

154330



Comptroller General  
of the United States

Washington, D.C. 20548

318235

## Decision

**Matter of:** Advanced Engineering & Research Associates,  
Inc.

**File:** B-261377

**Date:** May 23, 1995

### DECISION

Advanced Engineering & Research Associates, Inc. (AERA) protests the award of a contract to bd Systems, under request for proposals (RFP) No. F04701-93-R-0023, issued by the Department of the Air Force for space systems acquisition support to the Space and Missile Systems Center.

We dismiss the protest.

The solicitation, issued on November 7, 1994, contemplated the award of four time and material/indefinite quantity contracts. The RFP provided that one award would be set aside for a section 8(a) contractor, one award would be set aside for a small disadvantaged business (SDB), one award would be a small business set-aside, and one award would be made on an unrestricted basis. The solicitation stated that in the event that an award could not be made in one category then the work effort would be "rolled-up" to another category. For example, in the event that the agency was unable to make an award in the 8(a) category, then the work effort would "roll-up" to the SDB category, and if an award could not be made in the SDB category, then that work would be "rolled-up" into the small-business category, and so on. The RFP also permitted multiple awards to the same offeror and stated that if an offeror is in line for more than one award then that offeror's capacity to perform the number of contracts sought would be carefully reviewed. Awards were to be made to the responsible offerors whose proposals were determined to be most advantageous to the government. The RFP listed the following evaluation factors, in descending order of importance: technical/management; cost; and general considerations.

Eleven offerors submitted proposals by the closing date, and one offeror, bd Systems, submitted a supplemental proposal for a second award. The agency awarded bd Systems contracts in the 8(a) category and the small business category. This protest followed.

AERA argues that the agency's award, in the small business category, to bd Systems did not represent the best value to the government. AERA, which submitted a proposal in the small business category, argues that its lower price of \$36.27 per hour represents the best value, versus bd Systems's price of \$37.22.

AERA's assertion that it should have received the award solely because it offered a lower price than the awardee fails to state a valid basis for protest because the solicitation provided that award would be based on technical factors as well as on cost. In a negotiated procurement, unless the RFP so specifies, there is no requirement that award be based on lowest cost. Stewart-Warner Elecs. Corp., B-235774.3, Dec. 27, 1989, 89-2 CPD ¶ 598.

AERA's other contention is that bd Systems lacks the capacity to perform the two contracts.<sup>1</sup> AERA is challenging bd Systems's responsibility. This is a question for the Small Business Administration (SBA) because the Small Business Act, 15 U.S.C. § 637(b)(7) (1988), gives the SBA, not our Office, the conclusive authority to determine a small business concern's responsibility through the certificate of competency (COC) process. MRL, Inc.--Recon., B-235673.4, Aug. 29, 1989, 89-2 CPD ¶ 188. The RFP explicitly recognized that the "evaluation" of an offeror's capacity to perform more than one contract would be subject to COC procedures. Since the SBA has exclusive authority to finally determine the responsibility of a small business, our Office generally does not review either the contracting

---

<sup>1</sup>AERA also argues that bd Systems was only permitted by the RFP to seek multiple awards in the "roll-up" order. AERA contends that the agency improperly considered bd Systems's proposals for the small business and the 8(a) categories, out of the "roll-up" order established in the RFP of 8(a), SDB, small business and unrestricted. AERA has misinterpreted the RFP. The "roll-up" procedures described above were to be used in the event that an award could not be made in a certain category, not, as the protester contends, for multiple awards. The RFP stated that if a proposal is in line for more than one award then that offeror's capacity to perform the number of contracts sought would be reviewed, then the SBA may be contacted for a COC.

officer's decision to refer a responsibility question to the SBA, or the SBA's decision to issue or deny a COC. See 4 C.F.R. § 21.3(m)(3) (1995); MRL, Inc.--Recon., supra.

The protest is dismissed.



Paul Lieberman  
Assistant General Counsel