

DECISION



12738 *Roberts*
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THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-196454 DATE: February 8, 1980
MATTER OF: Thomas G. Gebhard, Jr., P.E., Ph.D

DIGEST:

1. [Protest of agency's technical evaluation of proposal] is denied where record indicates agency conducted fair and reasonable review consistent with solicitation's evaluation criteria.
2. While management experience of individual personnel may, in some instances, satisfy solicitation requirement for corporate or firm experience, protester, as individual manager of consultants, concedes lack of appropriate managerial experience. Therefore, agency's downgrading for lack of corporate or firm experience is not unreasonable.
3. Where protester's proposal to evaluate employment practices of state drinking water agencies failed to show depth of understanding of personnel requirements for operating a public water system supervision program, agency reasonably downgraded protester in this evaluation area.
4. Post-award objection to use of solicitation evaluation criterion is untimely filed under Bid Protest Procedures because it concerns alleged apparent solicitation impropriety necessitating filing prior to closing date for receipt of proposals.
5. Agency's consideration of education, experience and salaries when evaluating "understanding of personnel requirements" is not legally objectionable since use of evaluation subcriteria not specified in solicitation is proper where they are sufficiently related to or encompassed by criterion which is set forth in solicitation.

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Thomas G. Gebhard, Jr., P.E., Ph.D. (Gebhard) protests the award of a contract to A. W. Martin Associates, Inc. (Martin) under request for proposals (RFP) No. WA 79-A265, issued by the Environmental Protection Agency (EPA), for "An Evaluation of Employment Practices of State Drinking Water Agencies." Gebhard contends that EPA improperly declared his proposal technically unacceptable, removing it from the competitive range for negotiation. We think EPA's actions are reasonable and consistent with the RFP's stated evaluation criteria and that the protest is without merit.

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In its "Determination of Competitive Range and Source Selection," EPA found the Gebhard proposal, while offering the lowest cost estimate, to be "so technically deficient that it is unacceptable ***[and that t]hese deficiencies are not correctable during meaningful discussions."

In the first place, while the agency found the protester's proposed personnel, as individuals, to be experienced and qualified in the required areas, it found Gebhard to be lacking in prior corporate or firm experience in working with the Safe Drinking Water Act and related legislation and regulations. The requirement for corporate or firm experience was prominently mentioned as the first technical evaluation category of the RFP. Gebhard implies that the individual experience of his proposed personnel should be enough to overcome lack of experience as a firm. However, it should have been clear that the agency sought organizational as well as individual personnel experience because the solicitation assigned equal evaluation point values (30 points) to each type of experience. Furthermore, while the management experience of individual personnel can, in some instances, satisfy a requirement for corporate or firm experience, such is not the case here. Thomas Gebhard, who submitted a proposal as an individual who would manage other consultants, admits only a familiarity with the programs and concedes that the firm "is not experienced in implementing the Safe Drinking Water Act through State regulatory agencies." We therefore find nothing unreasonable in the agency's determination to downgrade Gebhard in this regard.

Gebhard believes that undue emphasis was placed on corporate experience, the effect of which was to exclude qualified firms without EPA experience. Since this issue, first raised by Gebhard after award, contests the agency's use of the first evaluation category in the RFP, it is untimely filed under our Bid Protest Procedures. Alleged improprieties in any solicitation which are apparent prior to the closing time for receipt of proposals must be protested prior to that closing time to be considered. 4 C.F.R. §20.2(b)(1) (1979). (1)

EPA also found that Gebhard's proposal exhibited "no understanding of the personnel requirements for operating a public water system supervision program in terms of educational requirements, experience needs, or salaries in relation to experience and training."

In contesting the agency's assessment of his proposal in this area, Gebhard points to two pages of his proposal which, he submits, contain information relating to staffing requirements of state regulatory agencies and indicating experience in staffing agencies with a variety of personnel skills. However, we believe the thrust of the agency's negative evaluation here was Gebhard's lack of adequate discussion to show the firm's capabilities or potential capabilities in this area. Indeed, Gebhard recognizes this in noting that "EPA's criticism is apparently based on the quantity [lack] of information in [Gebhard's] proposal." Our review of Gebhard's proposal indicates that while the protester claims a familiarity with the personnel system of one state, he fails to explain in any depth an understanding of that or any other personnel system. Therefore, we conclude it was not unreasonable for the agency to downgrade Gebhard in this area.

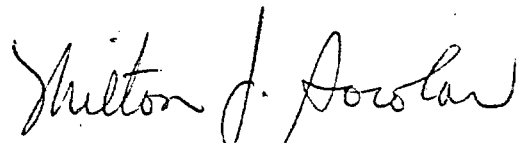
Gebhard also argues that EPA's reference to the educational requirements, experience needs, or salaries in relation to experience and training of these personnel were "invisible criteria," that is, not contained in the RFP. Gebhard believes these criteria were applied without warning. (2)

We have held that each evaluation subcriterion need not be disclosed in the solicitation so long as offerors are advised of the basic criteria. Genasys Corporation, 56 Comp. Gen. 835 (1977), 77-2 CPD 60. Additional factors may be used in an evaluation where there is sufficient correlation between an additional subcriterion and the generalized criteria in the RFP so that offerors are on reasonable notice of the evaluation criteria to be applied to their proposals. Littleton Research and Engineering Corp., B-191245, June 30, 1978, 78-1 CPD 466. For example, in a procurement of an accounting system to be implemented by computer terminals and linked by a telecommunications system, we found that an undisclosed subcriterion concerning telecommunications and Federal accounting experience was logically related to the explicit evaluation criteria calling for "related corporate experience" and properly could be utilized in evaluating proposals. Genasys Corporation, supra.

In the instant case, education, experience and salaries of the personnel are factors which are sufficiently related to the announced criterion which calls for a demonstration of understanding of personnel requirements. We thus find no merit in Gebhard's argument.

Gebhard also contests the agency's evaluation of Gebhard's allocation of man-hours and the specificity of the proposal's technical approach. A review of the record indicates that the Gebhard proposal was downgraded a total of only 5 points out of 100 total evaluation points for these areas. Since the cutoff score for the competitive range in this procurement was 74.25 points and Gebhard was rated at 47.85 points, we see no need to discuss these matters because, even assuming that Gebhard is correct in these matters and 5 additional points should have been added to its score, it is apparent that the protester's technical ranking would not have been so favorably affected as to place it in the competitive range as ultimately determined by the agency. (3)

The protest is denied.



FOR THE Comptroller General
of the United States