



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Bardes Services, Inc.

File: B-242581

Date: April 29, 1991

Trudy L. Bardes for the protester.
Joan C. Mazzotti, Esq., for ARA Services, Inc., an interested party.
Alfred F. Chatterton III, Office of Personnel Management, for the agency.
Anne B. Perry, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Allegations that contracting agency amended the solicitation to include an improper clause, failed to require a common cutoff date for receipt of best and final offers (BAFO), and did not provide protester with sufficient time to submit its BAFO, are dismissed as untimely where protest was not filed prior to closing date for receipt of BAFOs or within 10 working days after protester learned of agency's actions in these regards.
2. Allegation that experience of president, key employees and subcontractors should be attributed to protester's organization is denied where the solicitation provided for corporate experience and key employees to be evaluated separately.
3. Protester is not an interested party to challenge the acceptability of awardee's proposal where there is an intervening party of greater interest which would be in line for award if protest were sustained.

DECISION

Bardes Services, Inc. (BSI) protests the award of a cost-plus-fixed-fee contract to ARA Services, Inc. under request for proposals (RFP) No. OPM-RFP-89-1205, issued by the Office of Personnel Management (OPM) for consolidated facilities management services at the Federal Executive Institute, Charlottesville, Virginia. BSI alleges that the contracting agency failed to treat offerors equally and improperly evaluated BSI's and ARA's technical proposals.

We dismiss the protest in part and deny it in part.

The RFP was issued on June 23, 1989, and provided that an offeror's technical qualifications would constitute 60 percent of the overall score with its estimated cost the remaining 40 percent. The solicitation contained the following award formula:

$$\begin{array}{r} \text{Technical Score} \\ \text{for this Firm} \\ \hline \text{Highest Technical} \\ \text{Score Received} \end{array} \quad \times 60 = \text{Technical Score}$$
$$\begin{array}{r} \text{Lowest Cost of} \\ \text{All Offerors} \\ \hline \text{Cost of Offer} \\ \text{from this Firm} \end{array} \quad \times 40 = \text{Cost Score}$$
$$\text{Technical Score} + \text{Cost Score} = \text{Overall Score}$$

The technical evaluation criteria were listed as follows:

- A. Management and Plan of Operation (25 points)
- B. Experience (20 points)
- C. Key Personnel (30 points)
- D. Subcontracting Plan (15 points)
- F. Contract Financing (10 points)

Five proposals were received by the amended closing date for receipt of initial proposals of January 5, 1990. Based on its evaluation of the proposals, the technical evaluation panel (TEP) determined that all offerors should be included in the competitive range. ARA's proposal received the highest raw technical score of 92 points and was rated "acceptable as is," and BSI received the lowest raw technical score of 64 points, and was rated as "conditionally acceptable." Following receipt of technical clarifications from BSI, it received an additional three technical points and its rating was changed to "acceptable as is." A cost realism analysis was performed on each offerors' proposal. BSI offered the lowest price and as a result received a cost score of 40 points.

Negotiations were conducted with each offeror between November 26-28, and each was given 1 week from the date of its negotiations to submit its best and final offer (BAFO). The agency conducted discussions with BSI on November 26 and at that time informed BSI that its BAFO was due on December 3. Written confirmation of BSI's negotiations and the revisions

it needed to submit was received by BSI on Friday, November 30 at 4:00 p.m. The last offeror's BAFO was received by OPM on December 5.

The evaluation of BAFOs and the cost realism analyses resulted in the following three highest final scores:

	Technical Score	+	Cost Score	=	Total
ARA Services	60	+	37.8	=	97.8
Marriott Corporation	59	+	38.0	=	97.0
BSI	45	+	40.0	=	85.0

Award was made to ARA Services on December 27. In its protest filed on January 10, 1991, BSI objects to the award on the grounds that the agency: (1) failed to provide sufficient time for BSI to submit its BAFO; (2) failed to establish a common cutoff date for receipt of BAFOs; (3) improperly amended the solicitation to exclude finance costs for the purchase of government-mandated capital equipment, a reimbursable expense; (4) improperly evaluated BSI's corporate experience; and (5) improperly permitted ARA to substitute key employees after the submission of BAFOs.

BSI's protests with respect to the amount of time it was given to submit a BAFO, the failure of the solicitation to establish a common cutoff date, and the exclusion of finance costs, an alleged solicitation impropriety, are dismissed as untimely. As a general proposition, to be timely, protests raising issues such as these concerning alleged improprieties incorporated into an RFP which are apparent on the face of an amendment must be filed before the next closing date for receipt of proposals following the incorporation. 4 C.F.R. § 21.2(a)(1) (1991). We recognize that this was not feasible here since BSI was informed of a majority of these bases only 1 day before its BAFO was due, and therefore, section 21.2(a)(1) is inapplicable. The Big Picture Co., B-210535, Feb. 17, 1983, 83-1 CPD ¶ 166. However, the protester was required to diligently pursue its protest. BSI was informed on November 26 that its BAFO was due on December 3, and on November 30 received Amendment 7 which incorporated the allegedly improper solicitation provisions and notification of the staggered due dates for receipt of BAFOs from all offerors; it did not protest these issues, however, until after award, on January 10. We therefore view the protest on these issues as untimely.

BSI next argues that the technical evaluation of its proposal was flawed because the TEP awarded BSI none of the possible 20 points for corporate experience. The protester contends that it deserved at least partial credit under this category

since its proposal exhibited a significant amount of corporate experience in performing preventative maintenance contracts, and the firm's employees and president possess comparable experience. BSI argues that the TEP ignored all of this collective information in its evaluation.

The evaluation and scoring of technical proposals is the function of the contracting agency, and we review allegedly improper evaluations to determine whether the evaluation was fair and reasonable and consistent with the stated evaluation criteria. Litton Sys., Inc., B-239123, Aug. 7, 1990, 90-2 CPD ¶ 114. A protester's mere disagreement with the agency's evaluation is not sufficient to render the evaluation unreasonable. Id.

The RFP stated that corporate experience would be evaluated on the basis of total years of "relevant corporate experience in the field of facilities management, as demonstrated by: (1) Corporate-reputation and experience of the corporation in managing similar facilities of size, age, and complexity, verified through at the minimum . . . three (3) references of past performance. (2) Total years managing facilities of similar size, age, and complexity."

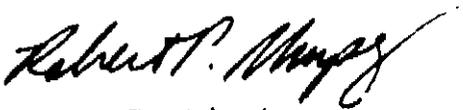
BSI as a corporate entity did not demonstrate experience of the type required; rather, it relied on the experience of its key personnel, particularly the experience of its president, proposed project manager, and subcontractors, and argues that the agency should have attributed this experience to the organization. The RFP, however, called for the evaluation of corporate experience separately from the experience of the individual employees, which was also evaluated. BSI received almost the maximum available points for the experience of its individual employees, but since BSI's proposal did not indicate any of the requisite corporate experience in managing facilities of similar size, age, and complexity, in other words, long term, residential and executive facilities, the agency did not give BSI any technical points under the corporate criterion. Since a firm's experience is different from its employees', individual experience, and since the RFP provided for separate evaluation of these areas, we consider the evaluation here to be proper. Sikora & Fogleman, B-236960, Jan. 17, 1990, 90-1 CPD ¶ 61.

Finally, BSI alleges that the contracting officer improperly permitted ARA to substitute key personnel after award. BSI argues that since the key personnel category was worth 30 points, the single highest criterion, any failure to actually use the key personnel proposed and evaluated constitutes a substantial deviation from the actual offer which was accepted by the government, and the resulting

contract award is based upon a "bait and switch" tactic, for which ARA should be disqualified.

We dismiss this allegation because BSI is not an interested party to protest this issue. BSI lacks the requisite direct and substantial interest in this regard, since even if the award to BSI were improper, the record shows that Marriott Corporation has a substantially higher overall score than BSI, and would be next in line for award. Since there is an intermediate party of greater interest, BSI is not an interested party to protest this issue. See Kaiserslautern Maintenance Group, B-240067, Oct. 12, 1990, 90-2 CPD ¶ 288.

The protest is dismissed in part and denied in part.


for James F. Hinchman
General Counsel