Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: McNeil Technologies, Inc.

File: B-278904.2

Date: April 2, 1998

James L. McNeil for the protester.
Gena E. Cadieux, Esq., Patricia D. Graham, Esq., and Joseph A. Lenhard, Esq., Department of Energy, for the agency.
Jacqueline Maeder, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency failed to award a contract to a small disadvantaged business in derogation of solicitation award provision is denied where the solicitation language addressing awards indicated only that the agency contemplated the award of contracts to a small business, a small disadvantaged business, and a large business, without making awards to all three mandatory.

DECISION

McNeil Technologies, Inc. protests the Department of Energy's (DOE) failure to award the firm a contract under request for proposals (RFP) No. DE-RP01-97EI30000, issued by DOE for technical services for the Energy Information Administration (EIA).[1] The protester contends that, because its proposal was the highest-ranked one submitted by a small disadvantaged business (SDB), the agency was required to award McNeil a contract in order to comply with the solicitation's award terms.

We deny the protest.

DOE issued an omnibus RFP, referred to as the EIA Omnibus Procurement (EOP), via the Internet on July 7, 1997, along with a 27-page document titled "Answers Regarding Questions to Draft RFP," which provided responses to more than 200 questions that had been submitted concerning a previously disseminated draft solicitation.[2] Under the EOP, DOE combined technical services that were currently being performed for EIA under 11 separate support services contracts. The EOP sought separate proposals for three functional areas/contract line item numbers

---

[1]EIA is an independent statistical and analytical agency within DOE.

[2]The agency posted a draft solicitation on the Internet on April 17, 1997.

(CLIN) including information management and product production support services (CLIN 001); energy analysis and forecasting (EAF) support services (CLIN 002); and information technology support services (CLIN 003). The EOP provided for multiple indefinite quantity awards with awardees becoming eligible for post-award competition for task orders for a 3-year base period with one 2-year option. Since each contract will have cost reimbursement and fixed-price provisions, task orders are to be issued on both a cost-plus-fixed-fee and a fixed-price basis. DOE issued two amendments to the RFP.

Item 22 of the RFP cover sheet stated that the procurement was being conducted under full and open competition, without indicating that it was subject to any restrictions or set-asides. At section L.22, entitled "Number of Awards," the RFP stated, in relevant part: "The Government contemplates individual awards for at least one small business, at least one small/disadvantaged business, and at least one large business under each functional area of the EOP solicitation." In a solicitation cover letter, DOE stated:

> To promote small, small/disadvantaged business participation under the EOP, the Government anticipates at least one (but not limited to one) contract award to a small disadvantaged business, and at least one (but not limited to one) award to a small business under each functional area. Also, large businesses will be required to submit subcontracting plans pursuant to [Federal Acquisition Regulation] FAR 52.219-14. The basis of award to small/small disadvantaged (as well as large) business is best value.

The cover letter also expressly provided that it was not an integral part of the RFP and that, in the event of a conflict between the cover letter and the RFP, the RFP would control.

In the July 7 "Answers Regarding Questions to Draft RFP," in response to a question concerning the number of contracts to be awarded, the agency had stated that:

> EIA will award a minimum of 3 awards to technically qualified firms in each functional area: at least one to a qualified 8(a), at least one to a qualified SB, and at least one to a technically competent large business.

At section L.15, the RFP stated that DOE would "award contracts resulting from this solicitation to the responsible offerors whose offer conforming to the solicitation will be the most advantageous to the Government, cost or price and other factors, specified elsewhere in this solicitation, considered," and advised that DOE intended to award on the basis of initial offers without discussions. Section M-1(B) reiterated that award would be made to the offerors whose conforming proposals

were determined to be most advantageous to the government. Section M-3 of the RFP identified the following non-cost evaluation factors:

1. Business management, technical and organizational approach
2. Past and present experience
3. Corporate resource management
4. Videotape response/presentation
5. Past performance

Business management, technical and organizational approach was weighted 50 percent of the evaluation; past and present experience and corporate resource management were each weighted 20 percent; the video presentation was weighted 10 percent; and past performance was adjectivally rated. Price proposals were to be evaluated as to reasonableness.

Six offerors, including McNeil, submitted proposals on CLIN 002, EAF support services, under which the contractors are to provide analytic, modeling, and documentation support in the areas of general analysis, analytical/statistical analysis, model development, model documentation, and archiving activities and non-technical analysis and evaluation. Members of the technical evaluation committee (TEC) individually evaluated each proposal and, in internal discussions, reached a consensus on the strengths and weaknesses of each proposal and assigned each a point score of 0, 2, 5, 8, or 10 under each evaluation criterion.[3] Numerical ratings were multiplied by the weight for the factors and the scores were then totaled. A proposal that received scores of 10 on each evaluation factor would receive a maximum point score of 1,000. Past performance was assigned an adjectival rating of "excellent," "good," "fair" or "neutral," "poor," or "unsatisfactory."

The source selection official (SSO) determined that one large business concern, Science Applications International Corporation (SAIC) and one small business concern, Decision Analysis Corporation (DAC) demonstrated the greatest technical understanding in the area of EAF support services. Because of the large difference in technical merit between these two proposals and the remaining proposals, the SSO also determined that it was advantageous for the agency to select only these two top offerors for award. McNeil was given a point score of 2 for its videotape presentation and scores of 5 for the other three evaluation categories, for a total of 470 points, making McNeil's proposal the third-highest ranked of the six

---

[3]As relevant here, a score of 5 reflected a proposal which appeared capable of meeting the RFP requirements and had few significant strengths or significant weaknesses. A score of 8 reflected a proposal evidencing very good responses showing a high probability of meeting the RFP's requirements and had significant strengths and few significant weaknesses.

proposals. The protester's past performance was rated "good" and its proposed cost was second low. Technical scores, adjectival ratings for past performance, and evaluated ceiling prices[4] for the awardees' and the protester's proposals were as follows:

Offeror[5]	Business Management Technical/Corporate	Past Performance	Evaluated Price
SAIC	895	Good	$11,965,418
DAC	825	Good	$15,392,544
McNeil	470	Good	$15,261,480

On December 17, DOE notified McNeil that it had not been selected for award and, after a debriefing, McNeil filed this protest with our Office.

McNeil takes the position that the language of the RFP, the cover letter, and DOE's "Answers Regarding Questions to Draft RFP" requires DOE to make an award to at least one SDB under each of the three functional areas. The protester relies primarily on the language in DOE's "Answers Regarding Questions to Draft RFP" which states that DOE "will award" to at least one small disadvantaged business in each functional area. McNeil argues that this language, in conjunction with the RFP language and the cover letter language, can only be interpreted to mean "that there definitely will be a small disadvantaged business award in each of the three functional areas of the [s]olicitation." Because McNeil's proposal was never found to be technically unqualified and is ranked third overall and highest for an SDB among all offerors on EAF support services, McNeil argues that it was entitled to the award of a contract for CLIN 002.

The agency takes the position that McNeil is misconstruing the RFP language. DOE asserts that it is inappropriate for McNeil to rely on the July 7 "Answers Regarding Questions to Draft RFP" because this document was not part of the RFP and the answers provided were never incorporated into the subsequently

---

[4]Evaluated ceiling prices were calculated by doubling an offeror's proposed price for the functional area.

[5]The technical scores for the other three offerors were 275, 190, and 175; past performance ratings were "good" for all three offerors; and prices ranged from approximately $16,000,000 to $28,000,000.

issued RFP. Additionally, DOE argues that the language at section L.22 of the RFP which states that the government "contemplates" individual awards for at least one small business, at least one SDB and at least one large business, as well as the language in the RFP cover letter stating that the agency "anticipates" multiple awards to a small business and to an SDB under each functional area simply indicate that DOE may award to a small business, an SDB, and a large business, but that the language does not require such awards. DOE also argues that McNeil's interpretation ignores section M.1(B), which states that awards will be based on best value, from which it follows that, where a proposal does not represent the best value to the government, award to the entity that submitted the proposal is not required regardless of the offeror's size or status.

Evaluation and award in negotiated procurements are required to be made in accordance with the terms of the RFP. Industrial Data Link Corp., B-248477.2, Sept. 14, 1992, 92-2 CPD ¶ 176 at 4. Where a dispute exists as to the meaning of solicitation language, we will resolve the matter by reading the solicitation as a whole and in a manner that gives effect to all provisions of the solicitation. Pro Constr., Inc., B-272458, Oct. 10, 1996, 96-2 CPD ¶ 141 at 3; Lithos Restoration, Ltd., 71 Comp. Gen. 367, 370 (1992), 92-1 CPD ¶ 379 at 4. To be reasonable, an interpretation must be consistent with the solicitation when read as a whole and in a reasonable manner. Lithos Restoration, Ltd., supra. Applying this standard here, we conclude that DOE's determination to award contracts to the two offerors whose proposals were evaluated as presenting the best value to the government is consistent with the only reasonable reading of the RFP evaluation and award scheme.

McNeil's interpretation of the RFP award statement is untenable. The language at section L.22 of the RFP simply states that the agency "contemplates" making awards to a small business, an SDB, and a large business. Similarly, the RFP cover letter states that DOE "anticipates" awards to a small business, an SDB, and a large business. Nothing in this language commits or requires the agency to award contracts to these three types of firms, particularly in view of the fact that the RFP otherwise indicates that full and open competition is anticipated and does not provide for any sort of set-aside. The word "contemplates" means simply to have in view as probable or as an end or intention; that is to say, it signifies that an outcome is being considered without mandating the imposition of a definite outcome. Similarly, "anticipates" means to give advance thought to, or to expect. In short, the language of the RFP and its cover letter are consistent: both signify that the agency had an expectation that it would award contracts to each of the three types of businesses, without making such awards mandatory.

We agree with DOE that the "Answers Regarding Questions to Draft RFP," which contains the language most heavily relied upon by McNeil, lacks probative value because the document, which was not part of the RFP, was never incorporated by amendment into the RFP, and uses language which is not consonant with the

award language actually contained in the RFP. In short, McNeil's interpretation of the RFP award requirement is unfounded; the agency was not obligated to make an award to McNeil simply because McNeil submitted the highest ranked SDB proposal.

The protest is denied.

Comptroller General
of the United States