conducting

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[5]The contracting officer states, contrary to arguments advanced by the protester in its comments, that no competitive range determination was made by the agency. The agency simply selected the best value offeror based on initial proposals. The record supports this view.

discussions, the contracting agency may properly do so, provided the contracting officer reasonably determines that discussions are unnecessary. See FAR § 15.610(a)(3) (FAC 90-31); see generally Lloyd-Lamont Design, Inc., B-270090.3, Feb. 13, 1996, 96-1 CPD ¶ 71.

Stroh, in its initial protest, argued, on information and belief, that the agency could not properly have made an award to Ace based on initial proposals because "Ace's proposal was found to have contained deficiencies." Stroh offered no support or explanation for this allegation. Stroh received the agency report which detailed the evaluation of Ace's proposal, including the agency's specific determination that Ace's technical proposal was significantly superior to Stroh's (and other offerors') proposals.[6] After reviewing the report, Stroh withdrew the allegation that Ace's proposal contained a deficiency.

Stroh, in its comments, for the first time argues that the agency could not properly have made an award based on initial proposals because Ace's technical proposal received a rating of only "satisfactory" in one subfactor and that under the source selection plan (SSP), the agency was required to conduct discussions notwithstanding the explicit terms of the RFP permitting award on the basis of initial proposals.[7]

We find this argument to be untimely. To be considered timely, protest issues must be raised not later than 10 days of when the basis for protest was or should have been known. Bid Protest Regulations, § 21.2(a)(2), 61 Fed. Reg. 39039, 39043 (1996) (to be codified at 4 C.F.R. § 21.2(a)(2)). Accordingly, this protest ground will not be considered. Stroh was aware of this basis of protest not later than when it received the agency report, but first raised the matter in its comments on the agency report which were filed more than 10 calendar days after Stroh received the report.[8]

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[6]Counsel for the protester also received Ace's entire technical and price proposals under a protective order issued by our Office.

[7]The SSP stated that a rating of "satisfactory" indicates that the proposal "[m]eets minimum requirements of the solicitation; [deleted]; [a]ward made with detailed discussion and revised proposal." [Deleted].

[8]Stroh requested and received an extension for filing its comments with our Office; this does not toll the requirement to timely file any additional basis or bases of protest that are revealed by the agency report. See Dial Page, Inc., B-256210, May 16, 1994, 94-1 CPD ¶ 311. Additionally, we note that a contracting agency's failure to follow an SSP does not provide a basis for questioning the validity of an

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Finally, Stroh argues that it should have received the award based on its initial proposal because its proposal was acceptable and lower in price, or that the agency should have conducted discussions with offerors. The RFP here specifically advised offerors that the government intended to evaluate proposals and award a contract without discussions and that each initial proposal should contain the offeror's best terms. Based on the initial proposals received, the agency determined that Ace's proposal represented the best value to the government based on its technical superiority and reasonable price. We do not think that the mere possibility that an inferior initial proposal could eventually become, through discussions, the best value proposal precludes the agency from awarding the contract to the offeror with the clearly best value proposal based on initial proposals. Concerning Stroh's argument that its proposal did not contain the deficiencies found by the agency and was acceptable, Stroh does not argue that its proposal (even absent these deficiencies) was technically equal to Ace's proposal and does not contest the agency's determination that Ace's proposal was clearly superior. Under these circumstances, we have no basis to object to the agency's award without discussions to Ace. Compare Information Spectrum, Inc., B-256609.3; B-256609.5, Sept. 1, 1994, 94-2 CPD ¶ 251 (discussions were not necessary where the agency could reasonably determine which offer represented the best value to the government) with The Jonathan Corp.; Metro Mach. Corp., B-251698.3; B-251698.4, May 17, 1993, 93-2 CPD ¶ 174 (discussions were necessary where the agency could not reasonably determine which proposal represented the best value to the

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[8](...continued)
award selection because the SSP is an internal agency instruction and, as such, does not give outside parties any rights. See Johnson Controls World Servs., Inc., 72 Comp. Gen. 91 (1993), 93-1 CPD ¶ 72.

government, given the significant discrepancy between the agency's cost realism estimate and the cost proposals received and the closeness of the competition); see also TRW, Inc., B-254045.2, Jan. 10, 1994, 94-1 CPD ¶ 18.

The protest is denied.[9]

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[9]Stroh also alleged that the award was not preceded by a cost/technical tradeoff. While the contracting officer did not execute any formal document denominated as a cost/technical tradeoff or otherwise explicitly set forth a tradeoff determination, it is clear from the record that in determining that discussions were not necessary the contracting officer did determine that Ace's significant technical superiority was worth its price, even though that price was appropriately 10-percent higher than the protester's.