



B-158686 (2)

SEP 2 - 1966

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Attention: Mr. Walter A. Slowinski

Gentlemen:

By letter of March 3, 1966, Ocean Science and Engineering, Incorporated (Ocean Science), protested the award of a contract to Space General Corporation (Space General) under Request for Proposals No. 42-007-66-77Q issued on November 8, 1965, by the Dugway Procurement Division, United States Army, Salt Lake City, Utah.

The subject request for proposals invited quotations on a cost-plus-incentive-fee contract to devise and prove out an economical system for sampling the atmosphere near sea level in an ocean environment. Eight proposals were received and evaluated under the criteria set forth in the request. While the \$345,755 proposal submitted by Ocean Science was less than Space General's \$486,290 proposal, it was higher than three other proposals. The Army awarded contract DA-42-007-AMC-314(Y) for developing an atmospheric sampling system to Space General on February 26, 1966, and the contract is presently being performed.

You contend that this award is improper because (1) the Army in evaluating the proposals did not consider the extra cost of a research vessel for Space General, which accounts for the revision of the contract payment to \$631,200; (2) Space General had access to information not available to its competitors; and because (3) the Army misused its discretion when it did not make award to Ocean Science who you contend is the most experienced and proven producer in the field.

On point (1), you state that the contract actually awarded to Space General was for \$631,200, not the \$486,290 originally offered, and that since the difference between the two sums represents the cost of a research vessel in Hawaii, the offer of Ocean Science was more favorable because Ocean Science has its own vessel in the area available for work under this contract at a substantially lower cost. The negotiator's breakdown of the negotiated increases does not show any costs for a research vessel. It shows that the price differential was

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the result of a large number of revisions which would, generally, raise the cost of all of the proposals submitted. These changes include the contractor's cost of manufacturing certain samplers which were to have been furnished by the Government, the acceleration of delivery schedules, an increase in the spare parts schedule, and an upward revision of travel costs. Further, it is reported that these changes would have been applicable to all proposals. We find no evidence to suggest that there was a research vessel involved.

Your further contention that Space General "may have had knowledge not available to other bidders" is based upon the Army's classifying as Secret the technical portion of Space General's proposal. We understand this classification action was taken because Space General, by virtue of its general background as a research and development oriented concern, was able to make what are termed "educated guesses" about the purposes and intended location of the proposed atmospheric tests. Your charge to the contrary, that Space General had access to privileged information, is unsupported by the record.

As Space General, in a letter dated April 6, 1966, and the Army, in its administrative report dated May 27, 1966, absolutely deny your allegation of favoritism, your charges are not sufficient to warrant action by this Office.

Unlike advertised bid procedures when bidders must show compliance with a pre-established set of Government specifications, offerors under a request for proposals do not have an unqualified right of access to their competitors' proposals. Proposals such as those solicited here, containing engineering designs and scientific data developed by the offeror in response to a stated technical problem, will very probably contain proprietary data or other material which the Government should restrict to protect the interest of the individual offeror.

Section 3-507.1 of the Armed Services Procurement Regulation clearly recognizes this need for confidential treatment of proposals by permitting offerors to restrict access to the data submitted to the personnel involved in the particular agency's evaluation process. And, without special action on the part of the offeror, Section 3-508.3 of the same Regulation limits the information about a solicitation for proposals available to disappointed offerors to the basic essentials of the number of concerns solicited, the number of proposals received, the name and address of firm awarded contracts, the item, quantities

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and unit prices of each award; and, in general terms an explanation of why the offeror's proposal was rejected.

Therefore, the refusal here to release the technical portion of Space General's proposal, a refusal clearly within the terms of the applicable regulations, cannot be said to raise an inference of collusion or suspicion of improper access to information.

You state that as Ocean Science is the most qualified offeror, the Army improperly exercised its discretion when it rejected Ocean Science's proposal in favor of Space General's proposal.

While it may be true that Ocean Science has had experience in the building, installing, and maintaining of ocean platform systems, the Technical Evaluation Committee in its Disposition Form dated December 22, 1965, which evaluated Ocean Science's proposal, found that: "knowledge of critical factors to be investigated in study phase, which affect sampling at sea is not clearly expressed," and that the proposal "contains no discussion of effect of component packaging or modular components on platform size, weight or maintenance."

Furthermore, the evaluators found that Space General had successfully completed a wider range of complex research and development contracts, had many times the number of scientifically trained personnel available, and had a better equipped physical plant. In short, the Evaluation Committee found that, in comparison to the proposal of Ocean Science, Space General offered the technically better solution.

Finally, you challenge the procedure by which the Army exercised its discretion here, for on page four of your memorandum dated July 11, 1966, you state:

"* * * The issue in this protest is whether that discretion was properly utilized. The Army presents no facts to show the manner in which their discretion was applied other than to show the results of their analysis of the bids. It is submitted that those results are not prima facie reasonable but require an explanation of the means by which the result was reached."

On the record, it appears that the proposals have been as carefully and thoroughly evaluated as is consonant with expeditious procurement. Fifteen different aspects of each proposal were numerically rated by the five-member Technical Evaluation Committee on the

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basis of the criteria set out in Paragraph IX of the Request for Proposals. These scores were then submitted to a five-member Contractor Selection and Purchase Assignment Board, which assigned weight to the criteria previously evaluated by the Technical Evaluation Committee, and on the combined basis of cost and technical sufficiency of the proposals, as indicated by the weighted scores, selected Space General's offer. The report of the Army dated May 26, 1966, listed Space General's weighted score at 105,510 while Ocean Science's was 92,960 and concluded:

"* * * the difference in cost between Space General and Ocean Science was nominal (\$5,471) while the difference in weight evaluation factor was substantial (12,550)."

For this reason, the Contractor Selection and Purchase Assignment Board recommended that the contract be negotiated with Space General.

Procedurally, this process of a technical committee numerically grading the various technical aspects of each proposal and a purchasing committee weighing the results is adequate to insure a thorough consideration of all proposals, and the resulting award will be treated as a proper exercise of discretion by this Office, absent a clear showing of unreasonableness or favoritism. No showing of unreasonableness or favoritism has been made with regard to the evaluation. Ocean Science was told in brief wherein its proposal was judged weak. In the circumstances, we are satisfied that a reasonable and fair evaluation of proposals was made, and we find no basis to disturb the award.

Very truly yours,

FRANK H. WEITZEL

Assistant Comptroller General
of the United States