

Tietrovito



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Hydro Research Science, Inc.

File: B-230208

Date: May 31, 1988

DIGEST

1. Protest challenging as unduly restrictive an evaluation plan in which personnel experience is more important than firm experience and where offerors must submit, for evaluation, plans for training their personnel is denied where the protester has not shown the evaluation scheme to be unreasonable.
2. Protest that procuring agency chose relative weights of evaluation criteria to favor competitor is denied where there is a reasonable basis for agency's discretionary actions and the record reflects no specific and malicious intent to injure protester.

DECISION

Hydro Research Science, Inc. (HRS), protests that request for proposals (RFP) No. DACW07-88-R-0023, issued by the United States Army Corps of Engineers (Corps), for the operation and maintenance of the San Francisco Bay/Delta Hydraulic Model (Bay/Delta Model) is defective and should be revised. Specifically, HRS contends that the relative weights of evaluation factors and the evaluation of offerors' training needs are unduly restrictive of competition.

We deny the protest.

The solicitation, originally issued August 12, 1987, as a 100 percent small business set-aside, contemplated the award of a fixed-price, requirements contract. Proposals were received from HRS and Hydronetics, Inc. The Corps awarded a contract to Hydronetics and HRS protested the award. Hydro Research Science, Inc.--Reconsideration, B-228501.2, Apr. 29, 1988, 88-1 CPD ¶ 418. As a result of the protest, the Corps terminated Hydronetics' contract and reissued the solicitation as the RFP now in dispute.

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The present RFP lists the following evaluation criteria, in descending order of importance:

1. Contractor's basic management work plan describing: (a) methods to assure timely response to negotiated work orders; (b) plan for operation of physical model; (c) plan for performance of preventative maintenance; (d) identification of, and plan for providing, training; and (e) quality control plan;
2. Specific experience, education, and professional standing of key members of proposed staff relative to operation and maintenance of tidal hydraulic model;
3. General capability of firm itself, past experience, and in-house capabilities.

Unlike earlier solicitations, the RFP informed offerors that key personnel experience was more important than firm experience. In addition, the RFP deleted an earlier solicitation provision informing offerors of a planned work order to provide training to the awardee's personnel and included, for the first time, under evaluation factor No. 1 (management work plan), the requirement that offerors provide plans for training their own personnel.

HRS contends that the reversal of the relative weights of the evaluation criteria and deletion of the planned work order to provide training favors Hydronetics and is unduly restrictive of competition. It is well settled that a determination of an agency's minimum needs and the selection and weights of evaluation criteria to be used to measure how well offerors will meet those needs are within the broad discretion entrusted to agency procurement officials. Air Tractor, Inc., B-228475, Feb. 5, 1988, 88-1 CPD ¶ 115; Augmentation, Inc., B-186614, Sept. 10, 1976, 76-2 CPD ¶ 235. However, when a solicitation provision is challenged as unduly restrictive of competition, the initial burden is on the procuring agency to show that the provision is justified. We test the adequacy of the agency's justification by determining whether its explanation is logical and reasonable. Once the agency establishes support for the challenged provision, the burden shifts to the protester to show that the provisions are unreasonable. Gates Construction Corp., B-229573, Dec. 14, 1987, 87-2 CPD ¶ 588.

With respect to the relative weights of the evaluation criteria, the Corps explains that, in the evaluation of the two prior solicitations for Bay/Delta Model services, it consistently placed more emphasis on personnel experience

than firm experience despite the fact that these solicitations informed offerors that firm experience was more important than personnel experience.^{1/} The present RFP correctly identifies the relative weights of the evaluation factors. The Corps states that placing more emphasis on personnel experience encourages new firms to enter the competition while emphasizing firm experience tends to limit competition.

HRS, in its comments, contends that the relative weights of personnel experience vis-a-vis firm experience will have no effect on competition. HRS argues that since the management work plan is the most important evaluation criterion, no company would base its decision to submit an offer on the relative weights of personnel or firm experience. HRS further argues that emphasizing personnel experience will not prevent personnel turnover during contract performance and that it would be more reasonable to emphasize firm experience because firms with greater experience are more capable of attracting replacement staff.

We do not find the relative weights of the experience criteria to be unreasonable or unduly restrictive. The Corps' justification of the relative weights of the evaluation criteria, that emphasizing personnel over firm experience will encourage new firms to enter the competition, is both reasonable and logical. The fact that a firm has corporate experience does not insure that the firm has retained personnel with the requisite experience to perform the contract. While the protester disagrees with the Corps' justification, it has failed to show that it is unreasonable, does not meet the Corps' minimum needs, or would not result in enhanced competition.

HRS also argues that the Corps, in reversing the relative importance of the evaluation factors from prior solicitations, exhibited bias against HRS in favor of Hydronetics. HRS contends that the reversal of the factors will have the

^{1/} HRS was awarded a contract under the 1986 solicitation, and Hydronetics served as HRS's subcontractor. The contract awarded to Hydronetics under the 1987 solicitation was canceled as a result of HRS's protest. Hydro Research Science, Inc.--Reconsideration, B-228501.2, supra, 88-1 CPD ¶ 418.

effect of ensuring award to Hydronetics.^{2/} With respect to its allegations of bias or bad faith, HRS has the burden of showing undeniable proof that the agency had a malicious and specific intent to injure the protester. Furthermore, we will not find a discretionary action to be biased if the record indicates a reasonable basis for such action. Thus, even if it is assumed that the Corps was biased against HRS, it must be shown that it was translated into action which affected HRS's competitive position. See CMI Corporation, 62 Comp. Gen. 645 (1983), 83-2 CPD ¶ 292.

We do not find that HRS has submitted evidence meeting the heavy burden of showing bias or bad faith. As noted above, the Corps has great discretion in choosing an evaluation plan, and we found that the Corps had a reasonable basis for emphasizing personnel experience over firm experience. Furthermore, the record reflects that in evaluating proposals under the two prior solicitations the Corps weighted personnel experience higher than firm experience despite the fact that those solicitations erroneously informed offerors that firm experience was more important than personnel experience. The Corps has not altered its evaluation plan; rather, the present RFP more accurately informs offerors of the method by which their proposals will be evaluated. Thus, the record does not reflect that the Corps had a specific and malicious intent to injure HRS.

HRS also contends that Hydronetics may have an unfair advantage because the personnel experience requirement may be interpreted to require specific experience at the Bay/Delta Model. We have held that where a solicitation lists general experience as an evaluation criterion, the procuring agency may consider, as a subfactor, an offer's experience in the specific services called for under the solicitation; the solicitation does not have to list specific experience as a separate evaluation factor since it is reasonably related to the general experience factor. Technical Services Corp., 64 Comp. Gen. 245 (1985), 85-1 CPD ¶ 152.

HRS's complaint is that Hydronetics, by improperly receiving award of a contract under the prior solicitation, has obtained additional experience. We have found that a competitive advantage accruing to an offeror because of its own position need not be discounted or equalized in favor of

^{2/} Under the prior solicitation, Hydronetics received a higher technical score for personnel experience while HRS received a higher score for firm experience. Hydro Research Science, Inc.--Reconsideration, B-228501.2, supra, 88-1 CPD ¶ 418.

other offerors as long as it does not result from preferential treatment or other unfair action by the government. Thermex Energy Corp., B-227034.2, Aug. 17, 1987, 87-2 CPD ¶ 164. We do not find that Hydronetics obtained an unfair competitive advantage because of the 4 months of service it performed under the improperly awarded contract. Hydronetics' personnel operated the Bay/Delta Model during 1983-1986 as employees of Tetra Tech, Inc. When the services at the Bay/Delta Model were set-aside for small business in 1986, the Tetra Tech personnel were assembled by Hydronetics, a newly formed small business. In 1986, Hydronetics served as HRS's subcontractor. Thus, Hydronetics personnel already had significant experience with the Bay/Delta Model prior to the award of the contract.

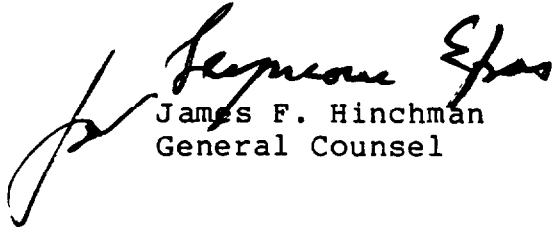
HRS also argues that the deletion of the work order for government training of the awardee's personnel in connection with the RFP requirement that offerors describe in their management plan their training needs and their plan for meeting those needs is unduly restrictive of competition. HRS states that it can develop and implement a training program but that the omission of government provided training will unduly favor Hydronetics who received training under the terminated contract.

The Corps states that only the notice of a planned work order for training has been deleted from the solicitation and that the Corps will provide training to the awardee's personnel. Under the circumstances we do not find unreasonable a requirement that offerors describe their training needs and provide a plan for meeting those needs.

HRS also contends that Hydronetics' proposal will be rated higher in the most important evaluation criterion, management plan, because its training needs will be less due to the training it received under the prior contract. We agree with the protester that it would be improper for the Corps to evaluate Hydronetics' decreased training needs due to the training it received under the prior, improperly awarded contract. However, we will not presume government misconduct but caution the Corps to neutralize any competitive advantage Hydronetics may have received as the result of the training it received under the prior contract.

Since we find the protest to be without merit, HRS's claim for costs is denied. Bay Decking Co., Inc., B-227833, Sept. 28, 1987, 87-2 CPD ¶ 307.

The protest is denied.



James F. Hinchman
General Counsel