



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: EAI Corporation

File: B-239231.10

Date: October 24, 1990

R. William Mengel for the protester.

Richard C. Tucker, for Dames & Moore; David A. Sharp, P.E., for Metcalf & Eddy; Timothy Sullivan, Esq., and Katherine S. Nucci, Esq., Dykema Gossett, for O.H. Materials Corporation; interested parties.

Dana B. Current, Esq., and Judy Sukol, Esq., Department of the Army, for the agency.

Paul E. Jordan, Esq., and John F. Mitchell, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest of solicitation provision limiting the number of pages in technical proposal, and of failure to partially set aside procurement for small business concerns, not raised prior to the time for receipt of initial proposals, is untimely.

2. Protester was properly excluded from the competitive range where the agency had a reasonable basis for its determination that the offeror's proposal was so deficient in various technical areas as to require major revision in order to be considered technically acceptable.

DECISION

EAI Corporation protests the contract awards under request for proposals (RFP) No. DAAA15-90-R-0009, issued by the Army Armament Munitions and Chemical Command, for engineering, testing, and evaluation services in support of environmental programs at various Army installations. EAI contends that it was improperly excluded from the competitive range; it also objects to certain aspects of the RFP.

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

The RFP, issued October 19, 1989, sought proposals to provide various services in support of the expanded environmental missions of the Army Toxic and Hazardous Materials Agency.

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The services would include conducting investigations at Army installations, compliance support, training of personnel, remedial design, and emergency disposal. Remedial investigations were required to determine quantitatively the concentration of various hazardous substances in water, soil, sediment, air and biota. Feasibility studies were required to evaluate and/or demonstrate contamination control approaches via application of available data and/or the development of necessary geotechnical, chemical, and process engineering data.

The agency anticipated award of up to 15 indefinite quantity/indefinite delivery (task order) contracts. Task orders would be issued on a cost-plus-fixed-fee completion-form basis, with a minimum obligation of \$1,000,000 and a maximum quantity of 181,500 direct labor hours for each contract. Contracts would be in effect for 36 months from the award dates with completion required within 54 months of award.

Offerors' technical proposals were limited to 120 pages. Each was to provide sufficient details of the offeror's technical approach, manhours, number of trips, number of per diem days, and lists of equipment and supplies for each work element based upon the requirements of a single task order described in the RFP. Cost and fee for the sample task order were to be separately furnished.

Evaluation of technical/management proposals was to be based upon the following factors and subfactors:

Technical: Understanding of Problem/Objective; Data Analysis/Contamination Assessment/Remedial Actions Assessment; Geotechnical; Quality Assurance/Quality Control; Chemical Analysis Program; Sampling; Safety; Data Management.

Management: Project Management/Organization; Qualification of Personnel; Past Performance Record/Corporate Experience; Facilities and Equipment.

Cost was to be evaluated on the basis of magnitude and realism with consideration of extraordinary government support costs. No relative weights were assigned to the factors or subfactors and proposals were rated as "acceptable" (no deficiencies or significant disadvantages); "unacceptable" (one or more deficiencies or such numerous disadvantages as to amount to a deficiency, and incapable of being made acceptable without substantial revision); or "marginal" (despite deficiencies or disadvantages, capable of being made acceptable through discussions). To receive an overall acceptable

rating, a proposal had to receive acceptable ratings in all factors and subfactors. Award was to be made to the acceptable offerors with the lowest projected cost proposals.

Forty-two offerors submitted proposals by the December 13, 1989, closing date and after evaluation and discussions, 24 proposals were found technically acceptable. EAI's proposal was among those evaluated as technically unacceptable and incapable of being made acceptable without substantial revisions. It thus was eliminated from the competitive range. After being notified of the award of 15 contracts, EAI filed a protest with our Office challenging its exclusion from the competitive range.

The evaluation of proposals and the resulting determination as to whether an offeror is in the competitive range are matters within the discretion of the contracting activity, since it is responsible both for defining its needs and for deciding on the best methods of accommodating them. Information Sys. & Networks Corp., 69 Comp. Gen. 284 (1990), 90-1 CPD ¶ 203. Generally, offers that are unacceptable as submitted and would require major revisions to become acceptable are not for inclusion in the competitive range. Telemechanics Inc., B-229748, Mar. 24, 1988, 88-1 CPD ¶ 304. In reviewing an agency's evaluation, we will not reevaluate the technical proposals, but instead will examine the agency's evaluation to ensure that it had a reasonable basis and did not constitute a violation of procurement statutes or regulations. Information Sys. & Networks Corp., 69 Comp. Gen. 284, supra.

In evaluating EAI's proposal, the evaluators identified 27 disadvantages and 4 deficiencies under the 8 subfactors comprising the "technical" factor. They also identified 2 disadvantages and 6 deficiencies in the 4 subfactors comprising the "management" factor. Throughout the identification of deficiencies and disadvantages is a recurring determination that EAI's proposal lacked sufficient detail and specifics to convince the evaluators of EAI's capability and understanding of the program. For example, as to the technical subfactor "understanding of problem/objective," the evaluators found the proposal deficient because all the work elements were not integrated into a unified program, and the proposal generally did not evidence a clear understanding of the key elements of program performance. Under the technical subfactor "sampling," the evaluators concluded that EAI had provided an inadequate discussion of sampling techniques and had failed to address adequately samples in relation to environmental criteria and feasibility study needs. Under the management subfactor "project management/organization," the evaluators found EAI had not demonstrated the capability to perform three concurrent, complex tasks, as required by the RFP. The evaluators also found EAI had not indicated the

equipment necessary to perform all aspects of the sample task, nor of the required three concurrent tasks.

EAI has a number of objections to certain aspects of the solicitation as well as to the evaluation of its proposal. The firm's "foremost" complaint, which it also says is "the most significant element of the protest," concerns the RFP's requirement that proposals be limited to 120 pages. This provision, EAI asserts, was unduly restrictive of competition and prevented it from furnishing the detail which the evaluators found lacking.

Under our Bid Protest Regulations, protests based upon alleged improprieties in a solicitation which are apparent prior to the closing date for receipt of initial proposals must be filed prior to closing. 4 C.F.R. § 21.2(a)(1) (1990). The protester was on notice of the page limitation prior to the closing date but did not raise it until nearly 4 months later. This protest ground is therefore untimely and not for consideration. Telemechanics Inc., B-229748, supra. We also note that EAI's proposal was only 102 pages in length and that 24 of the 42 offerors were able to provide acceptable proposals within the limits set by the RFP. Having chosen not to use all available pages or to protest the RFP's page limitation prior to the closing date, EAI assumed the risk that its proposal might not be acceptable as submitted. See Infotec Dev., Inc., B-238980, July 20, 1990, 90-2 CPD ¶ 58.

In its initial protest EAI also objected to the agency's failure to set aside a portion of the procurement for small businesses. EAI argued that the fact that none of the awards was to a small business concern was indicative of a "flawed small business set-aside determination process." Just as with the page limitation, the fact that this was an unrestricted procurement was apparent on the face of the RFP and if EAI thought that was inappropriate it should have protested that prior to the time for receipt of initial proposals.

With respect to the evaluation of its proposal, EAI sets forth several examples which it contends indicate that the agency failed to follow the evaluation criteria stated in the RFP. EAI contends that agency evaluators erred in citing as disadvantages of EAI's proposal the firm's heavy reliance upon subcontracting, lack of "large scale" remedial investigations/feasibility study experience, and lack of advanced degrees among its personnel, since these are not stated evaluation criteria.

While an agency must inform offerors of all major evaluation factors, it need not expressly identify the various aspects of each which might be taken into account, provided that such aspects are reasonably related to or encompassed by the stated

criteria. Avtec, Inc., B-238824, June 22, 1990, 90-1 CPD ¶ 581. EAI's reliance on subcontractors was identified as a management subfactor deficiency in relation to its apparent lack of capability to perform three concurrent complex tasks. We think that this deficiency was fairly included within the RFP's requirement that proposals demonstrate adequate management, including control of subcontracts, to ensure efficient and timely completion of task orders.^{1/} Similarly, while the words "large scale" are not specifically used in the RFP concerning remedial investigations and feasibility studies, it is plain from the context of the entire RFP that the effort involved is large scale. The agency's evaluators therefore reasonably regarded experience with such projects to be relevant. In view of the RFP's requirement for proposals to demonstrate that assigned personnel have adequate experience/education, we believe identification of a lack of advanced degrees on a complex requirement such as this to be a fair criticism.

EAI also asserts that the deficiencies and disadvantages noted above indicate that the agency ascribed more importance to some subfactors than others, without revealing the relative weights to all offerors, thus preventing all offerors from competing on an equal basis. We disagree. In advising that proposals must be found acceptable in each factor and subfactor with awards being made to the low technically acceptable offerors, the RFP fairly apprised offerors that the various factors and subfactors were of equal weight. Where subfactors are considered of equal or approximately equal importance, there is no obligation to advise offerors of their relative importance. See Tracor, Inc., 56 Comp. Gen. 62 (1976), 76-2 CPD ¶ 386; Informatics, Inc., B-194734, Aug. 22, 1979, 79-2 CPD ¶ 144. From our review of the record, we find that the proposals were evaluated on the acceptable/unacceptable basis with all factors and subfactors considered of equal weight. The mere identification of matters as unacceptable does not indicate that the evaluators considered them more important than those not mentioned or identified in lesser detail.

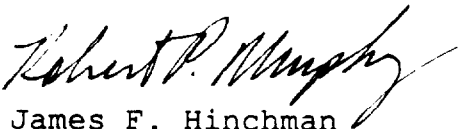
Our review of the RFP, the evaluation, and EAI's proposal supports the agency's conclusion that EAI's proposal was generally lacking in detail and failed to demonstrate an adequate understanding of the RFP's requirements. In view of the large number of deficiencies and disadvantages in EAI's

^{1/} EAI also contends that the criticism of its reliance on subcontracts indicates a bias against small business. We find this assertion to be speculative and insufficient to support the allegation. Independent Metal Strap Co., Inc., B-231756, Sept. 21, 1988, 88-2 CPD ¶ 275.

proposal, we find the agency reasonably determined that EAI's proposal was technically unacceptable, and not capable of being made acceptable without substantial revisions. Thus, it properly was eliminated from the competitive range. Telemechanics Inc., B-229748, supra.

Finally, EAI complains that the agency improperly awarded a sixteenth contract while the RFP only provided for awards of up to 15 contracts. EAI is mistaken, as the record reflects that the agency has not awarded a sixteenth contract under this solicitation. In addition, since EAI was properly found to be technically unacceptable, it is not an interested party to protest any additional awards. 4 C.F.R. § 21.0(a).

Accordingly, the protest is dismissed in part and denied in part.


for James F. Hinchman
General Counsel