



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Environmental Technology Assessment
Compliance Service

File: B-258093

Date: December 13, 1994

Dorothy D. Guillory, Esq., for the protester,
William H. Ward, for Ward & Associates, an interested party.
Jose Aguirre, Esq., Diane D. Hayden, Esq., and Paul M.
Fisher, Esq., Department of the Navy, for the agency.
Scott H. Riback, Esq., and John M. Melody, Esq., Office of
the General Counsel, GAO, participated in the preparation of
the decision.

DIGEST

Allegation that agency improperly eliminated protester from further consideration in architect-engineer procurement is without merit where record shows that agency's actions were consistent with applicable procedures, and the protester was eliminated for numerous valid reasons.

DECISION

Environmental Technology Assessment Compliance Service (ETACS) protests the actions of the Department of the Navy in connection with its acquisition of environmental engineering services at the Naval Air Station, Alameda, California.¹ ETACS argues that the Navy improperly removed it from further consideration based on the firm's response to a Commerce Business Daily (CBD) announcement published by the agency.

We deny the protest.

The Navy is conducting this acquisition using the procedures outlined in the Brooks Act, 40 U.S.C. § 541 et seq. (1988), and its implementing regulations, Federal Acquisition Regulation (FAR) part 36, to acquire engineering services for various environmental engineering projects. Pursuant to these authorities, the Navy published a CBD synopsis on

¹The Navy intends to issue a solicitation for its requirement, request for proposals (RFP) No. N62474-94-D-7535. ETACS' protest concerns the Navy's actions prior to its issuance of the RFP.

May 5, 1994, requesting that interested firms submit standard form Nos. 254 (Architect-Engineer and Related Services Questionnaire) and 255 (Architect-Engineer and Related Services Questionnaire for Specific Project) to demonstrate their qualifications for the procurement. Firms were required to include certain specific information relating to various matters that the agency would consider, including the qualifications of offered personnel, the firm's capacity to perform the work, prior experience in related work, and proposed subcontracting plan.

A total of 21 firms (including ETACS) responded to the CBD announcement by the closing date. The agency then had a source selection board (SSB), comprised of two engineers and a contracting officer, review the submissions² and recommend to the source selection authority (SSA) a final selection list of four firms, which the SSB considered to be the most highly qualified to perform the work. The SSA approved this list of four firms, which did not include ETACS. Upon learning of its exclusion from further consideration, ETACS filed this protest.

ETACS makes numerous arguments regarding the propriety of the agency's actions. ETACS primarily contends that the agency failed to inform offerors that their submissions would be reviewed by a selection board of architects or engineers before being reviewed by the SSA.³ According to

²Naval Facilities Engineering Command (NAVFAC) procedures permit the agency to use either of two procedures when conducting architect-engineer procurements. Pursuant to NAVFAC Contracting Manual, P-68, subpart 36.602, the agency may either (1) use a "slate committee" to review the submissions and make recommendations to the source selection board, which in turn makes recommendations to the source selection authority; or (2) use a single slate committee/source selection board which makes its recommendations directly to the source selection authority. The Navy used the second procedure here.

³Although we find the firm's arguments somewhat unclear, we read the protest as also alleging that the agency erred in permitting the SSB to review the submissions and make a recommendation to the SSA without first having the submissions reviewed by some other source selection board. This allegation apparently arises from the wording of the agency's notice to ETACS, which stated that its submission had been reviewed by a "slate committee." As already noted, however, the Navy used one of its two permissible procedures, whereby a single slate committee/source selection board made recommendations to the SSA; we have no basis to object to the agency's actions in this regard.

ETACS, this failure on the part of the agency prejudiced it because it would have prepared its submission differently had it been aware of the fact that engineers would be reviewing its submission. ETACS argues secondarily that, in any event, its submission was not reviewed at all by the agency.

We have examined the record in this case and conclude that ETACS' allegations arise either from a basic misunderstanding of the Brooks Act's contracting procedures, or from a lack of information regarding the agency's actual evaluation of its submission.⁴ First, ETACS' allegation that it was not notified that its submission would be reviewed by a panel or board of engineers is not a basis for sustaining its protest. As discussed below, the procedures for making source selections under the Brooks Act--including the requirement that an agency use only qualified architects or engineers in reviewing offeror submissions and making a final selection of a limited number of firms for final negotiations--are outlined in FAR part 36. Because the FAR is published in the Federal Register and The Code of Federal Regulations, ETACS was on constructive notice that the agency was required to evaluate the offerors' submissions using a board of qualified individuals. See Gurley's Inc., B-253852, Aug. 25, 1993, 93-2 CPD ¶ 123.

We also see nothing else improper in the agency's actions. Under the Brooks Act and its implementing regulations, agencies are not required to obtain proposals from all prospective offerors but, rather, may limit the competition to those firms found to be the most highly qualified to perform the requirement. 40 U.S.C. §§ 542 and 543; FAR § 36.606. Consistent with this statutory scheme, an agency identifies the firms with whom it will negotiate by convening an evaluation board of qualified architects or engineers (as well as individuals familiar with government contracting such as a contracting officer) to review the qualifications statements of firms that are either on file with the agency or provided in response to a CBD announcement. FAR § 36.602-3. After reviewing the qualifications statements, the evaluation board recommends

⁴The protester's counsel declined to submit an application to review evaluation information under a protective order. Consequently, neither ETACS nor its counsel has reviewed the agency's evaluation materials which describe why certain firms were eliminated from consideration while others were not. Our in camera review of these materials shows that the agency properly evaluated ETACS' submissions.

to the agency's SSA a list of no fewer than three firms that the board has identified as qualified to perform the contract; the SSA then either approves or disapproves the list of firms, FAR § 36.602-4. After the list of firms has been approved by the SSA, the agency solicits proposals from, and negotiates with, this limited number of firms. FAR § 36.606.

The Navy's actions, described above, were consistent with these procedures. The agency sought and obtained qualifications statements from 21 firms; the qualifications statements were reviewed by an SSB; based on its review, the SSB recommended four firms for final selection and negotiation; the SSA approved that recommendation; and the agency began negotiations with the qualified firms after notifying the unqualified firms, including ETACS, that they would not receive further consideration.

The record shows that ETACS' qualifications statements were reviewed by the SSB, and that the firm was found unqualified to perform the work for three separate reasons. First, an ETACS professional employee who was represented as the individual who would be responsible for handling storm water activities was found to be lacking in storm water management experience. As specified in the CBD announcement, this was a necessary area of expertise for contract performance which requires, among other things, various storm water monitoring, permitting and sampling activities. Second, the SSB found that, although ETACS had represented that it had adequate capacity to perform the contract, nothing in the firm's submission substantiated this representation. This also was a proper area of consideration for the agency, since the CBD announcement specifically advised firms that capacity to perform the solicited work would be reviewed by the SSB and requested the submission of materials to show adequate capacity. Finally, the SSB found that, although ETACS had offered to use six subcontractors, five of which were either small businesses or small disadvantaged businesses, the firm had presented no plan showing how the various proposed subcontractors would be used. As with the other areas, this was a proper consideration for the SSB because prospective offerors were required by the CBD announcement to state the dollar value and type of work to be performed by each subcontractor, and were advised that their subcontracting plans would be reviewed by the agency.

In sum, the record shows that the agency reviewed ETACS' submission using proper procedures, found it deficient in a number of areas, and did not further consider ETACS because of those deficiencies. On this record, we find nothing improper with the Navy's actions.

The protest is denied.


for Robert P. Murphy
General Counsel