



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Environmental Technologies Group, Inc.
File: B-237325
Date: January 24, 1990

DIGEST

1. Where protester is given notice of agency's interpretation of government requirement during discussions, agency properly rejected protester's offer as unacceptable for failing to meet requirement in its best and final offer.
2. Where agency properly found a small business concern's offer to be technically unacceptable, without questioning the offeror's ability to perform or any other traditional element of responsibility, agency is not required to refer its determination to exclude the concern's proposal to the Small Business Administration under certificate of competency procedures.

DECISION

Environmental Technologies Group, Inc. (ETG), protests the award of a contract to Nuclear Research Corporation (NRC) under request for proposals (RFP) No. DAAB07-89-R-P013, issued by the Department of the Army. The protester argues that its proposal was improperly determined unacceptable. The protester also contends that the agency should not have rejected its proposal without referring the matter to the Small Business Administration (SBA) under certificate of competency (COC) procedures.

We deny the protest.

The agency issued the solicitation on April 11, 1989, as a 100 percent small business set-aside for a 3-year, firm, fixed-priced contract for radiac sets, which allow troops to detect and measure radiation from nuclear fall-out, including installation kits, spare parts and supporting

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data.^{1/} The solicitation provided for award to the responsible offeror submitting the lowest priced technically acceptable proposal. Production capability including manpower and quality assurance were subfactors under the technical evaluation criteria.

The agency received six proposals on June 12 and found five of them to be susceptible of being made acceptable and therefore in the competitive range. During written and oral discussions, the agency became concerned over the protester's plans to subcontract for 10 of 11 required circuit card assemblies. The agency advised the protester that it was concerned about the quality implications of the protester's subcontracting plans, particularly as to how the protester would insure that the subcontractor established the controls on work processes required by the quality standard, MIL-Q-9858A, as required by the RFP. During discussions, the agency noted that the protester would only be doing final assembly, inspection and packaging and requested the protester to "identify vendors, qualifications, ESD, parts control, configuration control and quality program (flow down adherence to MIL-Q-9858A)." This question was submitted in writing to the protester as a discussion question.

On September 6, the agency provided the offerors with a final list of discussion items and requested them to submit best and final offers (BAFOs) no later than September 13. At that time, the contracting officer again asked the protester to "[p]rovide a concise explanation of how the identified companies were verified to be in conformance with MIL-Q standards. Explain how ETG will monitor schedule and MIL-Q conformance and enforce ETG & MIL standards at each identified subcontractor."

The protester submitted a timely BAFO, in which it explained that Southwold, Inc. in Taipei, Taiwan, would provide the 10 subcontracted circuit card assemblies; the protester declined to require its subcontractor to establish its own procedures equivalent to the requirements of MIL-Q-9858A but explained that Southwold's quality assurance procedures

^{1/} The radiac set may be used in a nuclear battlefield environment to establish safe operational limits, or to monitor radiation where accidents involving nuclear materials have occurred. It is installed on combat vehicles.

did meet the less stringent requirements of MIL-I-45208A.^{2/} The agency found that the protester's response promised nothing more than an end product inspection and provided no explanation of how the protester planned to impose process controls and insure testing at the vendor and subvendor level. The agency therefore rejected the protester's proposal as technically unacceptable and made award to NRC, which had submitted the lowest technically acceptable offer on September 25. This protest followed.

The protester argues that in finding ETG's best and final offer unacceptable because of its failure to impose MIL-Q-9858A on its subcontractors, the agency applied unannounced evaluation criteria. The protester believes that the solicitation was at best ambiguous in informing offerors of the requirement that MIL-Q-9858A flow down to subcontractors and that application of the MIL-Q-9858A to subcontractors is not only contrary to historical practice by defense agencies but also exceeds the agency's actual needs. The protester argues that while MIL-I-45208 is not as rigorous as MIL-Q-9858A, it is rigorous enough to meet those needs; furthermore, the protester has required its vendors in many instances to meet requirements more stringent than MIL-Q-9858A imposes. The protester asserts that if its subcontractors are forced to follow MIL-Q-9858A practices, they will be unable to offer items to the protester at reasonable prices.

The RFP required MIL-Q-9858A be followed by the actual manufacturer of the item. Thus, we think the agency reasonably interpreted the requirement as being applicable to a subcontractor if that is who will manufacture the radac sets to be furnished under the contract. Moreover, the record shows that during oral and written discussions,

^{2/} MIL-I-45208A provides for an end product inspection quality system where defective parts are sorted from the satisfactory parts. MIL-Q-9858A envisions a preventative quality system in which the manufacturing operations are controlled to prevent the production of defective parts. Paragraph 1.5 of MIL-Q-9858A states that the system's requirements exceed those of MIL-I-45208A in that "total conformance to contract requirements is obtained best by controlling work operations, manufacturing processes as well as inspections and tests."

the protester was advised of the agency's view that this quality assurance standard was to "flow down" to subcontractors used by the offeror. This communication itself was sufficient to place the protester on notice of the requirement. See Federal Electric International, Inc., B-232295.2, Dec. 21, 1988, 88-2 CPD ¶ 610. Therefore, even if there was a reasonable question as to what the Army required of subcontractors prior to discussions, there should have been none thereafter. Accordingly, we find that the agency could properly evaluate subcontractor compliance with the required quality assurance standard.

The protester also objects to the agency's finding its proposal technically unacceptable because it proposed insufficient manhours. Since the protester's failure to commit itself to meeting the agency's quality requirements provided a valid basis for rejecting its proposal, we need not address the question of whether the Army properly found the protester's proposal unacceptable in other areas. See Digital Equipment Corp., B-235665, Sept. 21, 1989, 68 Comp. Gen. ___ , 89-2 CPD ¶ 260.

Finally the protester argues that before rejecting its proposal, the agency must refer the matter of its quality assurance procedures to the SBA. The protester notes that the evaluation factors that formed a basis for its rejection were not used to compare proposals, but as "go-no go" criteria; this, the protester argues, makes them a matter of responsibility. The protester furthermore notes that under Federal Acquisition Regulation § 9.104-1(e) (FAC 84-18), quality assurance measures are traditionally a matter of responsibility; an agency may not find a small business nonresponsible for award without referring the matter to SBA under COC procedures.

We disagree that the agency's basis of rejection required referral to the SBA. The record before us contains no evidence that the agency doubted the protester's responsibility, that is, its general ability to meet quality control standards. Rather, the record reflects the agency's concern that the protester had refused to commit itself to meet quality assurance requirements which were a material part of the solicitation. The record therefore clearly supports the agency's position that the proposal's technical acceptability, not the firm's responsibility, was at issue in the rejection of the protester's offer. In such

circumstances, referral to SBA is not required. TM Systems,
Inc., B-236708, Dec. 21, 1989, 89-2 CPD ¶ ____.

The protest is denied.

for *Andrew T. Progan*
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General Counsel