



## Decision

**Matter of:** Standard Testing and Engineering Company

**File:** B-256644

**Date:** July 11, 1994

J. Lawrence Blankenship, Esq., and Gladys E. Cherry, Esq., Derryberry, Quigley, Parrish, Solomon & Blankenship, for the protester.

Timothy A. Beyland, Esq., and Milton D. Watkins, Esq., Department of the Air Force, for the agency.

Sylvia Schatz, Esq., and David A. Ashen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Protest that agency improperly downscored proposal is denied where agency reasonably determined that, based on the maximum dollar amount and number of awards contemplated by solicitation for indefinite delivery/indefinite quantity contracts, protester's proposed bonding capacity was insufficient to assure that it could meet a solicitation requirement to furnish a performance bond equal to the amount of any delivery orders that may be issued during contract performance.

### DECISION

Standard Testing and Engineering Company protests the Department of the Air Force's award of four contracts to Rust Remedial Services, Inc., J.A. Jones Construction Service Company, Brown & Root Environmental, and OHM Remediation Services Corporation, under request for proposals (RFP) No. F34650-92-R-0171, for the acquisition of environmental support services at Tinker Air Force Base, Oklahoma, and Eglin Air Force Base, Florida. Standard primarily argues that the agency's evaluation of its proposed bonding capacity was improper.

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

The solicitation, issued on January 27, 1993, as a competitive, partial small business set-aside, required the contractor to furnish all labor, materials, equipment, transportation, and supervision necessary to provide environmental support at the bases. The RFP contemplated the award of "up to four indefinite delivery/indefinite quantity contracts" for a base year with four 1-year options; the solicitation guaranteed each contractor the

award of delivery orders amounting to at least \$1 million in the base year, with "a maximum cumulative amount of \$190,000,000 for a combination of all contract(s) awarded." The RFP required offerors to submit with their delivery order proposals a performance bond, the amount of which "shall equal 100 percent (100%) of the delivery order."

Award was to be made to the responsible offeror whose offer represented the best value to the government based on an integrated assessment of each proposal. The RFP listed the evaluation factors, in descending order of importance, as (1) technical, (2) management, (3) quality, (4) sample tasks, and (5) cost/price. The second of four subfactors listed in descending order of importance under the management factor, the program management subfactor, provided in part that "[t]he offeror shall supply letter(s) of commitment from an approved surety stating their intent to provide necessary bonding for all orders for which your company receives award." The solicitation provided for each factor (except cost/price) and each subfactor to receive a color/adjectival rating (i.e., blue/exceptional, green/acceptable, yellow/marginal, or red/unacceptable), a proposal risk rating, and a performance risk rating.

Proposals were received from 21 firms by the amended March 25 closing date for receipt of proposals. The agency included 17 proposals in the competitive range and issued written discussion questions to the offerors.

In its letter to Standard, dated June 23, the Air Force advised that "[t]he letter provided from the [o]fferor's surety does not indicate the dollar amount of bonding per year which may be obtained by the offeror"; the agency cautioned that "[t]he offeror may be unable to obtain the amount of bonding required to bid on the Tinker and Eglin AFB [Air Force Base] delivery orders." In its response, Standard stated that its proposed surety would be willing to write bonds for up to \$5 million per delivery order and for an aggregate amount of \$8 million. During the subsequent oral discussions with Standard, however, the Air Force again questioned the firm's proposed bonding capacity, requesting clarification on the amount of additional bonding that Standard could provide above the proposed limit of \$5 million for each delivery order. Likewise, in a written summary of discussions which was included in its subsequent October 5 request for best and final offers (BAFO), the agency indicated that Standard had been "asked to discuss how they will obtain additional bonding once they have reached the \$5 million delivery order limitation."

The June 23 agency letter also notified Standard that the RFP would be amended to remove the partial small business set-aside. Thereafter, in a July 29 notice in the Commerce

Business Daily (CBD), the agency announced that the partial small business set-aside had been dissolved and that the acquisition would be conducted under full and open competition. Although a superseding copy of the solicitation included with amendment No. 0002, issued on September 23, still included the statement that "[t]his acquisition is a partial small business set-aside," the October 5 request for BAFOs stated that "[a]ll references to a small business set-aside are deleted."

BAFOs were received from 16 firms. Four firms, but not including Standard, were selected for award based upon the agency's evaluation of cost/price and other factors. The proposals of two of the awardees were evaluated as exceptional with respect to all four of the factors given adjectival ratings and as low risk overall; the proposal of another awardee was evaluated as exceptional under three of the factors and low risk overall; and the proposal of the fourth awardee was evaluated as exceptional under the two most important factors and low risk overall. In contrast, Standard's BAFO was evaluated as exceptional only under the most important factor, and acceptable under the remaining factors, including management, and was viewed as moderate risk overall. Further, Standard's proposal received a rating of marginal under the program management subfactor of the management factor, because of a perceived significant weakness with respect to its proposed bonding capacity. The agency concluded that since the contractor might reasonably expect to receive delivery orders of up to \$47.5 million--that is, one-fourth of the overall contract maximum of \$190 million over 5 years--Standard's proposed bonding of only \$5 million per delivery order and \$8 million in total was insufficient to assure that it could meet the solicitation requirement to furnish a performance bond equal to the amount of any delivery orders.

Upon learning of the awards, Standard protested, first to the Air Force, and then to our Office. Standard maintains that the Air Force's determination to downscore its BAFO under the management factor and rate its BAFO as a moderate risk on the basis of inadequate bonding capacity was improper, because the solicitation did not set forth a specific required bond amount.

We will review an evaluation only to ensure that it was reasonable and consistent with the stated evaluation criteria. Comarco, Inc., B-249697.2, Jan. 26, 1993, 93-1 CPD ¶ 65. Here, we find that the evaluation of Standard's proposal under the management factor was reasonable.

Although the solicitation did not set forth a specific dollar figure for the amount of the required performance

bond--since the required bond is dependent upon the amount of the delivery orders placed against a contract--it did furnish sufficient information from which an offeror in preparing its proposal could reasonably conclude that bonding of \$5 million per delivery order and \$8 million in total would be insufficient. Again, the solicitation contemplated the award of up to four contracts, with delivery orders not to exceed a maximum cumulative amount for all contracts of \$190 million over 5 years, and required the sum of an offeror's performance bond to equal 100 percent of the amount of delivery orders awarded to it. Further, in the minutes of the pre-proposal conference, which were furnished to potential offerors, offerors were specifically cautioned that "all contractors must bid on all delivery order RFPs," and were advised that "[a]ssuming equal competition, a small business may expect to receive one fourth of the awards (\$47.5 million), although the potential exists to receive more or less." Indeed, since the solicitation allowed for the possibility of making award to fewer than four offerors, it appears that a contractor could receive substantially more than \$47.5 million in delivery orders. (We note in this regard that during its discussions with Standard the Air Force questioned the firm's proposed bonding capacity, requesting clarification on the amount of additional bonding that Standard could provide.) In these circumstances, we believe that the agency reasonably downgraded Standard's proposal on the basis that its proposed bonding capacity was insufficient to assure that Standard could meet the solicitation requirement to furnish a performance bond equal to the amount of any delivery orders awarded it.

Standard also argues that it was improperly misled into participating in this procurement by an agency promise at the pre-proposal conference that one of the four contracts would be reserved for a small business; the agency then subsequently dissolved the partial small business set-aside. Our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1994), require that a protest of an alleged solicitation impropriety that did not exist in the solicitation as issued, but which subsequently was incorporated into it, be filed before the next closing date for receipt of proposals following the incorporation of the alleged impropriety. See Rowe Contracting Serv., Inc., B-234633, Mar. 20, 1989, 89-1 CPD ¶ 288. Here, both the June 23 agency letter and the July 29 CBD notice advised offerors that the partial small business set-aside was being dissolved and that the acquisition would be conducted under full and open competition. Although the September 23 superseding copy of the solicitation included with amendment No. 0002 still contained the statement that "[t]his acquisition is a partial small business set-aside," the subsequent October 5

request for BAFOs again made clear that the partial small business set-aside had been dissolved. Accordingly, under our Bid Protest Regulations, Standard was required to protest the elimination of the partial small business set-aside prior to the October 21 closing date for receipt of BAFOs; its failure to do so renders its protest untimely in this regard.

The protest is denied in part and dismissed in part.

/s/ John M. Melody  
for Robert P. Murphy  
Acting General Counsel