



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Thermolten Tech., Inc.

File: B-278408; B-278408.2

Date: January 26, 1998

E. Kent Hirsch, Esq., for the protester.

Frank J. Borgia for Burns and Roe Enterprises, Inc., an intervenor.

Joshua A. Kranzberg, Esq., and Lisa R. Simon, Esq., Department of the Army, for the agency.

Douglas McArthur, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest against conduct of debriefing, contending that agency should have had experts capable of understanding technical aspects of proposal conduct the debriefing in order to allow protester to elaborate on its inadequately written proposal, is denied; the adequacy of a debriefing is a procedural matter concerning agency actions after award which are unrelated to the validity of the award, and, in any event, the purpose of a debriefing is not to give offerors the opportunity to cure deficiencies in their proposals, but to furnish the basis for the selection decision and contract award.
2. Protest that agency improperly rejected protester's proposal for failure to meet solicitation's technical requirements is denied where the record shows that proposal contained major deficiencies--a failure to present a coherent explanation of the offered process for disposing of chemical munitions and a general lack of care in assessing and managing the potentially lethal byproducts of the process--reasonably warranting its rejection.
3. Post-award protest that agency improperly limited competition to offerors of "mature technologies" is dismissed as untimely where solicitation made clear that agency was seeking only such technologies and protest thus should have been filed before the time set for receipt of initial proposals.

DECISION

Thermolten Tech., Inc. protests the rejection of its proposal submitted in response to request for proposals (RFP) No. DAAM01-97-R-0031, for identification of technologies other than incineration for demilitarization of assembled chemical weapons. Thermolten generally challenges the evaluation of its proposal and contends that, given the unique nature of its process, which could not be explained

adequately through the normal proposal preparation and review process, it should have had the opportunity to supplement its written proposal through a presentation at the post-award debriefing.

We deny the protests.

As a signatory to the Chemical Weapons Convention, ratified to date by 168 countries and effective in April 1997, the United States became obligated to destroy chemical weapons previously stored at depots within the United States and its territories. The Army's preferred method of disposal, incineration, has created concerns over potentially toxic byproducts that could be released into the air surrounding the disposal sites. As a consequence, section 8065 of the National Defense Appropriations Act for 1997, Pub. L. No. 104-208, 110 Stat. 3009, 3009-101-3009-102 (1996), provided for:

the conduct of a pilot program to identify and demonstrate not less than two alternatives to the baseline incineration process for the demilitarization of assembled chemical munitions . . . [and evaluation of] the effectiveness of each alternative chemical munitions demilitarization technology identified and demonstrated under the pilot program to demilitarize munitions and assembled chemical munitions while meeting all applicable Federal and State environmental and safety requirements . . . [N]o funds may be obligated for the construction of a baseline incineration facility at the Lexington Blue Grass [Kentucky] Army Depot or the Pueblo [Colorado] Depot activity until 180 days after the Secretary of Defense has submitted to the congressional defense committees a report detailing the effectiveness of each alternative chemical munitions demilitarization technology identified and demonstrated under the pilot program and its ability to meet the applicable safety and environmental requirements

The statute thus suspends construction activities on additional facilities for incineration until the agency has identified, analyzed, and reported to Congress on promising alternative technologies necessary for meeting the United States' treaty obligations.

On July 28, 1997, the agency issued the RFP here, for the selection and demonstration of approaches, other than the "baseline" incineration approach, for demilitarization and disposal of stockpiled assembled chemical weapons. RFP § C.1. The solicitation advised offerors that the assembled chemical weapons assessment (ACWA) program here was separate from the chemical stockpile disposal program, in constituting an effort to find whether there existed "mature technology" alternatives to incineration. RFP § C.1.2.

The solicitation provided for the evaluation of offers and the award of multiple task order contracts for the resolution of "data gaps"¹ in the selected technologies and subsequent demonstration of the most promising technologies. RFP §§ A (executive summary) and M.2. As a first step, the agency would evaluate the proposals for responsiveness to the requirements of the solicitation, as well as against six "threshold" criteria, described below. RFP § M.2.2. The agency would award initial \$50,000 firm, fixed-price task orders for "data gap" resolution to all responsive offerors meeting the threshold criteria. For this effort, the agency would assess selected technologies for "data gaps," and each contractor would prepare a Data Gap Resolution Work Plan and perform testing to fill in the identified data gaps. RFP § M.2.3. The agency would use the results of this effort to rank the technologies and select a minimum of two for demonstration testing. The contractors offering these selected technologies would receive \$50,000 firm, fixed-price task orders to prepare Demonstration Work Plans for demonstration testing. RFP § M.2.4. Using criteria not relevant to the instant protest, the program evaluation team would then select contractors to receive cost-plus-fixed-fee task orders for demonstration testing. RFP § M.2.5.

As stated above, the selection of contractors would be based upon the offers' responsiveness to the terms of the RFP and compliance with six threshold criteria. The RFP warned offerors that the threshold criteria represented the minimum requirements for award and that a failure to meet any of the threshold criteria would result in elimination from further consideration. RFP § M.6.1.2. The six criteria were as follows:

M.6.1.2.1 Total Solution The technology(ies) must be a total ACWA Program solution for at least one single agent-filled munition type (VX Rockets or HD 105mm Projectile, etc.). The proposed solution may include use [of] any of the following existing processes: (1) the reverse assembly process to access the components (i.e., agent, metal parts, energetics, and dunnage/packaging); (2) neutralization for agent (HD and VX); and (3) smelting for metal parts (if already decontaminated to a 3X condition).

M.6.1.2.2 Alternative to Baseline Incineration. The technology(ies) must be an alternative to baseline incineration.

M.6.1.2.3 ACWA Schedule. The technology(ies) must utilize processes and equipment that are developed or capable of being developed in time to meet (not extend) the current ACWA program schedule (initiate demonstration test program by June 1998).

¹The term "data gaps" is used in the RFP to mean additional data or information necessary to fully assess the proposed technology.

M.6.1.2.4 Laboratory Testing with Agent or Similar Chemicals.

Laboratory-scale testing must have been completed with agent(s) or chemicals with similar properties to agent to support the viability of the technology being proposed.

M.6.1.2.5 Laboratory Testing with Energetics or Similar Chemicals.

Laboratory-scale testing must have been completed with energetic(s) or chemicals with similar properties to energetics to support the viability of the technology being proposed.

M.6.1.2.6 Legal Right to Technology. Offerors must have the legal right to use any proprietary technology for testing and demonstration purposes, as evidenced by unencumbered ownership or by an existing licensing or other agreement granting such right.

Section L of the RFP provided instructions for the preparation of offers. It directed offerors to provide detail for every area to be covered--not simple repetition of requirements or a simple promise, without detail, to comply with contract requirements. RFP § L.3.5.2. Section L.6 provided an outline for offerors to follow, beginning with a process summary (§ L.6.1.1), the design basis (assumptions and exceptions, § L.6.1.2), and a process description (§ L.6.1.3). The offeror was to provide actual or theoretical proof that the process would work as planned (§ L.6.1.4), a preliminary design for the proposed hypothetical full-scale system (§ L.6.1.5), and a demonstration schedule (§ L.6.1.8). The offeror was also to address health, safety, and environmental issues, including properties of the process materials and their health effects, potential hazards and safeguards. RFP § L.6.1.6. The offeror was to address the characteristics and impact of any effluent discharge into air or water or as solid waste, including quantity and methods for monitoring, treating and disposal. RFP § L.6.1.7.

The agency received 12 proposals by the closing date of September 15 and referred them to an evaluation team. The team found seven proposals that met the six threshold criteria and recommended award of task order contracts to the seven offerors that had submitted those proposals. With regard to Thermolten's proposal, the team determined that the protester had failed to meet five of the six threshold criteria--all but the second criterion (Alternative to Baseline Incineration). On October 6, the contracting officer accepted the evaluation team's recommendation to award contracts to the seven firms whose responsive proposals had met the threshold criteria. The protester requested a debriefing, which the agency provided on October 14. These protests to our Office followed.

The first issue raised by the protester concerns the conduct of the debriefing. Thermolten complains that it had expected an opportunity to explain its proposal to a group including experts capable of evaluating the technical aspects of its proposal and, possibly, reversing the determination of the evaluation team. Protest at 2.

Thermolten complains that, without such experts present, the debriefing protest was a "wild goose chase," in that its expectation of presenting data to support its proposal was frustrated. Protest at 3.

A protester's challenge to the adequacy of a debriefing is a procedural matter concerning agency actions after award which are unrelated to the validity of the award; we generally will not review such matters. C-Cubed Corp., B-272525, Oct. 21, 1996, 96-2 CPD ¶ 150 at 4 n.3. In any event, the purpose of a debriefing is not to give offerors the opportunity to cure deficiencies for the instant procurement, but to furnish the basis for the selection decision and contract award. 10 U.S.C. § 2305(b)(5) (1994); Security Defense Sys. Corp., B-237826, Feb. 26, 1990, 90-1 CPD ¶ 231 at 4. While the debriefing here may not have been what Thermolten expected, there is nothing to indicate that it was improper or inadequate under the requirements of the Federal Acquisition Regulation (FAR). FAR § 15.1006(a) (June 1997); see FAR § 15.606(a)(1) (FAC 97-2).

With respect to its challenge to the agency's conclusion that its proposal did not meet five of the threshold criteria in the RFP, Thermolten has not identified any specific aspect of the evaluation to which it takes exception. In fact, after reviewing the agency report, Thermolten states only that it "stand[s] upon" its protest and the record submitted by the agency in support of its objections.

The function of our Office is not to reevaluate proposals, but to review the agency's evaluation to ensure that it was fair, reasonable, and consistent with the evaluation criteria stated in the solicitation. VSE Corp., B-247610.2, Aug. 6, 1992, 92-2 CPD ¶ 81 at 6. The evaluation of technical proposals is primarily the responsibility of the contracting agency, since the agency is responsible for defining its needs and the best method of accommodating them, and it must bear the burden of any difficulties resulting from a defective evaluation. Litton Sys., Inc., B-237596.3, Aug. 8, 1990, 90-2 CPD ¶ 115 at 8. Where, as here, the solicitation makes no provision for an oral presentation, the evaluation must be based on the written material submitted with the proposal. Suncoast Scientific Inc., B-240689, Dec. 10, 1990, 90-2 CPD ¶ 468 at 6. Our review discloses nothing from which we could conclude that the evaluation was either unreasonable or inconsistent with the stated evaluation criteria.

Thermolten essentially admits that it made little effort to address the specific RFP requirements, asserting that its process was so innovative that the ordinary rules of proposal submission did not apply. For example, as noted above, RFP § L.6.1.7 required offerors to address a detailed and specific list of environmental issues, including the characteristics and quantity of any effluent discharge into air or water or as solid waste, and proposed methods for monitoring, treating and disposal.

Despite the express warning of RFP § L.3.5.2 that a simple promise to comply would be insufficient, Thermolten's response to § L.6.1.7 was as follows:

L6.1.7 HUMAN HEALTH AND ENVIRONMENT:

The thermolten equipment and process ensures minimum impact on human health and the environment and will not add to any impact that already exists in the permitted area. Thermolten Tech. will use all existing permits and standards in place now and in the future.

(Thermolten proposal, ¶ L6.1.7, page 39, quoted in its entirety.)

The protester thus chose to omit any discussion of what or how much emissions its process might produce, what the consequences of the emissions might be, or how it planned to monitor and control the emissions, in addition to avoiding any discussion of the potential problems that might arise from its proposed method of controlling hazardous emissions. In addition, the evaluators concluded that the proposal focused almost entirely upon the theory and history of its process, providing little detail on what Thermolten actually proposed to do. Contracting officer's statement, Nov. 17, 1997, at 11; see also Thermolten proposal, ¶¶ L6.1.2 and 6.1.5, pages 10-12 (relating to design, begins by quoting Genesis 1:1 and continues with a discussion of how the addition of a proton to the nucleus and an electron to the outer shell of an atom, beginning with hydrogen, produces the first 18 elements of the periodic table). The descriptions, the evaluators found, were vague and omitted data necessary to determine the viability of the process.

In essence, it was the lack of detail and failure to include supporting data that led the evaluators to conclude that Thermolten's proposal did not meet the RFP requirements. As the discussion below shows, the record demonstrates that the evaluators' conclusion was reasonable.

With regard to the first threshold criterion, Total Solution, the evaluators found the proposal lacked detail on the design, particularly how the parts of the system worked together to ensure destruction of all components and materials of the chemical weapons. Source Selection Evaluation Board report, at 3-3. The proposal contained indications that the protester had not yet settled on a final design:

The process described, *with some alterations*, permits the destruction/treatment of [all] agents, energetics, metals of drained munitions, plus all dunnage. (Thermolten proposal, ¶ L6.1.3, page 20; emphasis added.)

[The reactor has a] middle core of *either a low melting point metal or alloy, or a suitable solid metal, such as steel or a combination of the two*. (Id.; emphasis added.)

Similarly, Thermolten proposed to destroy energetics and propellants "by drilling holes at strategic places in the munition," without discussing where the "strategic places" were or what equipment it would be using to bore into the explosive material. Id. at 21. The portion of the proposal intended to address safety requirements, introduces a plan to use robotics in place of manpower (obviating the need to discuss safety requirements), with no detail on the type of robotics equipment to be used or where, in the process, it is to be used. Id. at ¶ L6.1.6, page 38. Based on the information in the proposal, the evaluators reasonably concluded that the protester had not defined a total solution.

The evaluators concluded that Thermolten met the second criterion, Alternative to Baseline Incineration. However, the vagueness of the proposal and the failure to identify the development status of the proposed technologies left the evaluators unable to determine that the proposal met the third threshold criterion, Schedule. As with its response to the solicitation's environmental requirements, the protester avoided any discussion of specifics, providing instead a general assurance that its processes were in place, that it could provide a demonstration on 30 days notice, and the promise, with no further detail, that it could meet the current demonstration test program scheduled for June 1998. Id. at ¶ L6.1.8, page 40.

Of more serious concern were the evaluators' conclusions regarding the protester's failures to meet the fourth and fifth criteria, Agent Destruction and Energetics Destruction. The protester made little or no effort to identify the byproducts of its process, stating only that it identified a "distinctive odor" (the rotten egg smell of sulfur) and that the byproduct was probably some sulfur compound or another. Id. at ¶ L.6.1.4, page 29. The protester also recovered "an unknown compound" left by the destruction of melathion, a "possible" compound of phosphorus, and a "red liquid . . . which in all probability is trithiocarbonic acid." The protester had no idea where certain of the original material had gone, stating that some material--approximately 341 grams of a 500-gram mixture including mustard gas and nitroglycerine--had "simply vanished" after heating. Thus, even where the protester did find the byproducts of its process, it made little effort to analyze them beyond observation and smell. The record therefore demonstrates that the evaluators' concerns with Thermolten's proposal were both reasonable and consistent with the criteria specified in the solicitation.

As noted above, § C.1.2 of the RFP advised offerors that it was the purpose of the ACWA program to explore "mature technology" alternatives to incineration. This language, repeated in both the contracting officer's statement and the letter forwarding the agency report to our Office, prompted Thermolten to file a second protest, objecting that the appropriation statute, quoted above, makes no mention of mature technologies. The statute merely requires the Army to evaluate alternatives to baseline incineration, which, in Thermolten's view, the agency admits the protester provided.

Thermolten's protest on this ground is untimely. As noted above, RFP § C.1.2.1 specifically states that the agency is looking for "mature technology" alternatives to baseline incineration; further, amendment No. -001 to the RFP provided answers to questions from the offerors, including a definition of "mature technology," which, to the agency, means only that a contractor can meet the ACWA demonstration schedule, as well as the schedule mandated by the Chemical Weapons Convention, using that technology. The requirement is therefore, in the agency's view, a reasonable response to the schedule imposed upon the agency by statute and treaty. To the extent that Thermolten disagrees, it should have raised this issue prior to the submission of proposals, not after its proposal had been rejected. 4 C.F.R. § 21.2(a)(1) (1997) (protests based upon alleged improprieties in a solicitation which are apparent prior to the time set for receipt of initial proposals shall be filed prior to that time). In addition, the record indicates that there were severe deficiencies in the protester's proposal that had nothing to do with the maturity or the developmental nature of the proposed process. As discussed above, the proposal did not adequately describe the procedure proposed, or the precautions to be taken, and, considering the lethal nature of the products at issue, exhibited a remarkably casual attitude toward identifying the residue created by the process. Thus, the agency could have properly found the proposal unacceptable regardless of whether the technology met the "mature technology" requirement, which as stated above, was little more than a requirement that an offeror could meet the required schedule using the proposed process.

The protests are denied.

Comptroller General
of the United States