



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Drytech, Inc.

File: B-246152.2

Date: February 24, 1992

Richard K. Dryburgh for the protester.
Herbert F. Kelley, Esq., and Robert W. Garrett, Esq.,
Department of the Army, for the agency.
Paul E. Jordan, Esq., and Paul I. Lieberman, Esq., Office of
the General Counsel, GAO, participated in the preparation of
the decision.

DIGEST

1. Agency properly excluded proposal from the competitive range where the agency reasonably concluded that the proposal was technically unacceptable and the offeror had no reasonable chance of award because of deficiencies in personnel experience, technical approach, and corporate experience.

2. Allegations of improper disclosure of protester's proposal information and of improper contact between agency and competitor are dismissed as untimely where raised more than 10 working days after protester knew or should have known of protest basis.

DECISION

Drytech, Inc. protests the award of a contract under request for proposals (RFP) No. DAHC90-91-R-0023, issued by the Department of the Army Intelligence and Security Command (INSCOM), for software maintenance services. Drytech protests the elimination of its proposal from the competitive range, alleging that its proposal evaluation was flawed and that the agency engaged in various improprieties.

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

The RFP sought proposals for provision of services, materials, and qualified data systems personnel to maintain and generate necessary software and support documentation for the SCRIBELET and ACONITE systems at the 703d Military Intelligence Brigade, Kunia, Hawaii. Contract award was for 1 base year with four 1-year options.

Offerors' technical proposals were evaluated on the basis of three factors: Personnel Experience and Qualifications (60 percent); Technical Approach (30 percent); and Corporate Experience and Past Performance (10 percent). The RFP advised potential offerors that initial proposals reflecting less than their best potential could result in exclusion of proposals from further consideration. It also cautioned them that unsupported promises to comply with the contractual requirements would not be sufficient and that proposals must not merely "parrot back" the specifications.

Three offerors, Drytech, ManTech Field Engineering Corp., and Ball Technology Systems Corp., submitted proposals by the closing date of August 23, 1991.¹ During the week of August 26, an evaluation panel reviewed, evaluated, and scored the three proposals. Each of three evaluators could award a maximum of 1,000 points, 600 for the first factor, 300 for the second, and 100 for the third factor. Out of a possible total score of 3,000 points, Drytech's proposal received a score of 1,020, while Ball's and ManTech's each scored more than 2,000. Based on the recommendation of the evaluation panel, the contracting officer found that Drytech's proposal did not have a reasonable chance of receiving the contract and eliminated it from the competitive range. Ball received the award on September 30.

During the first week in October, the agency provided an oral debriefing for Drytech. In a letter dated October 7, the contracting officer advised Drytech that its proposal had been eliminated because: only one of its proposed personnel met the minimum experience requirements; the proposal failed to meet the minimum requirements of the Statement of Work (SOW); and the firm lacked any corporate experience supporting software maintenance contracts. Drytech then filed a protest with our Office.

As a preliminary matter, Drytech argues that it was improper for the agency to wait until after award to notify it of its elimination from the competitive range. Federal Acquisition Regulation (FAR) § 15.609(c) requires a contracting officer to notify an offeror of its elimination from the competitive range "at the earliest practicable time." See FAR § 15.1001 (promptly notify unless disclosure might prejudice the government's interests). Here, because the agency intended

¹ManTech also protested the award to Ball on unrelated grounds (B-246152). In conjunction with that protest, the government has reopened negotiations with Ball and ManTech. Drytech was excluded from this round of discussions for the same reasons it was originally excluded from the competitive range.

to make award within a short time, INSCOM did not notify Drytech of its elimination until October 1. See FAR § 15.1001(b). A failure to comply with the FAR requirements for a prompt debriefing where the contract is otherwise properly awarded, i.e., where no prejudice resulted from the violation, does not establish a basis to sustain the protest. See Pauli & Griffin, B-234191, May 17, 1989, 89-1 CPD ¶ 473.

Drytech next contends that the agency's evaluation procedures were flawed. In particular, it argues that INSCOM used evaluation criteria not disclosed in the RFP and did not properly score the evaluations. Drytech maintains that its proposal, if properly evaluated, should have received the award. We disagree.

Solicitations must inform offerors of the basis for proposal evaluation and the evaluation must be based on the factors set forth in the solicitation. While agencies must identify the major evaluation factors, they need not identify the areas of each factor that might be considered, if the unidentified areas are reasonably related to or encompassed by the stated criteria. Avogadro Energy Sys., B-244106, Sept. 9, 1991, 91-2 CPD ¶ 229. Here, Drytech identifies eight personnel and corporate experience evaluation subfactors which it argues were not specifically stated in the SOW. We find that these subfactors are all reasonably related to the personnel and corporate experience factors; thus, INSCOM's evaluation of Drytech's proposal was consistent with the stated evaluation criteria.

For example, Drytech's proposed site manager/senior systems analyst was evaluated on whether he had experience directing the efforts of 8 to 12 subordinate personnel and had demonstrated expertise in personnel and management functions, and in written and oral communications. The SOW required management experience on a project equivalent to the level-of-effort covered by this contract. According to the agency, past contractors have employed 8 to 12 personnel to perform the contract. Thus, the agency's assessment of equivalent level-of-effort, in terms of the number of personnel supervised, is fairly encompassed by the personnel experience and qualifications factor. Likewise, expertise in communication, and personnel and management functions, are matters reasonably related to successful management of an office.

With regard to the corporate experience factor, Drytech challenges the evaluation worksheet reference to "at least three and not more than five previous contracts" since the SOW did not specify a number. We find that the level of experience represented by three to five previous contracts is reasonably related to the requirement for similar

experience provided in the RFP. Further, there is no evidence that Drytech, whose proposal described six contracts, was penalized for an insufficient number of contracts.

Drytech also contends that INSCOM eliminated it from the competition because the agency erroneously believed that three of Drytech's five proposed personnel were obligated on other contracts and because they had not submitted letters of intent, although the RFP did not require such letters. The protester observes that the source selection chairman noted both these matters in a memorandum to the contracting officer. The agency argues that these matters played no role in Drytech's evaluation as technically unacceptable. Regardless of the reason for the chairman's reference to these matters, the record establishes that the evaluators did not downgrade Drytech for the apparent conflicting obligations of its proposed personnel or for the lack of intent letters.

Drytech next complains that although it proposed two individuals to perform particular functions, the evaluators only included the points for one in Drytech's score. Drytech incorrectly infers that the evaluation procedure was flawed because it did not account for multiple individuals in the same position. On the contrary, the source selection plan provides that where more than one individual is proposed for a particular position, the individuals' points are added and then divided by the number of individuals. Since both of Drytech's proposed personnel received identical scores, the resulting average score was correct. We find no basis for objecting to this reasonable scoring method.

The evaluation of proposals and the resulting determination whether an offer is in the competitive range is a matter within the discretion of the contracting agency, since that agency is responsible for defining its needs and the best method of accommodating them. Delta Ventures, B-238655, June 25, 1990, 90-1 CPD ¶ 588. In reviewing an agency's technical evaluation, we will not reevaluate the proposal, but instead, will examine the agency's evaluation to ensure that it was not arbitrary or in violation of the procurement laws and regulations. Id. We find that the agency's evaluation of Drytech's proposal was reasonable and in accord with the RFP's evaluation criteria.

Under the most important evaluation factor, personnel, the evaluators found only one of Drytech's five individuals to possess all the required experience. For example, the RFP required all mainframe software personnel to have 2 years of programming experience on a stated computer system involving a particular database management system. Three of Drytech's proposed personnel lacked the requisite years of experience.

Although Drytech argues that some experience requirements are not fairly delineated in the SOW, it makes no effort to explain the evaluated lack of experience in these areas.

Under the technical approach factor, the RFP required a description of the offeror's comprehensive technical approach, to include a detailed work plan, comprehensive management plan, and a transition and training plan. The RFP also described the expected content of each of these plans and advised that the proposal would be evaluated for clarity, organization of the information provided, and comprehension of the work to be performed. The evaluators found that Drytech had not submitted a detailed work plan or a transition and training plan, and lacked an understanding of the requirements. We agree. Drytech's proposal "parroted" the SOW requirements and provided no real explanation of how the tasks would be performed. With regard to a training and transition plan, Drytech provided only a general paragraph on training support and a flow chart showing a training package development cycle.

While Drytech does not explain its omission of the required plans, it challenges the evaluators' assessment that the protester placed too much reliance on its site manager performing technical support as a senior systems analyst. Drytech argues that since the position is stated in terms of both manager and analyst, it should not be penalized for proposing a single individual. We find the evaluators' views unobjectionable. While one person may be able to handle both roles, the offeror must ensure that it establishes that its proposed individual is capable of handling the workload. Based upon the historical volume of work, compared with the individuals proposed, the evaluators concluded that the individual proposed by Drytech could not handle all the responsibilities encompassed by the protester's management plan.

The evaluators gave Drytech's proposal no points under the corporate experience factor since Drytech provided information only for government contracts for custodial, escort, and document destruction services. We agree with the evaluators that none of this experience applies to the RFP's requirement for a description of corporate background and experience relating to projects with "similar scope, software, systems and functional requirements as the support required at Kunia." Drytech concedes in its protest that its lack of corporate experience was serious and asserts that the agency should not have solicited a proposal from it. We find no error in the agency's decision to provide an RFP to Drytech. Whether to submit a proposal was a matter

of Drytech's own business judgment and not the responsibility of the agency.²

In its protest, Drytech contends that its owner, officers, employees, and consulting associates possess sufficient relevant experience. However, Drytech did not rely upon that experience in its initial proposal to satisfy the RFP's experience requirement. An offeror must demonstrate affirmatively the merits of its proposal, and it runs the risk of rejection if it fails to do so. Vista Videocassette Servs., Inc., B-230699, July 15, 1988, 88-2 CPD ¶ 55.

Drytech also argues that since its price was the most advantageous to the government, INSCOM should have awarded it the contract. While Drytech may have offered to perform the contract at the lowest cost to the government, it also submitted a technically unacceptable proposal. Drytech's potentially lower price is therefore irrelevant, since once a proposal is found technically unacceptable, it cannot be considered for award. Johnson Energy Management Co., Inc., B-234730, June 8, 1989, 89-1 CPD ¶ 540.

Finally, Drytech alleges that the agency engaged in "serious improprieties" that "marred the selection process." Among other matters, Drytech alleges that INSCOM personnel revealed to a competitor the names of two individuals included in Drytech's proposal under this RFP and divulged its status as an offeror on a similar RFP. Drytech also alleges that a contracting official talked to a "senior official" of a competitor during the same week that proposals on the Kunia RFP were being evaluated. Drytech orally reported some of these allegations to INSCOM, but refused to put its complaint in writing or to disclose the name of its information source.

These allegations are untimely. Protests not based upon alleged improprieties in a solicitation must be filed no later than 10 working days after the protester knew, or should have known, of the basis of protest. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (1991). Here, Drytech

²Drytech also alleges that it was unfair to exclude it for lack of experience when, in response to Drytech's request to place it on the "qualified bidders list" (see FAR § 9.201), the agency sent it a copy of the RFP. There is no evidence that this procurement involved a qualification requirement for which a qualified bidders list was compiled. Inclusion of a corporate experience requirement as an evaluation factor is not the same as the requirement for testing or other quality assurance demonstration involved in a qualification requirement procurement. See FAR subpart 9.2.

first learned of the alleged disclosure of information from its proposal on August 27, 1991. It last received information concerning allegedly improper actions by contracting personnel on September 11. However, since Drytech did not file its bid protest until October 15, more than 10 working days later, we dismiss this allegation as untimely.

The protest is denied in part and dismissed in part.



for James F. Hinchman
General Counsel