



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Aerostructures, Inc.

File: B-280284

Date: September 15, 1998

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DIGEST

1. Protest against solicitation terms relating to evaluation of offeror personnel and cost is denied where record shows that solicitation reflects agency's needs and protest contentions essentially amount to assertions that solicitation should be more restrictive.
2. Protest that agency improperly withdrew small business set-aside is denied where, based on acquisition history and technical nature of requirement, agency reasonably determined it was unlikely that at least two offers from responsible small businesses would be received.

DECISION

Aerostructures, Inc. protests the terms of request for proposals (RFP) No. N00421-97-R-1269, issued by the Department of the Navy for services in connection with its aircraft structural life surveillance program. Aerostructures principally maintains that the RFP improperly relaxes certain requirements included in previous solicitations, and that the agency improperly issued the RFP on an unrestricted basis, rather than as a small business set-aside.

We deny the protest.

The solicitation seeks proposals for a base year, with four 1-year options, to perform engineering analyses, technical studies and structural testing for the structural management of the Navy's aircraft. The contract awarded will be an indefinite-quantity, fixed-price-per-labor-hour contract. The RFP calls for firms to submit detailed technical, past performance, management and cost proposals to demonstrate their ability to perform the requirement. As part of their technical proposals, firms are required to submit numerous resumes to show the education and experience of their proposed employees, as well as detailed information relating

to similar prior or ongoing contracts for purposes of evaluating the firm's past performance.

RFP PROVISIONS

Personnel Qualifications

Aerostructures maintains that the RFP improperly relaxes requirements (compared to prior RFPs for this acquisition)--and thereby eliminates a competitive advantage it otherwise would enjoy as the incumbent contractor--in the area of personnel qualifications by imposing only minimal educational and experience requirements.

In drafting solicitations, agencies may include restrictive provisions or conditions only to the extent necessary to satisfy the needs of the agency or as authorized by law. 10 U.S.C. § 2305(a)(1)(B)(ii) (1994). We will question a solicitation provision only where the protester shows that it is not reasonably related to the agency's requirements and has the effect of restricting competition, see Micromass, Inc., B-278869, Mar. 24, 1998, 98-1 CPD ¶ 93 at 3, since our role in reviewing bid protests is to ensure that the statutory requirement for full and open competition is met, not to protect the competitive interest a protester may have in solicitation terms that could make it more difficult for certain firms to compete. Simplix, B-274388, Dec. 6, 1996, 96-2 CPD ¶ 216 at 5-6.¹

The protester's challenge to this RFP is untenable. An agency simply is not required to limit a competition to firms offering personnel with a certain amount of education or experience, or even to award additional evaluation credit to firms offering personnel with greater education or experience, where it has determined that the additional qualifications are unnecessary to the fulfilling of the government's needs. The protester's position would require the solicitation to be modified to require more--i.e., personnel with greater qualifications--than the agency actually needs; this is inconsistent with the principle of full and open competition, and does not provide a valid basis for protest.

¹In its original protest, Aerostructures maintained that the RFP required the submission of only 24 resumes whereas, previously, the agency had required the submission of 42 resumes. The protester does not mention this contention in its comments, and we deem the allegation abandoned. TMI Servs., Inc., B-276624.2, July 9, 1997, 97-2 CPD ¶ 24 at 4 n.3. In any case, this allegation, like the protester's other argument relating to the evaluation of personnel qualifications, amounts to an assertion that the RFP should be drafted in a manner that is more restrictive than necessary to meet the agency's requirements, a contention we will not consider. Simplix, *supra*.

In any case, the RFP and source selection plan both provide for the possibility that a firm's personnel qualifications will merit additional consideration in the evaluation. In this respect, the RFP specifically provides that individuals exceeding the minimum requirements in the areas of experience and education may be rated higher, RFP at 135, and further provides for the assignment of a range of adjectival ratings for each prospective employee that is evaluated. RFP at 133, 135. The source selection plan also provides for detailed consideration of each proposed employee's relative merit through the evaluation of each resume submitted, with the evaluators assigning adjectival ratings and including a narrative discussion of the employee's strengths and weaknesses. See, e.g., Source Selection Plan, Attachment 3 at 4-5.

Turnover Costs

Aerostructures also asserts that the RFP improperly fails to provide for consideration of turnover costs if the agency makes award to a firm other than the protester. According to Aerostructures, a new contractor cannot hope to function at a level of efficiency comparable to the protester, who has been performing the contract for an extended period of time.

This argument fails for essentially the same reason as discussed above, that is, there is no requirement that an agency include particular factors in its evaluation. Rather, an agency is responsible for determining which considerations must be evaluated to meet the agency's legitimate needs, and must fashion the RFP to reflect this determination. Sea-Land Serv., Inc., B-278404.2, Feb. 9, 1998, 98-1 CPD ¶ 47 at 6. Again, the fact that an offeror may have an interest in certain factors being considered in the award decision is not a valid basis for challenging a solicitation. In any case, the RFP provides for assessing the offerors' capacity to perform in accordance with the agency's requirements--including the timely and efficient delivery of the services to be provided--by requiring firms to provide a detailed plan for fulfilling each contract line item that describes the techniques, procedures, experience, facilities and personnel that the offeror intends to utilize in performance of the contract; offerors are also required to discuss how they will provide rapid turnaround of urgent requirements. RFP at 111, 135. In addition to this general information, firms are required to submit detailed responses to five sample tasks for purposes of demonstrating their capability to perform the contract. These responses must include a step-by-step description of the technical approach being proposed, a detailed work plan, a description of the labor hours by category that will be used to complete the sample task, and a schedule for the work to be performed. RFP at 111-21, 136. These proposal submission requirements will

enable the agency to assess the relative efficiency of awarding the contract to one firm versus another.²

WITHDRAWAL OF SMALL BUSINESS SET-ASIDE

Aerostructures asserts that the agency did not adequately investigate possible small business interest, and as a result, improperly issued the solicitation on an unrestricted basis rather than setting it aside for small businesses as it had done with the past two solicitations for this requirement. Specifically, it maintains that the agency should have conducted a current market survey and investigated the capabilities of small businesses on the solicitation mailing list.

Acquisitions with an anticipated value in excess of \$100,000 must be set aside for exclusive small business participation where the contracting officer determines that there is a reasonable expectation that offers will be received from at least two responsible small businesses, and that award will be made at a fair market price. Federal Acquisition Regulation (FAR) § 19.502-2(b). In determining whether to set an acquisition aside, the agency must undertake reasonable efforts to ascertain whether there is a realistic expectation that two or more small business offerors will actually submit proposals. Talon Mfg. Co., Inc., B-257536, Oct. 14, 1994, 94-2 CPD ¶ 140 at 10.

The Navy proceeded reasonably here in withdrawing the set-aside. The contracting officer's decision to withdraw the set-aside was based primarily on the procurement history and technical complexity of the requirement, and there is no basis for the protester's assertion that the agency was required to use other means to assess the likelihood of receiving two small business offers. In this regard, there is no requirement that agencies use any particular method for making this assessment; rather, such factors as the nature of the supplies or services to be acquired, the procurement history of the requirement, current market climate, and advice from the agency's small business advocate all may constitute adequate grounds for

²Aerostructures also originally protested that the RFP improperly required firms to have prior experience in systems engineering (which the protester states is a discrete engineering discipline), even though the contract is for performance of structural engineering services. In response, the Navy explained that the RFP reference to systems engineering was intended, not to require system engineering experience per se, but to reflect its intention to evaluate experience in managing any complex program for engineering services. The Navy further advised that, during the pendency of the protest, it received the protester's offer and found the firm's experience acceptable for purposes of the past performance requirement. Since the protester does not continue to allege that it has been prejudiced by this RFP provision, we have no basis to further consider this aspect of the protest.

determining that a set-aside is not appropriate. Cardiometrix, B-276912, B-276912.2, Aug. 11, 1997, 97-2 CPD ¶ 45 at 2-3; Talon Mfg. Co., Inc., *supra*, at 10. Thus, there is nothing improper with the method the Navy used in making its determination.

The agency's conclusions based on the procurement history and technical nature of the requirement also were reasonable. In this regard, the agency had received only one small business offer (from Aerostructures) during the past two acquisition cycles, when the requirement was set aside for small businesses. As for the technical nature of the requirement, the contract requires a large staff of highly specialized personnel with qualifications in the fields of engineering and computer programming. Offerors are required to submit 23 key personnel resumes, and the RFP calls for as many as 42 highly specialized professionals designated as key personnel. RFP at 8. (For example, the solicitation estimates that the contractor will be required to have 12 senior engineering analysts, RFP at 8; these individuals must have a minimum of 12 years of experience in contemporary aircraft airframe design and analysis, and knowledge and experience in a minimum of 6 discrete specialty areas such as the design of metallic and composite airframe structures; full scale aircraft or major component static, dynamic and fatigue testing; and fatigue/durability and damage tolerance analysis. RFP at 158.) The contracting officer reasoned that there was little or no likelihood that there were two small business concerns with the large number of highly specialized personnel required. Based on his concerns, the contracting officer sought the views of the agency's small and disadvantaged business advocate (SDBA); the SDBA concurred that the set-aside should be withdrawn based on the history and technical complexity of the requirement. We note that the agency proceeded with the receipt of offers after this protest was filed, and again received only one small business offer, from Aerostructures. Given these circumstances, we conclude that the agency reasonably decided to issue the RFP on an unrestricted basis.

Aerostructures contends that the decision to issue the requirement on an unrestricted basis was motivated by the contracting officer's bias against the firm. Aerostructures asserts in this regard that it was aware of the contracting officer's alleged bias because of statements he made to the effect that he no longer wished to contract with Aerostructures and was tired of doing business with the firm. We need not decide the question of bias since, as discussed, the decision to withdraw the set-aside was otherwise proper. Where, as here, the reasonableness of a set-aside decision is independently verifiable, alleged improper agency motives do not provide a basis for disturbing the decision. York Int'l Corp., B-244748, Sept. 30, 1991, 91-2 CPD ¶ 282 at 6.

The protest is denied.

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