



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: ASR Management & Technical Services

File: B-244862.3; B-247422

Date: April 23, 1992

Rao S. Anumolu for the protester,
Lt. Col. William H. Spindle and David H. Doro, Esq.,
Department of the Air Force, for the agency,
Behn Miller, Esq., and Christine S. Melody, Esq., Office of
the General Counsel, GAO, participated in the preparation of
the decision.

DIGEST

1. Personnel qualification requirement in a solicitation--requiring engineering candidate to have 2 years of technical experience with a particular computer system--constitutes a technical evaluation factor where solicitation's award provision informed offerors that personnel qualifications were more important than cost and thereby placed offerors on notice that required resume submissions would be evaluated qualitatively.

2. Since the record demonstrates that the awardee's proposed candidate resume failed to indicate compliance with technical experience requirement and was, therefore, properly judged technically unacceptable by the technical evaluation team, agency's proposed termination of protester's contract--on basis that protester had improperly received contract award--is proper since offeror's non-compliance with a mandatory technical evaluation factor cannot be waived.

3. Protest against terms of solicitation is dismissed where protester generally challenges terms but provides no detailed statement of legal and factual grounds in support of protest.

DECISION

ASR Management & Technical Services protests the Department of the Air Force's termination of its contract and decision to recompute the requirement. The contract, No. F42610-91-C-0615, was awarded to ASR under request for proposals (RFP) No. F426-10-91-R-0100, to provide engineering support for five technical efforts in the Intercontinental Ballistic Missile (ICBM) Weapon System. ASR asserts that the

termination was improper, and that the agency should reinstate the contract.¹

We deny the protest challenging the proposed termination of ASR's contract, and dismiss the protest regarding the terms of the resolicitation.

BACKGROUND

The solicitation was issued on May 10, 1991, under the Small Business Administration's (SBA) section 8(a) program,² see 15 U.S.C. § 637(a) (1988) and (Supp. I 1989), and sought offers for a base year and 2 option years. Offerors were required to complete and submit the solicitation's "PRICES/COST" schedule, which contained both fixed-price contract line items and cost-reimbursable line items. Each technical effort constituted a separate fixed-price contract line item number (CLIN) on the schedule, as set forth below:

CLIN 0001:	Program Planning and Control Systems (PPACS)
CLIN 0005:	Minuteman System Requirements Analysis (SRA) Maintenance
CLIN 0009:	Peacekeeper System Data Management (CONFIGURATION MANAGEMENT)
CLIN 0013:	Minuteman System Data Management (CONFIGURATION MANAGEMENT)
CLIN 0021:	Strategic Missile Test Center (SMTC) ³

¹A decision to terminate a contract for the convenience of the government is a matter of contract administration which our Office generally does not review; however, we will review the propriety of a contract termination where the termination is based on the agency's conclusion that the original contract award was improper, and the protester is challenging that conclusion. FirstPage of VA, B-243747, Aug. 2, 1991, 91-2 CPD ¶ 121; Norfolk Shipbuilding and Drydock Corp., B-219988.3, Dec. 16, 1985, 85-2 CPD ¶ 667.

²Section 8(a) of the Small Business Act authorizes the SBA to enter into contracts with government agencies and to arrange for performance through subcontracts with socially and economically disadvantaged small business concerns.

³The cost-reimbursable CLINs were reserved for travel, supplies, and computer services required by the engineers to perform the contract; additionally, in the event that an engineer was to perform a particular technical effort in less than the number of hours upon which the contractor's proposed fixed-price fee was based, the contractor was to be compensated for such performance utilizing an hourly labor rate.

Under the solicitation, offerors were required to provide a total of 15 engineering candidates to perform engineering support as follows:

CLIN 0001:	2 candidates
CLIN 0005:	1 candidate
CLIN 0009:	4 candidates
CLIN 0013:	7 candidates
CLIN 0021:	1 candidate

The personnel qualifications required for each candidate to be considered technically acceptable were identified and described in the solicitation's statement of work. To establish compliance with these qualifications, offerors were required to furnish candidate resumes with their proposals.⁴ With respect to contract award, the RFP provided that personnel qualifications were more important than price; in this regard, the RFP's evaluation criteria award clause specifically stated:

"For the purposes of award, offers will be evaluated based on the following factors, listed in descending order of importance:

-PERSONNEL QUALIFICATIONS (IN ACCORDANCE WITH THE) STATEMENT OF WORK

-COMBINED PRICE OF ALL FIXED PRICE, LEVEL-OF-EFFORT LINE ITEMS, INCLUDING OPTIONS."

The solicitation also provided that award would be made on an "all or none" basis.

On the June 25 closing date, eight offers were received. On July 26, each offeror's resumes were reviewed by technical evaluators from each technical activity; although ASR had submitted the lowest priced offer, the record shows that with regard to the SMTC requirement--CLIN 0021--its offered candidate was determined technically unacceptable. In this regard, only two offerors--Indian Affiliates, Inc. and Scientech, Inc.--proposed candidates who were determined technically acceptable for the SMTC technical effort.

⁴Clause 2.1.7 of the statement of work provided:

"The contractor shall furnish resumes and specify the pertinent labor category and education level for all prospective employees to be associated with this contract. Resumes shall be submitted . . . with proposal"

By letter dated August 5, the contract negotiator advised all offerors of defects pertaining to submitted pricing schedules. On August 13, the contract negotiator issued a letter entitled "CLARIFICATION/DEFICIENCIES ON RESUMES" to all offerors.⁵ Although identifying each offeror's apparent resume "deficiencies," these letters also advised offerors that the noted deficiencies "are 'responsibility' issues and may be corrected at any time prior to contract award." Offerors were further advised that "the resume issue is unrelated to the forthcoming request" for best and final offers (BAFO).

By letter dated August 16, ASR responded to the Air Force's clarification request. In addition to explaining how its prospective candidates met the personnel qualifications set forth in the statement of work, ASR advised the contract negotiator that, if necessary, ASR was willing to provide additional resumes for "back-up" personnel to demonstrate its ability to perform this contract. With regard to the SMTC requirement, ASR was the only offeror who submitted a resume clarification.

On August 20, the contract negotiator issued a request for BAFOs; in the BAFO request cover letter the contract negotiator advised all offerors that "[y]our [BAFO] . . . should be based on clarification/deficiencies previously identified . . ." On the September 5 BAFO closing date, ASR submitted the lowest priced offer.

On September 9, the contract negotiator contacted an SBA representative in New York and verified that ASR was considered to be a responsible small business concern. On September 12--without consulting the technical evaluators as to the technical adequacy of ASR's resume clarifications⁶ and relying on the SBA's telephone confirmation of ASR's responsibility--the contract negotiator selected ASR for award and mailed the appropriate contract documents to ASR.

⁵According to the contract negotiator, the candidate resumes submitted by Indian Affiliates--who proposed using incumbent contract personnel--contained no noted deficiencies and was determined technically acceptable for all personnel qualifications. Accordingly, while Indian Affiliates did receive a copy of the clarification/deficiencies cover letter, it was not required to submit any resume clarifications.

⁶Apparently, as evidenced by the August 11 resume clarification/deficiencies request, the contract negotiator regarded the RFP's personnel qualifications as factors pertaining to each offeror's responsibility.

for signature; the contract negotiator also notified ASR of its selection by telephone that afternoon.

On September 17, after reviewing ASR's submitted clarification for its SMTc candidate resume, the SMTc technical evaluators determined that ASR's candidate was technically unacceptable and informed the contract negotiator of this finding. However, after learning that the contract negotiator had already selected ASR for award--and possibly due to the scheduled October 1 performance start date--the Air Force decided to proceed with contract award to ASR. The Air Force determined that notwithstanding ASR's technical unacceptability with respect to the SMTc effort, it was "in the best interest of the [g]overnment to award to the low offeror." Accordingly, on September 20, the contract negotiator awarded prime contract No. F42610-91-C-0615 to the SBA with ASR as the successful subcontractor.

On September 30, at a post-award conference, the SMTc technical team informed ASR that its SMTc candidate was technically unacceptable; at this time, the Air Force apparently provided ASR with a more detailed description of the knowledge required to perform this effort. ASR was then permitted to submit resumes for replacement candidates, under reduced qualification requirements, which the SMTc team determined technically acceptable. During this same conference, the Air Force also informed ASR that due to security clearance delays, all contract performance--except for the PPACS and SRA technical efforts--would have to be postponed.

On October 4, the Air Force issued a show cause notice which advised ASR that the agency was considering terminating ASR's contract for default as a result of the contractor's inability to provide a qualified candidate for the SMTc effort.⁷ That same day, ASR apparently began performing the other four technical efforts called for by the contract.

⁷According to the contract negotiator, the SMTc technical team approved ASR's proposed back-up candidates at the post-award conference; however, ASR was unable to hire these individuals. According to ASR, the Air Force never approved any of its back-up candidates. Regardless of why ASR was unable to provide candidates to perform this portion of the contract, this post-award negotiation was improper. Where, as here, an agency accepts a proposal that does not show compliance with specifications, and then conducts post-award discussions with the awardee to permit it to comply with the specifications, discussions must be held with all competitive range offerors. See ALT Coms., Inc., B-246315, Mar. 2, 1992, 92-1 CPD ¶ ____.

By letters dated October 7 and 8, ASR argued against the prospective termination for default; on October 17, the Air Force interviewed and rejected as technically unacceptable five back-up candidates which ASR proposed to perform the SMTC requirement. On October 18, according to the Air Force and the protester, ASR and the agency decided--by means of a no-cost settlement agreement--to delete the SMTC requirement from ASR's contract. As a result of this agreement, on October 22, the Air Force rescinded the show cause notice.

On October 29, after learning of the deletion of the SMTC requirement, the second low offeror--Indian Affiliates--filed a protest with this Office, alleging that the contract had been improperly awarded to ASR. In response to the Indian Affiliates protest, by notice received December 12, the Air Force informed us that it had improperly evaluated ASR's offer and accordingly would resolicit the requirement,⁸ and terminate ASR's contract if ASR was not the successful offeror under the resolicitation. On December 16, after learning that the Air Force intended to terminate ASR's contract upon completion of the resolicitation, Indian Affiliates withdrew its protest. On December 17, ASR filed this protest against the Air Force's proposed termination of its contract and decision to resolicit its requirements.⁹

DISCUSSION

With respect to the SMTC portion of this contract, offerors were required to provide an engineering candidate who held "at least [2] years experience in the integration of Sun Unix [computer] systems with Macintosh and IBM PC networks. . . ." The record demonstrates that the candidate proposed by ASR to perform this requirement did not have this exact experience; accordingly, the Air Force argues that the contract award to ASR was improper. We agree.

In its protest and subsequent comments to this Office, ASR does not dispute the Air Force's conclusion that its offered candidate for the SMTC effort does not possess the exact Sun

⁸The Air Force proposes to solicit the SMTC requirement under one solicitation and has issued a separate solicitation for the other requirements.

⁹We do not consider this protest to be prematurely filed since the Air Force's notice to ASR regarding the prospective termination action constitutes adverse agency action. See Tero Tek Int'l, Inc., B-242743.3, Oct. 3, 1991, 91-2 CPD ¶ 288.

Unix experience required by the solicitation.¹⁰ However, ASR contends that it properly received award since the referenced SMTC specification is a responsibility-type factor and--according to ASR--only required the contractor to demonstrate its technical understanding and ability to perform the SMTC effort. In essence, ASR argues that the Sun Unix requirement does not constitute an evaluation factor but rather serves only to assist the agency in determining an offeror's responsibility. In this regard, ASR contends that it has demonstrated in its proposal its ability to secure a qualified individual to perform the SMTC effort.

The Sun Unix experience requirement--as well as the other personnel qualifications set forth in the statement of work--constitute responsibility-type factors. See Federal Acquisition Regulation (FAR) § 9.104-1(e). In a negotiated procurement, however, it is proper to include among the technical evaluation criteria such traditional factors as experience and personnel qualifications which can be evaluated comparatively and are reasonably required for the agency to make a selection decision. B & W Serv. Indus., Inc., B-224392.2, Oct. 2, 1986, 86-2 CPD ¶ 384.

Here, given the specific language of the award provision set forth above--which identified "personnel qualifications [in accordance with] the statement of work" as the most important evaluation criterion for award--we find that the Sun Unix experience requirement clearly constituted a technical evaluation criterion.¹¹ Both the award clause

¹⁰In this regard, ASR asserts that its candidate's experience with the Iris Unix computer system is comparable to the instant Sun Unix computer experience requirement.

¹¹The Air Force asserts that the Sun Unix experience requirement constitutes a definitive responsibility criterion. Where, as here, responsibility-type factors such as experience are set forth as evaluation criteria in a negotiated procurement and are to be used by technical evaluators to make a comparative evaluation of the technical merits of each offer, we do not regard them as definitive responsibility criteria. See Commercial Bldg. Serv., Inc., B-237865.2; B-237865.3, May 16, 1990, 90-1 CPD ¶ 473; Nations, Inc., B-220935.2, Feb. 24, 1986, 86-1 CPD ¶ 203; Numax Elecs. Inc., B-210266, May 3, 1983, 83-1 CPD ¶ 470. In any event, even if we were to construe these personnel qualifications as definitive responsibility criteria, we would nonetheless conclude that ASR had improperly received award since an offeror's noncompliance with such criteria in its proposal may not be waived.

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and the solicitation's resume submission requirement--which stated that resumes were to be furnished with each offeror's proposal--put offerors on notice that each proposed candidate's experience would be evaluated qualitatively.¹² See NDI Eng'g Co., B-245796, Jan. 27, 1992, 92-1 CPD ¶ 113.

It is a fundamental rule of federal procurement law that agencies are required to evaluate competing proposals strictly in accordance with the solicitation's evaluation criteria; agencies must adhere to the stated criteria or inform all offerors of any changes made in the evaluation scheme. Cavalier Computing, Sys. Planning Corp., 71 Comp. Gen. 71 (1991), 91-2 CPD ¶ 446. Here, the record clearly shows that after determining that ASR's SMTC candidate was technically unacceptable, the technical evaluation team waived for ASR a material RFP requirement--that the SMTC candidate possess 2 years of Sun Unix computer experience.¹³ The other offerors were not advised that the

¹¹ (...continued)

See Pasco Realty, B-245705, Jan. 8, 1992, 92-1 CPD ¶ 39; United Materials, Inc., B-243669, Aug. 16, 1991, 91-2 CPD ¶ 161.

¹²Although ASR argues in its comments that it was never informed of its SMTC resume deficiency prior to award, the record shows that in the August 13 resume clarification/deficiencies request the contract negotiator specifically advised ASR that "[e]xperience in resume is lacking . . . 2 years SUN-UNIX integration with IBM/Macintosh PC networks" Moreover, the August 20 BAFO request letter clearly advised offerors to include resume clarifications in their BAFOs. Under these circumstances, we conclude that ASR was given adequate opportunity to correct the deficiencies in its SMTC candidate resume. See Pacific Computer Corp., B-224518.2, Mar. 17, 1987, 87-1 CPD ¶ 292.

¹³In its resume clarification, ASR stated that its proposed candidate was technically acceptable since the candidate possessed experience with Iris Unix computer integration. Despite this claim, the SMTC technical evaluation team specifically found that because the Sun Unix and Iris Unix computer systems involve different hardware platforms, Iris Unix experience is not the technical equivalent of Sun Unix experience for purposes of this procurement. Beyond mere disagreement with the technical team's conclusion, ASR has not provided any evidence which demonstrates that this finding was unreasonable; accordingly, we have no basis for questioning the technical team's determination that ASR's SMTC candidate

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Sun Unix experience requirement was relaxed, and were not given an opportunity to respond to the relaxed requirement. Under these circumstances, we find that the award to ASR was improper, and the Air Force thus properly decided to terminate ASR's contract in the event ASR is not in line for award under the resolicitation.

In a protest filed with this Office on January 29, 1992, ASR challenges the terms of the resolicitation--RFP No. F42610-92-R-60037--which was issued for the PPACS, SRA and the two CONFIGURATION MANAGEMENT requirements on January 24. Our Bid Protest Regulations require that a protest include a detailed statement of the legal and factual grounds of protest, 4 C.F.R. § 21.1(c)(4) (1991), and that the grounds stated be legally sufficient. 4 C.F.R. § 21.1(e). Here, although ASR generally objects to the terms of the new solicitation, ASR has not set forth any viable grounds of protest. For example, although ASR notes that certain provisions in the new RFP "are not the same" as those in the original RFP, it is not apparent why the protester thinks the RFP's terms are improper. Since the protester has not established the likelihood of impropriety in the challenged agency action, we have no basis for considering the matter. Imaging Equip. Servs., Inc., B-247201, Jan. 10, 1992, 92-1 CPD ¶ 50. To the extent ASR argues that proceeding with the resolicitation was improper while its protest challenging the termination of its contract was pending, the Air Force states that it has postponed receipt of initial offers under the resolicitation until the protest is resolved; in any event, this issue is academic in light of our finding that the proposed termination and resolicitation are proper.

The protest challenging the proposed termination of ASR's contract is denied, and the protest regarding the terms of the resolicitation is dismissed.



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¹³ (...continued)
was technically unacceptable. See Babcock & Wilcox Constr. Co., Inc., B-240334, Nov. 9, 1990, 90-2 CPD ¶ 385.