



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Gates Construction Corp.
File: B-229573
Date: December 14, 1987

DIGEST

A solicitation provision which places substantial weight on an evaluation factor of prior experience in hard rock dredging is not unduly restrictive of competition or in excess of agency needs where contract involves significant hard rock dredging which the record indicates is a complex and difficult task and the agency has established an urgent need for timely and proper completion of the work.

DECISION

Gates Construction Corp. protests request for proposals (RFP) No. DACW21-88-R-0001 issued by the United States Corps of Engineers for dredging, demolition, and construction work in connection with the United States Naval Submarine Base, Kings Bay, Georgia. Specifically, Gates protests the weight given company experience in the solicitation evaluation criteria as unduly restrictive of competition and in excess of agency needs.

We deny the protest.

On October 9, 1987 the Corps issued the RFP with November 10 as a closing date for submission of proposals. The work requires a degree of hard rock dredging and is a pre-requisite to the docking, maintenance, and operations of the Trident submarine, U.S.S. Tennessee, at Kings Bay. The dredging is necessary to allow the submarine to pass through Kings' Bay channel to the base and will take 250 days to complete. Gates filed its protest with our Office on November 9. The Corps opened proposals received on November 10. Gates did not submit an offer. Negotiations are scheduled and award is suspended pending the outcome of this decision.

Due to the Corps' urgent need to perform this contract, our Office invoked the express option available under our Bid Protest Regulations, 4 C.F.R. § 21.8 (1987), and is issuing

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this decision within 45 calendar days of Gates' filing of this protest with our Office.

The solicitation provided that primary emphasis in the proposal evaluation process would be placed on company experience and equipment and a lesser degree of importance would be placed on the cost/price. The solicitation further elaborated on the evaluation criteria in descending order of importance as (1) past experience of company in dredging which required removal of rock; (2) equipment capability and availability, reliability, and condition; (3) price proposal; (4) experience and availability of personnel; and (5) proposed schedule. The solicitation provided guidance in describing the firm's capability, experience, and equipment and personnel characteristics. With respect to company experience, the solicitation stated that the offeror should submit evidence of broad, progressive and responsible experience to indicate that the offeror has developed ability to support the work called for in the specifications. It further provided that the statement of experience should include prior experience acquired under other contracts which would substantiate ability to perform this contract which requires removal of significant quantities of hard rock and that contracts cited should have been completed within the last 5 years, or currently nearing completion. The provision also advised that offerors without previous government contracting experience would not be penalized.

Gates alleges that only firms which have previously contracted with the Corps could meet the experience requirement of hard rock dredging and 5 years related work. The protester contends that the evaluation guidance which emphasized experience in dredging hard rock is unduly restrictive of competition, beyond the needs of the agency, and discourages otherwise capable firms from submitting proposals.

In preparing a solicitation for supplies or services, a contracting agency must specify its needs and solicit offers in a manner designed to achieve full and open competition, 10 U.S.C. § 2305(a)(1) (Supp. III 1985). Consequently, when a solicitation provision is challenged as unduly restrictive of competition or as exceeding the agency's actual needs, the initial burden is on the procuring agency to establish support for its contention that the provision is justified. Abel Converting Inc., B-224223, Feb. 6, 1987, 87-1 CPD ¶ 130; Daniel H. Wagner, Associates, Inc., 65 Comp. Gen. 305 (1986), 86-1 CPD ¶ 166. We determine the adequacy of the agency's justification by examining whether its

explanation can withstand logical scrutiny. R.R. Mongeau Engineers, Inc., B-218356, et al., July 8, 1985, 85-2 CPD ¶ 29. Once the agency establishes support for the challenged provisions, the burden shifts to the protester to show that the provisions in dispute are unreasonable. Information Ventures, Inc., B-221287, Mar. 10, 1986, 86-1 CPD ¶ 234.

We do not find that the protester has shown that the agency emphasis on prior experience in hard rock dredging is unreasonable. The agency explains that the dredging is required to allow passage of the Trident submarine through Kings' Bay channel and is estimated to exceed 30 percent of the total job. The record further indicates that hard rock dredging is a very complex and difficult task. The protester does not rebut this conclusion. The agency further emphasizes the urgency of the deployment of the Trident submarine missile system which requires timely completion of the dredging to allow the Trident submarine to use the Kings' Bay Naval Submarine Base which is the only east coast submarine base. Under these circumstances, the agency reasonably placed emphasis in its solicitation for proven company experience and expertise in hard rock dredging to ensure timely and proper completion of the dredging operation. See General Electric Company, Mobile Communications Business, B-225381, Feb. 6, 1987, 87-1 CPD ¶ 133.

Gates' comments to the agency report view the emphasis on company experience to mean that the Corps finds companies without recent experience in hard rock dredging to be "per se unable to support the required contract work." To the contrary, the solicitation encourages prospective offers to discuss fully how their firms could meet the requirements of the work to be performed. For example, if Gates has expertise in ocean dredging and marine construction, as stated in its comments, the solicitation states that the Corps would take into account related experience in its proposal evaluations. We find it reasonable to give preference to a firm with hard rock dredging experience where the work involves this type of dredging and the record shows that hard rock dredging is a more difficult type of dredging. The record indicates that a firm familiar with and experienced in this type of dredging would have a greater potential to timely complete the work and minimize problems of administration, quality control, and performance.

In addition, we are not persuaded by the protester's argument that competition would necessarily be limited to only those firms that previously contracted with the Corps in the Kings Bay area. The agency has provided our Office with a partial listing of both government and non-government

contracts within the past 5 years that have concerned hard rock dredging. Other similar work accessible to American dredging firms has been done at the Naval Harbor in Mombassa, Kenya, the Port Everglades Authority in Florida, three jobs at Brunswick Harbor, Georgia, two jobs in British Columbia, and one in Honolulu, Hawaii. Gates contends that some of these are not realistically accessible to the majority of American firms but fails to elaborate further. The fact that some projects may not be local or that some projects were contracted to two or three firms does not establish that the solicitation is necessarily restrictive of competition. It is well established that the number of possible sources for an item or service does not determine the solicitation provision's restrictiveness. Doss Aero-nautical Services, Inc., B-222914, Aug. 27, 1986, 86-2 CPD ¶ 232.

Further, the requirement is for offerors to list contracts completed by which the agency can assess past experience. Offerors are not limited to hard rock dredging experience and are invited to establish ability to meet the contract requirements on the basis of its documented experience generally.

In our view, the protester has failed to show that the challenged experience evaluation criteria are unduly restrictive of competition or exceed the agency's needs.

The protest is denied.

Since the protest is denied, Gate's claim for the costs of filing and pursuing the protest is denied. Bay Decking Co., Inc., B-227833, Sept. 28, 1987, 87-2 CPD ¶ 307.


James F. Hinchman
General Counsel