



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Technology and Management Services, Inc.
File: B-240351; B-240351.2
Date: November 7, 1990

Jacob B. Pompan, Esq., Pompan, Ruffner & Bass, for the protester.
 Thomas S. Bustard, for Energetics, Incorporated, an interested party.
 Patricia D. Graham, Esq., Department of Energy, for the agency.
 M. Penny Ahearn, Esq., David Ashen, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging determination not to evaluate subcontractor experience under corporate experience criterion is denied where request for proposals (RFP) did not provide for inclusion of subcontractor's experience under corporate experience and it was necessary for the contractor to possess relevant corporate experience in order to assure satisfactory performance of the contract.
2. Competitive range of one is unobjectionable where agency reasonably determined that due to initial substantial scoring and price differential the excluded firms lacked a reasonable chance for award.

DECISION

Technology and Management Services, Inc. (TMS) protests the rejection of its offer and the subsequent award to Energetics, Incorporated, under request for proposals (RFP) No. DE-AC01-89EH89030, issued by the Department of Energy (DOE) for technical and analytical support services. TMS challenges its exclusion from the competitive range, arguing that the agency improperly failed to consider subcontractor experience when evaluating corporate experience.

We deny the protest.

The RFP provided for award of a cost-plus-fixed-fee, level-of-effort contract to the responsible offeror

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submitting the proposal most advantageous to the government. The solicitation advised that technical factors would be of greater importance than cost and listed three technical evaluation criteria: technical approach, personnel/management resources, and corporate experience. According to the solicitation, the first criterion was 10 percent more important than the second and third, which were of equal importance.

Six firms submitted offers in response to the RFP. Energetics received the highest technical score, 800 of 1,000 available points, and proposed the third lowest cost, \$3,932,089, while TMS received the third highest technical score, 460 total points, and proposed the highest cost \$4,736,264. The three proposals rated technically acceptable were as follows:

	<u>Technical Approach</u>	<u>Personnel/ Management</u>	<u>Corporate Experience</u>	<u>Total</u>
Total Possible	400	300	300	1,000
Energetics	280	260	260	800
S. Cohen & Associates	160	180	180	520
TMS	160	210	90	460

Although DOE determined these three proposals to be technically acceptable, it established a competitive range of only Energetics on the basis of Energetics' significant advantage with respect to technical rating--Energetics' score was approximately 54 percent higher than S. Cohen's and 73 percent higher than TMS'--and the fact that its cost was \$95,223 lower than S. Cohen's and \$804,175 lower than TMS'. DOE concluded that even if S. Cohen and TMS were given an opportunity to respond to discussions, they would not likely be able to increase their technical ratings and reduce their proposed costs to the point where they would be in line for award; in other words, the agency determined that S. Cohen and TMS lacked a reasonable chance for award.

After establishing a competitive range of Energetics, the agency conducted discussions with the firm and requested a best and final offer (BAFO). Based upon evaluation of the BAFO, which offered a further \$258,745 reduction in cost, the contracting officer determined that the technical superiority of Energetics' proposal and its evaluated cost provided assurance that the firm would successfully provide high quality work in a cost efficient manner. The agency thus made award to Energetics.

TMS primarily argues that DOE improperly excluded subcontractor experience from its scoring of TMS under the corporate experience criterion. The RFP advised under the criterion for corporate experience that:

"The offeror will be evaluated on its experience in service contracting with the Federal Government and others; related experience to the generic work areas described in the Statement of Work; experience within the past 5 years in planning and support effort to Headquarters type organizations; experience in nuclear and nonnuclear technologies; and familiarity with . . . environmental and health regulatory issues as shown in the Statement of Work."

TMS notes that the RFP's instructions for the preparation of proposals required offerors to describe in the section of their proposals in which corporate experience was to be discussed, "the specific roles of subcontractors, if any." According to the protester, in the absence any provision limiting the relevant experience to that of the offeror itself, the only reasonable interpretation of the experience criterion is that subcontractor experience would be considered. The protester points out that during the evaluation of initial proposals certain evaluators initially interpreted the RFP as did TMS, and included subcontractor experience in their scoring of TMS for corporate experience; these evaluators subsequently rescored TMS' proposal to eliminate consideration of subcontractor experience. In view of the evaluators' initial scoring, TMS maintains, the agency should have clarified the RFP to notify all offerors of the basis for evaluation.

We find that the corporate experience evaluation was consistent with the plain meaning of the RFP.

Preliminarily, the record shows DOE had a need for a contractor with relevant corporate experience, and thus had a basis for evaluating corporate experience apart from subcontractor experience. The statement of work calls for extensive technical and analytical support services, some to be provided on a quick response basis, concerning the environmental issues raised by programs dealing with such technical and complex areas as nuclear and non-nuclear energy research and development, and hazardous and nuclear wastes. The agency determined that, in light of these complexities, it is necessary for the contractor itself to possess relevant corporate experience; a lack of experience would necessarily impair its ability to oversee and manage tasks and perform them if a subcontractor is unavailable. Thus, while in some cases we have allowed agencies to give credit for other

experience to satisfy corporate experience requirements, see, e.g., Aerovironment, Inc., B-233112, Apr. 3, 1989, 89-1 CPD ¶ 343, the agency here had legitimate reasons for concluding that the offeror itself must possess relevant corporate experience in order to assure successful performance of the contract. Jim Welch, Inc., B-233925.2, July 12, 1989, 89-2 CPD ¶ 34.

We think the RFP provided, with sufficient clarity, for evaluation only of an offeror's own experience under the corporate experience criterion. The RFP advised that the "offeror will be evaluated on its experience" (emphasis added), and included no mention of subcontractors or their experience under the corporate experience criterion in the statement of evaluation factors. The reference in the RFP's proposal preparation instructions to "the specific roles of subcontractors, if any," was made only in connection with the requirement for submission of an organizational chart and was not sufficient to change the plain meaning of the other clear references to an offeror's own experience. In this regard, the proposal preparation instructions specifically relating to corporate experience required that "the offeror" provide a discussion of recent experience, without mention of subcontractor experience.

In order for an interpretation of a solicitation provision to be reasonable, it must be consistent with the solicitation when read as a whole and in a reasonable manner. Aerojet Ordnance Co., B-235178, July 19, 1989, 89-2 CPD ¶ 62. Applying this standard, TMS' interpretation of the corporate experience criterion as providing for consideration of subcontractor experience was not reasonable. We think the RFP sufficiently indicated that the offeror's own experience was the focus of the corporate experience evaluation.^{1/}

Our view of the RFP language notwithstanding, moreover, it is not apparent how putting TMS on more specific notice that subcontractor experience would not be considered would have had any effect on the outcome here. Advising offerors that subcontractor experience would not be considered would leave

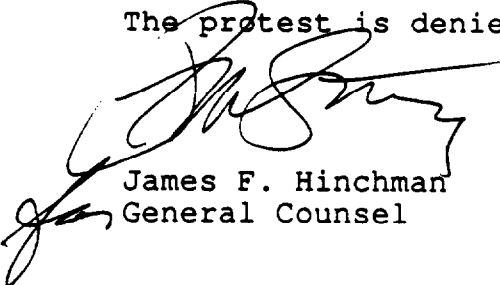
^{1/} It is not clear why certain evaluators initially looked at TMS' subcontractor experience; it appears they may have simply mistakenly extended their consideration of subcontractors under other portions of the evaluation where subcontractor information was to be reviewed. In any case, DOE subsequently realized that his was inappropriate based on the plain language of the corporate experience criterion, and the scoring was corrected accordingly (while proposals were rescored to correct other discrepancies).

DOE to consider only TMS' own corporate experience, which is just what DOE did. As corporate experience is a characteristic that an offeror generally cannot change for purposes of an evaluation, we fail to see how TMS could have improved its evaluation score with the notice it requests.

Although, we think DOE properly evaluated TMS' proposal for corporate experience, it does not appear that increasing TMS' score under this criterion would change the outcome of the procurement in any case. Even if TMS received the maximum possible score for corporate experience (300 points), the only aspect of the evaluation at issue, the firm would have had an overall technical score of only 670, still 130 points below Energetics' score of 800. While TMS generally contends it was deprived of an opportunity to improve its technical proposal and reduce its proposed cost through discussions, it does not allege any specific areas under the remaining two evaluation criteria where either the evaluation was deficient or TMS could have improved its score sufficiently to overtake the awardee. Nor does the protester allege any specific areas where it would have decreased its proposed cost, which was \$1,073,417 higher than the proposed cost upon which the award was based. Absent some indication that TMS' competitive position would change, DOE's scoring of TMS' corporate experience would not provide a basis for disturbing the award. See Empire State Medical, Scientific and Educ. Found., Inc., B-238012, Mar. 29, 1990, 90-1 CPD ¶ 340.

TMS further complains that the competitive range determination was improper because it failed to include all responsible offerors whose proposals were technically acceptable. However, even a proposal which is technically acceptable or susceptible of being made acceptable may be excluded from the competitive range if, relative to all proposals received, it does not stand a real chance of receiving the award. Hittman Assoc., Inc., 60 Comp. Gen. 120 (1980), 80-2 CPD ¶ 437; McMahan & Sons, B-224226, Feb. 5, 1987, 87-1 CPD ¶ 119. Such was the case here. Further, while we carefully scrutinize decisions which result in a competitive range of one, such decisions are unobjectionable where, as is the case here, the agency reasonably determined that the excluded firms lacked a reasonable chance of being selected for award. See Inst. for Int'l Research, B-232032, Mar. 15, 1989, 89-1 CPD ¶ 273.

The protest is denied.


James F. Hinchman
General Counsel