



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Jack Faucett Associates

File: B-277555

Date: September 12, 1997

Jack G. Faucett for the protester.
Beverly Maria Russell, Esq., Department of Transportation, for the agency.
Henry J. Gorczycki, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Where solicitation states a best value evaluation plan and that the agency will award from one to three contracts, the agency's decision to award two contracts to the two undisputed superior offerors is unobjectionable.

DECISION

Jack Faucett Associates protests the failure of the Department of Transportation, Federal Highway Administration (FHWA), to make an award to it under request for proposals (RFP) No. DTFH61-97-R-00010, for technical and program support services to assist FHWA in developing and evaluating transportation policy issues.

We deny the protest.

The RFP, issued on February 5, 1997, contemplated award of:

one or more (but most likely not more than three) indefinite delivery/indefinite quantity (IDIQ) contracts from this solicitation. Work will be performed under these contracts through the placement of Task Orders that may be either: firm fixed price (FFP), cost plus fixed fee (CPFF) or cost plus award fee (CPAF).

The use of multiple award contracts will allow FHWA to take continuous advantage [during the placement of task orders] of the competitive forces of the commercial market place which will result in lower prices, better quality, and improved contractor performance in satisfying FHWA requirements.

This requirement is not a small business set-aside.

The RFP also stated a best value evaluation plan with the following three evaluation factors listed in descending order of importance: technical, cost, and business factors (i.e., past performance and subcontracting plan for using disadvantaged and women-owned small business enterprises and minority institutions). The RFP's statement of work listed 9 task areas and 79 sub-tasks. The RFP also stated the competition procedure for placement of task orders among the firms that receive contract awards under the RFP.

Four offerors, including Faucett, Battelle Memorial Institute, and KPMG Peat Marwick, submitted proposals in response to the RFP. FHWA evaluated proposals, conducted discussions, and requested best and final offers (BAFO). The BAFO evaluations of Battelle's, KPMG's, and Faucett's BAFOs were:¹

Offeror	Technical Rating (0-100 points)	Price/Cost ²
Battelle	87.3	\$16,612,216
KPMG	80.8	18,491,569
Faucett	64.3	16,844,913

Under past performance, Battelle and KPMG received "excellent" ratings and Faucett received a "good" rating. Under subcontracting, Battelle proposed significantly greater participation by disadvantaged and women-owned small business enterprises and minority institutions than did the other offerors; KPMG proposed slightly greater participation than did Faucett. The Evaluation Panel discussed the relative merits and concerns for each BAFO, and recommended awards to Battelle and KPMG, the two highest-rated offerors.

¹The fourth offeror submitted the highest cost, lowest-rated BAFO, and was thus not in contention for an award.

²The figures shown are proposed costs based on staffing estimates assuming two awards. The RFP also provided staffing estimates and requested proposed costs assuming one and three awards.

The source selection official (SSO) reviewed the evaluation results³ and determined that Battelle and KPMG offered significant quantitative and qualitative advantages over Faucett. Moreover, she determined that Faucett's proposed team:

[did] not have any capabilities that are not available on the [Battelle] or KPMG teams, nor do they provide a similar magnitude of depth and breadth of coverage.

The SSO determined that Faucett's cost advantage over KPMG did not offset KPMG's significantly greater technical advantage over Faucett. She determined that the BAFOs of Battelle and KPMG represented the best value to the government and that two contract awards to these firms would provide sufficient on-going competition for placing task orders. On July 3, FHWA awarded contracts to Battelle and KPMG. After Faucett requested and received a debriefing, it filed this protest.

Faucett does not protest the awards to Battelle or KPMG. Rather, Faucett alleges that the agency should have awarded a third contract to Faucett because it was a small business and its BAFO was the third-ranked acceptable proposal under the RFP which contemplated multiple awards.

It is well settled that there is no right to a government contract, Perkins v. Lukens Steel Co., 310 U.S. 113, 127 (1940); Pegasus Alarm Assocs., Inc., B-225597.2, May 12, 1987, 87-1 CPD ¶ 499 at 3, although of course, firms do have the right to have their bids or offers considered fairly. Krygoski Constr. Co., 63 Comp. Gen. 367, 371 (1984), 84-1 CPD ¶ 523 at 6. In reviewing protests against allegedly improper evaluations and source selection decisions, our Office examines the record to determine whether the agency's judgment was reasonable and in accord with the RFP's stated evaluation factors. Brisk Waterproofing Co., Inc., B-276247, May 27, 1997, 97-1 CPD ¶ 195 at 3. A protester's mere disagreement with an agency's evaluation and source selection decision does not render the results unreasonable. Id.

In response to the protest, FHWA states that the teams proposed by Battelle and KPMG offered considerable depth and breadth of experience covering all of the task areas. Although acceptable, Faucett's proposal was clearly inferior to these two proposals and there was some concern that Faucett's resources could be overly burdened if it had to address all of the contract requirements. In addition to the administrative burden of overseeing a third contract, FHWA determined that the

³Although Faucett alleges that the agency informed it that the Evaluation Panel made no award recommendations, the BAFO evaluation report prepared by that panel and submitted to the SSO shows that the panel did make award recommendations to the SSO.

agency would receive no technical advantage from a third contract, and that adequate competition on task orders would be maintained with two competitors. Since the RFP stated that the agency would award anywhere from one to three contracts and that the technical area was the most important evaluation factor, we believe that the agency's decision to award two contracts to the two offerors submitting the clearly technically superior proposals was reasonable and consistent with the stated evaluation plan.

Although the protester makes numerous statements disagreeing with the agency's decision, its allegations are untimely, lack merit, or are unsupported by facts. For example, Faucett alleges that the RFP and/or awards did not provide adequate opportunity for small businesses. However, the RFP specifically stated that the solicitation was not a small business set-aside. Thus, to the extent Faucett protests after award the RFP's failure to restrict at least one contract award for small businesses, it is an untimely protest of alleged solicitation improprieties apparent on the face of the RFP which should have been protested prior to the date for submission of proposals. 4 C.F.R. § 21.2(a)(1) (1997). To the extent Faucett alleges that either Battelle's or KPMG's proposals do not provide adequate subcontracting opportunities for small disadvantaged or women-owned small businesses or minority institutions, the record shows that the allegation lacks merit because either awardee's proposal offers greater participation from such subcontracting organizations than that proposed by Faucett.

Moreover, while Faucett generally alleges that its proposal must represent a better value on certain tasks than either of the two awardees' proposals, and thus that Faucett should have been awarded a contract for at least some of the task areas, the protester has not identified a single task area for which it should have been found superior to the other offerors. In any case, the RFP did not contemplate making awards encompassing less than the totality of the tasks. We have examined all of Faucett's objections to the failure of the agency to make a third award and find nothing more than mere disagreement with the agency's determination, which is insufficient to disturb the agency's source selection decision.

The protest is denied.

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