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Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: MAR Incorporated

File: B-242465

Date: May 6, 1991

Paul Shnitzer, Esq., Crowell & Moring, for the protester.
Glenn R. Germaine for Seaward Services, Inc., an interested party.
Lucie-Anne Dionne Thomas, Esq., Department of the Navy, for the agency.
Stephen J. Gary, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that awardee failed to meet solicitation requirement that offeror's corporate experience demonstrate ability to perform naval research support services, as set forth in solicitation's statement of work, is denied where record indicates that agency had reasonable basis for finding proposal technically acceptable in area of corporate experience.

DECISION

MAR Incorporated protests the award of a contract to Seaward Services, Inc. (SSI) under request for proposals (RFP) No. N66604-90-R-7512, issued by the Naval Underwater Systems Center (NUSC), Department of the Navy, for services in support of naval research and development. MAR contends that SSI's proposal should have been found technically unacceptable because it failed to demonstrate the minimum level of corporate experience required by the RFP.

We deny the protest.

The solicitation requested proposals to operate and maintain small craft in support of various research and development efforts, and provided that award would be made to the offeror whose proposal was technically acceptable and lowest in overall cost to the government. To be found technically

acceptable, a proposal had to be rated acceptable in each of three major areas: personnel, management/technical approach, and corporate experience. Under the last category, which is the subject of MAR's protest, the solicitation provided as follows:

"CORPORATE EXPERIENCE

"This portion (of the technical proposal) shall present the company's history and experience, with emphasis on the operation and maintenance of the type vessels described in the Statement of Work [SOW] and navigation skills in the waters described in the [SOW]. The offeror must demonstrate that he has operated and maintained craft similar to those described in the SOW for a minimum period of three (3) years and must describe corporate experience which demonstrates knowledge and capability to perform the tasks described in the SOW.

"Performance of tasks should have occurred within the past five years. The offeror must describe corporate experience which demonstrates knowledge and capability to perform the tasks described in the SOW."

In response to inquiries from prospective offerors, the RFP was amended to incorporate the following clarifications: (1) the phrase "craft similar to" referred to craft that have similar horsepower, overall length, and operational characteristics; (2) the phrase "should have occurred," in connection with the required length of experience, did not require that the 3 years of total corporate experience be within the past 5 years. In addition, the solicitation specified the particular NUSC vessels that the contractor would be operating (four in all), the types of tasks to be performed (such as underwater weapons testing, evaluation, and recovery), and the general geographic area in which the contractor would be operating.

In evaluating initial proposals, the Navy found both MAR and SSI technically acceptable in corporate experience and therefore held no discussions with either firm concerning that aspect of their proposals. In this regard, the agency specifically determined that SSI's proposal satisfied the corporate experience requirements. For example, with respect to the firm's experience in operating craft "similar to" those listed in the SOW, and in the waters generally designated in the SOW, the technical evaluation panel (TEP) gave particular weight to the fact that SSI had operated and maintained the research support vessel Seaward Explorer since 1981. The TEP noted that the Seaward Explorer, at 105 feet in length, was

similar in size to 2 of the 4 NUSC vessels which the SOW indicated the contractor should be able to operate--the TWR-711 (102 feet) and TWR-841 (120 feet). The evaluators concluded that, "if SSI could manage, staff, operate and maintain a ship of the size, power, and operational characteristics of the Explorer for more than three years in waters which generally form an area between New England, Florida, and the Bahamas," then it believed "SSI could manage, operate, and maintain the full range of NUSC vessels described in the RFP."

In addition, the panel found that two other craft that SSI had operated and maintained for periods of several months each, under an ongoing contract with the Environmental Protection Agency (EPA), were similar to the remaining two NUSC vessels designated in the SOW: the SSI-operated research vessel Simons (122 feet) was found comparable to NUSC's YFRT-287 (136 feet), and SSI's Lake Guardian (180 feet) was determined to be comparable to the NUSC Ranger (192 feet). (The Simons, at 122 feet, also was found similar to the TWR-841, referred to above, at 120 feet.)

After determining that the final proposals submitted by MAR and SSI both were technically acceptable, the agency awarded the contract to SSI on the basis of its lower price--\$5,209,065, compared to MAR's price of \$5,494,557.

MAR alleges that SSI failed to demonstrate adequate experience under the RFP's corporate experience provision, and that SSI's proposal therefore should have been found technically unacceptable and the award made to MAR as the low, technically acceptable offeror. Specifically, MAR argues that the agency should not have considered SSI's experience in operating the Simons and the Guardian, since the firm had only been operating them for a few months rather than the 3 years required by the RFP. If SSI's experience with these vessels is excluded, MAR continues, the only other experience that SSI could demonstrate with a similar vessel was its operation of the Explorer; that vessel, however, according to MAR, was not in fact similar. MAR asserts that the agency's acceptance of the Explorer as similar was based partly on an improper comparison of its horsepower to the horsepower of a vessel (NUSC's HSTR-83) which originally was among those listed in the SOW but was subsequently removed by amendment to the RFP, before proposals were evaluated.

The evaluation of technical proposals is primarily within the discretion of the contracting agency, which is responsible for defining its needs and the best method of accommodating them, and must bear the consequences of a defective evaluation. See Anamet Laboratories, Inc., B-241002, Jan. 14, 1991, 91-1 CPD ¶ 31. Consequently, we will not engage in an independent evaluation of technical proposals, but will

examine the agency's evaluation only to ensure that it had a reasonable basis and was consistent with the stated evaluation criteria. Id. The fact that a protester disagrees with the agency's conclusions does not establish that the evaluation was unreasonable. See Tichenor & Eiche, B-228325, Dec. 28, 1987, 87-2 CPD ¶ 631.

We find that NUSC's evaluation here was reasonable and consistent with the RFP. First, we do not agree that the agency improperly considered the Simons and the Guardian in its corporate experience evaluation. Contrary to the interpretation urged by MAR, we find nothing in the solicitation that precluded the agency from considering vessels operated by the offeror for less than 3 years. In this regard, while it is possible to read the RFP's 3-year experience requirement, quoted above, as applying to each vessel, we think the more reasonable interpretation is that offerors be able to demonstrate cumulative experience totaling 3 years. The provision nowhere states that the 3-year requirement is to be applied for each vessel, and the language refers to the operation for 3 years of "craft similar to those described in the SOW"--that is, craft in the plural. We see nothing else in the RFP that supports MAR's interpretation.

This reading of the provision and the RFP is the less restrictive one; we will not read a provision restrictively where it is not clear from the solicitation that such a restrictive interpretation was intended by the agency. See Computer Sciences Corp., B-213287, Aug. 6, 1984, 84-2 CPD ¶ 151 (proposal properly found technically acceptable under agency's nonrestrictive interpretation of provision where solicitation did not specifically advise offerors that a more restrictive definition would be applied). Consequently, we see nothing objectionable in the agency's view that each period of SSI's experience, whether months or years, was relevant and should be considered in evaluating SSI under corporate experience.

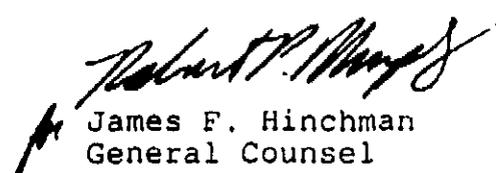
We also do not agree that NUSC's comparison of the Explorer's horsepower to that of a vessel no longer in the SOW tainted the evaluation. We note initially that neither MAR nor SSI indicated in its proposal the horsepower of the vessels it had operated. The TEP's assessment of horsepower in the case of both offerors, therefore, involved the use of estimates, which the TEP explains were based on the designated size and type of the listed vessels. The agency reports, however, that the actual horsepower of the SSI vessels is in fact very similar to the horsepower of its own vessels: SSI's Simons (920 hp) compared to NUSC's YFRT-287 (700 hp), and SSI's Guardian (2,250 hp) compared to NUSC's TWR-841 (2,350 hp) and the NUSC Ranger (3,000 hp). Thus, while the TEP refers to the Explorer as having virtually identical horsepower to a vessel, the HSTR-83, that was not in the SOW, the reference is irrelevant,

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since the agency did not, as MAR seems to suggest, base its findings of similarity on that one comparison. Rather, the evaluators noted numerous points of similarity between the SSI vessels and the four NUSC vessels listed in the SOW. For example, in addition to the size and horsepower similarities already noted, the record shows that the TEP also based its findings on the fact that SSI's and NUSC's vessels, among other things, all have twin engines, dual control for throttle and shift, navigational electronics, and winches.^{1/} We thus see nothing objectionable in the agency's comparison of vessels under corporate experience.

MAR also challenges the agency's finding that SSI's corporate experience demonstrates an ability to perform the tasks listed in the SOW. For example, with respect to the first task listed, "underwater weapons testing, evaluation, and recovery," MAR states that SSI's experience in retrieving rocket engines and oceanographic buoys does not qualify it to retrieve underwater weapons and torpedoes. The TEP, however, specifically found that torpedo retrieval is very much like retrieval of oceanographic buoys; the retrieval process, in terms of approach of the vessel and coordination of the deck crew, is "a similar process whether one recovers torpedoes, buoys or anything else. . . ." In general, the TEP based its conclusion that SSI would be able to perform the tasks in the SOW on its assessment that much of the work SSI had performed under contracts with the Coast Guard, EPA, and the Department of Energy was similar to what SSI would be required to perform for the Navy under the contract at issue. While MAR may disagree with the agency's conclusions, we find that the Navy had a reasonable basis for finding that SSI's corporate experience sufficiently evidenced the firm's ability to perform the tasks under the RFP. Tichenor & Eiche, B-228325, supra.

The protest is denied.


James F. Hinchman
General Counsel

^{1/} The TEP also found that there were no unique requirements or qualifications for operating any of the NUSC retriever vessels that would preclude SSI, as evidenced by the type of vessels it had operated, from handling the NUSC vessels.