



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: BENMOL Corporation

File: B-251586

Date: April 16, 1993

Robert Platt, Esq., Robert Platt & Associates, for the protester.
Douglas P. Larsen, Esq., James J. Paris, Esq., Department of the Navy, for the agency.
Paul E. Jordan, Esq., and Paul I. Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency properly rejected as technically unacceptable a proposal containing numerous deficiencies in areas of personnel qualifications, technical approach, and corporate experience, the correction of which would have required major revisions.

DECISION

BENMOL Corporation protests the rejection of its proposal, and the award of a contract to Pentech Services, Inc., under request for proposals (RFP) No. N00123-92-R-5272, issued by the Department of the Navy, for environmental testing services in support of the Naval Aviation Depot, North Island, California (NADEP). BENMOL, the incumbent contractor, contends that the agency's evaluation of its proposal was flawed.

We deny the protest.

The RFP, issued February 4, 1992, contemplated the award of a cost-plus-fixed-fee, level-of-effort contract for engineering, analytical, and technical support services at NADEP and various other Naval bases. While the solicitation encompassed work performed by BENMOL under a predecessor contract for similar services, it included an expanded statement of work which required additional senior level engineers and an estimated 4960 additional hours of work.

Proposals were to be evaluated on the basis of four factors, in descending order of importance: personnel qualifications (50 points), technical approach (30 points), corporate

experience (20 points), and cost (no numerical score). Award was to be made to the offeror whose proposal was determined most advantageous to the government, cost and other factors considered. The RFP advised offerors that evaluation of proposals and the award of a contract was intended to be performed without discussions so that initial offers should contain the offerors' best terms from a cost and technical standpoint.

Six firms, including BENMOL and Pentech, submitted offers by the May 14 closing date. BENMOL offered the apparent low total cost of \$2,963,805 for the base year and 3 option years, while Pentech offered a total cost of \$5,071,908. The proposals of BENMOL, as well as two other offerors, were evaluated as technically "unacceptable," because they would require a complete proposal revision to correct deficiencies. The technical evaluation team found deficiencies in BENMOL's proposal in all three evaluation factors, with the greatest number under personnel qualifications and technical approach. The evaluators found three proposals technically acceptable, of which Pentech's proposal was rated "outstanding," one proposal as "satisfactory," and one as "marginal." Overall, the evaluators found that Pentech's proposal demonstrated a thorough understanding of the RFP requirements; provided exceptionally experienced personnel (in-house and subcontracted); and reflected exceptional corporate experience in all facets of environmental management.

Of the three technically acceptable proposals, the contracting officer noted that Pentech was the highest technically rated, with the lowest proposed cost. Since the cost evaluators had determined that Pentech's prices were fair and reasonable, the contracting officer recommended that award be made to Pentech on the basis of initial proposals, as the offeror providing the greatest value to the government. On November 30, 1992, the agency's contract review board approved the contracting officer's recommendation to award the contract to Pentech. After receiving notice of the award, BENMOL filed this protest, contending that its proposal was incorrectly evaluated by the Navy.

In reviewing protests of allegedly improper evaluations, we will not reevaluate proposals; the evaluation of proposals is within the discretion of the contracting agency, since it is responsible for defining its needs and for deciding on the best method of accommodating these needs. Engineering Mgmt. Resources, Inc., B-248866, Sept. 29, 1992, 92-2 CPD ¶ 217; TLC Sys., B-243220, July 9, 1991, 91-2 CPD ¶ 37. However, we will examine the record to determine whether the evaluators' judgments were reasonable and in accord with the listed criteria. Id. An agency may reasonably find a

proposal technically unacceptable where the proposal contains so many deficiencies that it could only be made acceptable with major revisions. TLC Sys., supra. A protester's mere disagreement with the agency does not render the evaluation unreasonable. Litton Sys., Inc., B-237596.3, Aug. 8, 1990, 90-2 CPD ¶ 115.

According to the RFP, each offeror's technical proposal was to address the proposed means for complying with all applicable specifications (including inherent problems and their solutions) and to be sufficiently detailed to demonstrate the offeror's understanding of the requirements and problems. In evaluating BENMOL's proposal, the evaluators found that the offeror showed a good understanding of the RFP requirements, but overall was technically unacceptable based on deficiencies in all three evaluation areas. In response to the evaluation, BENMOL asserts that the deficiencies identified by the agency are invalid and contends that it was entitled to higher scores in all three factors. We have reviewed BENMOL's numerous arguments, its proposal, and the evaluators' worksheets and reports, and find the agency evaluators correctly identified a number of deficiencies which together support the agency's finding of technical unacceptability.

Under the most important factor, personnel, the evaluators found BENMOL's proposed key personnel lacking in the desired experience and education qualifications needed to perform the required tasks, scoring BENMOL's proposal at 22 out of a possible 50 points. For example, BENMOL proposed a single individual for two positions, Senior Environmental Engineer and Senior Chemical Engineer, an estimated combined requirement of 2300 hours per year. The evaluators not only were concerned that one individual could not handle both senior level positions, but that the proposed individual did not meet the desired qualifications for either position. They also found the individual had claimed credit for experience actually attributable to one of BENMOL's subcontractors. In addition, the evaluators noted that though this individual was listed as a BENMOL employee, he had been pursuing a masters degree since 1991, and was only

¹Our decision does not address all identified deficiencies, but rather a representative sample under each of the evaluation factors. Our review did reveal a limited number of instances where BENMOL's proposal may have satisfied the RFP requirements but did not receive appropriate credit from the evaluators. However, the instances of BENMOL's failure to provide minimum information requested by the RFP are so numerous that the reasonableness of the Navy's determination is not in doubt. See Benton Corp., B-249091, Oct. 21, 1992, 92-2 CPD ¶ 264.

"able to return" to BENMOI at a later date. Thus, the evaluators were unsure of the individual's availability and commitment.

In response, DENMOL argues that the employee in question was deserving of more points for his experience and his capability to handle the responsibilities of both positions. From our review of the resume and requirements, we find DENMOL's arguments constitute mere disagreement with the evaluators' reasonably-based assessment, which does not render the evaluation unreasonable. See Litton Sys., Inc., supra. While acknowledging that the individual had assisted a subcontractor in a particular study, DENMOL also argues that the individual had experience independent of that attributable to the subcontractor. Even if the evaluators' assessment was unfair in this respect, no prejudice to DENMOL resulted because only minimal deductions were taken for this aspect of the proposed individual's experience.² The major deductions for this individual were based on the reasonably perceived risk that he could not handle simultaneously two senior level positions, and might not be available for performance.

DENMOL also contends that it was treated unequally in the personnel evaluation, since the evaluators penalized DENMOL, but not Pentech, for a lack of written commitment letters required by the RFP. The RFP provided that all key personnel were required to be current employees or prospective employees committed in writing to work for the offeror. From our review of the evaluation, we find only one instance where the agency failed to deduct points for a proposed Pentech employee without a letter of commitment. This employee, a proposed "new hire" for Senior Software Systems Analyst, was awarded an average of 5.5 points out of 7, apparently based on a lack of certain experience; there was no mention of the lack of a letter of commitment. DENMOL's proposed individual for the same position was identified in his resume as both a DENMOL employee and "self-employed." The evaluators awarded the individual an average of 2 points based on a lack of experience and commitment letter. While the evaluators appear to have treated the offerors dissimilarly in this respect, we do not find that DENMOL was prejudiced. See MetaMetrics, Inc., supra. Had DENMOL received the same score as Pentech for this individual, its personnel score would increase by only 3 points, making its overall score 70, compared to the

²Competitive prejudice is an essential element of a viable protest; where no prejudice is shown or is otherwise evident, our Office will not sustain a protest, even if a deficiency is evident. See MetaMetrics, Inc., B-248603.2, Oct. 30, 1992, 92-2 CPD ¶ 306.

awardee's score of 86.1. In view of the numerous other deficiencies in BENMOL's proposal, the increase would not have changed the overall technically unacceptable evaluation.

With regard to technical approach, the RFP required that proposals be sufficiently detailed to demonstrate the offeror's understanding, methodology and ability to provide the services required to accomplish six technical tasks including a description of the resources and applicable tools required to accomplish the tasks. The RFP also required offerors to provide a local facility staffed with sufficient technical personnel and outfitted with appropriate emissions measurement equipment. The evaluators identified deficiencies in four of the tasks and found that the proposal did not clearly define the interface between BENMOL and its subcontractors. BENMOL received 22 out of 30 available points. While the separate deductions BENMOL received on each of the four tasks were not substantial, their combination supports the agency's evaluation of technical unacceptability.

For example, the first task entailed the capability to perform air/noise emission and priority pollutant measurements as well as the capability to analyze/interpret data and develop computer models. While BENMOL had a sound knowledge of source test methodology, including modeling requirements, it failed to demonstrate the capability to perform the tests using in-house personnel.

BENMOL responds that its proposal adequately covered all the listed tasks and, in its comments to the agency report, adds a detailed list of past delivery orders it performed on the predecessor contract. BENMOL challenges the evaluators' view that a lack of in-house capability is grounds for deduction of points, noting that its proposal "mentioned" that subcontractors would assist "as needed."

The RFP required offerors to demonstrate that they met the requirements of the RFP with sufficient technical capabilities. Here, although the evaluators designated the deficiency as a lack of "in-house capability," it is plain from the full evaluation that the agency was concerned with the lack of clarity regarding the precise role of the subcontractors identified in BENMOL's proposal. BENMOL identified various subcontractors in its proposal and their capabilities, but did not make clear how and to what extent they would be used. Rather, all of BENMOL's key personnel are identified as BENMOL employees, with subcontracting assistance on an "as needed" and apparently ongoing basis. Under these circumstances, the evaluators reasonably concluded that the protester could not perform the testing "in-house" since it had not adequately demonstrated how and

to what extent its subcontractors would be used to supplement the in-house personnel. While Pentech also relied on subcontractors for portions of its technical approach, its proposal made clear, through the integration of subcontractor employees as key personnel and otherwise from information throughout its proposal, not only the capabilities, but the extent of the subcontractors' involvement as well.

With regard to corporate experience, each offeror was required to describe its successful past corporate performance/experience in providing services similar to the tasks required in the RFP. While the evaluators found that the protester had demonstrated corporate experience in the industrial processes related to defense aviation, they found that the proposal was not clear in delineating what experience was attributable to BENMOL and what experience was attributable to the proposed subcontractors. In the absence of such a delineation, the agency was unable to evaluate the full extent of BENMOL's corporate experience, and awarded the offeror 12 of the 20 available points.

Out of 20 areas identified by BENMOL as representative of its experience, the agency identifies six instances where the protester claimed certain experience, but in fact, the experience was inaccurately stated or was attributable to a subcontractor and not BENMOL. With regard to one of the areas (measurements of jet engine emissions), BENMOL admits that it inadvertently included the "experience" in error. With regard to the other five, BENMOL asserts that either it or one of its listed subcontractors validly possessed the experience.

Although BENMOL relies on the fact that its proposed subcontractors validly possessed the experience in two areas in its listed experience, BENMOL did not identify the subcontractors to which it was attributable. By listing all key personnel as BENMOL employees and by not making clear what role the subcontractors would play, BENMOL's proposal indicated that it, not its subcontractors, would be responsible for the majority of contract performance. Thus, the failure to identify the subcontractors was reasonably viewed as misleading. While there is evidence in the record to indicate that the protester was responsible for some aspects of claimed experience in three areas, the agency assessment was reasonable since the listed experience is clearly broader than that which is actually supported. For example, BENMOL stated that it had experience in providing training programs for in-plant use of noise/air measurement equipment. While the protester did provide training in some technical areas, it admits that it provided no noise training and that its training in air measurement equipment was "informal." Such experience does not reasonably equate

to a training "program." The agency's recognition, based on administration of the predecessor contract, that the protester's own personnel were not responsible for all the experience reasonably supports the deduction of points in this area.

BENMOL also complains that it was unfair for Pentech to be awarded credit for the environmental experience of its subcontractors, while the protester was not. We disagree. The reason for the apparent difference in assessment is that BENMOL, unlike Pentech,³ failed to make clear what role its subcontractors would play in performance of the contract. Instead, BENMOL simply listed the subcontractors, along with their capabilities and some of their employees, and stated throughout the proposal that they would be used on an "as needed basis." The evaluators reasonably concluded that this did not meet the RFP requirement for sufficient detail to indicate the proposed means for complying with all applicable specifications. While BENMOL argues that the agency should have been aware of its relevant experience and how its subcontractors had performed on the predecessor contract, no matter how competent a contractor may be, to ensure that it receives credit in the technical evaluation, the contractor must submit the requisite information with its proposal. See Southeastern Center for Elec. Eng'g Educ., B-230692, July 6, 1988, 88-2 CPD ¶ 13. Having failed to include the necessary information regarding its experience in its proposal, BENMOL was not entitled to receive credit for its allegedly relevant experience.

As detailed above, the record shows that the Navy conducted the evaluation in accord with the listed criteria and reasonably found numerous deficiencies and failures to provide needed information in BENMOL's proposal. Thus, we conclude that the agency had a reasonable basis to determine BENMOL's proposal unacceptable and in need of major revisions.⁴

³Pentech clearly delineated subcontractor and in-house personnel with regard to key personnel resumes. As to corporate experience, Pentech presented both a description of its own experience and that of its subcontractors, including relevant past contracts.

⁴BENMOL also argues that an increase of only a few points would raise its score to that of another offeror whose proposal was included in the "competitive range." To the extent BENMOL is arguing that the agency should have held discussions, since the RFP provided for award on the basis of initial proposals, there was no requirement that the agency conduct discussions. Further, even if BENMOL's score
(continued...)

BENMOL also contends that it should have been awarded the contract because of its lower cost; however, a technically unacceptable offer cannot be considered for award, notwithstanding its low price. Color Ad Signs and Displays, B-241544, Feb. 12, 1991, 91-1 CPD ¶ 154. Since the agency properly found BENMOL's proposal to be technically unacceptable, the fact that BENMOL proposed lower costs than those proposed by Pentech provides no basis to sustain the protest.

The protest is denied.


for James F. Hinchman
General Counsel

¹(...continued)
were higher, it would not necessarily have been considered technically acceptable. The proposal to which BENMOL refers was rated as marginally acceptable and in need of revisions to become acceptable.