



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

Decision

Matter of: Advanced Resources International, Inc.
File: B-249679
Date: November 18, 1992

Paul J. Seidman, Esq., and Robert D. Banfield, Esq., Seidman & Associates, P.C., for the protester.
Ronald E. Cone, Department of Energy, for the agency.
Aldo A. Benejam, Esq., and Andrew T. Pogany, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency properly rejected protester's proposal as technically unacceptable where the record shows that the agency's technical evaluation committee reasonably downgraded protester's proposal in areas found deficient in accordance with the evaluation criteria announced in the solicitation.
2. Where a small business offeror was found unacceptable based upon a comparative assessment of its proposal under the evaluation criteria announced in the solicitation, the matter concerns technical acceptability rather than responsibility, and, as such, there is no requirement for referral to the Small Business Administration under certificate of competency procedures.

DECISION

Advanced Resources International, Inc. (ARI) protests the rejection of its proposal as technically unacceptable under request for proposals (RFP) No. DE-RP01-92FE62467, issued as a small business set-aside by the Department of Energy (DOE), to provide technical support services. ARI contends that DOE misevaluated its proposal, and that the agency should not have rejected its offer without referring the matter to the Small Business Administration (SBA) for consideration under certificate of competency procedures.

We deny the protest.

BACKGROUND

The RFP, issued on January 29, 1992, was set aside exclusively for small businesses, and contemplated the award of a cost-plus-fixed-fee, level-of-effort contract, for a base period of 2 years, with up to three 1-year options. Offerors were required to submit separate technical and cost proposals. The solicitation contained two statements of work (SOW), A and B, each describing technical support services in different DOE offices with unrelated missions.¹ Prior to the issuance of this solicitation, the work covered by SOWs A and B was performed separately by different firms under two different contracts DOE awarded in 1988 following an unrestricted competition.

Section M of the RFP, as amended, listed the following factors in descending order of importance, which the agency would consider in evaluating technical proposals: (1) personnel qualifications, (2) understanding the SOW and technical approach, (3) corporate experience and resources, and (4) work response/management and project organization. The RFP stated that of those four factors, the personnel criterion had the highest value. The RFP contemplated awarding one contract to the responsible offeror whose offer conformed to the RFP and was considered most advantageous to the government.

Two firms, including the protester, responded by the time set on March 3 for receipt of initial proposals. A technical evaluation committee (TEC) evaluated technical proposals by rating each of the factors and subfactors announced in the RFP based on a numerical point scale ranging from 0 to 10 raw points.² Since the solicitation

¹For example, under SOW A, the contractor is to provide technical support services to assist the Office of Planning and Environment in analyzing how fossil fuels might contribute to the nation's energy future under various assumptions. SOW A focuses on issues related to resource, production, and transportation of various forms of fossil fuels. Under SOW B, for example, the contractor is to provide the Office of Technical Coordination with programmatic planning and evaluation; initiative development; and program documentation and data base maintenance.

²The scale consisted of the following: superior=10; good=8; acceptable=5; inadequate=2; unacceptable=0.

contained two SOWs, the TEC rated each proposal by assigning separate point scores--one score based on SOW A, and one score based on SOW B (worth 1,000 possible evaluated points each). According to the evaluation plan, if the TEC determined that a proposal was unacceptable for either SOW, the entire proposal would be considered unacceptable, and the score for the unacceptable SOW used as the overall score for that proposal. A proposal considered acceptable for both SOWs would receive as the overall point score the average of the two scores earned for SOWs A and B.

Based on that evaluation plan, ARI's proposal earned a total of 385 points overall (ARI's score on SOW A), while the other offeror's proposal received 345 points overall. The TEC concluded that while each offeror might be capable of adequately performing one of the two SOWs, neither firm had submitted an acceptable proposal to adequately perform both SOWs A and B.³ Specifically, the TEC concluded with respect to both proposals that the majority of points were lost due to "fundamental weaknesses associated with inadequate personnel skills and corporate experience," which could not be corrected without offering completely different key individuals. The TEC further concluded that, even if discussions were held, neither proposal was susceptible of being made acceptable overall.

In July 16 letters, the contracting officer rejected both firms' proposals, stating that "none of the proposals received evidence [the offerors'] ability to adequately perform SOW A and SOW B." That letter also informed both offerors that the solicitation would be canceled and that a new solicitation would be issued on an unrestricted basis. This protest followed.

PROTESTER'S CONTENTIONS

The protester contends that DOE miscalculated its proposal. ARI also contends that the agency should have referred the rejection of the firm's proposal to the SBA because the agency's technical evaluation was in essence a responsibility determination. The protester also objects to the agency's decision to cancel the RFP and resolicit on an unrestricted basis.

³The TEC considered ARI's proposal acceptable as to SOW B, but unacceptable as to SOW A. The other offeror's proposal was found acceptable as to SOW A, but unacceptable as to SOW B.

DISCUSSION

The TEC found ARI's proposal unacceptable as to SOW A, primarily downgrading the firm's proposal in the area of personnel qualifications and for its lack of corporate experience. Regarding personnel qualifications, the single most important evaluation factor (worth a maximum of 350 weighted points), each of the TEC members who evaluated ARI's proposal under SOW A considered the firm's proposal "inadequate" in this area. The TEC summarized ARI's weakness in this area by noting that the firm proposed poorly qualified individuals for two of the highest priority work areas covered by SOW A (resource analysis and production analysis) and finding that ARI did not propose any employees with acceptable experience related to the third major work area under SOW A, fuel transportation. Regarding corporate experience, which the TEC also rated "inadequate," the TEC found that, except for its president, ARI's proposal did not demonstrate that the firm had adequate staff or the level of experience required to adequately perform SOW A.

The protester argues that rather than downgrading ARI because some of its proposed personnel have not performed work identical to that described in SOW A, DOE should have considered its proposed personnel's "related" experience. In this connection, ARI points to excerpts from the various resumes it submitted with its proposal, arguing that each of its proposed key individuals has some experience related to SOW A. Regarding corporate experience, the protester contends that the TEC improperly failed to consider the fact that ARI and its predecessor companies previously performed SOW A-type work for DOE. ARI also argues that in accordance with the RFP's requirements, it submitted a list of contracts in its technical proposal showing that it has performed work "related" to SOW A.

It is not the function of this Office to evaluate technical proposals de novo; rather, in reviewing protests against allegedly improper evaluations, we will examine the record to determine whether the agency's judgment was reasonable and consistent with the evaluation criteria listed in the solicitation. PHH Homequity, B-244683, Oct. 7, 1991, 91-2 CPD ¶ 316. A protester's disagreement with the agency's judgment or its belief that its proposal should have received a higher score is itself not sufficient to establish that the agency's evaluation was unreasonable. Id. Here, based upon our review of the agency report, including each evaluator's narrative explanation supporting each rating, and the TEC's report to the contracting officer summarizing its findings, we find that the agency's evaluation of ARI's proposal was reasonable and consistent with the RFP's evaluation criteria.

The RFP required offerors to propose individuals for the following positions for SOW A: project manager, engineer (petroleum), economist (resource), economist (transportation), analyst (environmental), analyst (resource), analyst (computer), and analyst (research). Attachment E to the RFP listed the minimum qualifications, including related experience and educational level, required for each of these positions.

As noted above, one of the three major areas associated with SOW A is related to energy transportation. Specifically, the RFP required that the economist (transportation) position have demonstrated work experience in the analysis of issues related to railroad transportation of coal or transportation modes used for coal export. That individual was required to have experience in computer modeling of transportation networks and in analyzing associated costs and constraints. The RFP stated that experience with natural gas and oil pipeline issues was desirable. The proposed individual was to have direct working knowledge of regulations, legislation, research sources and be knowledgeable of organizations in the fossil energy transportation field, as well as have knowledge of transportation networks. The RFP also required, for example, that the computer analyst be experienced in computer modeling algorithms involving fossil energy technologies.

ARI proposed only one individual with minimal experience in coal transportation. Despite the SOW's focus on transportation issues, ARI proposed no one experienced with domestic or international oil/gas transportation (e.g., pipelines, oil tankers, barges, ships, or railroad transportation). ARI proposed only one individual with minimal experience on coal resource issues. Also, contrary to the RFP's specific requirements, none of the computer analysts that ARI proposed demonstrated any experience with fossil energy. With the use of computer models an integral part of much of the analyses required under SOW A, that lack of expertise was considered an unacceptable weakness in ARI's proposal.

The record shows that while some of the key individuals ARI proposed under SOW A have some experience to adequately perform parts of that SOW, that experience was heavily weighted towards unconventional gas. Only one individual, ARI's president, appears to have any significant experience related to the analytical oil-related nature of the SOW. DOE questioned whether the unconventional gas experience of the other proposed employees would transfer to oil-related issues, and considered this another weakness in ARI's proposal. The record thus shows that for most key positions, ARI did not propose individuals with the experience required by the RFP for SOW A.

With respect to corporate experience, the RFP stated that DOE would evaluate each offeror's ability to perform the contract on the basis of "demonstrated past contract experience . . . and demonstrated understanding of, and access to, technical and human resources essential to perform" the contract. In this connection, the record shows that ARI is a newly formed entity, having been in business for less than 1 year, and that ARI's lack of a proven track record as an organization was a weakness of particular concern to DOE.

The record shows, and we find, that the protester, as a corporate entity, did not demonstrate the experience required by the RFP. Rather, ARI apparently relied on the experience of its key personnel, particularly its president, and work performed by other entities, which according to the protester, should have been attributed to ARI. The RFP, however, called for the evaluation of the offerors' corporate experience separately from the experience of individual employees, which DOE evaluated and also found deficient. Since a firm's experience is different from its employees' individual experience, and since the RFP clearly provided for separate evaluation of these areas, the agency's evaluation of corporate experience was reasonable. See Bardes Servs., Inc., B-242581, Apr. 29, 1991, 91-1 CPD ¶ 419. Further, since the record shows that both ARI and its proposed employees lack the experience required by the RFP, we find that the TEC reasonably downgraded ARI in these areas.⁴

ARI also complains that the agency should have referred the rejection of the firm's proposal to the SBA because the agency's technical evaluation was in essence a responsibility determination. A contracting agency may use traditional responsibility criteria--that is, matters relating to an offeror's ability to perform the contract such as personnel experience--as technical evaluation factors if the agency's needs warrant a comparative evaluation of proposals in those areas. See, e.g., Sanford and Sons Co., 67 Comp. Gen. 612 (1988), 88-2 CPD ¶ 266. Clearly, a comparative assessment of the merits of competing

⁴The protester also complains that the RFP did not inform offerors that SOWs A and B would be evaluated separately, and that the RFP did not state that to be considered acceptable overall, proposals had to be acceptable under each SOW. Regardless of the agency's separate evaluation methodology for each SOW, the RFP contemplated the award of one contract based upon the proposal that conformed to the requirements of RFP, including both SOWs, and the TEC reasonably found ARI's proposal unacceptable. This issue is therefore not material.

proposals with respect to personnel experience is warranted where, as here, the agency is procuring sophisticated technical support services. In such cases, since the agency is contracting for the services themselves, the relative quality of the services offered, as reflected in the experience of personnel offered, is a legitimate--in fact, a key--factor in the agency's technical evaluation. Accordingly, the agency's determination that ARI's proposal was unacceptable is not a matter of responsibility requiring referral to the SBA. Instead, since ARI's proposal was simply found technically deficient under the evaluation factors announced in the RFP, we find that referral to SBA is not required. See D.M. Potts Corp., B-247403.2, Aug. 3, 1992, 92-2 CPD ¶ 65.⁵

The protest is denied.


for James F. Hinchman
General Counsel

⁵The protester also argues that the agency's decision to cancel the RFP and resolicit on an unrestricted basis is improper. The short answer is that since the agency did not receive any acceptable proposals, cancellation was appropriate. Further, Federal Acquisition Regulation § 19.507 directs that if a set-aside acquisition is not awarded, the determination to set the acquisition aside is automatically dissolved, and that the requirement may be subsequently acquired by sealed bidding or by negotiation.