

DECISION



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THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-193633

ALG 02647
DATE: August 29, 1979

MATTER OF: Honor Guard Security Services

[Protest of Bid Rejection for Failure to Submit Required Information]
DIGEST:

1. Provisions in request for proposals (RFP) requiring submission of information bearing on offeror experience and qualifications relate to offeror responsibility, rather than technical acceptability of proposal, where comparative evaluation of proposals on basis of information provided is not made.
2. Where solicitation is materially defective, resolicitation is appropriate.

Honor Guard Security Services (Honor Guard) protests the award of a contract to another firm following the rejection by the Department of Energy (DOE) of Honor Guard's proposal. DOE concedes that the procurement was flawed and that corrective action is appropriate. AGC 09912

Honor Guard's proposal was rejected under request for proposals (RFP) No. EW-78-B-07-1747, for security guard services at specified locations because certain information was not contained in the proposal. Honor Guard asserts that it should have been permitted to furnish this information after the closing date for receipt of proposals because the information was relevant only to Honor Guard's responsibility.

The RFP set forth a basis of award in the "Proposal Schedule" which specified:

"* * * Award will be made to one responsible offeror, who meets the qualifications set forth in paragraph 22 'Qualifications of Offerors' of 'Alterations to and Supplemental Solicitations Instructions and Conditions', and whose offer is responsive to this solicitation on the basis of the lowest Total Amount quoted for Items 1., 2., 3., and 4., * * *"

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The solicitation also set forth an additional basis of award under those Instructions and Conditions:

"34. CONTRACT AWARD. Award will be made to that responsible offeror, fully responsive to this Request for Proposal, and that is most advantageous to the Government, price and all other factors considered." (Emphasis added.)

Paragraph 22 set forth qualification standards as follows:

"22. QUALIFICATION OF BIDDERS. To be considered for award of this contract, a proposer must submit with its offer the information requested below; and meet the stated qualifications, and by submission of an offer the offeror represents that it meets said qualifications:

1. List of contracts covering guard services at multi-complexes for the Government as well as industry during the past three years beginning with calendar year 1976, including contract number, Contracting Agency, duration of contract, name and telephone number of contract administrator.
2. Qualifications of Contractors' management personnel to be assigned to any resulting contract.
3. Be able to provide a well trained and experienced guard force including a backup force.
4. Be able to demonstrate integrity and financial responsibility.
5. Be qualified under applicable Federal Law to perform such services on a Federal Government installation.

The attention of the bidder is called to the provisions of The Act of March 3, 1893, 27 Stat. 591, as amended (5 USCA 3108). This Act has been held to prohibit the employment of detective agencies and also prohibits contract or agreements with a detective agency as a firm, as well as contracts with individual employees of such agency.

"Prior to the award of a contract, the Contracting Officer may request offerors to submit evidence demonstrating that the offeror meets the qualifications listed above. Failure of an offeror to provide satisfactory evidence, if requested by the Contracting Officer, will constitute grounds for rejection of the proposal."

Honor Guard did not furnish the information specified by No. 1.

We agree with the protester that the qualification standards of paragraph 22 pertain to a prospective contractor's "responsibility" as defined in FPR Subpart 1-1.12, with particular reference to the criteria set forth in FPR §1-1.1203 (1964 ed. amend. 192). Although, when their needs require a comparative evaluation of offeror experience or other responsibility-type areas, contracting agencies may properly utilize in negotiated procurements technical evaluation factors which measure such areas, see SBD Computer Services Corporation, B-186950, December 21, 1976, 76-2 CPD 511 and citations therein, DOE did not make that type of evaluation here.

After reviewing this procurement, DOE has concluded that resolicitation is appropriate because of defects in the proposal evaluation process and because it views the solicitation itself as materially defective. DOE submits that its RFP failed to contain any weighted evaluation criteria; that the two conflicting "basis of award" provisions (cited above) make it impossible for offerors to determine whether the procurement is intended to achieve a minimum standard at the lowest cost or whether cost is secondary to

quality; and that the RFP contained qualification criteria which "require evaluation" but did not set forth any standards for a resultant determination of "qualified/not qualified." DOE asserts that data submitted under the requirements of paragraph 22 necessitate a "subjective evaluation" rather than a "go, no-go" judgment.

DOE concludes that resolicitation is required under a revised request for proposals containing evaluation criteria with relative weights, selection based on technical factors as well as cost or price, and the conduct of written and/or oral discussions with those offerors within the competitive range.

DOE submits that termination of the current contract, which expires on September 30, 1979, is impracticable because of the time required for the preparation and issuance of a new request for proposals, the evaluation of proposals and the conduct of negotiations with offerors within the competitive range. Consequently, DOE advises that it will not exercise options under this contract but will recompete requirements beyond September 30, 1979, under a new solicitation. DOE further contends that immediate termination and interim performance of these services by DOE personnel is unfeasible because DOE's security posture would return to the unsatisfactory condition existing prior to award whereby DOE was unable to provide adequately trained guards in sufficient numbers to prevent diversion or theft of nuclear materials; was compelled to work its existing guard force on an excessive overtime basis resulting in a diminution of efficiency; was precluded from providing guard services for construction work, etc.

Although Honor Guard maintains that the contract should be terminated and negotiations conducted with those offerors in the competitive range, we do not believe that course of action is appropriate in view of the deficiencies described above. We have no objections to DOE's resolicitation of this requirement.

The protest is sustained.

J. E. O. Hill
For The Comptroller General
of the United States