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Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Talon Corporation

File: B-248086

Date: July 27, 1992

James R. Watford for the protester,
Douglas A. Lemothe, for EOD Technology, Inc., an interested party,
Philip L. Hall, Department of the Army, for the agency,
Jacqueline Maeder, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency properly excluded proposal from the competitive range where the agency reasonably concluded that the offeror had no reasonable chance of award because of numerous deficiencies in its technical proposal which were not susceptible to correction.
2. Protest that one of four technical evaluators was biased against the protester is denied where the record contains no evidence of bias or bad faith and the technical score awarded the protester's proposal by the allegedly biased evaluator was the highest total score and did not vary significantly from the scores awarded by the other three evaluators.

DECISION

Talon Corporation protests the exclusion of its proposal from the competitive range under request for proposals (RFP) No. DACA87-92-R-0003, issued by the U.S. Army Engineer Division, U.S. Department of the Army for removal and disposal of ordnance and explosive waste (OEW). Talon asserts that its proposal evaluation was flawed and that the procurement was tainted by various improprieties.

We deny the protest.

The RFP, issued on November 22, 1991, contemplated the award of a fixed-price, time-and-materials contract for all necessary personnel, equipment and transportation for the safe location, identification, removal and disposal of all

OEW at various formerly-used defense sites and active Department of Defense installations west of the Mississippi River.

The RFP evaluation criteria included technical, management, and price factors. The technical factor, which was nearly twice as important as management, listed nine subfactors. Two of these subfactors, OEW remediation program and examples, were of equal value and the most important.¹ The management factor listed five subfactors of which corporate experience was the most important.² Cost was to be evaluated for reasonableness and affordability.

Paragraph L.17d(2) of the RFP specified and explained nine areas--identical to the nine technical evaluation subfactors--to be addressed in the technical proposals. As to the OEW remediation program, for example, the RFP required that offerors:

"Demonstrate a successful OEW remediation program which contains explosive waste and/or ordnance investigation/removal operations. The offeror shall submit specific documentation outlining the offeror's experience in OEW remediation programs."

Similarly, as to examples, the RFP required that the offeror:

". . . submit examples from previous OEW remedial actions accomplished to include the following:

1. One example of a Safety, Health and Emergency Response Plan or similar document.
2. One example of site specific work plans for remediation of an OEW contaminated site."

Eleven firms submitted proposals by the amended January 21, 1992, closing date. Offers were evaluated by a four-member technical/management evaluation board. The four members individually scored each offeror's proposal for each

¹The other technical subfactors included design approach, understanding the problem, OEW transport and disposal, facilities and equipment, quality management, chemical analysis program and safety program.

²The other management subfactors included personnel qualifications, organization, cost control and subcontracting.

technical and management factor and provided written narratives explaining and supporting their individual judgments concerning the proposals, after which a final overall consensus score was determined, supported by a narrative discussion of the advantages and disadvantages of each proposal for each evaluation criteria. Out of possible total scores of 650 for technical merit and 350 for management, Talon's proposal received consensus scores of 112 and 107 respectively, totaling 219 out of a possible 1,000 points. The protester's proposal was ranked last of the 11 proposals submitted.

In the narrative discussion of Talon's proposal, the evaluators found no "advantages" in Talon's proposal for any of the nine technical subfactors and "advantages" for only two subfactors in the management proposal. Talon's proposal was heavily downgraded under every evaluation criteria. The evaluators significantly downgraded the OEW remediation program and examples sections of the firm's proposal because Talon had not presented any evidence of experience in successful OEW remediation programs and had provided examples of work proposals rather than the examples of past work accomplished as required by the solicitation. As to the management evaluation, the offeror was significantly downgraded for corporate experience because it presented no details of corporate experience on OEW remediation projects as required by the RFP.

The Army evaluators recommended that six firms, whose proposals were rated significantly higher than Talon, be included in the competitive range. The contracting officer adopted the technical/management evaluation board's recommendation and excluded Talon (and four firms rated higher technically than the protester) from the competitive range based on a determination that Talon's proposal needed major revision and, in relation to the other offerors whose proposals were included in the competitive range (all of which received technical scores more than 600 points higher than Talon's), Talon did not have a reasonable chance of being selected for award. On March 25, Talon filed its protest with our Office challenging that determination.

Talon argues that "its submission was totally reflective of the capability needed to discharge all aspects of the RFP. . . ." While the protester addresses each of the evaluators' consensus comments concerning the technical and management subfactors, Talon primarily argues that it was improperly downgraded for lack of corporate experience because the need for corporate experience was not stated in the Commerce Business Daily (CBD) announcement of the solicitation, and no quantitative corporate experience level was set forth in the RFP. Talon argues that since the agency relied on corporate experience, it should have made

this requirement known and "precluded the luring of small emerging business firms into the belief that they could be . . . competitive in the circumstances outlined in the CBD and the solicitation."

Talon also asserts that the agency's evaluation of its response to the examples subfactor is only partially correct, arguing that its subcontractor provided an approved and implemented safety, health and emergency response plan which was overlooked or ignored by the evaluators.

Finally, Talon argues that "there is personal and professional animosity" on the part of one member of the evaluation team toward Talon. The protester speculates that this one individual was biased against Talon on the basis of an alleged comment concerning the evaluation of proposals that "some companies just thought they were EOD companies" in conjunction with Talon's belief that this individual scored Talon's proposal lowest in the evaluation. Talon states that this evaluator "has personally and professionally known two of [the] principals of Talon" for over ten years and contends that he "should have excused himself from the evaluation process."

The evaluation of proposals and the resulting determination whether an offer 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. Delta Ventures, B-238655, June 25, 1990, 90-1 CPD ¶ 589. In reviewing an agency's technical evaluation, we will not re-evaluate the proposal, but instead will examine the agency's evaluation to ensure that it was not arbitrary or in violation of the procurement laws and regulations. Id. We find the agency's evaluation of Talon's proposal was reasonable and in accord with the RFP's evaluation criteria.

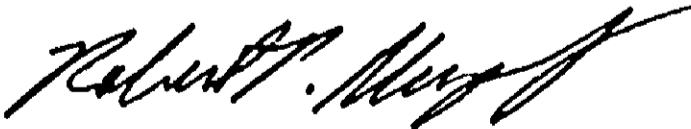
Regarding Talon's experience in successful OEW remediation programs, the record shows that the firm is a newly-formed company that currently has four employees--its president, contract administrator, program manager, and project manager--and has no corporate experience in OEW remediation work. Because the firm was newly incorporated, the agency exercised its discretion to evaluate the corporate experience of the firm by evaluating the experience of its principal officers. See York Sys. Corp., B-237364, Feb. 9, 1990, 90-1 CPD ¶ 172. However, the resumes for Talon's principal officers showed no experience in successful OEW remediation programs. As a result, the agency properly gave minimal credit to the offeror on this evaluation subfactor. Similarly, Talon presented no examples from past work accomplished as required by the second technical subfactor and was properly downgraded. Finally, the safety, health

and emergency response plan submitted by Talon's subcontractor was properly downgraded because it dealt with an acid contaminated lagoon rather than with the remediation of OEW, as called for under this RFP.

While the protester objects that the CBD announcement failed to spell out the corporate experience requirement, the announcement is intended to enhance competition by publicizing contract opportunities and need not specify each requirement a prospective offeror must meet. See Federal Acquisition Regulation (FAR) §§ 5.000 and 5.207. The RFP contained ample explanations notifying offerors of the requirement for previous successful experience in OEW remediation. The management factor called for offerors to demonstrate corporate experience in OEW remediation programs and, as noted above, the RFP elsewhere required that the offeror submit in its technical proposal "specific documentation outlining the offeror's experience in OEW remediation programs" and ". . . submit examples from previous OEW remedial actions accomplished. . . ." As to Talon's suggestion that the agency lured it into submitting a proposal, the decision to submit a proposal was a matter of Talon's own business judgment.

Regarding Talon's allegation of bias, when a protester contends that contracting officials were motivated by bias or bad faith, it must submit convincing proof that the agency directed its actions with the specific and malicious intent to hurt the protester. Okte!, B-244956; B-244956.2, Dec. 4, 1991, 91-2 CPD ¶ 512. Talon's speculation does not constitute such proof, and we find nothing in the record that suggests bias on the part of any evaluator. We have reviewed the technical evaluators' worksheets in camera, and they do not support the protester's hypothesis that its low average technical score was attributable to the low scores awarded it by this one evaluator. In fact, not only were the scores that Talon received from this evaluator not significantly different from the scores awarded by the other evaluators, but Talon's highest total score on the nine technical subfactors was awarded by the allegedly biased evaluator. There is no basis for Talon's speculation that its low technical score was the product of bias on the part of an agency official.

The protest is denied.


for James F. Hinchman
General Counsel