



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: SouthEastern Technologies, Inc.

File: B-275636

Date: March 10, 1997

R. Keith Kibbe for the protester.

Wendy E. Bryant, Esq., and Gena Cadieux, Esq., Department of Energy, for the agency.

Aldo A. Benejam, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging as unclear the terms of a Commerce Business Daily announcement seeking expressions of interest (EOI) for a decontamination, decommissioning, and recycling project for the Department of Energy (DOE) is denied where on its face, the announcement reasonably described the work to be performed and provided sufficient information, considering the nature of the procurement, to enable all interested parties, including the protester, to prepare EOIs in response, particularly given that prior to publishing the announcement DOE held a workshop to discuss the agency's goals with respect to the project with private industry, and protester attended that workshop, presented its proposed approach to DOE officials, and was a team member of a consortium that subsequently submitted a proposal to DOE to complete the project.

DECISION

SouthEastern Technologies, Inc. challenges as unclear the terms of a Commerce Business Daily (CBD) notice published by the Department of Energy (DOE) seeking expressions of interest (EOI) for a decontamination, decommissioning, and recycling project.

We deny the protest.

By way of background, in 1985, DOE discontinued uranium enrichment operations at its Gaseous Diffusion Plant in Oak Ridge, Tennessee. The discontinuation of these operations has resulted in underutilized facilities, equipment, materials, and infrastructure. With the loss of the mission for uranium enrichment for weapons, the mission has turned to environmental cleanup and re-industrialization of the site, referred to in the record as the "K-25 Site." Re-industrialization of the K-25 Site is intended to replace jobs reliant on federal funding with private industry jobs. The

agency's goal is to significantly reduce the federal presence at the site by the year 2010. To achieve that end, the Oak Ridge Operations Manager detailed a task team called "Vision 2010" to seek economical and effective means of accomplishing the agency's goal.

During April 1996, the Vision 2010 task force hosted an "Industry Advice and Information Exchange" workshop to discuss the K-25 Site assets and potential business opportunities with private industry. The purpose of the workshop was to give attendees an overview of the available facilities, equipment, and material salvage and recycle operations in Oak Ridge's facilities. The workshop was advertised in the CBD and in local and national newspapers. The protester participated in the workshop and also made a presentation to members of the Vision 2010 Task Team.

As a result of the workshop, several firms submitted proposals offering various approaches to complete the project. Only two approaches, however, addressed the complete decontamination and decommissioning of the three buildings at the site. One approach was proposed by a consortium headed by British Nuclear Fuels Limited, Inc. and Manufacturing Sciences Corporation (the BNFL consortium); the second proposal was submitted by the Teledyne/Allegheny consortium, which included the protester as part of its team.

Over the next several months, DOE continued to work with both consortiums to refine their approaches. Ultimately, the Teledyne/Allegheny consortium concluded that it could not meet the government's needs and withdrew its proposal, leaving only the BNFL consortium to pursue the project. Based on the information DOE had gathered over the preceding several months, the agency decided to negotiate a contract on a non-competitive basis with the BNFL consortium, and on November 4, 1996, DOE published the CBD announcement at issue here.

The CBD announcement, entitled "K-25 SITE THREE-BUILDING DECONTAMINATION AND DECOMMISSIONING (D&D) AND RECYCLING PROJECT," explained that as a result of proposals received through the Vision 2010 workshop, DOE "intends to negotiate a contract which may be on other than full and open competition for the D&D of the K-29, K-31, and K-33 process buildings and recycling of materials and equipment contained therein." The CBD notice stated that due to DOE scheduling requirements, "a formal solicitation may not be issued." Interested parties were invited to submit a "written expression of interest which should demonstrate their experience and capability to decontaminate and decommission similar facilities with a proven technology." In essence, the protester argues that the CBD announcement was so unclear that it was unable to determine what DOE intended.

The requirement for and content of synopses of proposed contract actions is governed by 15 U.S.C. § 637(e), (f) (1994) and 41 U.S.C. § 416(a), (b) (1994) as implemented by Federal Acquisition Regulation (FAR) 5.201, 5.207. The instant synopsis published by DOE contains an "accurate" [15 U.S.C. § 637(f)(1); 41 U.S.C. § 416(b)(1)] and a "clear and concise" [FAR 5.207(b)(4) (format item 17)] description of the proposed action. It provides "information that will assist a prospective contractor to make an informed business judgment as to whether," in this situation, to submit an EOI. 15 U.S.C. § 637(f)(1); 41 U.S.C. § 416(b)(1). DOE substantially complied with the prescribed synopsis transmittal format, FAR 5.207(b)(4), and the notice published the applicable requirements of 15 U.S.C. § 637(f) and 41 U.S.C. § 416(b). See generally Talon Corp., B-248086, July 27, 1992, 92-2 CPD ¶ 55.

In that the synopsis appeared to be more than the customary notice and was seeking EOI's, an analogy to the sufficiency of solicitations is instructive. As a general rule, a contracting agency must give offerors sufficient information in a solicitation to enable them to compete intelligently and on a relatively equal basis. University Research Corp., 64 Comp. Gen. 273 (1985), 85-1 CPD ¶ 210. There is no requirement that an agency draft specifications in such detail as to completely eliminate any risk or remove every uncertainty from the mind of every prospective offeror. A&C Bldg. and Indus. Maintenance Corp., B-230270, May 12, 1988, 88-1 CPD ¶ 451. Offerors are expected to use their business judgment and professional expertise to determine the most efficient and effective method of meeting the government's requirements. McDermott Shipyards, Div. of McDermott, Inc., B-237049, Jan. 29, 1990, 90-1 CPD ¶ 121. While this protest does not involve a formal solicitation, we think that these standards are equally applicable to a challenge, such as SouthEastern's, that a CBD announcement seeking EOIs is unclear. We have considered all of the protester's allegations and, based on our review of the record, conclude that SouthEastern has failed to show that the CBD announcement is unclear or otherwise contains any genuine ambiguities that precluded the firm from preparing an adequate EOI.

The CBD announcement explains in detail the contents of the three buildings at the K-25 Site (K-29, K-31, and K-33) and includes a description of the size of each. For instance, the CBD stated that "[t]he K-29 building contains three inactive gaseous diffusion process units consisting of ten cells each. Each cell contains ten stages, for a total of 300 stages." The announcement contained a similar description of the contents of the other two buildings and stated that "[a]ltogether, these three process buildings house a total of 1,540 stages." The announcement explained that "[a] stage consists of two electric motors, axial flow compressors, a converter containing a large surface area of barrier material, and associated process piping and valves." It also described the gross square footage for each building, and included an estimated tonnage of valuable metals contained within each (nickel,

aluminum, stainless steel, and copper), explaining that some of these assets are contaminated with radioactive and chemical materials.

With respect to the work to be completed, the CBD announcement specifically stated as follows:

"The work scope for the K-25 Site Three-Building D&D and Recycling Project requires as a minimum the following: 1) responsibility for surveillance and maintenance of the three process buildings, 2) removal of all process equipment and materials from the three buildings, 3) decontamination of all vacant areas within the building to 'brownfield' status, 4) recycling of the majority of materials, 5) disposal of secondary waste, 6) preparation of the three buildings for industrial use, and 7) having one of the buildings ready for industrial occupancy by the year 2000."

The announcement stated that the contractor would be responsible for disposing of the resulting recycled material/equipment/products, and that the contractor would also be responsible for all wastes and by-products associated with completing the effort.

In our view, the CBD announcement, by describing in detail the conditions at the site as well as the work to be performed, provided sufficient information to enable all interested parties, including the protester, to prepare reasonably detailed EOIs in response.

SouthEastern argues that the announcement was deficient because it could not tell whether the DOE intended the CBD announcement to be a presolicitation notice pursuant to Federal Acquisition Regulation (FAR) § 15.404, or whether the agency intended to establish qualification requirements pursuant to FAR Subpart 9.2. The protester further argues that the CBD announcement was insufficient because it failed to include note 22, the standard note which invites interested firms to identify their capability and submit EOIs, as prescribed by FAR § 5.207(e)(3) (FAC 90-41).

As noted above, the announcement specifically stated that DOE "intends to negotiate a contract which may be on other than full and open competition basis"; the announcement also clearly stated that DOE was seeking EOIs from parties who could demonstrate the experience and capability to perform the work required, and that DOE might conduct negotiations with "all responsible offerors who demonstrate prerequisite capability and technology." Notwithstanding the lack of reference to note 22 in the CBD announcement, a reasonable reading of the CBD notice shows clearly DOE's intent in publishing the notice--to advise potential offerors of DOE's intent to negotiate a sole-source contract with the BNFL

consortium, unless DOE received EOIs from other firms showing that a sole-source contract was not appropriate.

SouthEastern also maintains that the CBD announcement lacked sufficient detail for potential offerors to know exactly what information to include in their EOIs. For instance, the protester contends that the CBD notice contained only a conclusory statement that the BNFL consortium had demonstrated its capability and technology to complete the project, but did not identify any decontamination or nickel recovery technologies to be used by the consortium. According to SouthEastern, it needed this detailed information in order to adequately respond to the CBD announcement.

Risks are inherent in procurements, and an agency may properly impose substantial risk on the contractor and minimal risk upon itself. Essex Electro Eng'rs, Inc., 72 Comp. Gen. 299 (1993), 93-2 CPD ¶ 141. There is no legal requirement that a solicitation eliminate all performance uncertainties; such perfection, while desirable, is often impractical in some procurements, particularly where, as here, the contemplated project is unprecedented. In fact, in this connection, SouthEastern characterizes the requirement as being "first-of-a-kind," adding that "[n]o one has ever decontaminated and decommissioned one of the U.S. gaseous diffusion plants." Given the nature of the procurement, it is clear that the DOE is not in a position to suggest to potential contractors how the work was to be accomplished or what technologies should be used to complete the project.¹ Given the unprecedented nature of the project, we think that it is unreasonable for potential offerors to expect the level of detail sought by the protester.

The mere presence of substantial risks placed on potential contractors does not render the CBD announcement legally deficient. See AAA Eng'g & Drafting, Inc., B-236034, Oct. 31, 1989, 89-2 CPD ¶ 404. Under these circumstances, it is not unreasonable for the DOE to expect offerors to use their professional expertise and business judgment in anticipating a variety of factors that they should assess in addressing the agency's needs. See, e.g., Custom Env'tl. Serv., Inc., 70 Comp. Gen. 184 (1991), 91-1 CPD ¶ 38; A&C Bldg. and Indus. Maintenance Corp., *supra*.

¹The protester also contends that the CBD notice should have revealed the technologies proposed by the BNFL consortium so as to allow potential offerors to propose solutions that would give them a chance to submit a proposal for the work. As already explained, this is contrary to DOE's intent--to place the burden on the interested firms to suggest their approach, rather than specifying how the project should be completed. In any case, we note that FAR § 3.104-5 (FAC 90-40) requires that agencies protect proprietary information contained in a bid or proposal from unauthorized disclosure. The DOE is thus precluded from publicly disclosing BNFL's approach.

The protester's contentions are particularly without merit when the CBD announcement is read within the historical context of the K-25 Site D&D project. In this regard, the record shows that prior to publishing the announcement, the agency conducted the "Vision 2010" workshop to discuss the project and DOE's goals with private industry. SouthEastern attended that workshop and the firm was given an opportunity to, and in fact did, present its approach to DOE during a private workshop session. Subsequently, SouthEastern was a member in a consortium which submitted a proposal to the agency, and the agency continued to work with the consortium to refine its approach to completing the project.

Thus, the record shows that by the time DOE published the CBD announcement at issue here, SouthEastern had substantial involvement with DOE both as an active participant in the Vision 2010 workshop and later as a member of a consortium that submitted a proposal to complete the K-25 Site D&D project. In view of that involvement, it is not unreasonable for DOE to expect that SouthEastern, along with other Vision 2010 workshop participants, would use their business judgment and professional expertise in responding to the CBD announcement. While we conclude that the CBD announcement was clear on its face, given SouthEastern's extensive involvement with this project, the protester's allegation that the CBD announcement was so "garbled" that it could not determine what DOE expected, is especially without merit.²

The protest is denied.

Comptroller General
of the United States

²Eight firms, including the protester, submitted written EOIs in response to the CBD announcement. One firm subsequently withdrew from further participation. A team of evaluators reviewed the remaining EOIs and determined that all were unacceptable primarily because no EOI completely satisfied the agency's requirements, and recommended that DOE negotiate a contract with the BNFL consortium as announced in the CBD notice. DOE notified the offerors of the evaluation team's conclusion on December 11; SouthEastern does not challenge the rejection of its EOI. Since we conclude that the CBD announcement was clear with respect to the agency's requirements and deny the protest on that basis, we need not address DOE's argument that SouthEastern is not an interested party to maintain the protest.