

In the United States Court of Federal Claims

NOT FOR PUBLICATION

No. 09-602C

(Filed May 20, 2010)

USFALCON, INC.,

Plaintiff,

v.

THE UNITED STATES,

Defendant.

ORDER

The parties were given the opportunity to propose redactions to the May 4, 2010 Opinion and Order and to the November 17, 2009 transcript. Both the Opinion and the transcript were filed under seal.

Concerning the Opinion, plaintiff did not propose any redactions. Defendant proposed redactions relating to price information, the number of offerors submitting proposals, and the number of offerors included in the original competitive range.

The Court approves the redaction of price information regarding all offerors except USfalcon. Plaintiff chose not to propose any redactions and it is the only party with an interest in keeping its price confidential. Numbers that reveal the prices of other offerors will be redacted from page 17 of the Opinion.

The Court denies the government's request to redact the number of offerors submitting proposals. In its request, the government merely asserts, with no explanation or justification, that this is protected information under the Protective Order. The Court cannot fathom how keeping secret the number of offerors submitting proposals can be necessary to safeguard the competitive process. The exact number is of no relevance to future potential offerors, and the fact that a large number was involved is already evident -- as it is public knowledge that as many as eighteen offerors are being considered for awards under the revised competitive range, per Amendment 0012 to the Solicitation. *See* Docket No. 37-1. Nor is this number "source selection information," because it is merely the result of a large number of independent businesses choosing to submit proposals--the number does not belong to any individual business, nor is it the result of government analysis.

This Court denies the government's request to redact the number of offerors in the original competitive range. While this is the result of government analysis and is thus arguably "source selection information," the Court does not see how the competitive process could be jeopardized if this number is made public. The government provides no explanation, and no case law is known to the Court justifying this request. Therefore the numbers, and the letters assigned to make offerors anonymous, will not be redacted.

Concerning the transcript from the November 17, 2009 hearing, the Court grants both parties' requests to redact two dollar figures appearing on page 33 and the number of members of Team USfalcon identified on page 99. The Court denies the remaining requests. The bulk of the redactions requested by plaintiff -- to which defendant objected-- concerned descriptions of the training method proposed and the reasons it was found to have failed to meet a requirement. Plaintiff did not request that this same information be redacted from the Opinion, and since it will be made public in that document there is no cause to redact it from the transcript.

Both plaintiff and defendant request the redaction of mere qualitative comparisons of the USfalcon price to those of other offerors, such as its being "much lower." The Court does not find this to be information that must be protected, as such relative terms do not reveal the proprietary information of other offerors.

The government also requested that the number of offerors submitting proposals be redacted, again without any explanation or justification. For the reasons stated above, that request is denied.

Accordingly, Heritage Reporting Corporation shall redact the transcript of the hearing held on November 17, 2009 to omit the following passages:

1. Page 33, the words between "at" on line 12, and "than" on line 13.
2. Page 99, lines 13-14, the words between "said" and "will".

The transcript shall be filed and made publicly available after the foregoing portions are redacted.

IT IS SO ORDERED.

s/ Victor J. Wolski

VICTOR J. WOLSKI

Judge