

Arsenoff



Comptroller General
of the United States

Washington, D.C. 20548

145272

Decision

Matter of: Aviation Constructors, Inc.

File: B-244794

Date: November 12, 1991

Herman Fussell, Esq., Shapiro, Fussell, Wedge & Smotherman, for the protester.

Eric L. Wilson, for Hensel Phelps Construction Company, an interested party.

Lester Edelman, Esq., Army Corps of Engineers, for the agency.

Robert C. Arsenoff, Esq., and John Brosnan, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest against an alleged failure to evaluate private construction experience consistent with stated evaluation factors is denied where solicitation factors relating to experience placed principal emphasis on government construction experience.

DECISION

Aviation Constructors, Inc. (ACI) protests the award of a contract to Hensel Phelps Construction Company under request for proposals (RFP) No. DACA47-91-R-0005, issued by the Army Corps of Engineers to design and build maintenance docks and hangars for F-117A aircraft at Holloman Air Force Base, New Mexico. The protester alleges that its proposal was not evaluated in accordance with the RFP evaluation criteria.

We deny the protest.

The RFP was issued on December 14, 1990, contemplating award of a fixed-price contract to the offeror whose proposal represented the best value to the government based on technical merit and price, technical merit being most important. Technical merit was measured under seven factors which were listed in descending order of importance:

Construction Team Experience
Design Submittal
Management Plan
Design Team Experience
Proposed Milestone Schedule
Business Qualifications
Project Organization

Each of these factors was divided into two or more equally-weighted subfactors which were described in detail in the RFP's special instructions to offerors. The two factors and their subfactors at issue in ACI's protest are described in the RFP as follows:

"Construction Team Experience

"1.0 Provide in detail the experience of your organization in construction including a list of military aircraft construction projects relevant to the proposed project that your organization has completed within the last five years, or any under construction currently, with the name and short description of the project, its size, the owner, the initial and final contract amounts, the date of completion, the percentage of the project accomplished with your own forces.

"1.1 Provide in detail the experience of the key personnel including Construction Engineer/Manager, Project Engineer, Quality Control Engineer, Superintendent and Safety Officer proposed to manage direct, schedule, and oversee the construction of this project with resumes for each person including his or her education, training, tenure with the organization, and experience relevant to the construction of this project. . . .

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"Business Qualifications

"1.0 Has your organization ever failed to complete any work awarded to it? If so, please explain when, where, and why.

"1.1 Has any officer or partner of your organization ever been an officer or partner of another organization that failed to complete a contract for design or construction? If so, please explain when, where, and why.

"1.2 Does your organization currently hold any contracts for design or construction with the United States Government, including all federal departments, agencies, and administrations?
."

Seven initial proposals were received on February 22, 1991. They were evaluated using a detailed evaluation plan which tracked the RFP criteria, and provided that credit be given in the first area listed above principally for government contract experience. Under the second factor, the plan stated that such experience was to be the focus of the third subfactor. ACI received a technical score of 91 out of 325 possible points. The other six offerors' scores ranged between 119 and 184 points. ACI's price for the project was \$52.47 million. The other prices ranged between a low of \$52.16 million and a high of \$60.75 million.

With respect to construction team experience, a factor which was worth a maximum of 80 points, ACI received a score of 7. Other scores ranged from 13 to 42 points. In the narrative comments, the evaluation panel noted that ACI lacked corporate experience in military construction, that its proposal did not list related experience for a quality control engineer, a superintendent or a safety officer, and that the firm's other key personnel lacked individual military construction experience.

With respect to business qualifications, a factor which was worth a maximum of 20 points, ACI received a score of 11. Other scores ranged from 15 to 17 points. In their narrative, the evaluators commented that the protester's lack of previous government contract experience was a disadvantage.

All seven firms were included in the competitive range, oral and written discussions were held, and best and final offers (BAFO) were received on March 25. During discussions, ACI was specifically asked to submit information on its corporate military construction experience, the relevant experience of its quality control engineer, superintendent and safety officer, and the military construction experience of its other key personnel.

The evaluation of BAFOs yielded the following results:

<u>Firm</u>	<u>Technical Score</u>	<u>Price (Millions)</u>
Offeror A	191	\$59,436
Offeror B	174	\$54,699
Hensel Phelps	173	\$50,666
Offeror C	154	\$52,017
Offeror D	136	\$54,150
Offeror E	126	\$53,353
ACI	109	\$50,521

In the final evaluation, ACI's score under the construction team experience factor was raised to 17, and the other offerors' scores for this factor ranged from 13 to 44 points. The evaluators noted that ACI had listed eight commercial design/build projects but had no corporate military construction experience, and they stated that additional information regarding individual military construction experience of some of ACI's key personnel and subcontractors had been provided. ACI's final score for the business qualifications factor remained at 11 points, and the other offeror's scores ranged from 15 to 17. No changes were noted with regard to ACI's BAFO relating to this factor.

The three highest technically-rated proposals--which did not include ACI--were given a final additional consideration for award. The point-by-point evaluations of these three offers were compared in detail and the contracting officer concluded that each offeror was highly qualified and that the differences in point scores did not reflect any appreciable difference in technical merit. Award was made to Hensel Phelps as the low-priced offeror in the group. Although the selection of Hensel Phelps was made in early April, the Corps reports that a contract was not actually awarded until June 14 due to a moratorium a military construction funding; ACI was notified of the award on June 19. This protest followed.

ACI protests the selection noting that its price was \$145,000 lower than the awardee's. The protester does not challenge the Corps's authority to award to other than the low offer; rather, ACI argues that, had its proposal been evaluated in accordance with the RFP factors, it would have been in the group of offerors receiving final consideration. The protester focuses on its scores under the construction team experience and business qualification factors, which it views as low in light of its demonstrated commercial construction experience. In this regard, ACI does not allege, nor does the record reflect, that it has any appreciable military construction experience.

In reviewing protests which allege that an evaluation was improper, our Office does not rescore proposals or otherwise substitute its judgment for that of the agency's evaluators; we instead examine the record to determine whether the agency's judgment was reasonable and in accordance with the listed evaluation criteria. Suncoast Scientific, Inc., B-239614, Sept. 14, 1990, 90-2 CPD ¶ 211. A protester's mere disagreement with the agency's judgment without additional evidence does not establish that it was unreasonable. Id.

The construction team experience factor was worth 80 points, equally divided between organizational experience and experience of key personnel/subcontractors. Within the corporate experience subfactor, the only information requested was a list of current or prior "military aircraft construction projects relevant to the proposed project." As for key personnel/subcontractor experience, the only information requested in the subfactor was for "experience relevant to the construction of this project."

We find that the RFP's explicit request for corporate experience on "military aircraft construction projects" should have placed offerors on notice that this specialized experience would receive primary consideration during the evaluation. A.G. Personnel Leasing, Inc., B-238289, Apr. 24, 1990, 90-1 CPD ¶ 416. Likewise, with respect to key personnel/subcontractor experience, the RFP's request for experience relevant to "this project"--the construction of military aircraft facilities--logically encompassed consideration of government construction experience. Science Sys. and Applications, Inc., B-240311; B-240311.2, Nov. 8, 1990, 90-2 CPD ¶ 381. Further, military construction experience was the subject of discussions held with ACI. Thus, we find that ACI should have understood that experience in military construction was an important consideration to the agency, and we have no basis for questioning the reasonableness of the evaluators in downscoring ACI on the evaluation factor relating to construction team experience for its conceded lack of such experience. A.G. Personnel Leasing, Inc., supra.

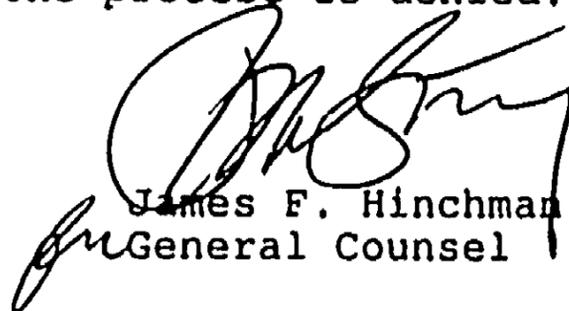
As to the business qualifications factor, only one-third of its total of 20 points were experience-related; and the relevant subfactor specifically requested a listing of design and construction contracts "with the United States Government." This should have placed ACI on notice that government experience was of primary importance to the Corps. A.G. Personnel Leasing, Inc., supra. This emphasis was repeated in discussions with the protester. We, thus, have no basis for disturbing the evaluators' decision to

downscore the protester for lacking such government contract experience.¹

Further, the record does not support ACI's contention that consideration of its private sector construction experience would have placed it in final award contention. The final scoring results show that, even if the protester's scores under the two evaluation factors it disputes were raised to the highest scores received by any other offeror, its overall score would only increase from 109 to 140 points. The lowest technical score of the three firms included in the final consideration for selection was 173 technical points. Contrary to the protester's position, then, it is unlikely that ACI's proposal, albeit low-priced by \$145,000 for a project worth more than \$50 million, would merit final consideration for reasons unrelated to experience.

Finally, ACI asserts that the agency was required to provide it notice of the preliminary selection decision in early April. We disagree. Federal Acquisition Regulation § 15.1001(c) requires that notice of award be made "[p]romptly after award." The notice of award here was mailed on June 14 when award was actually made, and the record shows that the protester received a facsimile copy on June 19.

The protest is denied.


James F. Hinchman
General Counsel

¹To the extent ACI is now objecting to the emphasis which the RFP placed on government contract experience, its protest is untimely since it should have been filed prior to the date set for receipt of offers to permit a timely resolution of the matter. See Suncoast Scientific, Inc., supra.