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DECISION

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

FILE: B-208632 **DATE:** January 31, 1983

MATTER OF: Anderson Engineering and Testing Company

DIGEST:

1. Protest that procurement should have been formally advertised rather than competitively negotiated is untimely, since solicitation clearly stated that procurement was negotiated and protest was not filed prior to the closing date for receipt of proposals.

2. Traditional matters of responsibility may be used to evaluate technical acceptability in negotiated procurements. When a small business is found to be unacceptable in such circumstances, the certificate of competency procedures do not apply.

3. Protester's contention that agency could have cured deficiencies in initial proposal by resorting to protester or other sources is rejected, since it is offeror's responsibility to demonstrate acceptability in its proposal, RFP provided for use of additional sources only to "verify" information already in proposal and RFP reserved to Government right to make award based on initial proposals without discussions.

4. Protest that actual evaluation scheme which weighted factors and subfactors was not in accordance with evaluation criteria in RFP, which only listed main factors in order of importance, is denied. Listing of weights is not required and subfactors may be used so long as they are reasonably and logically related to main factors, as these are.

Anderson Engineering and Testing Company (Anderson) protests the award of a contract for subsurface exploration, laboratory soil testing and related services to Gulf

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Drilling Company, Inc. (Gulf), under request for proposals (RFP) No. DACW66-82-R-0019 issued by the Memphis District, Corps of Engineers (Corps).

Anderson contends that the requirement should have been advertised rather than negotiated, that the Corps improperly found its proposal to be technically unacceptable, that the evaluation was not based on the criteria stated in the RFP, and that the Corps erred in not sending its proposal to the Small Business Administration (SBA) for a certificate of competency (COC) determination.

We dismiss the ground concerning advertising versus negotiation as untimely and deny the protest on all other grounds.

The RFP was competitively negotiated and 100 percent set-aside for small businesses. Section "M" of the RFP set forth the evaluation factors for award and the manner in which proposals would be evaluated. The initial paragraph stated:

> "Evaluation of Proposals. Offeror's proposals shall be examined and evaluated based on the factors listed below. It is the responsibility of the offeror to provide information, evidence or exhibits which clearly demonstrates the ability to satisfactorily respond to contract requirements and the factors listed below."

The next paragraph explained that an initial evaluation of proposals would be made using the stated evaluation criteria in order to determine the proposals eligible for award. The evaluation criteria were then listed in order of importance as follows:

> "a. Cost of Work. All proposals must include price proposals to be considered for award.
>
> "b. Specialized Experience to Perform the Work Required. Proposal must clearly demonstrate the offeror's full knowledge and understanding of, and experience in, all methods, techniques and standards required by the contract for the performance of the work.

"c. Qualifications and Capabilities of Key Personnel. Proposals must clearly demonstrate that the capability, background and experience of key personnel responsible for the administration and servicing of the contract are such to insure successful performance of the work effort required by the contract.

"d. Capability to Complete the Work in the Required Time. Proposal must clearly demonstrate the ability of the offeror to provide the required number of competent personnel and the required equipment and plant within the time frame required by the contract and to satisfactorily complete work assignments within the time requirements of the contract."

The solicitation provided that the Corps may contact references submitted by offerors and may use information in the Corps of Engineers Architect-Engineer Contract Support System (ACASS) to "verify information provided within the offeror's proposal." (Emphasis supplied.)

The RFP stated further that the Government might conduct discussions with offerors in the competitive range, but reserved the right to award based on initial proposals without discussions. Finally, the solicitation provided that award would be made to "that responsible offeror whose offer conforming to the solicitation is considered to be most advantageous to the Government, price and other factors included." (Emphasis in original.)

Fourteen timely proposals were received in response to the RFP and were evaluated. Ten proposals, including Anderson's, were rejected as technically unacceptable. The four remaining proposals were evaluated further, but no discussions were conducted. Award was made to Gulf based on its initial offer, which was the lowest cost offer of the four. Gulf's cost was $64,019; Anderson's was $57,880.

Concerning Anderson's contention that the requirement should have been procured by formal advertising, protests of apparent improprieties in an RFP must be filed prior to the closing date for receipt of initial proposals in order to be considered timely. 4 C.F.R. § 21.2(b)(1) (1982). The solicitation here clearly indicated that it was negotiated and gave the statutory exception permitting negotiation.

Thus, this basis of protest was apparent from the solicitation. Since it was not protested prior to the closing date, it is untimely and not for consideration. International Business Investments, Inc., B-204429, January 6, 1982, 82-1 CPD 16.

The essence of Anderson's complaint is twofold. First, that the evaluation criteria are matters of responsibility, not "responsiveness," and that, therefore, the Corps should have gone beyond Anderson's offer to determine its acceptability. Second, that, if the Corps had doubts concerning Anderson's responsibility, it was required to submit Anderson's offer to SBA for a COC determination. Anderson cites a number of GAO decisions involving advertised procurements in support of its position.

Anderson's arguments might have some validity if this was a formally advertised procurement, but it was not. Consequently, Anderson's legal citations are inapposite. As Anderson has recognized, to a large degree the evaluation criteria do consist of factors that are traditionally matters of responsibility. However, we have long held that in negotiated procurements, it is appropriate to use traditional responsibility factors as technical evaluation criteria and to judge technical proposals on that basis. Electrospace Systems, Inc., 58 Comp. Gen. 415, 425 (1979), 79-1 CPD 264; Design Concepts, Inc., B-184754, December 24, 1975, 75-2 CPD 410; 53 Comp. Gen. 388 (1973); 52 Comp. Gen. 854 (1973). If a small business is found to be technically deficient in such situations, COC procedures are not applicable. R. H. Ritchey, B-205602, July 7, 1982, 82-2 CPD 28; Electrospace Systems, Inc., supra.

In this case, the agency has pointed to deficiencies in Anderson's proposal which resulted in the finding that Anderson's proposal was technically unacceptable. Anderson admits that many of the deficiencies exist, but argues that the information to cure them was readily available from Anderson or ACASS. Generally, the technical acceptability of proposals must be based only on what is contained in the proposals, not on information obtained from other sources. See, e.g., Mutual of Omaha Insurance Company, B-201710, January 4, 1982, 82-1 CPD 2; University of New Orleans, B-184194, January 14, 1976, 76-1 CPD 22. It is well settled that an offeror must demonstrate affirmatively the merits of its proposal and it runs the risk of proposal rejection if it fails to do so clearly. Centurion Films, Inc., B-205570, March 25, 1982, 82-1 CPD 285. Additionally, the RFP stated that ACASS could be used to "verify" information already in

a proposal. It did not state that it would be used to cure a proposal. Moreover, the RFP reserved to the Government the right to award a contract based on initial proposals without discussions. Accordingly, we reject Anderson's argument. See Centurion Films, Inc., supra; Shapell Government Housing, Inc. and Goldrich and Kest, Inc., 55 Comp. Gen. 839 (1976), 76-1 CPD 161.

Anderson also raises a peripheral argument which is either untimely or without merit. Anderson complains that the evaluation criteria should be mathematically precise if possible and should be disclosed in the RFP. In that regard, Anderson argues that the weighting of the factors and subfactors used in the evaluation was not disclosed in the RFP. To the extent that Anderson is arguing that the evaluation criteria were not sufficiently precise, this basis for protest is untimely because it is an apparent solicitation impropriety not raised prior to the closing date for receipt of proposals. See Memorex Corporation, B-196130, October 12, 1979, 79-2 CPD 252.

To the extent that Anderson is arguing that the actual evaluation was not in accordance with the stated criteria because the weighting and subfactor weighting were not disclosed, this basis for protest is denied. We have held that such weighting need not be disclosed in an RFP--only the relative importance of the main factors is required to be revealed. Prosearch, B-206316, June 30, 1982, 82-1 CPD 636. Also, unrevealed subfactors may be used in evaluating the proposals so long as they are reasonably and logically related to the main factors. Human Resources Research Organization, B-203302, July 8, 1982, 82-2 CPD 31. Anderson has not argued and we do not find that the subfactors are not reasonably and logically related to the main factors.

Milton J. Socolar

for Comptroller General
of the United States