



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Leon D. DeMatteis Construction Corporation

File: B-276877

Date: July 30, 1997

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DIGEST

Protest that technical qualifications criteria in solicitation for construction of a new federal courthouse are unduly restrictive of competition is denied where the record shows that the criteria are reasonably related to the agency's need to ensure that the contractor will have sufficient experience in all aspects of the type of complex construction that will be necessary for the project; protester's arguments focusing on the individual elements of this experience, but ignoring the value of the totality of this experience, do not show that the criteria are unreasonably restrictive.

DECISION

Leon D. DeMatteis Construction Corporation protests the terms of request for proposals (RFP) No. GS-02P-97-DTC-0010(N), issued by the General Services Administration (GSA) for construction of Phase II of a new federal courthouse in Brooklyn, New York. DeMatteis argues that the solicitation's technical qualifications criteria are unduly restrictive of competition.

We deny the protest.

The new courthouse, one of the largest in the country, will consist of an 18-story building housing the new courthouse proper as well as a 6-story structure connecting the new courthouse to the existing courthouse on the same site. The connecting structure will contain the main building entrance and an interior atrium, enabling the two buildings to function as one complex.¹ The new courthouse will

¹The new courthouse will be built on the site presently occupied by the existing courthouse and a federal office building. Under Phase I of the project, being performed under a separate contract, the federal office building and a structure
(continued...)

be approximately 742,734 gross square feet in size and its estimated construction cost is between \$165 and \$180 million.

The new courthouse will house 15 District and 10 Magistrate courtrooms, a jury assembly area, judges' chambers, office space for court and court-related agencies, a grille/cafe, a U.S. Court of Appeals library, and a secure prisoner circulation/detention system. The interiors of the courtrooms and judges' chambers will contain extensive architectural paneling and millwork, and the public spaces will contain a variety of finishes, including marble wall panels, travertine tile, and terrazzo flooring.

The building's mechanical systems will include a central chilled water refrigeration and boiler plant system containing central air handling units for floors 4-17 and local floor air handling units for the lower floors; a variable air volume distribution system with hot water reheat coils; three dual-fueled boilers and three direct-fired dual-fueled absorption chillers; a direct digital control building automation system; cast iron plumbing; a copper domestic water system; fuel oil and natural gas distribution systems; a fully-sprinkled fire protection system; electric service from new utility network vaults to four 460-volt service switch gear with ground fault protection; two diesel-driven 1,000-kilowatt paralleled emergency generators; and extensive conduit and electrical power to support a security system.

Work under this contract will include site work, demolition, excavation, reinforced concrete foundations and structure, fireproof steel frame structure, metal decking, concrete floors, a curved entry structure clad in coated aluminum curtain wall, coated aluminum and glass curtain wall and limestone building facade, roofing, sealant and flashing, skylights, interior architectural woodwork and finishes, doors, frames and hardware, stairs, interior partitions, signage and graphics, elevators, mechanical, electrical, plumbing and fire suppression systems. Related work will include site improvements, landscaping, distinctive pavement, and asphalt paving for roadways.

The solicitation was issued on April 4, 1997, as step one of a two-step procurement. Under the first step, at issue here, offerors must submit technical proposals to be evaluated under two technical qualifications criteria--project experience and past performance, and qualifications of key personnel. Proposals that fail to satisfy the minimum requirements of either criterion will be automatically eliminated from further consideration. Proposals deemed technically acceptable under these criteria

¹(...continued)

connecting that building to the existing courthouse will be largely demolished. The existing courthouse will remain in continuous operation throughout both phases of the project.

will enter the pricing phase of the procurement. Award will be made to the offeror submitting the lowest-priced, technically acceptable proposal.

DeMatteis's protest focuses on the project experience and past performance criterion, which calls for experience demonstrating a firm's overall coordination and subcontracting responsibilities, including schedules and budgets.² Specifically, the RFP requires that the offeror demonstrate that it has successfully completed a minimum of three projects in the role of a general or prime contractor within the past 10 years; each project must comply with the following subcriteria:

- a. Type of Facility: Courthouse, Civic Building, Museum, Library, Embassy, Hospital, Corporate Headquarters, or Office Building (all complete with interiors). All projects must be new construction. Modernization or alterations of existing buildings are not acceptable.

Note: At least one project must have been completed on a job site with a limited working area. The project/building (excluding parking lots) must have occupied at least 75 percent of the total job site.

- b. Gross Square Footage: Not less than 400,000 gross square feet/each project
- c. Number of Stories: Not less than 10 (above grade)/each project
- d. Construction Contract Dollar Value: Not less than \$100,000,000/each project.

On April 24, DeMatteis filed an agency-level protest in which it argued that these criteria, except for the square footage requirement, were unduly restrictive of competition; the firm's April 25 protest to this Office repeated this claim. DeMatteis and several other firms submitted technical proposals by the May 6 closing date, but the procurement has been suspended pending resolution of this protest.

In preparing a solicitation for supplies or services, a contracting agency must specify its needs and solicit offers in a manner designed to obtain full and open competition and may include restrictive provisions or conditions only to the extent that they are necessary to satisfy the agency's needs. 41 U.S.C. § 253a(a) (1994). The determination of the agency's minimum needs and the best method of accommodating them is primarily within the agency's discretion. Premiere Vending, 73 Comp. Gen. 201, 206, 94-1 CPD ¶ 380 at 7. Agencies enjoy broad discretion in the selection of evaluation criteria, and we will not object to the use of particular

²Since the protester's objections to the second criterion derive from its objections to the first, we need not address them separately.

evaluation criteria or an evaluation scheme so long as the criteria used reasonably relate to the agency's minimum needs in choosing a contractor that will best serve the government's interests. Id.; Renow, Inc., B-251055, Mar. 5, 1993, 93-1 CPD ¶ 210 at 3.

GSA explains that the project experience and past performance criterion is grounded in the agency's need to ensure that the general contractor chosen will have sufficient relevant experience in all aspects of the complex construction presented by this project. For clarity of presentation and response by offerors, GSA divided the areas of experience required by this project into the RFP subcriteria set out above.

GSA first considered the specific attributes of the courthouse and identified other types of buildings that contain similar attributes, such as extensive coordination of trades, various centralized systems, varying floor heights, mixed use, and a high level of finishes. Since all of the building types listed in subcriterion (a) have these features in common, GSA considered that experience with any of these types would be representative of that required here. In addition, since the task of coordinating construction increases in complexity as the number of stories increases, GSA decided to ensure that the contractor had experience with multi-story construction by imposing a 10-story minimum requirement, reflected in subcriterion (c). GSA also decided to ensure that the contractor had experience in constructing and allocating project funds for such a large project by imposing minimum size and dollar thresholds, set out in subcriteria (b) and (d). GSA also limited acceptable projects to those completed within the past 10 years because building and construction methodology for large-scale multi-story projects has changed radically in the last decade.

Central to GSA's approach is that these subcriteria are not separate, free-standing requirements, but rather complementary parts of a single, unified criterion which represents all aspects of the relevant experience necessary for this project. Since GSA will be asking the successful contractor to call upon all of this relevant experience on this one project, its underlying need is for a contractor who demonstrates relevant experience in all these aspects on each project.

DeMatteis does not address this critical underlying justification for the criterion. Instead, the protester extracts specific aspects of the experience encompassed by these subcriteria and contends that it has demonstrated competence in each of these aspects under an array of projects that do not, individually, meet all of the subcriteria. Essentially, DeMatteis argues that an offeror's management competence demonstrated in this fashion would meet GSA's minimum needs.

GSA asserts that an evaluation on this "mix and match" basis might demonstrate contractor experience in specific areas--such as specialized security systems or types of mechanical systems--but would yield little relevant information concerning

a contractor's ability to manage and coordinate the entire project. For example, the successful construction of a 10-story building which does not meet the other subcriteria requirements would show a contractor's knowledge of basic multi-story construction but would not demonstrate any knowledge of sophisticated, state-of-the-art building systems in the same building.

This project requires the contractor to perform thousands of different tasks, all on this one project, and GSA seeks assurance that the contractor chosen has a track record of performing these thousands of different tasks all on one project. GSA's disagreement with DeMatteis as to the validity of its claims of equivalent specific experience aside, the agency's larger concern is that the sum of this experience gained under a wide array of unrelated projects does not "add up" to the totality of this experience gained under one project--that the whole is, in fact, greater than the sum of its parts. While DeMatteis rejects this underlying concern in favor of a limited focus on the individual elements of the required experience, it has not persuaded us that GSA's approach is unreasonably restrictive.

DeMatteis' specific challenges are unpersuasive for the same reason. DeMatteis takes particular issue with the exclusion of residential buildings from the "types of facility" subcriterion. For example, the firm cites three multi-story residential buildings on which it claims experience--for one or more of the buildings--with such things as the coordination of numerous trades; centralized heating, ventilation, and air conditioning systems; a standard centralized security system; varying floor heights; and expensive finish work. Setting aside the fact that all three of these buildings had construction costs well below \$100 million,³ there is no evidence that any one of these buildings has all of the specific attributes present in this project. This merely validates GSA's statement that it did not include residential buildings because they typically do not contain components and complexities similar to those which will be encountered here.⁴

As for DeMatteis' insistence that it and other competent contractors are being improperly excluded from competing here, the determinative consideration regarding the propriety of a challenged method of proposal evaluation is whether it

³While DeMatteis argues that the \$100 million figure is arbitrary, we have no basis to conclude that GSA's desire to ensure that the contractor chosen is capable of allocating funds for such a large project is unreasonable, especially considering that the \$100 million threshold is well below the estimated construction costs here.

⁴DeMatteis does not dispute GSA's reasons for including the multi-story requirement or the 10-year limitation, but argues that its recent, similar experience in other types of buildings is sufficient. For the reasons stated above, we find this argument to be without merit. DeMatteis raises no specific challenge to the minimum square footage subcriterion.

reasonably relates to the government's minimum needs and not whether or not it works to the prejudice of one or another offeror. 120 Church St. Assocs., B-232139, Nov. 21, 1988, 88-2 CPD ¶ 496 at 5. Accordingly, given our conclusion that the experience criterion at issue here is reasonably related to GSA's minimum needs, the fact that DeMatteis or other contractors cannot meet the criterion does not demonstrate that it is improper.

The protest is denied.

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