Comptroller General
of the United States

United States General Accounting Office
Washington, DC 20548

Decision

Matter of: EAI Corporation

File: B-283129

Date: October 7, 1999

William B. Barton, IV, Esq., and William T. Welch, Esq., Barton & Tolle, for the protester.
Richard Ferguson, Esq., and Elizabeth M. Grant, Esq., Defense Logistics Agency, for the agency.
Mary G. Curcio, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency's decision not to set aside portion of solicitation for exclusive small business participation was proper where agency reasonably determined that requirement to operate information analysis center for chemical and biological warfare and requirement to perform additional research tasks in the same subject areas are interrelated and interdependent, such that partitioning the requirements is not practicable.

DECISION

EAI Corporation protests that Defense Logistics Agency (DLA) request for proposals (RFP) No. SPO700-99-R-0050, which calls for contractor to establish and operate a chemical warfare/chemical and biological defense information analysis center (CBIAC), should have been partially set aside for exclusive small business participation.

We deny the protest.

The purpose of the CBIAC is to provide scientific and technical analysis and technical advisory services to assist the chemical and biological defense community in meeting technical and operational objectives relating to chemical warfare and chemical biological defense. RFP at 36. The successful contractor will perform basic or core center functions, as well as additional technical area tasks (TAT). The basic functions include information collection, information processing, information analysis, and information dissemination. Id. at 38-44. TATs are over and above the

core center functions and can be ordered by qualified users in 20 subject areas. Id. at 45-68.

EAI argues that the solicitation should be divided into two components--the core IAC function, and the TAT function--and that one of the portions should be set aside for exclusive small business participation. In the alternative, EAI argues that some of the individual TATs should be set aside for small business participation.[1]

Federal Acquisition Regulation (FAR) § 19.502-3 requires, in relevant part, that a portion of an acquisition be set aside for exclusive small business participation when a total set-aside is not appropriate, and the requirement is severable into two or more economic production runs or reasonable lots. The determination as to whether a particular acquisition should be partially set aside is left to the discretion of the contracting officer, provided the determination is reasonably supported. Digital Sys. Group, Inc., B-258262.2, Jan. 20, 1995, 95-1 CPD ¶ 30 at 7.

DLA determined that no portion of the TATs can be set aside because, while the solicitation lists 20 areas in which TATs can be ordered, any specific TAT can cover more than one area. Supplemental Report, Aug. 25, 1999, at 10-11. The agency is concerned that dividing the TATs by area may result in multiple contractors performing a specific TAT, id. at 10, which would increase the cost to the requesting activity and, more importantly, would increase the potential for inadequate responses or errors due to contractors' inability to determine which part of the TAT falls within their jurisdiction. Id. at 11. Finally, the agency is concerned that the need to coordinate the efforts among the contractors would cause delays in the response time to the TATs. Id.

We think the agency's concerns provided a reasonable basis for its conclusion that it would be impracticable to set aside one or more of the TATs for small businesses. Specifically, we think it is reasonable to anticipate that responses to TATs could be degraded or delayed due to the need to divide responsibilities among different contractors, and that the involvement of more than one contractor in a TAT would increase the cost to the user. Further, while it seems conceivable that a given TAT could concern only a single research area, and thus could be effectively performed

---

[1]In its initial protest submission, EAI also argued generally that the solicitation violates the Small Business Reauthorization Act of 1997, 15 U.S.C. § 631(j) (1999), by bundling multiple requirements without justification. In its comments on the agency's report, EAI for the first time specified that the agency improperly bundled the TAT and core center functions. EAI should have been aware of the specific basis for its bundling argument at the time it filed its protest. Because EAI raised the specific argument for the first time in its comments, the argument is untimely. See Braswell Servs. Group, Inc., B-276694, July 15, 1997, 97-2 CPD ¶ 18 at 6-7. Our Regulations do not contemplate the piecemeal development of protest issues.

as a partial set-aside, it is not apparent how the agency reasonably could determine this in advance. We conclude that the TATs are not severable by research area.

In any case, we find that the agency has established a sound basis for having the TATs and the core functions performed by a single contractor. In this regard, DLA explains that the CBIAC (as well as other IACs covering different subject areas) were established to perform both the core functions and additional tasks that go beyond the scope of, but are directly related to, the core functions. Supplemental Report, Aug. 25, 1999, at Tab A. The agency concludes that the tasks to be performed under the core and TAT functions are interrelated and interdependent--and that it thus would not be practicable to sever them--because (1) the TAT work requires access to the various databases maintained under the core functions; (2) when a TAT is completed, the results must be incorporated into the database for future use; and (3) the scientists and other experts who perform the core center functions are available to work on the TATs. Id. at 9-10. In the final analysis, the CBIAC was designed to provide "one-stop shopping" for its users. Id. at 11.

We find no basis for questioning the agency's judgment. Since the TAT and core functions cover the same areas within the larger chemical and biological warfare area, we think the agency reasonably could conclude that there is a significant benefit to be gained from having a single contractor perform all tasks so that the contractor, as well as the experts performing the tasks, will be able to build on information obtained from performing the core functions. This approach appears consistent with the aim of avoiding duplication of work and inconsistent results, and also with the aim of ensuring that there is a well-respected and recognized central authority in area.

Since DLA reasonably determined that the solicitation was not severable, there was no requirement to set aside a portion of the solicitation for exclusive small business participation.[2]

EAI also maintains that the solicitation improperly restricts competition because it requires offerors to own or control certain laboratory facilities. EAI argues that there are sufficient facilities within the Department of Defense that DLA should make available to the awardee. This argument is without merit. The solicitation does not require offerors to own or control laboratory-testing facilities; rather, it requires only that offerors have access to such facilities. RFP at 46-47. Access can be demonstrated by several means: ownership or control; subcontract; cooperative

---

[2]In its initial protest submission, EAI argued only that a partial set-aside was required. It appears from subsequent submissions that EAI also may be arguing that the entire solicitation should have been set aside for small businesses. This argument is untimely, since it was not raised in the initial protest. See Braswell Servs. Group, Inc., supra.

research and development agreement with a federal agency or department; memorandum of agreement or memorandum of understanding with a federal activity; or similar arrangements with non-government entities, including partnership and joint venture agreements. Id. at 47. Given this multitude of acceptable approaches to meeting the requirement, and the absence of evidence showing that facilities in fact are unavailable to potential offerors, there is no basis for finding that the access requirement is restrictive. In this regard, we note that EAI in fact entered into an agreement permitting it to use the testing facilities of a government agency. Although this agreement ultimately fell through, it demonstrates that there are available laboratories with which arrangements can be made.

The protest is denied.

Comptroller General
of the United States