



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: The Cowperwood Company

File: B-274140.2

Date: December 26, 1996

Edward V. Gregorowicz, Jr., Esq., for the protester.

David H. Peirez, Esq., Reisman, Peirez, Reisman & Calica, and Robert G. Fryling, Esq., Blank Rome Comisky & McCauley, for Continental Terminals, Inc., an intervenor.

Barry D. Segal, Esq., General Services Administration, for the agency.

Mary G. Curcio, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency properly may reopen discussions and request an additional round of best and final offers from all competitive range offerors in order to permit offeror an opportunity to correct proposal deficiency and possibly obtain lower price; agency reasonably determined that reopening in such circumstances is in government's interest.
2. Where agency provided protester with evaluation information during debriefing held before making award to another offeror, but subsequently determined that it was necessary to reopen the competition, agency properly equalized the protester's potential competitive advantage by disclosing similar information to the other offerors in the competition.

DECISION

The Cowperwood Company protests the decision of the General Services Administration (GSA) to reopen discussions and request additional rounds of best and final offers (BAFO) under solicitation for offers (SFO) No. MNY95-387, issued by GSA for the construction and lease of office space.

We deny the protest.

GSA received and evaluated several initial proposals. Following discussions, the agency advised the competitive range offerors that it would not evaluate the prices proposed for the option period. Because the BAFO option prices were widely divergent, however--GSA believed that offerors, knowing that the option prices would not be evaluated, had no incentive to offer competitive prices--GSA decided

to amend the solicitation to provide for evaluation of option prices. Following receipt and evaluation of the second BAFOs, the agency selected Continental Terminals, Inc. for award.

Before the award was final, GSA held a debriefing with Cowperwood at which GSA revealed information concerning the proposal evaluation areas in which Continental had scored higher than Cowperwood, Cowperwood's scores and weaknesses in the different evaluation areas, and Continental's price. Also before the award was finalized, GSA received several agency-level protests. In the course of reviewing these protests, GSA determined that Continental's proposal was technically unacceptable because the termination rights it granted the government did not comply with the requirements of the solicitation. GSA thus decided to reopen discussions and request a third round of BAFOs to give Continental the opportunity to correct this deficiency. In order to eliminate any unfair advantage Cowperwood may have gained by virtue of the debriefing information it received, before reopening the agency revealed similar information to the other competitive range offerors.

Cowperwood maintains that the competition should not be reopened. Rather, since Continental's first and second BAFOs were technically unacceptable, and Cowperwood's own first and second BAFOs were the lowest-priced, technically acceptable offers received, Cowperwood believes the appropriate course of action would be to make award to Cowperwood. This is particularly the case, Cowperwood asserts, in light of the information disclosure.

This argument is without merit; while GSA was not required to reopen the competition after first and second BAFOs, neither was it precluded from doing so. A contracting agency properly may reopen discussions following receipt of BAFOs where it determines that doing so is in the government's best interest. Federal Acquisition Regulation § 15.611(c) (FAC 90-31); NDI Eng'g Co., Inc., 66 Comp. Gen. 198 (1987), 87-1 CPD ¶ 37; Management Sys. Applications, Inc., B-259628; B-259628.2, Apr. 13, 1995, 95-1 CPD ¶ 216. There is nothing improper in an agency's reopening a competition and requesting additional BAFOs in order to permit the revision of a proposal it has determined to be otherwise strong. Research Analysis and Management Corp., B-218567.2, Nov. 5, 1985, 85-2 CPD ¶ 524. This is precisely what GSA did--it determined that reopening discussions and requesting third BAFOs--to permit Continental to revise its proposal--was in the government's interest. There simply was no requirement that the agency instead reject Continental's proposal and make award based on another offeror's first or second BAFO.

The fact that GSA disclosed pricing and technical information to the offerors before it requested third BAFOs does not change our conclusion. While it of course would have been preferable had the original disclosure not occurred, the only question is

whether the agency essentially should be precluded from considering Continental's proposal for award--instead of permitting correction of the deficiency--because of the disclosure. There is no basis for such a conclusion; the disclosure of information to equalize competition is an appropriate alternative to eliminating an offeror from a competition due to a prior disclosure of information that could result in an unfair competitive advantage. KPMG Peat Marwick, 73 Comp. Gen. 15 (1993), 93-2 CPD ¶ 272. This approach is particularly appropriate here in light of the facts that (1) Continental had nothing to do with the original disclosure and gained no benefit from it; (2) Cowperwood actually was a primary beneficiary of the disclosure, since it will have an opportunity to submit a BAFO based on the information it learned about Continental's highest-rated proposal; and (3) it will enable the agency to consider all proposals for this high-cost project and to make award based on the one most advantageous to the government.

Cowperwood also challenges the evaluation of its BAFOs. Since the award decision will be based on the evaluation of the new BAFOs, this basis of protest is academic.

The protest is denied.

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