



Comptroller General
of the United States

452214

Washington, D.C. 20548

Decision

Matter of: Continental Technical Services of Georgia,
Inc.

File: B-259681; B-259681.2

Date: April 19, 1995

W. H. Dunlap for the protester,
Blake Mills and Michael K. Carroll for Task Performance
Corporation, an interested party.
Nicole Porter, Esq., and Wayne Evelhoch, Esq., Department of
Energy, for the agency.
C. Douglas McArthur, Esq., and Christine S. Melody, Esq.,
Office of the General Counsel, GAO, participated in the
preparation of the decision.

DIGEST

Where evaluation was reasonable and consistent with factors listed in solicitations, agency reasonably made a determination to exclude the protester's proposal from the competitive range where protester did not receive high technical score or offer a low price and combined technical/price ranking of offerors indicated that protester had no reasonable chance for award.

DECISION

Continental Technical Services (CTS) of Georgia, Inc. protests the rejection of its proposal submitted in response to request for proposals (RFP) No. DKX30-90, issued by Martin Marietta Energy Services (MMES) for temporary engineering, computer and drafting support personnel at government-owned facilities in Oak Ridge, Tennessee; Paducah, Kentucky; and Portsmouth, Ohio. MMES issued two solicitations using the same RFP number--a portion of the effort set aside for award to small, disadvantaged businesses (SDB), with the remainder open to competition on an unrestricted basis--in its capacity as prime management

and operating (M&O) contractor to the Department of Energy (DOE) at the agency's Oak Ridge facility.¹

We dismiss as academic the protest challenging award under the unrestricted solicitation, and we deny the protest challenging award under the restricted solicitation.

BACKGROUND

On December 15, 1993, the agency issued the solicitations, which differ only in that one contained a notice that MMES would not accept offers for the set-aside portion of the effort from concerns that were not SDBs. The solicitations sought offers for the supply of engineering, computing, and drafting labor² on an as-needed basis for a base year with two 1-year options. The solicitations listed the following evaluation criteria:

A. Proposed Direct Labor	50 percent
Multiplier for Base Award and Options I, and II	
B. Organizational Approach and Technical Understanding	25 percent
C. Facilities	15 percent
D. Corporate Experience	10 percent

The solicitations provided that the highest ranked technical proposal would be awarded the full 50 points; other technical proposals would receive scores:

" . . . determined by multiplying the available technical points by a fraction, the numerator of which is the average number of points awarded the proposal in question, and the denominator of which is the number of points awarded to the highest-ranked technical proposal."

¹The parties have agreed to the resolution of the protest by our Office. We review subcontract awards by prime M&O contractors under a "federal norm" standard, i.e., to determine whether they are consistent with the policy objectives set forth in statutes and regulations which apply directly to federal agency procurements. Computer One, Inc., B-249352.2, Feb. 23, 1993, 93-1 CPD ¶ 252.

²Labor categories were defined in terms of expertise. In the engineering category were engineering aides, engineering assistant, junior engineer, engineer, and senior engineer; in computing, computing aide, computing technician, senior computing technician, computing analyst, and computing specialist; in drafting, junior drafter, drafting technician, senior drafting technologist, and designer.

Similarly, the lowest-priced acceptable proposal would receive the full 50 points available for price, with the other proposals receiving a proportionate price score.³ Since the solicitations provided the applicable labor categories and rates, and the awardee's chief function would be to identify the proper labor mix and recruit personnel on a case-by-case basis, the only price variable was the "direct labor multiplier," a percentage applied to the labor cost for each order and representing the successful offeror's indirect cost and profit rates.

The solicitations advised potential offerors that their proposals should be specific and demonstrate a thorough understanding of the work requirements. With regard to Organizational Approach and Technical Understanding, the most significant technical factor, the solicitations required a narrative discussion of the offeror's organization, including an assessment of the offeror's ability to recruit and provide personnel for the three sites; how the offeror planned to avoid delays in providing services; its plan for replacement of personnel; its recruiting techniques; its screening process; and its plan for ensuring that only qualified employees were presented. The solicitations further stated as follows:

" . . . The proposal shall explain how your organization will avoid offering over or under qualified individuals for Company personnel requirements. In addition, the proposal shall address how cost to the Company will be minimized through your organizational approach.

"This section should present your understanding of the requirements A discussion shall also be provided addressing any potential difficulties that are foreseen and the proposed potential actions to take to avoid these difficulties."

In this section of the technical proposal, offerors also were required to address how their plans for staffing of the start-up phase (including the use of staff from currently active contractors) would avoid delays in service, as well as reporting requirements.

³Both solicitations contained the same provisions. Therefore, while the highest-ranked or lowest-priced SDB proposal would receive a full 50 points for technical merit or price for purposes of selecting an SDB contractor, the proposal could receive a somewhat lower score (based on its raw score as a percentage of the highest raw score awarded by the evaluators) for purposes of selecting a contractor under the unrestricted portion of the effort.

Regarding Facilities, the solicitations directed offerors to describe their proposed facility and its location and explain how the location would enable the offeror to respond promptly to requirements and enhance recruiting efforts. Under Corporate Experience, offerors were to provide a representative list of customers and a discussion of how many employees the offeror had placed within the prior 2 years.

The agency received 42 offers on February 17, 1994; 11 SDBs, which were eligible for award under both solicitations, submitted proposals for both the restricted and unrestricted portions of the requirement. The agency established a competitive range under the set-aside solicitation that consisted of the five SDB proposals with the highest technical scores, and requested that best and final offers (BAFO) be submitted by April 26. CTS's proposal, which tied for seventh in technical score, was eliminated from the competitive range.

Some confusion then ensued, as the notice of rejection received by CTS did not identify the solicitation to which it referred. By letter dated August 23, MMES advised CTS that the notice of rejection applied to the set-aside award; however, at a debriefing on September 6, MMES personnel apparently made it plain to CTS that it had effectively been eliminated from consideration under both solicitations. As a consequence, both CTS's protest to the agency and its subsequent protest to our Office concern its rejection under both solicitations. MMES did not, however, formally advise CTS that its proposal was eliminated from the competitive range for the unrestricted solicitation until after our Office had denied a motion to dismiss the protest as premature, shortly before submission of the agency report on February 15, 1995.

THE UNRESTRICTED SOLICITATION

By letter dated April 12, DOE advised our Office that MMES would cancel the unrestricted solicitation and issue a new solicitation for that portion of the requirement. Cancellation of a solicitation renders a protest academic. Morey Mach., Inc.--Recon., B-233793.2, Aug. 3, 1989, 89-2 CPD ¶ 102. We do not consider academic protests because to do so would serve no useful public policy purpose. Accordingly, in light of the cancellation, we dismiss CTS's protest under the unrestricted solicitation.

THE RESTRICTED SOLICITATION

Competitive Range

In a negotiated procurement, the purpose of a competitive range determination is to select those offerors with which the contracting agency will hold written or oral discussions. See Federal Acquisition Regulation (FAR) § 15.609(a); Everpure, Inc., B-226395.2; B-226395.3, Sept. 20, 1988, 88-2 CPD ¶ 264. The competitive range is to be determined on the basis of price and other factors that were stated in the solicitation and is to include all proposals that have a reasonable chance of being selected for award. See FAR § 15.609(a). Even where proposal deficiencies are minor and readily correctable through discussions, the agency may properly exclude a proposal from the competitive range where, relative to other acceptable offers, the proposal has no reasonable chance of being selected for award. The Temp Club of Va., B-247096, Apr. 23, 1992, 92-1 CPD ¶ 386.

The competitive range is to be determined on the basis of price and other factors stated in the solicitation and consist of all proposals that have a reasonable chance of being selected for award, including deficient proposals that are reasonably susceptible of being made acceptable through discussions. See FAR § 15.609(a); Bay Tankers, Inc., 69 Comp. Gen. 403 (1990), 90-1 CPD ¶ 389.⁴ In reviewing a competitive range determination, we do not reevaluate technical proposals; instead, we examine the agency's evaluation to ensure that it was reasonable and in accord with the evaluation criteria. Rainbow Technology, Inc., B-232589, Jan. 24, 1989, 89-1 CPD ¶ 66.

CTS received a consensus score of 23.4 out of 50 points available in the technical evaluation. Evaluators found that overall the proposal was poorly organized and written, with the protester having departed from the requested format in several instances. The evaluators also were concerned that while the protester offered to provide an experienced office manager for the first 6 months of the contract, there was no commitment beyond that time and no replacement manager identified. This created a concern that CTS would attempt to manage the contract from its main office in Georgia, which the evaluators found undesirable.

⁴Although the FAR is not directly applicable to procurements by prime M&O contractors, in applying the "federal norm" standard to protests of such procurements, we are guided by the FAR and case law interpreting the relevant FAR provisions.

The evaluators also found that CTS had not provided a substantive response that reflected CTS's understanding of requirements. While CTS stated that it was "committed to providing only qualified (not over or under)" personnel, it made no other mention of any measures to eliminate underqualified or overqualified candidates from the personnel pool. In addition, the evaluation team felt that CTS had not adequately addressed start-up problems, cost minimization efforts, or personnel problems and resolutions.

CTS disagrees, asserting that its technical proposal adequately addresses all requirements. CTS contends that the solicitation contained no format for technical proposals. CTS argues that there was no reason to address start-up problems, since it anticipates none; CTS asserts that the entire staff already exists and was identified in the solicitations. CTS further contends that cost minimization is synonymous with offering a low price, i.e., a low labor multiplier. CTS also notes that its proposal indicated the office manager would stay longer "if required" and contends that during its September debriefing it advised MMES personnel of its commitment to make an experienced office manager available at all times.

The record does not support CTS's allegations. Contrary to CTS's assertions, the solicitation did provide a format for the proposal; while CTS criticizes this format as inadequate and ambiguous, such issues should have been raised prior to submission of proposals, not 7 months later. See 4 C.F.R. § 21.2(a)(1) (1995). Further, it is clear that MMES expected offerors to assume some responsibility for cost minimization beyond offering a low labor multiplier, directing them to explain their process for providing cost-effective recommendations. The solicitation clearly required offerors to explain how they would avoid providing overqualified or underqualified individuals, not just a commitment to do so. The agency states further that it could not take seriously a proposal that brushed off potential problems, particularly when the solicitations required a discussion of those problems as an indicator of the offeror's understanding of requirements. Nor did the solicitation indicate, as CTS contends, that the existing staff would be retained; section VI, cited by CTS in its comments, merely provided the current level of staffing to accompany a profile of usage in the past year.⁵

⁵Specifically:

"The company currently has 192 full-time and 36 part-time temporary personnel on site. This amounts to approximately \$8 million annually. The temporary personnel are Engineering, Computer

The solicitation clearly required offerors to provide the information missing from CTS's proposal, and the agency could therefore reasonably view CTS's technical proposal as inferior to other proposals that did provide such information. Despite CTS's arguments to the contrary, we find it neither unreasonable nor improper for the agency similarly to find less desirable a proposal that ignored start-up problems and failed to provide a commitment for on-site management after the start-up period.

Finally, several SDB proposals contained lower labor multipliers than CTS's. In this connection, three SDBs offered lower multipliers and six received higher technical scores; six firms received a higher combined score. Given the agency's reasonable conclusion, discussed above, that CTS's proposal had significant weaknesses, including a failure to demonstrate an understanding of requirements, and since numerous firms had superior combined technical/price scores, the record supports the agency's decision to eliminate CTS's proposal as having no reasonable chance for award. Id.

Other Issues

We dismiss many of the issues raised in CTS's protest as untimely, since they concern allegations of ambiguity in the solicitation or other irregularities which should have been apparent prior to the submission of initial proposals. These issues include allegations concerning: failure to indicate whether the solicitations called for sealed bids or competitive negotiation; failure to state how many awards would be made; lack of specificity in the evaluation criteria; failure to provide a proposal format; a 15-page limitation on the length of technical proposals; failure to provide a copy of the solicitation in time for CTS to submit a competitive proposal; and use of a "greatest value" basis for award, instead of providing for award to the low, technically acceptable offeror. CTS's submissions contradict many of these allegations, and the record fails to support many of the rest; in any event, our Bid Protest

Systems Analysts, and Draftsmen. The following information is a profile of Energy Systems' temporary staff usage during the past 12-month period. This information shall in no way be interpreted as a commitment by Energy Systems to use this level of support in future subcontracts."

The "current" staffing levels during the time frame when the solicitation was issued would be of limited use for awards made 6 months to 1 year later.

Regulations require that such issues be raised prior to the submission of initial proposals, 4 C.F.R. § 21.2(a)(1).

CTS also contends that there is no centralization in MMES's procurement directorate, and that this results in the elimination of qualified SDBs from awards. Our Office will not consider protests of an agency's general procurement practices that are divorced from applicability to a particular procurement. See Cajal Defense Support Co., B-237426, Feb. 16, 1990, 90-1 CPD ¶ 286

CTS also asserts that the agency failed in its obligation to debrief CTS properly after award. Initially, we note that the purpose of a debriefing is not to provide a point-by-point comparison with other offerors, the relative merits or technical standing of competitors or their scores. See FAR § 15.1003(b). In any event, the adequacy and timeliness of debriefings is a procedural matter which has no effect on the evaluation of proposals or the validity of the award.⁶ Senior Communications Servs., B-233173, Jan. 13, 1989, 89-1 CPD ¶ 37.

The protest challenging award under the unrestricted solicitation is dismissed; the protest challenging award under the restricted solicitation is denied.

for *Ronald Berger*
Robert P. Murphy
General Counsel

⁶While CTS also refers generally to violations of FAR subparts 14 and 15 and the Energy Policy Act, the only specific contentions made by CTS relate to its debriefing and the adequacy of MMES's programs for contracting with SDBs.