



Comptroller General
of the United States

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Washington, D.C. 20548

Decision

Matter of: Vortec Corporation
File: B-257568; B-257568.2; B-257568.3
Date: October 18, 1994

Kenneth B. Weckstein, Esq., and Shlomo D. Katz, Esq., Epstein Becker & Green, for the protester. Michael F. Murray, Esq., for Babcock & Wilcox Company; and John D. Quinn, Esq., and Stephen Sale, Esq., Fehrenbacher, Sale, Quinn & Deese, for Westinghouse Electric Corporation, the interested parties. Ronald E. Cone, Department of Energy, for the agency. David A. Ashen, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest of selection of seven other firms for final negotiation of contracts for demonstration testing of glass melter technologies for the vitrification of low-level radioactive wastes is denied, where the protester proposed a combustion melter system which had recently been unsuccessfully demonstrated; and the source selection officials reasonably determined that the system had inherent flaws which called into question whether it could be demonstrated and implemented within the time schedule under the solicitation and the applicable environmental agreement.

DECISION

Vortec Corporation protests the selection of seven other offerors for final contract negotiations, under request for proposals (RFP) No. W-045792-LR, for the demonstration testing of glass melter technologies. The solicitation was issued by the Westinghouse Hanford Company (WHC) as the management and operations (M&O) contractor for the Department of Energy's (DOE) Hanford Site in Washington. Vortec challenges the evaluation of proposals, and contends that one of the awardees should have been considered ineligible because of an organizational conflict of interest.

We deny the protest.

The solicitation, issued on February 25, 1994, requested proposals for the identification, test, and evaluation of multiple melter system technologies for the vitrification of liquid, low-level radioactive waste from nuclear wastes stored in underground storage tanks at the Hanford site. The contemplated vitrification involves the melting and combining of glass former materials and low-level radioactive wastes in a melter to form a glass product. The statement of work (SOW) called for the contractors to undertake demonstration testing intended to measure throughput, efficiency of operations, reliability of the feed system for blending the glass former material with the low-level waste feed, melter performance, homogeneity of the resultant glass product, and operation of the off-gas system for handling radioactive/hazardous volatiles produced by the melting process. The SOW required the contractors to conduct a glass-melting demonstration in their test/pilot facilities, using nonradioactive simulated waste, for a duration of not less than 24 hours of continuous processing time. The solicitation stated that the results of the above phase I testing would be used for the "down-selection" of the most promising technologies for additional phase II testing.

The solicitation grouped melting technologies into three categories based on the primary method used for heating the glass in the melter, consisting of: (1) joule-heated, wherein the glass is heated by passing electric current through the glass between electrodes; (2) combustion, wherein the glass is heated by the combustion of fossil fuels; and (3) other, including heating the glass by such means as arc, plasma, and induction heating. The solicitation stated that:

"[t]he top-rated proposal from at least two categories will be selected for Phase 1 testing. Additional proposals may be selected, depending on availability of funding based on best overall ratings."

The solicitation provided for the selection of proposals based upon the following five evaluation criteria: (1) technical merit of proposed technologies (worth 50 of 100 available points), (2) pilot/test facilities and capabilities (20 points), (3) "seller" qualifications (15 points), (4) schedule (10 points), and (5) cost (5 points).

WHC received 16 proposals in response to the solicitation by the April 11 closing date; in May, WHC selected the seven offerors whose proposals received the highest scores, from 52.672 to 65.594 points, for final negotiations leading to contract award. Four of the selected offerors proposed

joule heating, one proposed combustion heating, and two proposed other approaches to heating. Vortec's proposal, which proposed to heat the glass by means of combustion of natural gas, was ranked tenth with a score of 50,791 points, and Vortec was not selected for final contract negotiations. Vortec thereupon filed this protest with our Office.

Vortec challenges the overall evaluation of proposals. According to the protester, the information in the selected firms' proposals was inadequate to justify the scores given by the evaluators, and the evaluation instead was improperly based on assumptions made by WHC evaluators in light of their prior knowledge of and familiarity with the offerors' qualifications and proposed approaches.

WHC maintains that Vortec was not selected for final contract negotiations because its proposed combustion technology was immature, suffered from inherent flaws, and posed substantial technical risk. According to WHC, Vortec's proposal could not have been improved through discussions so as to have a reasonable chance for award under the stated evaluation criteria, and Vortec was "an unlikely candidate for selection unless every other offeror is eliminated from consideration."

WHC explains further in this regard that, as noted in the solicitation, it is conducting this procurement pursuant to the mandates of the Hanford Federal Facility Agreement and Consent Order (the Tri-Party Agreement), an agreement between the Department of Energy; the U.S. Environmental Protection Agency; and the Washington State Department of Ecology. The Tri-Party Agreement mandates retrieval and vitrification of defense nuclear processing wastes stored at the Hanford site; the agreement establishes milestones, enforceable through fines, for beginning melter testing and demonstration (September 1994); completion of melter feasibility and system operability tests and selection of reference melters (June 1996); and commencement of construction of the vitrification facility (December 1997). As a result, the solicitation generally cautioned that "[o]nly processes that are judged to be sufficiently developed for incorporation in plant design commencing in 1997 and brought on-line by 2005 will be considered."

Further, the solicitation established an "anticipated" date of September 1994, for initiation of phase I testing and provided in the statement of evaluation criteria for the highest rating under the criterion for schedule to be assigned to offerors that can start testing before September 30. The solicitation specifically required offerors to be ready to start testing not later than December 1, 1994, and under section F, entitled "Delivery/Performance," provided for performance under any

delivery orders issued pursuant to the contract to be completed by December 30. In addition, the solicitation emphasized the importance of proposing mature, previously demonstrated technology. In this regard, the solicitation required offerors to describe the maturity of the proposed technology and listed maturity of technology, including past demonstrations or industrial applications, as one of the two most important subcriteria under the most important evaluation criterion (technical merit). Similarly, understanding of the technical requirements and prior experience conducting vitrification demonstration testing and successfully operating units were the two most important subcriteria under the evaluation criterion for seller qualifications.

WHC states that, although Vortec had previously demonstrated its combustion technology (in July 1993), the demonstration was unsuccessful. WHC explains that the feed injectors repeatedly fouled after short periods of melter operation, resulting in premature termination of the test runs; the desired waste loadings--i.e., the percentage of product represented by waste--were not demonstrated; and a substantial amount of the sodium in the liquid feed was volatilized to the off-gas system. Based upon the problems encountered during the test and their evaluation of Vortec's proposed system, WHC's evaluators expressed concern that the system was subject to excessive corrosion and the need for frequent maintenance. They anticipated that the feasible operating range likely would be limited and that the glass produced likely would be nonhomogeneous and vary in composition.

Although Vortec proposed modifications to the feed injector, WHC concluded that the firm was unlikely to be able to solve the severe problems encountered in the demonstration. WHC determined that Vortec's proposed melter and feed system was essentially identical to that previously demonstrated, and that, in view of the problems encountered in the test with respect to feed injector plugging and excessive volatility and losses of feed materials, the system contained inherent flaws which would require significant reengineering to correct. In addition, WHC determined that operation of a fossil fuel-fired combustion melter (such as Vortec's) in a nuclear facility raised certain additional safety concerns relative to the risks associated with competing melter technologies. In particular, WHC was concerned that maintaining fuel and air under pressure, combined with the need to enrich the combustion air with oxygen to obtain reasonable performance, could create an explosion hazard. WHC concluded that Vortec's technology did not have the desired probability of successfully meeting the tight program schedule established by the solicitation and the Tri-Party Agreement.

In reviewing protests against an agency's evaluation of proposals, it is not our function to independently evaluate proposals and substitute our judgment for that of the agency. See General Servs. Eng'g, Inc., B-245458, Jan. 9, 1992, 92-1 CPD ¶ 44. Rather, we will review an evaluation only to assure that it was reasonable and consistent with the RFP evaluation criteria. Id.

We find no basis upon which to object to WHC's determination not to select Vortec for final contract negotiations.¹ First, Vortec has not refuted WHC's position that use of Vortec's proposed fossil fuel-fired combustion melter in a nuclear facility would pose additional safety risks (relative to other melter technologies) as a result of the potential for explosions. Although Vortec notes that another firm proposing a combustion technology--Babcock & Wilcox, which received an evaluation score of 56,234 points, 5,443 points more than Vortec--was selected for final

¹To the extent that Vortec is objecting to the proposal's evaluation on the basis that the evaluators improperly took into consideration their prior knowledge of and familiarity with aspects of certain of Vortec's competitor's qualifications and proposed approaches, the protest is without merit. It is true that offerors act at their peril when they fail to include within the four corners of their proposals information required by the solicitation or requested by the agency during discussions, and that such proposals may properly be rejected. See Abacus Enters., B-248969, Oct. 13, 1992, 92-2 CPD ¶ 242. However, the fact that an agency reasonably may eliminate a proposal from the competitive range for failure to include such information in the written proposal does not mean that the agency would be acting improperly if it included that proposal in the competitive range. We have also consistently held that, in evaluating proposals, contracting agencies may consider any evidence, even if that evidence is entirely outside the proposal (and, indeed, even if it contradicts statements in the proposal), so long as the use of the extrinsic evidence is consistent with established procurement practice. See, e.g., Western Medical Personnel, Inc., 66 Comp. Gen. 699 (1987), 87-2 CPD ¶ 310; AAA Eng'g & Drafting, Inc., B-250323, Jan. 26, 1993, 93-1 CPD ¶ 287. Here, other than arguing that such consideration was per se improper, Vortec has not demonstrated that the evaluators acted unreasonably or in any way inconsistent with the RFP evaluation criteria in considering the outside knowledge that they had concerning the offerors and their proposed approaches. See Intermagnetics Gen. Corp.--Recon., B-255741.4, Sept. 27, 1994, 94-2 CPD ¶ ____.

contract negotiations, this does not show that WHC was unreasonable in not also selecting Vortec. In view of the greater safety concerns associated with combustion melter technology, WHC could reasonably determine to select only one contractor for further evaluation of this technology.²

Nor do we believe that it was unreasonable for WHC to select Babcock & Wilcox rather than Vortec. WHC found that while Vortec was offering a melter system with no demonstrated performance history in industrial or commercial application and which in a recent test had failed to demonstrate its feasibility for the required low-level waste vitrification, Babcock & Wilcox offered extensive experience with combustion technology that, although not previously used in glass vitrification, was well established in the commercial power industry, and also possessed significant engineering and technical resources.

Although Vortec generally disputes WHC's characterization of the July 1993 demonstration of its proposed melting technology as unsuccessful, the protester has not refuted WHC's account of the specific problems encountered. Vortec notes that a draft report prepared by a WHC employee generally described the testing as having "successfully demonstrated that vitrification of low level waste is possible." WHC reports, however, that concerns had been raised about the draft report and whether it misrepresented the results of the 1993 demonstration and that the draft report was never adopted and approved by WHC. Moreover, Vortec has not refuted WHC's statement, which is directly supported by an affidavit executed by a test observer, that repeated plugging up of the feed injectors, and excessive volatilization and losses of feed materials were encountered during the demonstration, and the desired waste loadings

²Vortec specifically objects to the award to one of the offerors--Vectra GSI--based upon the offeror's purported use of technology licensed from a firm whose employees served as technical advisors to WHC's source evaluation board. Vortec maintains that having employees of the offeror's licensor evaluate the offeror represented a conflict of interest which requires the disqualification of the offeror's proposal. Vectra, however, offered a joule-based approach, not Vortec's combustion-based approach. Since, as indicated above, we see no basis to question WHC's selection of only one contractor for further evaluation of combustion-based technology, even if these conflict allegations were correct, Vortec was not prejudiced by the selection of Vectra and its joule-based approach. See Metametrics, Inc., B-248603.2, Oct. 30, 1992, 92-2 CPD ¶ 306 (competitive prejudice is an essential element of a viable protest).

were not demonstrated. Indeed, Vortec itself, in its proposal, characterized the design of the spray injector assembly as "critical" and, based on the results of the demonstration, identified injector design as "an area for additional investigation to assure reliable performance" and "to eliminate potential plugging problems." Further, Vortec conceded in its proposal that a total of only 4 hours of operation (over 2 days) was achieved--i.e., not the 24 hours of continuous processing time required under the SOW.

In these circumstances, we believe that WHC could reasonably question whether Vortec's proposed melter system, which in its essentials had recently been unsuccessfully demonstrated, was likely to be sufficiently developed in time to satisfy the stringent schedule established by the Tri-Party Agreement and implemented in the solicitation.³ Further, in view of Babcock & Wilcox's greater resources and general experience, WHC could reasonably determine that Babcock & Wilcox was more likely to demonstrate a feasible low-level waste vitrification approach within the required schedule than Vortec. Accordingly, WHC had a reasonable basis to select the combustion melter system offered by Babcock & Wilcox rather than that offered by Vortec.

The protest is denied.


 for Robert P. Murphy
 Acting General Counsel

³Although Vortec also argues that WHC improperly failed to raise its concerns with respect to the 1993 demonstration during discussions, Vortec was afforded the opportunity during the protest process to refute WHC's characterization of the demonstration as unsuccessful, and did not do so. Accordingly, Vortec was not prejudiced by any failure by WHC to raise this matter during discussions. Metametrics, Inc., supra.