



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Ultra Technology Corporation

File: B-230309.2

Date: August 2, 1988

DIGEST

1. Protest that agency acted unreasonably in determining the proposed awardee to be technically acceptable with regard to an evaluation factor involving minimum experience requirements is denied where resumes submitted by the firm provided a sufficient basis for the technical evaluators to reasonably conclude that the requirements had been met.

2. Protester's challenge to the agency's determination of responsibility is dismissed because there is no allegation of fraud or bad faith and the solicitation does not contain definitive responsibility criteria.

DECISION

Ultra Technology Corporation protests the proposed award of a contract by the Department of the Navy to Applied Retrieval Technology, Inc., under request for proposals (RFP) No. N00600-88-R-1135, which was totally set aside for small business. The protester alleges, in essence, that Applied Retrieval's proposal was improperly evaluated in that the firm lacks general experience in the maintenance of storage and retrieval systems as contemplated by the RFP and that it does not have, and cannot obtain, employees with the requisite experience called for in the solicitation.

We deny the protest in part and dismiss it in part.

The RFP provided that award would be made to the offeror with the lowest evaluated price who was determined to be technically acceptable based on seven factors listed in the RFP. There is no dispute that Applied Retrieval's final evaluated price of \$7,336,575, which was almost \$2 million less than Ultra Tech's, was lowest overall. The only dispute is whether Applied Retrieval has the requisite experience and personnel resources to perform the contract.

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While the solicitation contained no general experience requirement as suggested by the protester, it did contain a technical evaluation factor under which offerors were obligated to propose on-site technicians who meet specific experience requirements in two categories. The agency's technical evaluators determined Applied Retrieval to be technically acceptable as to this factor and the six others which were listed for evaluation in the RFP.

The protester primarily relies on its knowledge of the industry in maintaining that the proposed awardee does not have, and cannot obtain, personnel who meet the RFP experience requirements.^{1/} In this regard, Ultra Tech asserts that Applied Retrieval is a manufacturer without a service department necessary to perform the required maintenance. The protester also alleges that certain Navy employees registered dissatisfaction over the proposed award and argues that this is evidence of the unreasonableness of the contracting officer's decision.

In response, the Navy notes that Applied Retrieval submitted the requisite resumes for on-site technicians in its employ and in the employ of a proposed subcontractor^{2/}, and that agency evaluators concluded, on the basis of these resumes, that the proposed personnel met the RFP experience requirements. The agency also reports that a survey of its own technical representatives indicates that they are unaware of any dissatisfaction expressed over the choice of the proposed awardee.

Since the evaluation of proposals is the function of the contracting agency, our Office's review of an allegedly improper evaluation is limited to a determination of whether the evaluation was fair and reasonable and consistent with the stated evaluation criteria. We will question the

^{1/} The protester also seeks to rely, in part, on similar allegations made to this Office by another firm which it regards as prominent in the industry. Those allegations were dismissed in Cybernated Controls Corp., B-230309.3, May 20, 1988, 88-1 CPD ¶ 485.

^{2/} The firm's use of a subcontractor was the subject of a size appeal to the Small Business Administration which determined Applied Retrieval to be a small business and eligible for consideration under the RFP on May 20, noting that the solicitation did not include any provision restricting the percentage of work that could be subcontracted and stating that Applied Retrieval's agreement with the subcontractor was consistent with its status as a small business.

contracting agency's determination concerning the technical merit of a proposal only if we find the determination unreasonable. Paul G. Koukoulas, et al., B-229650 et al., Mar. 16, 1988, 88-1 CPD ¶ 278.

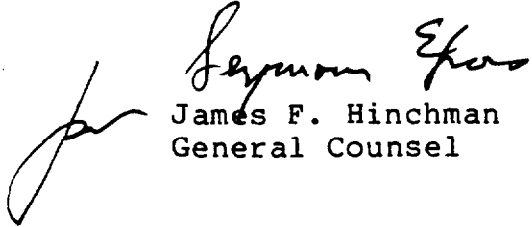
The record does not support the protester's position that the evaluation of Applied Retrieval's proposal was unreasonable. The RFP set requirements for two types of on-site employees: "Lead Technicians" and "Experienced Technicians." Lead Technicians were required to have 3 years of experience in maintaining electrical, mechanical or electro-mechanical systems, and 1000 hours of recent full or part time direct experience in the on-site maintenance (or supervision) of "ministackers" and "loop conveyors" or like equipment. Experienced Technicians were required to have 1 year of maintenance experience and 300 hours of recent on-site direct experience maintaining the described equipment. Our in camera review of the resumes submitted with Applied Retrieval's proposal^{3/} indicates that they provided a sufficient basis for the evaluators to reasonably conclude that the RFP requirements had been met.

To the extent that the protester argues that notwithstanding the content of Applied Retrieval's proposal that firm will not be able to supply the personnel proposed and does not have the experience or capacity to perform the work, the protester is challenging the proposed awardee's responsibility. Here, where there is no allegation of fraud or bad faith and the solicitation contains no definitive responsibility criteria--there is no requirement relating to corporate experience and personnel experience was used as an

^{3/} The Navy furnished Ultra Tech with various documents pursuant to 4 C.F.R. § 21.3(f) (1988); however, the agency did not provide other documents, including the Applied Retrieval's proposal, because they contained proprietary information, release of which could cause the firm substantial competitive harm, or because release of the documents during the pendency of this preaward protest could otherwise jeopardize competition. We agree with the agency's position. See 4 C.F.R. § 21.3(d)(2) (1988).

evaluation factor--we will not review the agency's
affirmative determination of responsibility.
4 C.F.R. § 21.3(m)(5) (1988).

The protest is denied in part and dismissed in part.

A handwritten signature in cursive script, appearing to read "James F. Hinchman", is written over the typed name. To the left of the signature is a large, stylized, handwritten flourish or mark.

James F. Hinchman
General Counsel