



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: COMPA Industries, Inc.

File: B-278451

Date: January 30, 1998

Robert W. Tate, Esq., The Beles Group, for the protester.

Paul R. Davis, Esq., and Gena E. Cadieux, Esq., Department of Energy, for the agency.

Jacqueline Maeder, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that award of contract to same offeror for two of four support service categories, for which solicitation sought separate offers, is precluded by an eligibility restriction intended to alleviate conflict of interest concerns is denied where the restriction, as amended, can only reasonably be interpreted to mean that offerors are eligible for awards for different service categories, and requires only that services provided under one category be independent of one clearly specified area under other support service categories.

DECISION

COMPA Industries, Inc. protests the award of a contract for two separate task categories to Informatics Corporation under request for proposals (RFP) No. DE-RP06-97RL13732, issued by the Department of Energy (DOE) for support services at its Hanford, Washington site. COMPA contends that the solicitation precluded the award of both task categories to the same offeror and that the agency failed to follow the solicitation evaluation criteria.

We deny the protest.

The solicitation, issued June 25, 1997, via the Internet, sought contractors to perform support services in four separate service or task categories, including project management and engineering services (task 1); environment, safety, health and security services (task 2); financial and administrative services (task 3); and independent assessment services (task 4). Task 1 was open to all firms; tasks 2, 3 and 4 were set aside for small businesses. The solicitation contemplated the award of fixed unit price, labor hour contracts for a 3-year base period with two 1-year options. Specific work to be performed under each contract was to be set out in task orders which would be issued as needed during the life of the contract.

Awardees under each task compete for individual task orders on the basis of Fiscal Year Work Plans (FYWP).¹

The RFP provided detailed descriptions of the work to be performed under each of the four service categories. As relevant here, task 4 required the contractor to assist DOE personnel in their coordination, administration, and management of independent, expert review panels. Originally, DOE hoped to establish independent, expert review panels in many different areas affecting the Hanford site. Therefore, to avoid situations where a contractor was managing an expert panel charged with reviewing work performed by the contractor's own company under a different task, the RFP precluded offerors from submitting offers on both task 4 and any of the other tasks. Specifically, the solicitation originally stated at paragraph L-8:

Note: Because of the nature of activities to be performed under the Independent Assessment Services category, offerors are restricted from submitting offers for all or any combination of the remaining support services categories when proposing on the Independent Assessment Services. Offers received inconsistent with this **Note** will be considered nonresponsive.

The agency subsequently determined that there would not be the need or the funds to have independent expert review panels in the many areas originally anticipated; rather, the need for independent review panels was not likely for any area other than Tank Waste Remediation System (TWRS) privatization, which includes certain issues related to spent nuclear fuels. Consequently, prior to receipt of initial proposals, DOE issued amendment 002, which revised the RFP to more accurately describe the services required and the eligibility guidelines. Specifically, in the cover letter to amendment 002, the agency advised offerors that the requirements relative to the service category entitled Independent Assessment Services had been revised and that under this service category "the support services provided must remain independent from support services provided to TWRS privatization and the Spent Fuels Project work." Amendment 002 revised paragraph L-8 to state:

Note: Because of the nature of activities to be performed under the Independent Assessment Services category, offerors awarded a contract for this service category will not be eligible for award of a FYWP or individual task orders for TWRS Privatization related work under contract(s) for the other three service categories.

¹An FYWP consists of a contractor's statement outlining how it intends to accomplish work under a particular task order in a given year.

The RFP provided for award to the offerors whose conforming proposals represented the best overall value to the government and advised that DOE intended to award on the basis of initial offers without discussions. The RFP identified experience and past performance as evaluation factors, listing various subfactors under each. Past performance and experience were equally weighted, and when combined were more important than price.

DOE received 41 proposals by the August 25, 1997, closing date, 38 of which were determined to be acceptable. COMPA submitted an acceptable proposal for task 4; Informatics submitted acceptable proposals for tasks 3 and 4. The proposals were evaluated by evaluation teams and a cost analyst. Based on the evaluations, COMPA did not receive an award and Informatics was awarded a contract for task 3 and for task 4. This protest followed, in which COMPA seeks to have Informatics disqualified from performing task 4, and to have a contract for that task awarded to COMPA.

The crux of COMPA's protest is that the RFP proscribed the award of a contract to one offeror for both task 4 and any of the other three tasks. In particular, the protester argues that paragraph L-8, as amended, states that an offeror awarded a contract to perform task 4 is not eligible for award of TWRS privatization related work or any FYWP related work. Because the bulk of the work to be awarded under tasks 1 through 3 is essentially FYWP work, COMPA contends that offerors awarded contracts that include task 4 are not eligible for awards under any of the other three tasks.

Where a dispute exists as to the meaning of a solicitation provision, our Office will resolve the matter by reading the solicitation as a whole and in a manner that gives effect to all its provisions; to be reasonable, an interpretation of a solicitation must be consistent with the solicitation when read as a whole. Lithos Restoration, Ltd., 71 Comp. Gen. 367, 370 (1992), 92-1 CPD ¶ 379 at 4; Innovative Tech. Sys., Inc., B-260074, May 24, 1995, 95-1 CPD ¶ 258 at 8.

COMPA's interpretation of the language in amendment 002 is unreasonable in context. The original solicitation prohibited the award of a contract for task 4 and any of the other three tasks. DOE's cover letter to amendment 002, as noted above, explained that support services provided under the independent assessment services category--task 4--"must remain independent from support services provided to TWRS privatization and the Spent Fuels Project work." The letter identifies no other services from which task 4 services must remain independent. The amendment language set forth this same requirement by stating that offerors awarded a task 4 contract would not be eligible for award of FYWP or individual task orders for TWRS privatization related work. This language, read in conjunction with the cover letter explanation of the amendment, can only reasonably be interpreted to mean that an offeror awarded a contract for independent assessment services would not be eligible for an award under an FYWP for TWRS privatization related work, or an

award of any other individual task order for TWRS privatization related work. The amendment is intended to, and does, open competition under task 4 to offerors who may be awarded contracts on any of tasks 1 through 3, and simply prohibits them from receiving any task orders related to TWRS privatization. In this regard, the shift in the proscribing language from designating such offers "nonresponsive" to limiting "eligib[ility] for award" of such work serves to permit the agency to control any possible conflicts by the allocation of appropriate task order awards, while opening up the field of competition.

The protester's suggestion that the amendment language that task 4 services must remain independent of all FYWP related work as well as independent of TWRS privatization related work is implausible. Under this interpretation, amendment 002 is identical in meaning to the original solicitation and thus serves no purpose, notwithstanding the explicit explanation to the contrary in the amendment cover letter. That is, under the original language of the RFP, an offeror awarded a contract for task 4 could not compete for or be awarded a contract on any other task. Similarly, under the protester's interpretation of the revised provision, an offeror could not be awarded a contract for task 4 work and for any other task, since work under these tasks consists primarily of FYWP work. COMPA's interpretation reflects a cramped reading of the language of amendment 002 and a disregard for the stated purpose of the amendment.

COMPA next argues that the agency failed to follow the stated evaluation criteria in determining the best overall value to the government.

Section M of the original solicitation included a table of contents and six paragraphs describing how proposals would be evaluated and how the agency would determine which proposal offered the best value to the government, including M-5, Relative Importance of the Factors, and, M-6, Determining Best Overall Value, which stated that: "In order to determine which offeror represents the best overall value, the Source Selection Official will make a series of paired comparisons among only those offerors who submitted acceptable offers (proposals)." Paragraph M-6 went on to explain how selections would be made from each paired comparison, repeating the process until the official identified the offeror representing the best overall value.

Amendment 001, among other things, deleted paragraph M-4, and revised M-6 to state that the best value would be determined by evaluating the offeror's capability along with the estimated price and then assessing whether the difference between or among competing offerors' proposals indicates a superiority from the standpoint of (1) what the difference might mean in terms of anticipated performance and (2) what the impact of the cost would be as estimated based upon the government's estimated price. Because of the deletion of M-4, the revised M-6 became M-5.

However, the agency inadvertently failed to delete M-4 from the table of contents listing. Thus, while the table of contents listed six paragraphs in section M, only five paragraphs were actually included. Amendment 002 correctly deleted M-4 from the table of contents and correctly re-numbered the remaining paragraphs. No additional revisions were made to M-5, Determining Best Overall Value.

In its report, DOE stated that it had made the award selection in accordance with the RFP, citing M-5, Determining Best Overall Value, and quoting the amended language noted above. COMPA argues that the "criteria quoted by the [a]gency [are] not the relevant RFP criteria" and thus show that the agency "failed to follow the controlling RFP [c]riteria." COMPA goes on to cite revised M-5, Relative Importance of the Factors, which, as noted above, was re-numbered as M-4 after the deletion of the original M-4. The record makes clear that the agency followed M-5 (the revised M-6), the correct controlling criteria, in determining best value. The protester apparently misunderstood that a paragraph (M-4) had been deleted, resulting in the renumbering of the remaining paragraphs. In short, the record does not support the protester's contention that the agency failed to follow the correct evaluation criteria. We also note that the protester fails to provide any indication of how it was prejudiced by the agency's alleged failure to adhere to Compa's understanding of the evaluation scheme.

Finally, the protester argues that the agency improperly evaluated the experience criterion on the basis of past contracts and not on current capability, "as required under the solicitation," and gave Informatics credit for relevant experience for services provided in support of a DOE Carlsbad contract which involved an individual who is currently employed by COMPA.

The protester points to nothing in the solicitation to support its contention that the solicitation specified that only current capability would be evaluated under experience and, in fact, experience under the solicitation was to be evaluated on three subfactors, duration (number of years), level (similarity of previous contracts) and relevance to the service category. Moreover, the solicitation required offerors to list past contracts and offerors were evaluated on these past contracts. Informatics provided a list of contracts for the past 5 years and described the nature of the work performed under nine of them. Informatics did not list or describe any contracts with the DOE Carlsbad Area Office and DOE therefore did not consider the Carlsbad contract to which the protester objects as part of the

evaluation.² Under these circumstances, we have no basis to question the agency's evaluation of Informatics's experience.

The protest is denied.

Comptroller General
of the United States

²Even if Informatics had included the Carlsbad contract in its proposal, the agency could properly have considered this contract as part of Informatics's experience as a corporate entity, which does not depend on the experience of the particular personnel who performed the work. See Precision Elevator, Inc., B-259375, Mar. 20, 1995, 95-1 CPD ¶ 152 at 3-4.