



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: LaQue Center for Corrosion Technology, Inc.

File: B-245296

Date: December 23, 1991

Harold T. Michels for the protester, J. Worth Slade, for IIT Research Institute; George A. Gehring, Jr., for Ocean City Research Corp.; C. Michael Gooden, for Integrated Systems Analysts, Inc.; and Scott H. Paul, for C/P Utility Services Co., Inc., interested parties. Fred L. Sheridan, Department of the Navy, for the agency. Anne B. Perry, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the decision.

DIGEST

1. Agency decision to procure marine corrosion control support services as a integrated package is legally unobjectionable where agency reasonably determines that this approach is necessary to obtain the required comprehensive and integrated analysis of life-cycle marine corrosion control.

2. Allegation that requirement for licensed engineers is unduly restrictive of competition is denied where agency demonstrates that requirement is necessary to satisfy the agency's minimum needs and that adequate competition exists; the fact that protester may have difficulty in assembling a sufficient number of experts to compete for the contract does not itself establish that the agency's justification is unreasonable.

3. Agency is not required to neutralize the competitive advantage which an incumbent firm may have by virtue of its particular circumstances as long as the advantage does not result from favoritism or preferential treatment by the agency.

DECISION

LaQue Center for Corrosion Technology, Inc. protests the terms of request for proposals (RFP) No. N00024-91-R-4206Q, issued by the Department of the Navy for a comprehensive support services contract for life-cycle marine corrosion control. LaQue argues that the solicitation is overly restrictive of competition because it provides for a single,

comprehensive contract for marine corrosion control services covering seven different areas of expertise rather than splitting the contract into component parts and separately procuring each service.

We deny the protest.

For approximately 30 years, the Navy's marine corrosion control efforts emanated from 30 separate Naval activities and Commands, and were divided into many small contracts. Each program was devoted to a specific corrosion symptom, rather than life-cycle corrosion control and prevention. In an effort to extend the life of its vessels, the Navy established a coordinated corrosion control and prevention program for surface ships which included the ship design process. The Navy implemented this decision in 1985 through the competitive award of a single, level-of-effort support services contract to ARINC Research Corp., for a comprehensive, integrated analysis of life-cycle marine corrosion control.

On June 9, 1991, the Navy issued the subject solicitation for a new support services, cost-plus-fixed-fee, level-of-effort contract for up to 50,000 manhours per year for a base year and four 1-year options. The successful offeror will be required to perform comprehensive, integrated life-cycle corrosion control analysis, engineering, and testing for diverse platforms, designs, construction phases, system types, ship status, system/equipment details, and problem types. Essentially, the RFP calls for the performance of corrosion control analysis, engineering and testing over the entire life-cycle of surface ships, submarines and combat systems, cradle-to-grave. Award is to be made on the basis of a cost/technical tradeoff to the offeror whose proposal, conforming to the solicitation, offers the greatest value to the government.

The solicitation includes essentially four mandatory award requirements: an office in the Washington, D.C. metropolitan area; specified items of equipment; appropriate security clearances; and a project team of corrosion experts consisting of eight professionals, six of whom must possess a Professional Engineering License (PE) or a certification as a National Association of Corrosion Engineers (NACE) Corrosion Specialist, and two of whom must possess NACE Coating Inspection certification, one at level I (basic) and the other at level II (intermediate). The RFP also requires

that offerors propose 20 key personnel meeting the minimum qualifications listed. Proposals are to be evaluated in accordance with the following criteria, listed in descending order of importance:

- I. Background and Experience
- II. Technical Approach
- III. Management Approach
- IV. Facilities Approach

LaQue asserts that certain of the mandatory RFP terms are overly restrictive of competition. Essentially, LaQue argues that the large number of services being procured under one contract severely restricts the field of competition. The protester asserts that the packaging of services contemplated by this RFP is unprecedented in the field of marine corrosion and does not ensure a competent corrosion control program because the eventual awardee may perform poorly. LaQue also argues that the professional license requirements are excessive and that such licenses do not necessarily establish professional competence. Lastly, LaQue alleges that the solicitation is structured so that only the incumbent contractor can satisfy the personnel and facility requirements.

LaQue argues that the packaging of services in this solicitation is unnecessary because the services have always been successfully procured separately. The protester contends that combining the requirements for seven very diverse and specialized areas of expertise in one contract only serves to restrict competition. LaQue alleges that because of the nature of the marine corrosion industry, which consists of mostly small companies who alone cannot satisfy the RFP requirements, the scope of the solicitation is overly broad and unnecessarily restrictive of competition. LaQue also disagrees with the agency's determination that an integrated, cradle-to-grave approach to marine corrosion can be successfully achieved using a single contractor, because LaQue believes this approach gives too much of the Navy's oversight responsibility to a contractor without any corresponding assurance that this contractor will perform competently.

Under the Competition in Contracting Act of 1984 (CICA), an agency is required to specify its needs and select its procurement approach in a manner designed to promote full and open competition. 10 U.S.C. § 2305(a)(1)(A)(i) (1988); Cost Eng'g Research, Inc., B-239574, Sept. 11, 1990, 90-2 CPD ¶ 197. A contracting agency should include restrictive provisions or conditions only to the extent necessary to satisfy the agency's needs. 10 U.S.C. § 2305(a)(1)(B)(ii).

Where, as here, the protester contends that acquiring services as part of a total package rather than breaking them out unduly restricts competition, we will object only where the agency's choice of a total package approach as necessary to meet its minimum needs lacks a reasonable basis. Eastman Kodak Co., 68 Comp. Gen. 57 (1988), 88-2 CPD ¶ 455.

The agency points out that this RFP is not a strictly total package approach since it was not intended to, and does not, supplant the use of small diverse marine corrosion control contracts. Rather, award under the protested solicitation, like the predecessor contract, is intended to fulfill a coordinating function: integrated, comprehensive life-cycle marine corrosion control analysis and engineering which addresses marine corrosion problems in a cradle-to-grave context. The Navy is utilizing this approach in an effort to address what it considers a major fleet problem, and the agency's experience with the predecessor contract is that it provided new and better integrated comprehensive solutions to life-cycle corrosion problems, which the agency desires to continue to use to alleviate the pressing Naval needs associated with the diminishing likelihood of new procurements for replacement vessels. The Navy points out that what the protester objects to as "seven different and highly technical areas" covered by this RFP are simply the components of the technical evaluations of Personnel and Corporate Experience, which reflect the interrelated components of marine corrosion control, necessary to provide the integrated approach that the Navy seeks to procure. The agency points out that competition is not substantially restricted because potential offerors can and, in fact, are encouraged to enter into teaming agreements to compete for the contract. Based on these considerations, we find that the Navy has provided a reasonable basis for its determination to utilize an integrated approach to marine corrosion problems.

LaQue next argues that the requirements for professional licenses and for a team of 20 individuals establish a substantial barrier to competition because individuals with the type of licenses required are not only difficult to find but also do not necessarily possess competence in corrosion engineering. Specifically, LaQue alleges that the PE license is given to anyone with an engineering degree and the requisite experience, which does not necessarily mean corrosion experience. Further, LaQue disputes that NACE certification establishes expertise in the field because the certification was granted to many individuals for whom the

test requirement was waived under a "grandfather" clause which allowed certification without an examination if an applicant had a specified number of years of experience.'

Restrictive provisions should only be included to the extent necessary to satisfy the agency's minimum needs. Cost Eng'g Research, Inc., supra. Where, as here, a protester has alleged that a solicitation provision is unduly restrictive of competition, it is the procuring agency's responsibility to establish that the specifications are reasonably necessary to meet its minimum needs. Loral Fairchild Corp., B-242957, June 24, 1991, 91-1 CPD ¶ 594.

The Navy explains that it is seeking to acquire the services of individual marine corrosion experts who will be capable of developing an innovative, integrated, life-cycle approach to a highly technical and problematic area. Under these circumstances, the agency determined that technicians and analysts would not offer the degree of expertise required, and therefore established a threshold fundamental degree of required engineering competence. The Navy argues that it chose professional licenses to demonstrate this threshold since such licensure is readily accepted in the engineering community as establishing a fundamental level of competence. The agency argues that while requirements vary from state to state, to obtain a PE license generally requires the necessary academic credentials, 4 to 10 years of relevant experience, an examination, and personal recommendations. In the field of corrosion engineering, NACE is nationally recognized as establishing a fundamental technical ability of corrosion specialists or coatings inspectors. NACE certification as a corrosion specialist requires a specified academic background, training, examination and 4 to 12 years of corrosion experience. We find that the licensing and certification requirements are directly related to the agency's needs, and that the Navy's use of these requirements is a reasonable way to assure that its minimum needs will be satisfied.

¹LaQue asserted for the first time in its comments that the mandatory requirement for an office in the Washington, D.C. metropolitan area is overly restrictive. Where a protester initially files a timely protest and later supplements it with new and independent grounds of protest, the latter raised allegations must independently satisfy our timeliness requirements, as our Regulations do not contemplate the unwarranted piecemeal presentation or development of protest issues. Star Brite Constr. Co., Inc., B-241741, Feb. 1, 1991, 91-1 CPD ¶ 105. This aspect of the protest is untimely.

In response to LaQue's argument concerning the limited numbers of such licensees and certified specialists, the agency determined that there are more than 230,000 PEs in nine states surveyed, including almost 64,000 in the Washington metropolitan area alone--from which pool the RFP calls for only six individuals.² The agency also found that there were 1,300 holders of the NACE certification for corrosion experts. Further, the agency found that there are 2,050 level I inspectors and 550 level II inspectors--the agency requires only one of each. In view of the number of available certified specialists and PE license holders, we do not view the RFP requirement for eight qualified individuals to be unduly restrictive of competition. Regarding LaQue's argument that a PF license may be obtained by other types of engineers having no corrosion experience, the solicitation provides for evaluating all key personnel to determine corrosion expertise; thus, an offeror will not receive a high technical score if it proposes engineers without corrosion expertise.³

LaQue finally alleges that the RFP is designed around a particular contractor, an incumbent subcontractor who allegedly already has the requisite office and personnel. The protester alleges that an unfair advantage accrued to this firm as well as any others who, during the course of their contracts, participated in the Navy's working groups on marine corrosion. LaQue argues that the Navy should be required to release all of the information generated by these contractors and others at these meetings. LaQue also argues that this unfair competitive advantage is exacerbated by the fact that the agency indicated in the solicitation that this was not a follow-on contract, when in fact it is. We disagree.

Where a solicitation allegedly favors one firm because of its prior experience as an incumbent for the services, our Office will examine the record to ensure that the competitive advantage enjoyed by the firm is not due to any favoritism or preferential treatment on the part of the agency. Cost Eng'g Research, Inc., supra. Further, an agency is not required to structure a solicitation so as to

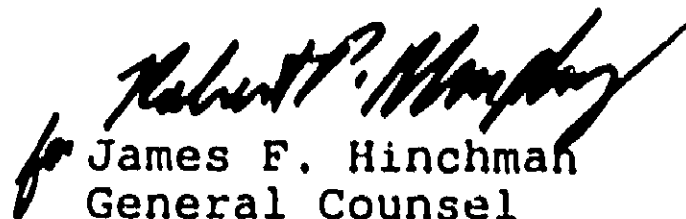
²LaQue disputes that these PEs all have corrosion experience. However, the protester concedes that at least 1 percent, or 2,300 are corrosion experts.

³We view LaQue's challenge to their personnel requirements to be part of its overall argument that the solicitation is overly broad and requires too many experts. As we have already determined that the agency reasonably packaged the services, we likewise find the staffing requirements reasonable.

neutralize natural advantages gained by incumbency, such as having qualified personnel and possessing a clear understanding of the areas the agency intends to address. Bendix Field Eng'g Corp., B-241156, Jan. 16, 1991, 91-1 CPD ¶ 44.

The Navy explains that attendance at the working group meetings was part of contract performance under the predecessor contract and so the experience and information derived from these meetings concerned performance issues. Thus, any knowledge acquired was gained from the firm's performance as an incumbent, and not from any improper agency preference or action.⁴ We note that the agency did not "misrepresent" this contract as not being a follow-on contract as the protester alleges. Since the requirement was being procured on a competitive basis, the RFP included a security classification form which identified the contract to be awarded as a new, and not a follow-on contract. This classification means that in order to perform the contract, any awardee, including the incumbent, will have to obtain new security clearances. The classification correctly reflects the fact that since the requirement is being competed, there are potential awardees other than the incumbent. The protester's contention that a follow-on classification should have been used reflects the mistaken premise that such a designation is required merely to provide notice that the same services had been acquired under a previous contract.

The protest is denied.


for James F. Hinchman
General Counsel

⁴LaQue makes a general statement, for the first time in its comments to the agency report, that the RFP lacks sufficient technical information which exacerbates its competitive disadvantage. Not only is this allegation untimely, see Star Brite Constr. Co., Inc., supra, but it also fails to specifically state what type of information is lacking or how this lack of information prejudices the protester.