



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Professional Pension Termination Associates  
File: B-230007.2  
Date: May 25, 1988

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### DIGEST

1. Protest that RFP does not provide sufficient information for offerors to prepare competitive proposals is denied where contract to be awarded is a labor-hour, level-of-effort one and protester does not show that solicitation is restrictive of competition by demonstrating that it is disadvantaged by the solicitation in any way not shared by other offerors.
2. Protest that during discussions agency is required to provide full information on status of work to be performed under solicitation calling for a labor-hour, level-of-effort type contract is denied. Offerors are not entitled to discussions concerning the RFP's statement of work; rather, agencies are only required to point out weaknesses or deficiencies in proposals and afford the firm an opportunity to revise its offer.
3. Protest that offeror was not allowed sufficient time after RFP amendment to prepare revised proposal is denied where firm was previously aware of one requirement of the amendment in time to amend its proposal and the amendment otherwise did not require significant changes in proposal.

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### DECISION

Professional Pension Termination Associates, Inc. protests the terms of request for proposals (RFP) No. 88-01 issued by the Pension Benefit Guaranty Corporation (PBGC) for professional services and the negotiations conducted under that solicitation. In general, the protester contends that (1) the solicitation was ambiguous and did not provide sufficient information for offerors to submit competitive proposals; (2) the agency issued a material solicitation amendment without allowing offerors sufficient time to amend their proposals; and (3) the agency failed to conduct meaningful negotiations with the protester.

We deny the protest.

#### BACKGROUND

The RFP was issued by PBGC to acquire assistance in determining the pension benefits for pension plan participants in approximately 22,350 pension plans. The agency issued this solicitation and RFP No. 88-02 in order to comply with a court approved settlement agreement in the cases of Rettig v. Pension Benefit Guaranty Corporation, 744 F.2d 133 (1984) and Piech v. Pension Benefit Guaranty Corporation, 744 F.2d 156 (1984). Under that settlement, PBGC agreed to determine, on a schedule set out in the agreement, the benefits of participants in 350 trustee pension plans 1/ and 22,000 non-trusteed plans.

Under the RFP, the contractor is to provide "highly qualified professional expertise to the Corporation [PBGC] on a Labor-Hour Basis." The RFP further provided that PBGC will submit selected plans to the contractor for processing on either an individual case basis or in groups.

Among other services, the contractor may be required to identify missing or incomplete data, issue initial benefit determination letters, locate missing participants, prepare files for payment, review, duplicate and assemble data for actuarial use, request files from the Federal Records Center and maintain and track files on the PBGC tracking system. Further, the contractor is required to maintain daily logs and individual plan checklists and prepare quarterly and monthly reports on the work. Based on case lists supplied by PBGC and priorities established by the settlement agreement, the contractor is to provide a detailed workplan including such information as cases to be processed, contractor employee assignments and target dates.

The contractor is required to provide a written certification of the accuracy and completeness of all work it performs and to justify the failure to complete work in planned time frames. According to the RFP, PBGC is to provide initial orientation on PBGC policies and procedures to be followed and other orientation, including plan specific training during the contract. The RFP also indicated that, after the first month of performance, the contractor is expected to complete the settlement implementation tasks for at least 11 participants per billable work hour on average over the duration of the contract.

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1/ A trustee plan is a terminated pension plan for which PBGC is trustee.

The RFP included labor categories and ranges of effort that are applicable to all work at the rates to be proposed by the awardee. Those rates are to include direct labor, indirect costs and profit. The listed labor categories and levels of effort for the base year and 2 option years were as follows:

<u>Labor Categories</u>	<u>Level of Effort</u>	
	<u>Minimum Hours</u>	<u>Maximum Hours</u>
Project Manager	1,500	2,000
Senior Team Member	1,500	4,000
Junior Team Member	1,500	8,000
Clerk/Technician	1,500	8,000

Following this list, the RFP stated at section F.2b:

The contractor shall designate one (1) working Project Manager for the personnel performing under this contract. In addition, the contractor shall provide two (2) senior and four (4) junior team members and four (4) clerks. The contractor may propose an alternative personnel composition. (Refer to Section J, Attachment B, for a description of labor categories.)

Section J of the RFP included a detailed breakdown of the experience and qualification requirements and the primary job duties of the four listed labor categories: project manager, senior and junior team member and clerk/technician. The RFP provided that the award decision would be based on price (40 points), and the following technical factors: experience (15 points), personnel experience (25 points), technical discussion (5 points) and management and supervision of personnel (15 points).

Professional filed a protest with this Office on January 14, 1988, before the initial due date for proposals, contending that the RFP was ambiguous and susceptible to more than one interpretation. In its protest, Professional said that it requested from the agency information regarding the RFP and the status of the work but contracting officials refused to

answer its questions. The protester requested that the January 15 due date for initial proposals be delayed and the RFP amended and clarified. Since the settlement agreement imposed a series of court supervised deadlines for benefit determinations, PBGC determined, under 31 U.S.C. § 3553(c)(2) (Supp. III 1985), that urgent and compelling circumstances significantly affecting the interests of the United States would not permit withholding award of the contract pending resolution of the protest and that, to meet those deadlines, the initial proposal due date could not be delayed. Thus, on the scheduled proposal due date, January 15, eight proposals were received, including one from Professional. One offeror withdrew its proposal and the remaining proposals were evaluated between January 19 and January 26. All proposals were judged either technically acceptable or, as in Professional's case, susceptible to being made acceptable. Professional's proposal received a technical score of 37.7, which was far lower than the 57.5 score received by the highest rated offeror.

Professional did not propose the 11-person team including a project manager, 2 senior members, 4 junior members, and 4 clerk/technicians as set out in the RFP. Rather, responding to the second sentence of section F.2b, Professional's proposal was based on a personnel plan composed of 41 employees including specialists in such areas as file management, correspondence, benefit determinations, software systems support and actuaries and attorneys. The six other offerors submitted proposals based on the use of an 11-person team.

After submitting its proposal, Professional continued to request information on the solicitation and the work to be performed. According to Professional, prior to meetings with the agency on January 27 and February 10, contracting officials agreed to answer the firm's questions in writing but during those meetings the same officials repeatedly stated that the firm's questions were not relevant to the preparation of a proposal. On February 9, PBGC issued an amendment to the RFP. That amendment made a number of changes in the RFP evaluation scheme and stated that all offerors were required to offer based on the RFP's 11-person scheme and that alternative proposals based on a different approach would only be accepted in addition to a proposal based on the required staffing. The amendment set the closing date for best and final offers (BAFOs) as February 16.

On February 12, Professional filed a second protest of PBGC's issuance of the amendment and the agency's failure to conduct meaningful negotiations.<sup>2/</sup> Professional did not submit a best and final offer (BAFO) on February 16 as required. After evaluation of the BAFOs, a contract was awarded to Office Specialists of Massachusetts on February 29.

#### JURISDICTION

As a preliminary matter, PBGC contends that our Office is without jurisdiction to decide this protest because the contract awarded under RFP No. 88-01 is partially funded with trust funds. PBGC's position is apparently that this Office does not have jurisdiction to decide protests of acquisitions funded in part by nonappropriated funds.

We do not agree. Our jurisdiction under the Competition in Contracting Act of 1984 (CICA) 31 U.S.C. § 3551 et seq. extends to bid protests challenging procurements conducted by federal agencies; our jurisdiction does not depend on the items or services being acquired or on the source of the funds for the acquisition. CPT Text-Computer GmbH, B-222037.2, July 3, 1986, 86-2 CPD ¶ 29. According to CICA, "federal agency" has the same meaning as that given by section 3 of the Federal Property and Administrative Services Act of 1949 (FPASA) (40 U.S.C. § 472 (1982)). 31 U.S.C. § 3551(3). That definition includes wholly-owned government corporations. Although the term "wholly-owned government corporation" is not itself defined in the FPASA, we read it to include the corporations so designated in the Government Corporation Control Act. Monarch Water Systems, Inc., 64 Comp. Gen. 756 (1985), 85-2 CPD ¶ 146. Since PBGC is so designated, we have jurisdiction to decide the protest. 31 U.S.C. § 9101(3)(I) (1982).

#### PROTEST

Professional's principle complaint is that the solicitation is ambiguous since it does not clearly set out the responsibilities of the contractor or the agency under the contract. Among other things, the protester objects to the RFP's lack of clarity as to what equipment and training PBGC is to provide, whether the contractor must provide actuar-ies, the nature of the records currently in the agency's

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<sup>2/</sup> Since both protests concern the same solicitation and raise similar issues, we have consolidated the protests and consider them in one decision.

possession and the contractor's obligation to contact plan sponsors and plan participants to gather information.

The protester also argues that since the contract is being awarded pursuant to the court approved settlement agreement, which provides that the court will retain jurisdiction to supervise the settlement, it is unclear whether the contractor will be subject to the jurisdiction of the court. If that is the case, Professional argues that the contractor would need to include significant additional expense in its overhead to retain legal counsel to respond to the court.

Further, Professional argues that PBGC contracting officials refused to provide it with worksheets and copies of settlement implementation tasks and that these items were necessary to establish pay rates, to provide the technical expertise required to certify the accuracy and completeness of work and to determine the required technical effort and level of supervision.

Professional says that the agency's refusal to answer its questions adversely affected the ability of every offeror to prepare an initial proposal. In its second protest, filed after submitting its proposal and after a series of meetings with the agency, Professional argues that because PBGC still refused to respond to the firm's questions, the agency failed to conduct meaningful discussions. Finally, Professional argues that the protested RFP and RFP No. 88-02 are contradictory because the protested RFP requires the contractor to do work that is also required under RFP No. 88-02.

#### AGENCY RESPONSE

PBGC explains that its contracting personnel attempted to respond to the issues raised by the protester. For instance, the agency says that it pointed out to the protester that the RFP is not ambiguous with respect to the procedures for contacting plan sponsors since the RFP merely requires PBGC permission before making such contacts. Also, the agency says that it has explained that the RFP states that the agency will provide necessary equipment and training, but that the agency retains the discretion to determine what equipment and training are necessary. PBGC also says that even after it attempted to respond to Professional's numerous inquiries, the firm submitted 21 pages of questions on January 12. The agency says that due to the pressing need to award the contract, it was unwilling to extend the January 15 closing date so there was not sufficient time to respond to the questions. Further, PBGC says that six offerors besides Professional were able to prepare proposals, all of which were judged either

technically acceptable or susceptible to being made acceptable and that no other offeror questioned the RFP requirements. PBGC thus concludes that the RFP was sufficiently clear to allow offerors to prepare competitive proposals.

The agency also states that it did conduct meaningful discussions with the protester as it informed the protester of the deficiencies in its proposal. The agency maintains that its obligation to conduct meaningful discussions does not include answering numerous questions concerning the RFP posed by an offeror.

#### SOLICITATION PROVISIONS

Solicitations must be drafted to inform all offerors in clear and unambiguous terms of what is required of them so that they can compete on an equal basis. Newport News Shipbuilding and Dry Dock Co., B-221888, July 2, 1986, 86-2 CPD ¶ 23. There is no legal requirement, however, that specifications be drafted in such detail as to eliminate completely any risk for the contractor, or that the procuring agency remove every uncertainty from the mind of every prospective offeror. Id.

Where, as here, a dispute exists as to the actual meaning of solicitation requirements, we read the solicitation as a whole and in a manner that gives effect to all its provisions in an effort to resolve the dispute. Energy Maintenance Corp., B-223328, Aug. 27, 1986, 86-2 CPD ¶ 234. We believe that the RFP, when read as a whole, is reasonably clear and unambiguous. First, the solicitation calls for a labor-hour, level-of-effort type contract under which the contractor is to provide services at specified fixed hourly rates. Further, although PBGC is required by the settlement agreement to process 22,350 pension plans, that agreement is not, as the protester seems to argue, incorporated into the contract, and under the RFP the contractor is not responsible for all required work on all 22,350 plans nor is the contractor obligated under the RFP to deal directly with the Court. Rather, the RFP provides that PBGC "will submit selected plans to the contractor" for processing in accordance with the terms of the RFP. Although, for example, Professional says that the RFP is not clear as to whether the contractor is to provide actuaries, the RFP includes a list of required employees and employee qualifications; actuaries are not listed and the contractor is only required to provide the employees called for by the RFP.

In other words, under the terms of the solicitation, the contractor is to provide 11 employees with the specified qualifications, to perform tasks listed in the contract at

the hourly rates also listed in the contract at a level-of-effort called for by the contract. The protester's quest for more specificity appears to be grounded in its belief that it cannot meet the obligations of the RFP with the level-of-effort and the staffing specified. While it is evident that the protester disagrees with the concept set forth in the RFP it has not shown that the agency's conclusion that the tasks can be satisfactorily performed by an 11-member team is unreasonable. In this respect, the contracting agency, not our Office or the protester, is responsible for determining its needs and the best means of meeting those needs since the agency is most familiar with the conditions under which the services are to be used. Richard M. Walsh Associates, Inc., B-216730, May 31, 1985, 85-1 CPD ¶ 621. Moreover, Professional has not shown that it is disadvantaged in any way not shared by the other offerors. Under these circumstances, and since none of the other six offerors questioned the RFP requirements, we think that the RFP is sufficiently clear to permit offerors to submit acceptable offers.

#### DISCUSSIONS

We also reject Professional's contention that discussions were inadequate since the agency did not answer all the firm's questions concerning the RFP. The purpose of negotiations is to lead all offerors having a reasonable opportunity of being selected for award into the areas of their proposals that require amplification or to point out weaknesses or deficiencies in them, and then to afford the firms the opportunity to revise their offers. Martin Advertising Agency, Inc., B-225347, Mar. 3, 1987, 87-1 CPD ¶ 285. Ultimately the content and extent of discussions are matters within the judgment of the agency involved and are not subject to question by our Office unless they are clearly without a reasonable basis. Northwest Regional Educational Laboratory, B-222591.3, Jan. 21, 1987, 87-1 CPD ¶ 74.

Here, we conclude that PBGC fulfilled its obligation to conduct meaningful discussions by informing Professional of the deficiencies in its proposal and giving the firm the opportunity to amend its proposal. According to PBGC, on January 27 it informed Professional that its BAFO should include a statement of experience on similar projects and that to be considered acceptable, the firm should submit resumes and other information on the 11 positions listed in the RFP. Although Professional argues that the agency was required to provide more information on the work required than was in the RFP, there is no requirement that the agency answer an offeror's questions concerning the RFP's terms where the matters raised either do not relate to the

deficiencies which the agency has identified in the offeror's proposal, or are already encompassed in the agency's identification of the proposal deficiencies. Here, Professional was notified of the agency's concerns about its proposal and was given the opportunity to amend its proposal. No more was required. Northwest Regional Educational Laboratory, B-222591.3, supra.

#### TWO SOLICITATIONS

We also find no merit to the contention that the protested solicitation, RFP No. 88-01 and RFP No. 88-02 are contradictory. RFP No. 88-02 calls for the contractor to abstract and summarize benefits of plans, determine and calculate benefits payable with respect to each plan, apply annuity rates and actuarial factors to obtain present value amounts of benefits, review processed cases, create a computer data base of plan participant information, provide listings of calculations by participant, prepare benefit statements and other related duties. In short, under RFP No. 88-02 the contractor is to calculate benefits, while the contractor under RFP No. 88-01 is to provide administrative support. Although there is potentially some overlap between the work to be performed under the two solicitations, we do not believe they are contradictory.

Professional argues also that contracting officials should have offered the firm a copy of RFP No. 88-02 in response to the firm's questions, since that solicitation contained information that would have been helpful in preparing a proposal under RFP No. 88-01. The protester says that other offerors who had access to RFP No. 88-02 and who participated in discussions under that solicitation had an unfair competitive advantage.

PBGC explains that there was no reason to give the firm a copy of the other solicitation since information in that solicitation was not relevant to RFP No. 88-01. For instance, the agency says that the protester is mistaken in its impression that the worksheets to be used in contracts awarded under both RFPs were the same and notes that, as the protester was told, the worksheets for RFP No. 88-01 were not yet developed when it asked for them. Further, the agency explains that no discussions were conducted under RFP No. 88-02, the awardee under the protested RFP was not provided a copy of 88-02 and a contract was awarded under that solicitation on December 22, 1987.

Under the circumstances, and in view of our conclusion that RFP No. 88-01 contained sufficient information for offerors to prepare competitive proposals, we find no merit to the

allegation that other offerors had a competitive advantage because they had reviewed RFP No. 88-02.

#### RFP AMENDMENT

Professional also argues that prior to its amendment, the RFP did not require offerors to submit an 11-person proposal in order to offer an alternative staffing proposal and that the mandatory requirement for an 11-person team was a material change in the RFP that called for more time than was allowed to submit a BAFO. Professional also maintains that the amendment materially changed the RFP requirements by including new evaluation factors. The protester says that it was given a copy of the amendment on February 10 at a meeting with PBGC officials, which did not allow sufficient time to prepare a revised proposal by February 16.

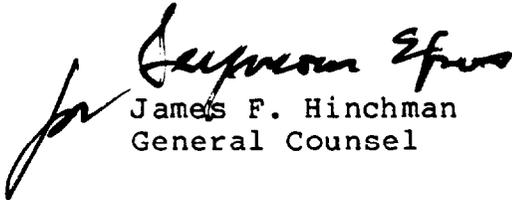
In our view, although the RFP did not clearly require offerors to propose an 11-member team when they offered an alternative staff proposal, the RFP clearly indicated that the agency thought that 11 employees with the listed qualifications and experience were adequate for the work. Moreover, the record shows that on January 21, the agency orally informed the firm that it should propose an 11-person team. The protester's record of a January 21 phone conversation with the contracting officer says that "[t]he agency was expressly requesting that [Professional] bid eleven people." Further, the record shows that during discussions, on January 27, Professional was told that its proposal must contain information regarding the 11-listed positions. Thus, at the latest, Professional was aware on January 21 that it should propose an 11-person team with the listed qualifications and experience. The protester simply disagreed with the agency's view and continued to argue that a much larger staff was required. We conclude that Professional had a reasonable opportunity to submit an amended proposal which met the requirement by February 16.

We also reject the protester's contention that the amendment materially changed the RFP evaluation criteria requiring more time for Professional to amend its proposal. The amendment merely distributed the 25 points assigned by the RFP to the personnel qualification evaluation factor over four subfactors and deleted two provisions from the evaluation criteria that did not significantly affect Professional's ability to prepare its BAFO. The subfactors added by the amendment to the personnel qualifications evaluation factor--background in "Title IV of ERISA or PBGC operations," data processing experience, employee benefits field experience and document analysis and benefit determination experience--were all reasonably encompassed within that evaluation factor and, in fact, were already

described by the RFP in section J, which set experience requirements for the four positions listed in the RFP.

Further, we do not understand how the sections of the evaluation scheme deleted by the amendment prejudiced Professional's ability to prepare a timely BAFO. The amendment deleted the "technical discussion" evaluation factor and a sentence that stated that evaluation points would be assigned based on the extent of an offerors' knowledge of defined benefit pension plans, Title IV of ERISA or PBGC operations. These changes did not, in our view, require offerors to add anything to their proposals and the protester does not explain what significant changes it would have made in its proposal to comply with these changes in the evaluation scheme. Thus, although the protester was given the written amendment with these changes on February 10 we think the firm should have been able to submit a BAFO on February 16.

The protest is denied.



James F. Hinchman  
General Counsel