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The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Consulting and Program Management
File: B-225369
Date: February 27, 1987

DIGEST

1. When responsibility-type factors such as experience are included as technical evaluation criteria in a request for proposals, they do not constitute definitive responsibility criteria. The General Accounting Office will review the agency's evaluation of them in the same manner as it does any other technical evaluation factor, i.e., to determine whether the evaluation was reasonable and complied with applicable statutes and regulations.
2. Agency's evaluation of awardee's technical proposal is unreasonable where the awardee's proposed staff does not meet specific, material experience requirements set forth in a request for proposals and experience is the most important technical evaluation factor.
3. When contracting agency maintains that literal application of experience requirements in solicitation would create a sole-source procurement and that the transition to performance by a firm not meeting requirements was achieved without problems, the experience requirements exceeded the agency's minimum needs. The General Accounting Office recommends that the agency resolicit, requiring only the individual and corporate experience necessary for performance.

DECISION

Consulting and Program Management Services, Inc. (CPMS) protests the award of a contract to Massachusetts Technological Laboratory, Inc. (MTL) under request for proposals (RFP) No. L/A 86-19. The solicitation, issued July 30, 1986 by the Department of Labor, is for property management services. The protester primarily challenges the agency's evaluation of the awardee's qualifications and experience. We sustain the protest.

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BACKGROUND

The solicitation, a total small business set-aside, requested proposals to support and maintain three automated property management systems: (1) the Contractor Property Management System, which monitors all non-expendable government property used in the performance of Labor Department contracts and grants; (2) the Real Property Management System, which monitors all transactions affecting government property held by the Job Corps; and (3) an Equipment Planning and Budgeting System.

The solicitation provided for award of an indefinite quantity contract for a base and 2 option years. Offerors were required to propose fixed hourly rates, including direct and indirect costs, profit, and overhead, for 12 specified labor categories for which "[i]ndividually named staff and analysts are to be committed for the full duration of the effort necessary to satisfy the requirements of the specified tasks." Task orders were to be used to initiate such specified tasks.

The solicitation provided for the evaluation of offers based upon a formula under which cost and technical factors were afforded equal weight. A maximum of 100 technical points - were available under four criteria: Individual Staff Experience (45 points); Offeror's Experience and Qualifications (25 points); Technical Approach (20 points); and Understanding of the Work (10 points).

Although the agency mailed 198 copies of the solicitation to firms on the offerors' list, an unknown number of large businesses that were ineligible for award were included on the list. Only three small businesses, CPMS, MTL, and Birch and Davis (whose offer is not at issue here), submitted proposals.

Agency evaluators gave CPMS' initial technical proposal 96.7 points; they considered this firm, the incumbent contractor, to have submitted a well-written proposal that left little or no room for improvement. By contrast, evaluators gave MTL's initial technical proposal only 54.6 technical points and at one point described it as "unacceptable." Nevertheless, since the panel had also indicated that MTL was "adequate technically," the contracting officer included all three offerors within the competitive range.

After oral negotiations and best and final offers, evaluators again gave CPMS a technical score of 96.7; however, they increased MTL's technical score to 89.3. After application of the formula to consider costs, however, MTL became the highest-ranked offeror with a total of 192.35 points, followed by CPMS with 189.96. Accordingly, the agency made award to MTL on October 2. On October 14, CPMS filed this protest with our Office. We consider the protest timely, since it was filed within 10 working days of when CPMS knew of the award that provided the basis for the protest. 4 C.F.R. § 21.2(a) (1986). It was, however, too late to require suspension of performance under the Competition in Contracting Act of 1984 (CICA), 31 U.S.C. § 3553(d) (Supp. III 1985).^{1/}

PROTEST

CPMS primarily alleges that the individual staff members proposed by MTL fail to satisfy the experience and qualification requirements set forth in the solicitation for each labor category. The protester also alleges that the awardee lacks required corporate experience.

The Labor Department responds by asserting that the awardee is responsible. The contracting officer states that he obtained assurances of financial capability and contacted the Small Business Administration before making an affirmative determination with regard to MTL in accord with the Federal Acquisition Regulation (FAR), 48 C.F.R. § 9.104-1 (1986). Such determinations are generally not reviewed by our Office, 4 C.F.R. § 21.3(f)(5), and the agency argues that we

^{1/} With regard to the 10-day time for filing of protests, our Bid Protest Regulations define "days" as "working days" of the federal government. 4 C.F.R. § 21.0(d). They indicate, however, that this definition is not applicable to the CICA provision concerning suspension of performance. *Id.* Our regulations repeat the statutory language that generally requires an agency to suspend performance if our Office notifies it of a protest "within 10 days of the date of contract award." The Federal Acquisition Regulation defines "days" in this context as "calendar days." 48 C.F.R. § 33.104(c)(5) (1986). Because of the difference in definitions, a protest may be timely, and thus warrant our consideration on the merits, but it may still not require suspension of performance. See Fort Wainwright Developers, Inc., et al., B-221374, et al., May 14, 1986, 65 Comp. Gen. _____, 86-1 CPD ¶ 459.

should therefore not consider CPMS's allegations concerning the awardee's experience and qualifications. The protester, however, argues that the requirements included in the RFP that certain staff members have a specific number of years of experience in specific disciplines constitute definitive responsibility criteria.^{2/} Under an exception to our general policy of not reviewing affirmative determinations of responsibility, our Office will consider allegations that definitive responsibility criteria have not been met, id., and the protester believes that we should do so here.

ANALYSIS

In our opinion, the protest relates not to the awardee's responsibility, but to the reasonableness of the Labor Department's evaluation of technical proposals. When responsibility-type factors such as experience are included among the technical evaluation criteria in a negotiated procurement, as they properly may be, we do not regard them as definitive responsibility criteria. Supreme Automation Corp., et al., B-224158 et al., Jan. 23, 1987, 87-1 CPD ¶ ___; Sage Diagnostics, B-222427, July 21, 1986, 86-2 CPD ¶ 85. A contracting officer may consider the results of the technical evaluation in determining whether a firm is a responsible offeror. Nevertheless, as with other technical evaluation criteria, an agency's assessment and scoring of experience must be reasonable and in accord with stated criteria, and must comply with applicable statutes and regulations. Supreme Automation Corp., supra. We find that the Labor Department's evaluation of MTL does not meet these standards.

As noted above, the RFP listed Individual Staff Experience and Offeror's Experience as the two most important technical evaluation factors, worth 45 and 25 points, respectively. No further experience requirements were set forth in Section M of the RFP, where the evaluation factors were listed. Elsewhere, however, the solicitation contained specific experience requirements for individuals proposed for each labor category that we regard as material to the technical evaluation.

^{2/} A definitive responsibility criterion is a specific standard, established for a specific procurement (generally a sealed bid procurement), by which an agency judges a firm's ability to perform. Typically, when the criterion involves experience, it requires a particular level or type. See, e.g., Nations, Inc., B-220935, Feb. 26, 1986, 86-1 CPD ¶ 203.

First, the instructions for preparation of technical proposals, section L.3., emphasized the importance of the Individual Staff Experience criterion, stating that:

"Successful performance of the proposed work depends heavily on the qualifications of the individuals committed to this effort. Accordingly, the government, in its evaluation of the offeror's proposal, will place considerable emphasis on the commitment by the offeror of personnel qualified for the work involved in accomplishing assigned tasks."

In addition, the instructions relating to Individual Staff Experience required offerors to submit resumes that included, at a minimum:

- "(a) Current employment status and previous work experience, including duties, dates and employing organizations. Duties must be clearly defined in terms of role performed, i.e., manager, team leader, consultant, etc. It should be indicated whether currently employed by the offeror and for how long.
- "(b) A statement of work completed or underway which is relevant to the proposed work under this contract.
- "(c) Educational background.
- "(d) Type of work to which individual should be assigned.
- "(e) Sufficient information to fully support items of requirement in the labor category descriptions.
- "(f) References from the two most recent projects that the individual actively participated in that can be contacted for performance evaluation."

Finally, the instructions warned that it was "mandatory that all of the offeror's staff have the combination of skills specified in the labor category descriptions." Thus, offerors were referred to the statement of work, Section C.3., which set forth detailed "Qualification/Experience" requirements for each labor category. These were, moreover, described as minimum requirements.

The record indicates that after reviewing MTL's initial proposal, evaluators found the proposal to be unacceptable because, in part, proposed key personnel apparently possessed limited experience in property management. During negotiations, the agency advised MTL of its concern in this regard. Based on additional information submitted with its best and final offer, evaluators increased MTL's score for Individual Staff Experience from 29 to 39.3 points and for Offeror's Experience from 18 to 22 points.

The Labor Department and MTL argue that the solicitation merely required that an offeror's staff "collectively" have the required experience. The agency concedes that the resumes of certain of MTL's proposed staff members do not show the specific experience required by the RFP, but argues that the resumes either show equivalent experience or permit an inference that the individual meets stated requirements.

While the agency does not define "collectively," if it means that one individual's experience can offset another individual's failure to meet the experience requirements set forth in the solicitation, then we reject that interpretation. The solicitation required offerors to propose individually named staff, committed for the full duration of the contract; to include resumes for each staff member; and to document the compliance of each with the "Qualification/Experience" requirements of the particular labor category for which the employee was proposed. Whatever the agency's intent, the only reasonable interpretation of the solicitation, read as a whole, is that these were individual, rather than collective, staff requirements.

We find that the individuals on MTL's proposed staff did not in fact meet the minimum qualifications set forth for each labor category. For example, the solicitation required the proposed project manager and the proposed Contractor Property Management System team leader, both of whom were to be named in the proposal, to be qualified automatic data processing (ADP) professionals whose experience included, among other things, a:

"minimum of three (3) years of experience in two or more of the following areas: IBM OS/MVS [operating] System . . . ; Wang mini-computer systems . . . ; IBM PC/AT or equivalent microcomputer experience utilizing networking/telecommunications"

The resumes MTL submitted for these individuals do not demonstrate experience with Wang minicomputer systems or with IBM PC/AT or equivalent microcomputers utilizing networking/telecommunications. The proposed property manager's resume shows experience with unidentified minicomputers in a distributed data processing mode. The team leader's resume also shows experience with unidentified minicomputers and microcomputers. Neither, in our opinion, is reasonably equivalent to or in excess of the above requirements. Cf. Haughton Elevator Division et al., 55 Comp. Gen. 1051 (1976), 76-1 CPD ¶ 294.

The solicitation also required the proposed Real Property Management System team leader to be a qualified professional with demonstrable federal real property management experience and at least 2 years of experience with a real property system that interfaced with the General Services Administration's Real Property Information System via automated methods. The Labor Department admits that it is not clear how much of MTL's proposed team leader's experience concerned real property, but maintains that it is reasonable to assume that some of this individual's experience as a property manager in the United States Army included real property, since post housing could have been involved. The proposed team leader's resume does not show that he managed real property or that he had experience with a system interfacing with that of GSA, and we do not agree that the experience may be inferred.

There are numerous other instances where MTL's proposed staff fell short of RFP requirements. The proposed senior systems analyst/production coordinator was to be a qualified ADP professional whose experience included at least 3 years of experience with Wang minicomputers and IBM systems. The resume of MTL's proposed senior systems analyst, however, reveals no experience with Wang minicomputers. The proposed senior on-line analyst programmer was to be a qualified ADP professional with at least 3 years of experience in on-line programming and analysis in an IBM OS/MVS (operating system) environment. The resume of MTL's proposed senior programmer gives no indication of ADP-related professional work experience before January 1986. Further, the proposed senior property specialist/analyst was to be a qualified personal property management professional with at least 5 years of experience in personal property management support, utilizing a centralized computer data base to manage personal property held by federal contractors and grantees. The resume of MTL's proposed senior property specialist gives no indication that she met this requirement.

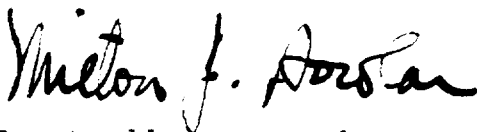
In negotiated procurements, any proposal that fails to conform to material terms and conditions of the solicitation should be considered unacceptable and may not form the basis for an award. AT&T Information Systems, Inc., B-216386, Mar. 20, 1985, 85-1 CPD ¶ 326. Since MTL's proposed staff did not meet stated experience and qualification requirements--which we consider material--we find the Labor Department's evaluation of the firm's technical proposal unreasonable. We sustain the protest on this basis.

RECOMMENDATION

The Labor Department maintains that a literal interpretation of the solicitation's experience requirements creates a sole source procurement, since only CPMS can satisfy them. We note that contracting officials were concerned about the possible restrictiveness of the requirements before the solicitation was issued, and, as a result, modified them for selected labor categories. Moreover, the contracting officer stated at the administrative conference that the transition from CPMS to MTL had been achieved without problems. These facts lead us to conclude that the "Qualification/Experience" requirements set forth in the statement of work exceeded the agency's minimum needs. Because only three small businesses submitted proposals, we also conclude that other prospective offerors may have been deterred from competing because of doubts as to their ability to meet minimum requirements.

The FAR requires agencies to revise solicitations and give all offerors an opportunity to submit new or revised proposals if changes occur in requirements or if the proposal considered most advantageous to the government involves a departure from stated requirements. 48 C.F.R. § 15.606. By letter of today to the Secretary of Labor, we are therefore recommending that the agency resolicit, requiring only that individual and corporate experience that is necessary for contract performance. Following the resolicitation, the agency should terminate its contract with MTL if appropriate. If MTL is again selected and offers lower hourly rates than under its current contract, that contract should be modified accordingly.

The protest is sustained.

for 
Comptroller General
of the United States