



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Oceanometrics, Inc.

File: B-278647.2

Date: June 9, 1998

Larry E. Sawyer for the protester.

Hiram B. Holt for Maritime Surveillance Associates, an intervenor.

Geoffrey D. Chun, Esq., Department of the Navy, for the agency.

Robert Arsenoff, Esq., and Paul I. Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging key personnel requirements is denied where record establishes that the requirements were reasonably related to the agency's needs.
2. Protest challenging methodology for establishing the realism of offerors' travel costs is denied where methodology is appropriately designed to ascertain actual reimbursable travel costs associated with each proposal.
3. Protest alleging that agency improperly evaluated airborne magnetic experience is denied where record establishes that the evaluation was performed in accordance with solicitation provisions.
4. Protest that agency improperly discounted the corporate experience of proposed subcontractor is denied where proposal indicates that subcontractor will perform a relatively small and unimportant portion of the contract.
5. Protest challenging the extension of incumbent's services contract as an attempt by agency to favor the incumbent in current competitive procurement is denied where record establishes that extension was effectuated to ensure contract coverage during pendency of protest.
6. Protest alleging that agency official and offeror's representative may have exchanged procurement-sensitive information at public social gatherings is denied where allegation is based on speculation for which there is no factual support, and alleged improper activity is explicitly denied by agency officials.

DECISION

Oceanometrics, Inc. protests the amendment of the evaluation criteria and the evaluation of its proposal under request for proposals (RFP) No. N68836-97-R-0065,

issued by the Department of the Navy as a small business set-aside for technical services in support of a broad based anti-submarine warfare development program denominated as Chief of Naval Operations (CNO) Project Beartrap.

We deny the protest.

OVERVIEW

The RFP was issued on October 8, 1997, and Oceanometrics protested various solicitation provisions to our Office on November 13. Initial proposals were received on January 7, 1998. Because the agency issued a series of amendments taking corrective action with respect to the objections raised by Oceanometrics, our Office dismissed the protest as academic on February 13. The agency conducted discussions with the protester between February 19 and February 24, during which Oceanometrics raised several questions and issues arising from the weaknesses in its proposal that had been identified by the agency. On February 24, the contracting officer issued amendment No. 0008 in an attempt to clarify solicitation provisions which had generated the discussion questions and disagreements raised by Oceanometrics. This protest, largely based on the discussions and the subsequent amendment, was filed with our Office on March 1. Revised proposals were received on March 30. Oceanometrics was subsequently informed that its proposal had been rejected as technically unacceptable on April 29.

PROTEST AND ANALYSIS

In its protest, Oceanometrics alleged: (1) that amendment No. 0008 established overly restrictive requirements for key personnel (which Oceanometrics cannot meet); (2) that amendment No. 0008 created an unfair and unjustified cost realism evaluation factor; (3) that the agency improperly weighted airborne magnetic experience in its evaluation of key personnel; (4) that the agency improperly segregated the evaluation of Oceanometrics's corporate past performance from that of its proposed subcontractor; (5) that the contracting officer improperly extended a contract of the incumbent--Maritime Surveillance Associates (MSA)--in order to enhance that firm's competitive position under the protested procurement; and (6) that a CNO Project Beartrap officer may have been biased in favor of MSA and may have provided procurement-sensitive information to a general partner of MSA during social meetings at a Navy-sponsored restaurant and bar.

Key Personnel

As originally written, the clause in section C at pages 4-5 of the RFP entitled "Key Personnel Requirements" began by identifying a position entitled "Principal Investigator" and listed minimum education and experience requirements as follows:

a baccalaureate degree in an analytical/technical field (or equivalent Navy and/or vocational electronics schools), six years technical and/or management experience with CNO Project Beartrap within the past ten years, and five years applied ASW/USW [anti-submarine warfare/undersea warfare] magnetics experience specifically geared toward data gathering gained within the past eight years. A combination of experience and education may be substituted for the listed requirements as long as the total years of education and relevant experience are not less than twelve years.

Amendment No. 0008 expanded the application of the specified education and experience requirements to all key personnel, not just to the Principal Investigator position. Further, the amendment expanded the definitions of technical and/or management experience with CNO Project Beartrap and ASW/USW magnetic experience and limited the use of experience that could be substituted for the degree requirement. Substituted experience towards the degree requirement was required to be in addition to the minimum experience requirements for Beartrap and magnetic backgrounds.

Oceanometrics, which asserts that its proposed personnel meet the original requirements--based on some substitution of experience--but whose personnel do not meet the revised requirements, complains that amendment No. 0008 is unnecessary and unduly restrictive of competition.

The Navy has provided an illustrative list of 12 contractor functions requiring the expertise of multiple parties which need to be performed to support research and development efforts for CNO Project Beartrap. The Navy also explains that the focus of the project has evolved through the years to rely on increasingly sophisticated airborne magnetic technology because acoustic submarine signatures continue to become quieter and the Navy shifted its strategic focus to regions of the oceans near the shoreline. As a result, the Navy states that it requires key personnel with current knowledge and experience with this technology, baccalaureate degrees, extensive experience with the Beartrap project itself, and at least 5 years applied ASW/USW experience geared toward data gathering. These requirements are reflected in amendment No. 0008. In its comments on the report, Oceanometrics merely maintains its disagreement with the amended requirements without presenting any basis to call into question the reasonableness of the agency's rationale for the requirements.

Agencies enjoy broad discretion in the selection of evaluation factors and we will not object to a particular set of requirements as long as it reasonably relates to the agency's needs in choosing a contractor that will best serve the government's interests. Premiere Vending, B-256437, June 23, 1994, 94-1 CPD ¶ 380 at 7. In order to establish the unreasonableness of a evaluation requirement, it is not enough that the protester disagrees with the agency's judgment; instead the requirement must be

shown to lack a reasonable basis. Continental Airlines, Inc., B-258271.4, July 31, 1995, 97-1 CPD ¶ 81 at 8. Since all Oceanometrics has articulated is generalized disagreement with the revised requirements for which the Navy has presented a detailed and reasoned supporting rationale, we have no basis to question those requirements and this aspect of the protest is denied. While Oceanometrics apparently presumes that the revised requirements are unduly restrictive of competition simply because the protester cannot effectively compete, a requirement is not per se improper merely because a potential offeror cannot meet it. AT&T, B-253069, June 21, 1993, 93-1 CPD ¶ 479 at 3.

Cost Realism Evaluation Factor

Amendment No. 0008 also added a cost realism evaluation factor which provided that each offeror's actual estimated travel costs (which the government is required to reimburse) would be calculated by using government per diem and contract airfare rates from the contractor's likely point of departure to and from a number of specified locations. The amendment estimated a number of trips and the duration of each for each destination. Oceanometrics believes that, because of its probable point of departure, it will be at a competitive disadvantage under this provision and asserts that travel costs must be evaluated as being equal for all offerors as they had been under the solicitation prior to the amendment.

The protester fails to recognize that the purpose of a cost evaluation is to assess what costs actually will be incurred by the acceptance of a particular proposal. See Environmental Affairs Management, Inc., B-277270, Sept. 23, 1997, 97-2 CPD ¶ 93 at 6. Here, prior to the issuance of the amendment, the RFP treated travel costs of all offerors as being the same. As a result of the evaluation of Oceanometrics's technical proposal and discussions with the protester, the contracting officer became aware that actual travel costs could vary widely from offeror to offeror, as a result of which the Navy issued the amended evaluation factor to accurately ascertain what each offeror's reimbursable travel costs would likely be. This approach is entirely consistent with the purpose of the cost evaluation and was reasonably designed to prevent the very result sought by Oceanometrics--that its proposal be evaluated as having lesser travel costs than it actually does in order to "equalize" the competition irrespective of offerors' differing probable costs.

Airborne Magnetic Experience

Because Oceanometrics received numerous discussion questions relating to the ASW/USW airborne magnetic experience of its proposed key personnel, the protester believes that the agency must have used a "hidden" evaluation factor placing undue emphasis on this experience requirement notwithstanding that the RFP indicated that magnetic experience was to be weighted equally with other types of required experience. We see no support for this position in the record. A comparison of the key personnel resumes submitted by the protester with the

evaluation results reported by the Navy confirms the reasonableness of the agency's conclusion that six of the seven proposed key personnel lack the required experience as set forth in amendment No. 0008 (quoted above). Oceanometrics does not dispute this conclusion under the amended requirement and, therefore, we have no basis to disturb the evaluation. As the agency points out, without rebuttal from the protester, the number of discussion questions was the result of the large number of proposed key personnel whose credentials were found lacking and there is no necessary relationship between the number of questions in a given area and the weight accorded that area in the evaluation.

Corporate Past Performance

Oceanometrics listed 12 contracts to be considered in evaluating its corporate past performance, 8 of which were performed by its proposed subcontractor. The four performed by the protester itself amounted to an effort of less than 600 hours. The protester objected to the Navy's criticism of its proposal as lacking enough corporate experience by Oceanometrics itself and argues that the agency used another "hidden" evaluation factor by, in effect, segregating and weighing prime versus subcontractor experience. It is the protester's position that no such segregation was to have occurred because the RFP did not provide for this type of analysis.

Oceanometrics proposed that its subcontractor would perform, at most, 25 percent of the labor under the contract. In such circumstances, an agency reasonably may decide that an offeror under a services contract may not place undue reliance on its subcontractor's experience. Innovative Tech. Sys., Inc., B-260074, May 24, 1995, 95-1 CPD ¶ 258 at 7. Accordingly, during discussions, the agency reasonably questioned the relevance of the protester's subcontractor's experience. Further, although an agency may properly consider the past performance of a proposed subcontractor, the key consideration is whether the experience is reasonably predictive of the offeror's performance under the contract. Oklahoma County Newspapers, Inc., B-270849, B-270849.2, May 6, 1996, 96-1 CPD ¶ 213 at 4.

Here, the agency considered the subcontractor's past performance of limited relevance because none of the four subcontractor employees is proposed to be involved in a major or critical aspect of the contract. In response, Oceanometrics argues that, given the critical nature of CNO Project Beartrap, all aspects of the contract should be considered "critical." Without any support, this argument is unpersuasive and, in the absence of any other cogent rationale by the protester, we have no basis to disturb the evaluation in this regard.

Improper Contract Extension

MSA is performing a contract with the Navy which partially overlaps with the contract to be awarded under the RFP. On March 3, 2 days after the protest was

filed, the Navy extended the contract until May 4. Oceanometrics claims that this action was taken to favor MSA in the present competition by enabling the firm to retain necessary key personnel.

Government officials are presumed to act in good faith and, where a protester contends that contracting officials are motivated by bias or bad faith, it must provide convincing proof since this Office will not attribute unfair or prejudicial motives to procurement officials on the basis of inference or supposition. ACS Sys. & Eng'g, Inc., B-275439.3, Mar. 31, 1997, 97-1 CPD ¶ 126 at 5. Oceanometrics's argument is based solely on the unwarranted inference that the contract extension must have been improper because it coincided with the filing of its protest and, thus, provides no basis for us to question the action taken by the agency. The reasonable explanation for the extension occurring when it did is, as the Navy states, that the agency needed to ensure contract coverage during the pendency of this protest.

Improper Contacts With MSA

Oceanometrics alleges, based on undocumented accounts of unnamed witnesses, that, during the course of the procurement, a CNO Project Beartrap officer was seen on a number of occasions socializing at a restaurant/bar with one of MSA's general partners. From this, the protester concludes that the two had a close personal relationship and suggests that the officer may have been biased or may have disseminated procurement-sensitive information to the MSA representative.

Both the officer and the MSA representative acknowledge by affidavit that meetings at the establishment described by the protester occurred during the time frame described in the protest. The meetings are described as being with groups of people consisting of various government representatives as well as representatives from different companies, including Oceanometrics. Both the project officer and the general partner vehemently deny that the current procurement was discussed and both describe the meetings as professional discussions in a relaxed environment between an incumbent contractor and a project officer for whom the contractor worked.

Socializing between an individual participating in a competitive procurement and a government contracting official does not, in and of itself, warrant a conclusion that bias or preferential treatment resulted. See Laser Power Techs., Inc., B-233369, B-233369.2, Mar. 13, 1989, 89-1 CPD ¶ 267 at 8-9. Where participants in such socializing testify that procurement information was not disclosed on such occasions and the record contains no evidence to the contrary, we will not sustain a protest allegation involving possible conflict of interest or other impropriety. Id.

The establishment in which the representative and the officer met is sponsored by the Navy and is open to the public. Thus, it is a logical setting for a project officer

and a contractor representative to meet. Both affidavits are clear with respect to the purpose of the meetings and each contains a denial of bias, or even of any personal friendship or that there was any discussion of or dissemination of procurement-sensitive materials. Oceanometrics has presented no evidence to the contrary and none exists in the record. Accordingly, we have no basis to sustain the protest on this issue.

The protest is denied.

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