



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Southwest Laboratory of Oklahoma, Inc.

File: B-240226

Date: October 26, 1990

Sam Zalman Gdanski, Esq., for the protester. Maureen A. McDevitt for Enseco Incorporated, and Martha Houseworth for Biospherics Incorporated, interested parties. Sherry Kinland Kaswell, Esq., Department of the Interior, for the agency. Mary G. Curcio, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency improperly excluded protester's proposal from the competitive range is denied where the agency reasonably found that the proposal was deficient under each evaluation factor.

DECISION

Southwest Laboratory of Oklahoma, Inc. protests the elimination from the competitive range of the proposal it submitted in response to request for proposals (RFP) No. 0-4405, issued by the Department of the Interior, U.S. Geological Survey, for chemical analysis of water, soil, and other solid materials for organic and inorganic constituents.

We deny the protest.

The RFP was issued on March 8, 1990, and provided that award would be made to the offeror whose proposal, conforming to the solicitation, was determined to be most advantageous to the government, cost or price and other factors considered. The RFP listed six factors to be evaluated: 1) Related Corporate Experience and Laboratory Qualifications; 2) Quality Assurance/Quality Control; 3) Current Analytical Methodology; 4) Instrumentation and Facilities; 5) Offeror's Work Plan; and 6) Academic Qualifications and Experience of Personnel. Each factor was followed by a description of the information the agency would be looking for in evaluating the factor. Factors 1 and 2 were of equal importance and more

240226/142565

important than factors 3, 4, 5 and 6, which were also of equal importance. Initial proposals were due on April 23.

Nineteen proposals were submitted in response to the RFP, three of which, scoring between 78.2 and 90 points, were determined to be technically acceptable and included in the competitive range. The remaining 16 proposals scored between 0 and 70.3 points and were determined to be technically unacceptable and excluded from the competitive range. Southwest was ranked thirteenth with a technical score of 52.2. After being notified of its elimination from the competitive range, Southwest protested to our Office.

The evaluation of technical proposals and the determination of whether an offeror is in the competitive range is a matter within the discretion of the contracting agency, since that agency is responsible for defining its needs and the best method of accommodating them. In reviewing an agency's technical evaluation, we will not reevaluate the proposal, but instead will examine the agency's judgment to determine whether it was reasonable and in accordance with the solicitation's evaluation criteria. Validity Corp., B-233832, Apr. 19, 1989, 89-1 CPD ¶ 389.

The evaluation panel considered Southwest's proposal deficient in all six evaluation areas. Southwest disputes the agency's analyses for all factors. As explained in detail below, we see no basis to question the agency's evaluation of the protester's proposal or the decision to exclude the proposal from the competitive range.

CORPORATE EXPERIENCE AND LABORATORY QUALIFICATIONS

This first technical evaluation factor provided as follows:

"An annotated listing of the Offeror's Corporate experience with contracts similar in size and type of analyses shall be provided. This list should cite past or present contracts with government or commercial firms and include a very brief description of the scope of the work performed. Laboratory qualifications should be supplied that included laboratory records for the percentage of missed holding times for each method over the last year; copies of the most recent detection limit studies performed; the measure of completeness objective to be used; copies of the EPA Water Pollution Study and Water Supply Study Performance Evaluation Reports for the last two years; and copies of state certifications for the performance of analyses on drinking water."

The agency found that Southwest's proposal did not demonstrate sufficient corporate experience or laboratory qualifications to meet the agency's needs as set out under this evaluation factor. The agency questioned Southwest's capabilities in this regard because in addressing the requirement in its proposal, Southwest provided a list of nine contracts without any information describing them or indicating their size by dollar amount, number of samples or the number or type of analyses. The agency also found Southwest deficient under this factor because in reporting its missed holding times,^{1/} Southwest did not explain or provide documentation showing how it had accomplished its record and what procedures it would use to achieve the same results for the agency. In addition, Southwest provided detection limit studies^{2/} for inorganic but not organic compounds, and detection limits for only two groups of volatile organic compounds, and did not provide a measure of completeness, as required by the solicitation.

While Southwest provided certifications from three states for drinking water analyses and received points for these, it did not receive as many points as contractors that provided certifications from a greater number of states. Nor did Southwest provide state or EPA certifications to perform analytical services in similar programs such as the Resource Conservation and Recovery Act. The agency explains that while proposals without such certifications were not found technically unacceptable, participation in such programs would indicate that the laboratory has corporate experience relevant to the agency's requirements, and thus would lead to higher points being awarded. Finally, Southwest did not indicate that it was certified by the Department of Agriculture to receive soil samples from outside the United States or from regulated areas within the United States as required by section 3.2 of the solicitation.

Southwest argues that the agency's evaluation of its proposal under the corporate experience factor was unreasonable. Southwest first asserts that the information it provided was adequate to demonstrate that Southwest had sufficient corporate experience to meet the agency's needs. Southwest argues that it provided a list of nine contracts and as

^{1/} The holding time is the time from which the sample is collected in the field to the time at which the initial analysis is started. Allowable holding times are stipulated for each type of sample.

^{2/} The detection limit is the minimum concentration of a substance that can be measured and reported with 99 percent confidence that the substance concentration is greater than zero. The study determines the detection limit.

requested by the RFP included the name of the contracting agency, a contact, and a brief description of the services provided. Southwest asserts that the evaluation factor did not require that information regarding the size of the contract be included in the proposal and, thus, that the agency improperly penalized Southwest for not including this information. Southwest further contends that it did not provide detection limit studies for the organic compounds due to the volume of paper doing so would entail. With regard to its failure to provide a measure of completeness as called for by the RFP, Southwest states that the RFP did not indicate what it was referring to by that term, and that Southwest interpreted it as referring to a complete Quality Assurance/Quality Control plan.

Southwest also asserts that it does have certifications to participate in other programs such as the Resource Recovery and Conservation Act, but did not indicate this because the RFP did not request this information. In any case, argues Southwest, in the introduction, the project description and the corporate experience sections of its proposal, Southwest did mention its participation in the EPA Contract Laboratory Program and the Defense Environmental Restoration Program Act, and its participation in the Resource Conservation and Recovery Act and the Clean Water Act are evidenced by the submission of the Environmental Protection Agency Water Supply and Water Pollution studies. Finally, Southwest argues that it also has the Department of Agriculture certification to handle samples from outside the United States and from restricted areas within the United States but it did not provide the information because it was not requested by the RFP. Concerning this point, Southwest argues that the solicitation is ambiguous because the statement of work provides that the sources of the samples are sites located throughout, not outside, the United States.

The agency reasonably determined that Southwest's proposal was inadequate regarding corporate experience and laboratory qualifications. First, Southwest did no more than provide a list of nine contracts with a one or two word general description, such as "groundwater monitoring," or "environmental analyses," to indicate what the contract involved. This description did not demonstrate what the contractor was required to do under the referenced contract. In addition, while the evaluation criterion did not specifically request offerors to include size information such as the dollar amount of the contracts listed as references, it did indicate that the contracts were to be similar in size and scope to the present effort. Southwest, however, included no information as to the size of the listed contracts from which the agency could determine if Southwest was experienced in performing contracts similar in size and scope to the present

procurement. Nor could the agency determine how many contracts had been completed or how long Southwest had been performing this type of analysis since Southwest did not include the length of time of the contracts or whether they were completed or in progress.

Second, the evaluation criterion did not request that a contractor provide Department of Agriculture certification to receive soil samples outside the United States or from restricted areas within the United States. However, Southwest should have been aware of the certification requirement from section C-3.2 of the RFP, which specifically provided that: "In order to be able to handle the soil samples from outside the continental United States (CONUS) or from regulated areas within the United States, the Contractor must have, or obtain, the appropriate approval and permits from the Deputy Administrator, Plant Protection and Quarantine programs, U.S. Department of Agriculture." Insofar as Southwest maintains that there is an ambiguity because the statement of work provides that the soil samples will be collected from the United States, we point out that the term "outside the continental United States" can refer to Alaska and Hawaii and we assume that in its report the agency was referring to these areas.

Third, the agency properly took into consideration whether Southwest had state or EPA certifications to provide analytical services in support of certain programs or activities which involve work related to that called for by the RFP. While the RFP did not specifically request such information, the information does directly relate to an offeror's corporate experience and thus was properly evaluated under the corporate experience criterion. Insofar as Southwest argues that in its proposal it mentioned that it had participated in some of the programs, since Southwest did not give any information concerning actual performance in the programs, the agency was not required to credit Southwest with participation in them.

Concerning the Laboratory Qualifications component of the evaluation factor, despite clear instructions in the evaluation criterion to provide detection limit studies, Southwest did not provide the studies for organic compounds even though they made up a significant number of the compounds to be analyzed. Thus, the agency's conclusion that Southwest's proposal was unacceptable in this respect also was reasonable. Regarding the requirement for a "measure of completeness objective," which the agency states is a standard industry term, if Southwest was unclear as to what the agency was referring to it should have sought clarification from the agency. In any case, we think it was unreasonable for Southwest to conclude that the term referred

to the Quality Control plan since the requirement for a Quality Control plan was covered by a wholly independent evaluation factor. Finally, we find it was reasonable for the agency to downgrade Southwest's proposal because Southwest did not explain how it achieved its past adherence to the required holding times because the agency could not ascertain that the Southwest procedure would, in fact, satisfy the agency's needs.

QUALITY ASSURANCE/QUALITY CONTROL

The RFP required the contractor to provide a copy of its Quality Assurance/Quality Control plan, which would be evaluated on its completeness and adequacy. Section C-9 of the RFP described the Quality Assurance/Quality Control requirements in detail. The agency found that the plan submitted by Southwest was very general and did not address the specific needs of the agency. The agency also found Southwest's plan deficient because it did not address the frequency of calibration checks; did not specify corrective actions; did not mention whether new calibration standards were compared to the old or whether cross checks were performed; and had an inadequate method for determining specific laboratory precision. The agency also was concerned because the plan did not mention adherence to the requirements of the third edition of EPA Manual SW 846 as required by the RFP. Finally, the agency found that Southwest's decision to spike actual samples for analytical control was less satisfactory than spiking deionized water. In the agency's view, because actual samples have unknown constituents, there can be invalid interpretations of quality control data. The agency also thought it was preferable to use duplicate controls such as spiked deionized water to determine method precision and accuracy.

Southwest argues that the plan it submitted did in fact address the specific needs of the project and did agree to adhere to EPA Manual SW 846. Southwest further asserts that its plan did address frequency of calibration, method specific laboratory precision, corrective actions, comparison of standards and documentation for out of control events. Southwest also disagrees that its proposal should have been found unsatisfactory based on the firm's decision to spike real samples. In Southwest's opinion, the spiking of real samples is superior to spiking blank water and is in fact EPA's preferred method.

The agency reasonably determined that Southwest's proposal under this technical factor was unacceptable. First, we recognize that the proposal references EPA SW 846 in the list of Quality Assurance protocols. This is a general list, however, and the plan does not specifically say that Southwest

will adhere to the manual in performing the contract. Second, our review of the plan confirms that it is a general plan and does not specifically address the requirements of the current solicitation despite the fact that the statement of work specifically provides: "The contractor shall describe its Quality Assurance/Quality Control program as it specifically applies to the work defined in this contract." Further, our review shows that while the proposal does address laboratory precision and comparison of standards, it addresses the frequency of calibration of only one of the many instruments to be used in performing the contract; provides certain instances in which corrective actions are necessary but does not indicate what those corrective actions are; and does not indicate how the agency will be informed of out of control events. Finally, concerning the spiking of samples, Southwest generally disagrees with the agency that spiking deionized water is preferable to spiking actual samples. But Southwest has not disputed the agency's contention that spiking actual samples can lead to inaccurate results because the samples contain unknown constituents. Accordingly, we have no basis on which to question the agency's position.

THE REMAINING EVALUATION FACTORS

The agency also found that Southwest's proposal was unacceptable under the remaining evaluation factors. Specifically, Southwest's proposal was found unacceptable under Current Analytical Methodology because Southwest provided a list of method references but did not, as required by the RFP, provide a list of methods actually in use by the laboratory. Southwest was found unacceptable under Instrumentation and Facilities because Southwest did not provide the information requested concerning the number of instruments and the amount of time they were available for work under the contract and because Southwest indicated that it had only one each of two critical instruments when the stringent turn-around times under the RFP required that these instruments be available at all times.

For the technical evaluation factor entitled Offeror's Work Plan, Southwest was found unacceptable because it did not submit a work plan. Instead, Southwest submitted a technical organization chart of personnel with general references to the handling of samples and data packages. In addition, the proposal did not provide a list of the personnel to be assigned to the contract, did not name an individual as project coordinator, and did not indicate what percentage of laboratory space and personnel time would be available for agency samples.

Finally, the agency concluded that Southwest's proposal was unacceptable under Academic Qualifications and Experience of

Personnel because it appeared that only 25 analysts and preparation personnel were available and the agency did not believe that was a sufficient number to meet its needs. Southwest also was downgraded because it did not specify the percentage of the work force to be assigned to the agency contract.

Southwest disputes the agency's evaluation on all points. Southwest argues that under Current Analytical Methodology, the list of method references it provided is the list of methods actually in use in the laboratory. Concerning Instrumentation and Facilities, Southwest asserts that its proposal did include a list of the equipment and the amount of laboratory space that would be available to perform the contract. Southwest also disagrees that the estimated workload under the contract requires the availability of more than one each of the critical instruments the agency is concerned with. Regarding its work plan, Southwest states that while it did not submit a document entitled "Work Plan," the information requested under this factor was included in its Quality Control/Quality Assurance plan. Finally, under Academic Qualifications, Southwest argues that while it did not provide the percentage of time personnel assigned to the contract would be available, it did provide the rest of the information requested and thus should not have been determined unacceptable under this factor.

We have reviewed the agency's evaluation of Southwest's proposal on these remaining technical evaluation factors and the points Southwest raised in disputing that evaluation. Our review reveals no basis on which to conclude that the agency's evaluation is unreasonable. Concerning Analytical Methodology, Southwest did not provide any documentation to demonstrate that the methods it listed in its contract were currently in use at the laboratory. It was reasonable for the agency to conclude that all the methods listed were not in use given that one of the methods required the use of a special tool which was not included on the instrument list Southwest provided.

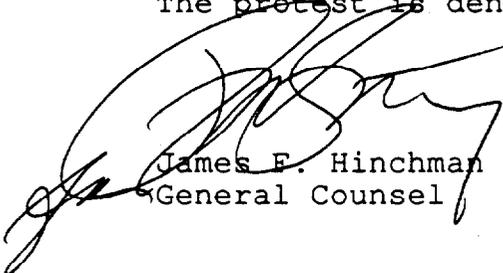
With respect to Instrumentation and Facilities, it was reasonable for the agency to downgrade Southwest's proposal for not having certain duplicate instruments. While Southwest argues that the estimated workload only required one of each instrument, the fact is that these instruments could break down and result in performance delays which would destroy the samples and require the agency to collect them again. In this regard, we note that the RFP specifically required contractors to provide adequate instrument redundancy to ensure that enough operating units would be available at any time.

Regarding the work plan, Southwest did not submit such a plan, but instead in its comments on the agency report argues that it included the work plan in its Quality Assurance/Quality Control section. In our view, it was unreasonable for Southwest to prepare its proposal in this way given that the evaluation factors specifically required a work plan and a Quality Assurance/Quality Control plan. In any case, our review shows that Southwest's Quality Assurance/Quality Control plan does not include all the information required by the work plan. Thus, for example, the Quality Assurance/Quality Control plan includes a sample custody plan but does not discuss chain of custody procedures in any detail; discusses sample processing only generally; and does not discuss sample analyses, procedures for meeting holding times, or report preparation.

Finally, concerning Academic Qualifications and Experience of Personnel, Southwest argues that it offered an overall staff of 50. However, Southwest does not dispute the agency's position that it offered only 25 analysts and preparation personnel, and we have no basis on which to question the agency's conclusion that this is an insufficient number of these types of personnel to meet its needs. Further, Southwest did not include the percentage of the work force that would be available to perform the contract.

Given that the agency's evaluation on all factors was reasonable, we have no basis on which to question the decision to exclude Southwest from the competitive range.

The protest is denied.



James F. Hinchman
General Counsel