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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-189172

DATE: December 15, 1977

MATTER OF: Environmental Science and Engineering, Inc.

DIGEST:

1. Protest that evaluation criteria should have been broader is untimely because not raised prior to date for submission of initial proposals. Moreover, agency properly evaluated protester's proposal based on factors stated in solicitation rather than on factors not so stated.
2. Agency's determination that proposal was outside of competitive range was reasonable where evaluation criteria in Request for Proposals (RFP) emphasized contractor experience and proposed methodology, and proposal contained a number of major informational deficiencies with regard to experience and methodology.
3. Agency was not required to request additional information from offeror concerning aspects of RFP to which offeror failed to respond where addition of such information would have been a major revision of the proposal.

Environmental Science and Engineering, Inc. (ESE) protests the award of a contract under Request for Proposals (RFP) No. WA-76-B533, issued by the Environmental Protection Agency (EPA).

The subject RFP requested proposals for assisting various regional offices of EPA with the preparation of Environmental Impact Statements. Fifteen proposals for Region IV were received by EPA. A technical evaluation concluded that three offerors, not including ESE, had submitted acceptable technical proposals. ESE was informed by letter that it was not within the competitive range. A debriefing was held at which time ESE was informed of the reasons why EPA had found its proposal to be unacceptable. Subsequently, ESE protested to

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this Office the exclusion of its proposal from the competitive range. ESE protests on the grounds that the evaluation criteria were incomplete, ESE's proposal was improperly graded, and EPA was required to request clarification from ESE concerning its proposal prior to finding it unacceptable.

With regard to the evaluation criteria, ESE contends that EPA should have considered factors in addition to those specified in the evaluation criteria of the RFP, in making its competitive range determination. ESE cites as examples of such factors the following: prior performance on Government contracts, the proximity of the contractor to anticipated work in Region IV, the number of professionals the contractor has available in Region IV, the in-house disciplines available through the contractor, the facilities the contractor has available to do the job and their proximity to Region IV.

To the extent that ESE is asserting that additional factors should have been included in the evaluation criteria, its assertions are untimely raised. Section 20.2(b)(1) of Title 4 of the Code of Federal Regulations requires that protests based upon alleged improprieties in the solicitation which are apparent prior to the closing date for initial proposals shall be filed prior to that date. Here, ESE's protest was received after the closing date for initial proposals and thus is untimely regarding objections to the evaluation criteria.

However, ESE also asserts that, even if the omitted criteria were not included in the evaluation criteria of the RFP, they should have been considered by the agency evaluators. ESE points to EPA's Procurement Information Notice (PIN) 77-15 Source Evaluation and Selection Procedures, which states on page 25 that:

"OTHER EVALUATION FACTORS. Frequently there are other factors that enter into the evaluation process that must be considered in arriving at a relative ranking. These factors are not included in the evaluation criteria of the solicitation, but consist of important items which may

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have a significant impact upon the determination of those offers within the competitive range and upon selection for award. They are not point scored, but are presented to the SSO for his consideration as deemed appropriate."

Two categories of examples are cited in this provision: compliance with statutory contractual requirements (e. g., labor standards incorporated into the contract) and negative record of responsibility. Such factors are relevant to a competitive range or award determination because an offeror who fails to satisfy them will not be considered for award. However, in order to be considered for award, the offeror also must submit a proposal which is technically acceptable. A determination of technical acceptability is based on the evaluation criteria stated in the solicitation. 50 Comp. Gen. 670 (1971). Consequently, it was proper for EPA to evaluate the offers for technical acceptability on the basis of the evaluation factors stated in the RFP, without specifically taking into consideration other factors which ESE contends would have enhanced its point score. See North American Telephone Association, B-187239, December 15, 1976, 76-2 CPD 495; 48 Comp. Gen. 314 (1968).

ESE next asserts that EPA's determination that ESE's proposal was outside of the competitive range was erroneous. EPA's determination was based on three findings of deficiencies in ESE's proposal. EPA first found that ESE's proposal had not "demonstrated specific experience in planning and/or designing various wastewater subsystems." Part I, Section III, of the technical evaluation criteria listed "contractor's experience with planning and/or designing various wastewater subsystems." Six subsystems which were to be addressed were listed as follows: flow and waste measures, interceptor systems, treatment measures, wastewater disposal, sludge treatment and disposal and facilities siting. The criteria also specified the components of each subsystem to be discussed. For example, under "flow and waste measures," the components were listed as: "infiltration/inflow, household water conservation, user charge systems, flow equalization and industrial recycling." ESE's proposal provided a list of twelve wastewater subsystem planning and design projects which it had completed, or was in the process of completing. Each listed project contained a notation as to which of the six subsystems specified

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in the RFP were included in that project. Five of the projects included all six subsystem functions specified. EPA found that the proposal contained no further description of ESE's experience concerning the subsystem components specified in the RFP.

EPA secondly found that ESE's proposal did not "indicate satisfactory capability in identifying objectives and constraints and applying them to alternative subsystems." Part I, Section IV of the technical evaluation criteria is entitled: "contractors experience with and proposed methodologies for evaluating alternative wastewater subsystems and systems and for selection of an optimum system." Subsection (A) of Section IV lists: "Identification of objectives and constraints and application to alternative subsystems." ESE's proposal provided a list of ten projects which ESE denoted as having included identification of objectives and constraints and application to alternative subsystems. EPA found that ESE's proposal did not describe the methodology which it proposed to use for identifying objectives and constraints. EPA concluded that ESE's inadequate description of experience coupled with a lack of methodology description did not demonstrate that the firm could satisfactorily meet the minimum requirements of the RFP.

EPA thirdly found that ESE's proposal did not "indicate adequate experience in the evaluation of environmental impact to the natural environment." Part I, Section V of the technical evaluation criteria is entitled: "contractors past performance and proposed methodologies for evaluating primary and secondary environmental impacts on the natural and socioeconomic environment." Section V contains a list of ten subcategories of environmental impact to be considered (water, land, groundwater, air, land use and population densities, etc.). ESE's proposal lists twenty-two projects with a notation as to which of the ten subsystems specified in Part V were involved in each project. EPA states that the low rating given to ESE for this Part was primarily due to a lack of specific experience in each subcategory. In addition, low point scores were given to each category in this Part for unsatisfactory proposed methodologies.

EPA determined that in order for ESE to remedy the omissions from its proposal, it would have to provide more than clarifying data, but rather, it would have had to add to its proposal new information concerning its experience and proposed methodology. EPA concluded

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that ESE's proposal was technically unacceptable and outside of the competitive range.

ESE contends that the information contained in its proposal was a "documented response to the general intent of EPA criteria, and an implied response to specific criteria sufficient for a prudent review." It contends that the listing in its proposal of major environmental studies currently being performed by ESE was sufficient to indicate a high level of experience. ESE asserts that to the trained reader each of the projects listed in its proposal implies a certain level of accomplishment. ESE states, for example, that the listing of six effluent guidelines projects conducted over the past five years would by definition require design and cost analysis for hundreds of treatment systems. ESE also contends that the experience of its personnel, which was described in its proposal was sufficient to satisfy the RFP evaluation criteria in light of Amendment 1 to the RFP which states, at page 3, that: "The experience of each prospective contractor is being evaluated by a combination of company experience in environmental analysis and the experience of personnel who would be assigned to perform directives of work issued under this contract."

Alternatively, ESE contends that, even if its proposal was deficient, EPA was required to request clarification from ESE concerning the extent of its experience and its proposed methodology, prior to determining it to be outside of the competitive range. ESE cites 41 C.F.R. 15-3.805-1(a)(4)(ii) which states that:

"The technical evaluators shall determine whether any proposal which appears to be unacceptable might be found acceptable upon the furnishing of clarifying data by the proposer * * *"

This Office has held that a contracting agency may exclude a proposal, as submitted, from the competitive range for "informational" deficiencies when those deficiencies are so material as to preclude any possibility of upgrading the proposal to an acceptable level except through major revisions and additions which would be tantamount to the submission of another proposal. Servrite International, Ltd., B-187197, October 8, 1976, 76-2 CPD 325; Comten-Compress, B-183379, June 30, 1975, 75-1 CPD 400; 53 Comp. Gen. ¶ (1973); 52 id. 382, 386 (1972); 52 id. 865, 868 (1973). Here, the

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evaluation criteria clearly indicated that the contractor's experience with planning and/or designing wastewater subsystems, and selecting between alternative subsystems, was an important element of proposal evaluation. ESE cited projects which it had conducted but did not describe its experience regarding those components specifically listed in the RFP. ESE's listing of the experience of its personnel did not remedy the lack of information as to company experience, because the RFP specified that both company and personnel experience would be scored. Also ESE's proposal contained no discussion of ESE's proposed methodology for identifying objectives and constraints of wastewater systems and subsystems, as listed in the RFP.

We find to be reasonable EPA's determination that it had no duty to request clarifications from ESE because ESE's proposal could be upgraded to an acceptable level only through major revisions and additions related to a basic requirement of the RFP. See 52 Comp. Gen. 382, 386 (1972). We conclude that the absence of description in ESE's proposal of the types of experience specifically enumerated in the evaluation criteria and omissions of information regarding proposed methodology, was a major deficiency which formed a reasonable basis for EPA's finding that ESE was outside of the competitive range. Because ESE's proposal was found to be technically unacceptable, ESE was not entitled to an opportunity to submit a revised proposal. See Servrite International, Ltd., supra.

ESE finally asserts that EPA's decision to proceed with award prior to resolution of the protest by this Office violated the spirit of bid protest procedures. The Federal Procurement Regulations (FPR) provide that award may be made prior to resolution of a bid protest by GAO where: (i) the items to be procured are urgently required; or (ii) delivery or performance will be unduly delayed by failure to make award promptly; or (iii) a prompt award will otherwise be advantageous to the Government. FPR 1-2.407-8(b)(4). ESE has not shown that EPA failed to follow this regulation or that EPA proceeded with award in bad faith. Consequently, we have no basis to question EPA's action in awarding a contract prior to resolution of the bid protest by this Office.

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Accordingly, the protest is denied.

R. J. Keenan
Deputy Comptroller General
of the United States