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**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

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Decision

Matter of: ZAFER Construction Company

File: B-401871.4

Date: February 1, 2010

Sam Z. Gdanski, Esq., Gdanski & Gdanski, LLP, for the protester.

Patrick D. Bowman, Esq., Department of the Army, Corps of Engineers, for the agency.

Linda C. Glass, Esq., and Ralph O. White, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging agency's corrective action, which included terminating the awarded contract and allowing all offerors whose proposals were in the competitive range to submit a revised proposal, is denied where the agency reasonably concluded that offerors should be given the opportunity to submit completely revised proposals because the time lapse since proposals were first submitted suggests that the original price proposals may no longer accurately reflect the cost of the project.

DECISION

ZAFER Construction Company, of Ankara, Turkey, protests the terms of corrective action announced by the Department of the Army, Army Corps of Engineers, in response to earlier protests filed by Contrack International, Inc., of McLean, Virginia. Contrack had protested the decision to award a contract to ZAFER, under request for proposals (RFP) No. W917PM-09-R-0075 for design and construction of an ammunition supply point at Bagram Airfield, Afghanistan. In this protest, ZAFER objects to the Army's plan to allow competitive range offerors to submit completely revised proposals, including price revisions, instead of limiting the revisions solely to the project management plan evaluation factor issue.

We deny the protest.

BACKGROUND

The RFP was issued on May 25, 2009, and provided for a "best value" evaluation on the basis of the following factors listed in descending order of importance:

experience, past performance, project management plan and price. Timely proposals were received from 15 offerors, including Zafer. After evaluation of proposals, award was made to Zafer on August 26, 2009. Contrack requested a debriefing, which was held on August 29.

On September 4, Contrack filed a protest challenging the agency's evaluation and selection decision. The Army submitted an agency report on October 5, and both Contrack and Zafer filed comments on the agency report on October 19. Among other issues, Contrack alleged that the agency's evaluation of its proposal under the project management evaluation factor was unreasonable and inconsistent with the RFP criteria because the agency unfairly assessed weaknesses in Contrack's plan using unstated evaluation criteria, and because the agency applied the evaluation factors unequally to the proposals of Contrack and Zafer.

On October 16, Contrack filed a supplemental protest; in its revised protest, Contrack argued that the agency improperly allowed Zafer to submit a 20-page project management plan even though the solicitation limited offerors to 6 pages for this plan. Contrack also argued that the agency engaged in unequal treatment by criticizing its compliant 6-page plan for a lack of detail, while giving credit to Zafer for its relatively more detailed plan.

Before responding to Contrack's supplemental arguments, the agency announced that it was taking corrective action. Specifically, the agency stated that it had reviewed the issues raised in the supplemental protest and decided to "terminate the awarded contract, issue an amendment, and notify all offerors in the competitive range that they may submit a revised proposal." Corrective Action Letter from Army Counsel to GAO, Nov. 3, 2009. Since that corrective action rendered Contrack's protests against the initial award academic, we dismissed Contrack's protests. Contrack Int'l, Inc., B-401871; B-401871.2, Nov. 4, 2009.

The protester maintains that through subsequent discussions with counsel for the agency, it was advised that the corrective action would be limited to permitting offerors to revise the project management plan submissions within the stated page limitation. However, on November 22, competitive range offerors were sent a letter requesting revised proposals. This letter also included a brief evaluation of the strengths and weaknesses of the offerors' initial proposals with instructions to consider this feedback in the revised proposal submissions.

This protest followed.

DISCUSSION

Zafer argues that the Army's corrective action to permit new and complete proposals, including price revisions, was overbroad and contradicted the explicit representations from the agency counsel that the corrective action would be limited

to the project management plan page limitation issue. Zafer contends that it was prejudiced because its low price has been exposed to competitors who may now submit revised pricing as well as revised technical submissions resulting in an impermissible auction.

In negotiated procurements, agencies have broad discretion to take corrective action where they determine that such action is necessary to ensure fair and impartial competition. MayaTech Corp., B-400491.4, B-400491.5, Feb. 25, 2009, 2009 CPD ¶ 55 at 3. We will not object to the specific corrective action, so long as it is appropriate to remedy the concern that caused the agency to take corrective action. Networks Elec. Corp., B-290666.3, Sept. 30, 2002, 2002 CPD ¶ 173 at 3. Where the corrective action taken by an agency is otherwise unobjectionable, a request for revised price proposals is not improper merely because the awardee's price has been exposed. Strand Hunt Constr., Inc., B-292415, Sept. 9, 2003, 2003 CPD ¶ 167 at 6.

The Army advises that due to the time lapse between proposal submission and the corrective action, the agency was concerned that the original price proposals submitted by the offerors would no longer accurately reflect the offerors' costs for the project. The Army further advises that the need to take corrective action also provided an opportunity to allow offerors to improve the quality of their technical submissions by revising their proposals to account for any changed circumstances between the original proposal submission and the time of corrective action.

In our view, this is a matter where the agency has considerable discretion and we will not substitute our views for the Army's on how the agency should proceed, absent a showing that this discretion is being abused. We see no such showing here.

The protest is denied.

Lynn H. Gibson
Acting General Counsel