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Accountability * Integrity * Reliability

Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Accent Service Company, Inc.

File: B-299888

Date: September 14, 2007

Dan Yasui, for the protester.

Allison M. Grace, Esq., and Tracy M. Humphrey, Esq., Department of the Navy, for the agency.

Paul N. Wengert, Esq., and Ralph O. White, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest is denied where agency properly concluded that agency employee had not violated procurement integrity provisions by escorting representatives of a potential competitor on a site visit, which included a brief stop at the office of the protester's on-site manager, and a limited disclosure to the visitors about the firm's incumbent contract staffing.

DECISION

Accent Service Company, Inc., a small business, protests the actions of the Naval Facilities Engineering Command, Department of the Navy, during a procurement under request for proposals (RFP) No. N40085-06-R-1335 for janitorial services at the Naval Support Activity in Mechanicsburg, Pennsylvania. Accent objects that its confidential proprietary information was disclosed to prospective competitors, in a breach of procurement integrity, and that the Navy has failed to take sufficient remedial measures.

We deny the protest.

The Navy issued the RFP on May 9, 2007, as a competitive 8(a) set-aside, seeking proposals to provide janitorial services under a combination firm-fixed and indefinite-quantity contract for a 1-year base period and four 1-year options. RFP at 44, 56. Accent is the incumbent contractor.

The protest alleges that the Navy caused Accent to disclose proprietary information about its approach to performing the incumbent contract, which Accent argues will

be useful to its competitors in the pending competition. Specifically, Accent alleges that on June 4, the Navy's contract surveillance representative (CSR) brought two individuals to the office of Accent's on-site manager. Accent alleges that the CSR did not identify the two visitors as potential competitors, and that the group "engaged . . . [Accent's] Manager in a discussion surrounding how the current contract was being performed." Ultimately the discussion included the fact that Accent employed workers in two shifts, and "an approximate manning structure for each shift." Altogether, the discussion lasted less than 15 minutes. Protest at 2. Accent complains that only the following day did the firm learn from the CSR that the visitors were representatives of a potential competitor. Id.

The Navy's account of these events is very similar, but differs in a few material areas. The Navy's account is also bolstered by a declaration from the CSR. The Navy admits that on June 4, the CSR brought two representatives of a potential competitor to see various areas, including the on-site manager's office space, but asserts that Accent's manager greeted the visitors and introduced herself, and the visitors did likewise--with both stating their names and company affiliation. The Navy states that when the visitors left the office after about 2 minutes, Accent's manager followed them out of her office, and "a discussion of the current contract's manning structure and shifts ensued" for less than 15 minutes. Agency Report (AR), at 3. On June 5, Accent complained to the Navy in writing that this (and at least two other alleged disclosures) constituted violations of procurement integrity. Protest at 2.

Upon receipt of Accent's complaint, the contracting officer (CO) for this procurement, as well as a second CO and Navy legal counsel, reviewed the allegations. After concluding that no violation of procurement integrity had occurred, the CO advised Accent, by letter dated June 12, "that the competitive integrity of the procurement process has not been compromised and that the information exchanged will not provide any advantage" to any competitor. AR, Tab 5, Letter from CO to Accent, June 12, 2007, at 1.

Accent's protest rests on three arguments: (1) the CSR violated procurement integrity by escorting a competitor to an on-site meeting with Accent's manager on June 4; (2) the on-site visit provided to a single competitor showed favoritism; and (3) the on-site visit (and resulting exchange of information about staffing) provided "one potential offeror . . . information that wasn't made available to all the other potential offerors." Protester's Comments at 1-2. Accent claims that the Navy should have resolved its complaint by canceling the solicitation and initiating a new procurement using different procurement personnel.¹

¹ With respect to Accent's complaint about other disclosures, the agency responded substantively to each of those allegations in its report, but Accent did not answer those issues in any specific way in its comments. Instead Accent answers that its protest was "primarily" based on the June 4 visit. Protester's Comments at 1. Since
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As a preliminary matter, we note that Accent does not identify the specific staffing information it alleges was provided during the June 4 meeting, other than describing the information as its “approximate manning structure,” Protest at 2, or “current level of service,” Protester’s Comments at 1. In addition, Accent alleges only in general terms that this information provided its competitor with insight into Accent’s proposal strategy for the pending RFP. In this regard, Accent hypothesizes that this offeror could gain a competitive advantage by assuming that Accent will similarly staff the work under the pending RFP. Id. at 1.

The Navy responds that the CSR did nothing improper by providing the tour, while Accent’s manager, in contrast, volunteered the limited staffing information at issue here. The Navy also argues that, in any event, the work under the pending solicitation differs sufficiently from the incumbent contract that Accent was not harmed by any limited disclosure its manager offered. AR at 9. Moreover, the Navy argues that the information was ultimately neither contractor bid or proposal information nor source selection information, as those terms are defined in the applicable statutory provisions and implementing regulations. See 41 U.S.C. § 423(f) (2000); Federal Acquisition Regulation (FAR) § 3.104-1. As support, the Navy cites case precedents in which the release of the incumbent contractor’s staffing did not violate procurement integrity: Avtel Servs., Inc. v. United States, 70 Fed. Cl. 173, 195 (2006) (finding that “much of the information on current staffing levels can be found in the public domain” or revealed through site visits to government facility), appeal dismissed, No. 2006-5060, 2007 WL 2363341 (Fed. Cir. Aug. 21, 2007); Rothe Dev., Inc., B-279839, July 27, 1998, 98-2 CPD ¶ 31 at 3 (protest denied where disclosure of incumbent staffing that government official derived by conducting “mental headcount” of contractor staff could not be considered a trade secret).

We find no basis to question the Navy’s actions here.² The information disclosed, as described by the protester, did not constitute contractor proposal information, source selection information, or a competition-sensitive trade secret.³ Moreover,

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the protester has failed to respond to the Navy’s substantive responses on those issues, we consider them abandoned. MFVega & Assocs., LLC, B-291605.3, Mar. 25, 2003, 2003 CPD ¶ 65 at 4.

² In response to a specific declaration, signed by the CSR, contesting fundamental aspects of Accent’s depiction of the events on June 4, Accent has relied only on arguments by its president (who does not claim to have been present on June 4). Thus, Accent has presented no statement by anyone claiming to have first-hand knowledge of these events to counter the Navy’s explanation.

³ Since, in our view, the information here was not improperly disclosed, we need not resolve the factual dispute over whether the visitors identified either themselves or the firm they represented when they met the protester’s on-site manager.

even assuming the facts are as Accent alleges, it is inconsistent for the protester to claim on the one hand that general information about its current staffing levels was considered confidential, while also acknowledging that its own on-site manager voluntarily disclosed them.⁴ In our view, the Navy's response to the protester's allegations was reasonable, and consistent with its statutory and regulatory obligations. 41 U.S.C. § 423(e)(3) (2000 & Supp. IV 2004); FAR § 3.104-7.

The protest is denied.

Gary L. Kepplinger
General Counsel

⁴ The procurement integrity provisions exclude from their coverage "a contractor . . . disclosing its own bid or proposal information or the recipient from receiving that information." 41 U.S.C. § 423(h)(2); FAR § 3.104-4(e)(1).