



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Forestry, Surveys & Data

File: B-276802.3

Date: August 13, 1997

Jim Miller for the protester.

Wilhelmina Bratton, Department of Agriculture, for the agency.

Sylvia Schatz, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protester was not prejudiced and there is no basis to sustain the protest where agency improperly considered evaluation factors--such as experience generally and prior experience in same timber district--not delineated in request for quotations (RFQ), because protester was on notice that experience would be evaluated based on experience questionnaire required by RFQ, and awardees' quotations clearly were more advantageous than protester's due to significantly greater experience providing timber stand examination services.

DECISION

Forestry, Surveys & Data (FS&D) protests its failure to receive an award under Department of Agriculture, U.S. Forest Service, request for quotations (RFQ) No. 14-97-018, for timber stand examination services in the Three Rivers Ranger District of the Kootenai National Forest in Lincoln County, Montana. FS&D primarily argues that the agency improperly applied undisclosed evaluation factors in evaluating the quotations.

We deny the protest.

The RFQ, issued on January 29, 1997, under simplified acquisition procedures, required quoters to submit unit and extended prices for four items, and provided that one or more purchase orders would be issued to the responsible quoter whose quotation is "most advantageous to the Government, cost or price and other factors considered." The RFQ did not specifically identify any nonprice evaluation factors, but did require quoters to complete and submit with their quotations an experience questionnaire covering such information as the number of years the quoter has provided timber stand examination services, and the number of years the quoter has operated as a prime contractor or subcontractor.

The agency received 19 quotations, which it evaluated for price and experience (based on the questionnaires),¹ and the agency issued purchase orders for the 4 items to 4 firms whose quotations were determined most advantageous to the government. FS&D did not receive a purchase order; its prices were lower than the awardees' for item numbers 1, 3, and 4, but FS&D's questionnaire showed significantly less experience than the awardees', and did not include the required information as to amount of timber stand examination experience and experience as a prime or subcontractor. FS&D challenged the awards in an agency-level protest (which ultimately was denied), and then filed this protest in our Office.

FS&D maintains that the Forest Service improperly evaluated quotations based on factors--the firms' prior experience performing the work in the Three Rivers Ranger District and the proximity of a firm's location to the worksite--not specified in the RFQ. FS&D maintains that, had it known that experience in the Three Rivers Ranger District would be evaluated, FS&D would have listed four or five of its stand examiners' experience in this location and therefore would have been in line for an award based on its low price.

The record indicates that the agency did consider undisclosed factors, both experience generally and the specific matters cited by FS&D. This was improper. While Federal Acquisition Regulation (FAR) § 13.106-2 affords contracting officers some discretion in determining how to conduct a procurement and in fashioning suitable evaluation procedures under simplified acquisition procedures, this discretion does not extend to a failure to identify significant evaluation factors and to evaluating quotes on the basis of factors not announced in the RFQ. Rather, the regulation specifically requires that evaluations be based on the factors set forth in the solicitation. FAR § 13.106-2(b); Vocational Resources, Inc., B-242396, Apr. 29, 1991, 91-1 CPD ¶ 414 at 2.

However, FS&D was not prejudiced by the evaluation conducted here. First, although the RFQ did not explicitly identify experience as an evaluation factor, the required experience questionnaire, together with the RFQ statement that the evaluation would encompass cost or price "and other factors," was sufficient to put FS&D on notice that experience would be evaluated. The protester does not assert that it was unaware that experience (generally) would be evaluated; and, in fact, its protest submission recognized that past experience would be evaluated, taking exception specifically to the evaluation of experience performing work in the Three Rivers Ranger District. Second, the record shows that the agency conducted a proper comparative evaluation of firms' experience.

¹Where, as here, the RFQ does not assign relative weights to technical factors and cost, it must be presumed that technical and cost considerations will be given approximately equal weight. See T.H. Taylor, Inc., B-227143, Sept. 15, 1987, 87-2 CPD ¶ 252 at 3.

In this latter regard, the Forest Service properly determined that FS&D's quotation showed significantly less experience than the awardees'. Specifically, the awardees' total years of experience performing the work contemplated by the solicitation as prime contractors and/or subcontractors ranged from 11 to 16 years. In contrast, FS&D's questionnaire listed only two projects, both within the past 2 years, and did not otherwise indicate years of relevant prime and subcontract experience (the relevant spaces on the questionnaire were left blank); it thus appeared that FS&D had no more than 2 years of relevant experience (FS&D does not assert otherwise).² The omission of this information also prevented the agency from determining whether FS&D had performed the listed projects, or whether the firm's principals had performed the work as individuals employed by another contractor. (The agency deemed this distinction relevant because it considered it beneficial to deal with a firm that previously had dealt with the government as a prime contractor.)

Since the awardees' quotations reasonably were found more advantageous to the government than FS&D's based on the experience evaluation, the agency's improper consideration of undisclosed factors did not competitively prejudice FS&D, and therefore does not provide a basis for disturbing the awards. See McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3; Statistica, Inc. v. Christopher, 102 F. 3d 1577, 1581 (Fed. Cir. 1996).

The protest is denied.

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²FS&D's listing of its employees' specific experience would not have improved the firm's relative standing, since its experience rating was based on the company's lack of experience as a prime or subcontractor; employee experience is not a substitute for company experience under these circumstances. See Cobra Techs., Inc., B-272041, B-272041.2, Aug. 20, 1996, 96-2 CPD ¶ 73 at 6.