

Arsenoff  
144015



Comptroller General  
of the United States  
Washington, D.C. 20548

## Decision

**Matter of:** Sletten Construction Company  
**File:** B-242615  
**Date:** May 24, 1991

J. Robert Sletten and William S. Merriman for the protester. Jack R. Pine, Esq., for CBI Services, Inc., an interested party. Lester Edelman, Esq., Department of the Army, for the agency. Robert C. Arsenoff, Esq., and John G. Brosnan, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

1. Agency conducted adequate discussions with protester where written questions precisely conveyed the evaluators' principal concerns with the firm's proposal; concern regarding corporate experience, which was not subject to change, did not have to be the subject of discussions.
2. Where protester had relatively little direct experience and failed to sufficiently identify a steel fabrication subcontractor after being asked to do so during discussions so that the subcontractor's experience and resources could be evaluated, agency acted reasonably in downgrading protester's proposal under relevant listed evaluation subfactors.

### DECISION

Sletten Construction Company protests the award of a contract to CBI Services, Inc. under request for proposals (RFP) No. DACW45-90-R-0091, issued by the Department of the Army, Corps of Engineers, Omaha District, for the replacement of penstocks<sup>1/</sup> at Power Plant No. 1 in Fort Peck, Montana. The

<sup>1/</sup> The term "penstock" refers to a structure which conveys water to powerhouse turbines; this RFP also involved the construction of a "trifurcation"--i.e., a concrete-encased steel structure which divides a large diameter pipe into three smaller pipes feeding the turbines at Fort Peck's No. 1 powerhouse.

protester principally alleges that discussions were inadequate and that its proposal was misevaluated.

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

The RFP was issued on August 24, 1990, and contemplated the award of a fixed-price contract to that firm whose offer presented the best value to the government considering three evaluation factors listed in descending order of importance: experience, price and technical considerations. Experience was worth a total of 800 points in the evaluation scheme used by the Corps; technical was worth 400 points, and price was not scored. Experience--the most important evaluation category--was broken down into nine subfactors, each of which was scored. The solicitation also required the prime contractor to perform at least 20 percent of the work itself.

Initial offers were received on October 26. As a result of their evaluation, Sletten and CBI scored as follows:

<u>Offeror</u>	<u>Experience</u>	<u>Technical</u>	<u>Total Score</u>
Sletten	465	370	835
CBI	760	375	1,135

Written discussion questions were issued on November 15 and responses were received November 27. Final evaluation results were as follows upon a rescoring of best and final offer (BAFO):

<u>Offeror</u>	<u>Experience</u>	<u>Technical</u>	<u>Total Score</u>	<u>Price</u>
Sletten	505	380	885	\$9,307,000
CBI	787	400	1,187	\$9,412,700

The agency report contains scoring sheets and a written debriefing document which details, by subfactor, the problems perceived by the agency evaluators with Sletten's proposal which resulted in its lower score. In this regard, the evaluators were concerned because Sletten's own experience in hydraulic and large steel fabrication projects was limited to concrete work which the evaluators doubted would amount to 20 percent of the required work at Fort Peck. The evaluators also noted that the experience of its proposed penstock installer was limited and that Sletten's principal sub-contractor (Noell), although an experienced firm based in Germany, had no experience with United States government contracts. The evaluators further stated that Noell's role in supervising its own subcontractors was unclear in the proposal; Sletten also lost points because it listed "Noell and/or Mark Steel Corporation or approved equal" as its steel fabricator instead of clearly identifying a particular firm so

that its experience and capabilities could be assessed; finally, Sletten was downgraded because, in the evaluators' view, its project manager and field superintendent did not have experience in large hydraulic or steel fabrication projects.

The contracting officer concluded that CBI's 25 percent advantage in its total score outweighed its approximately 1 percent higher price and, on January 7, 1991, CBI was awarded a contract; Sletten was notified the same day and filed this protest on January 17. Sletten received a telephonic debriefing on January 30, and a written debriefing on February 4, prior to the submission of the agency's report in this matter on February 25.

While conceding that under appropriate circumstances the contracting officer could make the type of price/technical tradeoff he did, Sletten argues that discussions were inadequate because they did not cover all of the matters set forth in the debriefings. Sletten also asserts that a fair evaluation of its proposal would reveal that it was superior to CBI's and questions generally whether the awardee's proposal was properly evaluated.

The requirement for discussions with offerors is satisfied by advising them of deficiencies in their proposals and affording them an opportunity to satisfy the government's requirements through the submission of revised proposals. Agencies need not afford offerors all-encompassing discussions or discuss every element of an acceptable, competitive range proposal that has received less than the maximum possible score, The Scientex Corp., B-238689, June 29, 1990, 90-1 CPD ¶ 597; rather, they need only lead offerors into areas of their proposals which are considered deficient. Honeywell Regelsysteme GmbH, B-237248, Feb. 2, 1990, 90-1 CPD ¶ 149. Where experience that is not subject to change is being evaluated, it need not be discussed with offerors since a deficiency in that area is not the type of deficiency that can be corrected. The Scientex Corp., B-238689, supra.

Sletten was asked the following questions relevant to the protest:

"1. Please clarify what role Noell has in your organization and what they will contribute to the completion of this project.

"2. Please clarify who will be the fabricator of the triff: cation and penstocks and where the fabrication will be done."

In our view, these two questions precisely conveyed the evaluators' concerns about the interrelationship between Noell and Sletten and between Noell and its subcontractors and the identity of the steel fabricator in the protester's proposal. The only major concerns about Sletten's proposal which were not discussed involved the extent of its or its subcontractors' experience--matters which were not subject to change and which, we note, the protester does not substantively challenge in its submissions to this Office. We therefore have no basis upon which to conclude that discussions were inadequate.

As to the evaluation of the proposals themselves, this is the function of the contracting agency and our review of an allegedly improper evaluation is to determine whether it was fair and reasonable and consistent with the stated evaluation criteria. A protester's disagreement with the evaluation or its good faith belief that its own proposal was superior does not itself establish that the agency's evaluation was flawed. Bridge Street Acquisition Corp., B-239121.3, Nov. 13, 1990, 90-2 CPD ¶ 388.

As indicated above, Sletten principally lost points because of its own limited relevant experience and because of questions concerning its subcontractors. In the case of its principal subcontractor, Noell, the evaluators questioned whether a foreign firm which had recently established a domestic office could perform the steel fabrication domestically as required by the RFP; this problem was compounded because, in the agency's view, Noell's control of and relationship to its own subcontractors were not clearly defined. Sletten's proposal also was faulted for not specifically identifying a particular steel fabricator whose experience and resources could be definitively evaluated. With the exception of expressing general disagreement over whether Noell's role was adequately outlined in its proposal and whether it actually needed to specify a particular steel fabricator, Sletten has provided no substantive rebuttal to the agency's concerns as they were set forth in the February 4 debriefing letter and reflected in the scoring of initial proposals and BAFOs.

With regard to the identification of a steel fabricator, Sletten did name two firms in the alternative with a further qualification that an approved "equal" firm might be substituted. The RFP clearly required that an offeror provide "the" name of a fabricator "to be used in this project," and indicated that the fabricator would be evaluated for specifically-related experience and fabrication capacity. When the Corps asked Sletten to be more definitive in its BAFO, it did not do so. Although Sletten now explains that it was leaving the subject open to confirm that any change in fabricators would need to be approved by the agency, the Corps

reasonably downgraded the protester for failure to sufficiently identify a principal subcontractor whose credentials would be key to successful performance and, by the terms of the RFP, had to be evaluated. Accordingly, we find that the evaluation of the protester's proposal was reasonable and consistent with the evaluation criteria.

Further, our in camera review of CBI's proposal indicates that in the principal areas of scoring difference between the two offerors--direct experience and sufficient delineation of subcontractors--the Corps had a sufficient basis for concluding that the awardee's proposal outranked the protester's. CBI's proposal does not, for example, leave any doubt as to the identification of any of its principal subcontractors as does Sletten's and it outlines considerable direct experience in the type of projects called for by the RFP. Thus, we have no basis to question the evaluation as urged by the protester.

In its original protest Sletten also alleged that CBI received improper advance notice of the award; this matter was addressed by the Corps in its report and the protester did not comment upon the agency's explanation. We therefore deem the issue to have been abandoned and dismiss the allegation. Anderson-Elerding Travel Serv., Inc., B-238527.3, Dec. 19, 1990, 90-2 CPD ¶ 500. Likewise, we dismiss Sletten's allegation that its debriefings were inaccurate, vague or misleading since the purpose of a debriefing is to assist offerors in submitting acceptable proposals on future procurements and, thus, it has no legal effect on the validity of an underlying evaluation or selection decision. Femme Comp, Inc., B-239192, Aug. 13, 1990, 90-2 CPD ¶ 121. Also, for the first time in its March 14 comments on the agency report, Sletten alleged that the process of requesting BAFOs together with responses to discussion questions was improper. The allegation is dismissed as untimely because, under our Bid Protest Regulations, it should have been raised within 10 days after Sletten knew that the agency was conducting the procurement in this manner. 4 C.F.R. § 21.2(a)(2) (1991). In any event, there is nothing inherently improper in combining a request for responses to questions with a request for a BAFO.

The protest is denied in part and dismissed . . . part.



↑ James F. Hinchman  
General Counsel