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Comptroller General
of the United States

United States General Accounting Office
Washington, DC 20548

Decision

Matter of: Westar Corporation

File: B-290788

Date: September 25, 2002

Terrence J. Strach for the protester.

George U. Lane, Esq., General Services Administration, 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

Protest that awardee failed to meet solicitation's requirements relating to certification of proposed personnel to perform certain nondestructive testing is denied, where record shows that agency obtained information adequate to demonstrate that personnel in question had necessary certifications at time of award, and protester has submitted no evidence to show that agency's conclusion regarding adequacy of certifications was unreasonable.

DECISION

Westar Corporation protests the award of a federal supply schedule delivery order to MEVATEC Corporation under solicitation No. 4TWG21024178, issued by the General Services Administration (GSA) for nondestructive testing services. Westar maintains that MEVATEC does not have personnel that meet the solicitation's certification requirements.

We deny the protest.

The solicitation required, among other things, that the contractor have three personnel certified at level III for nondestructive testing, in accordance with the requirements of the American Society for Nondestructive Testing (ASNT), for several different testing disciplines. Both the protester and the awardee submitted timely initial and best and final responses to the solicitation. The protester's initial and final submissions both provided: "Currently, we do not meet all the certification requirements of this Statement of Work (SOW) paragraph; however, we will take corrective actions over the next few months to remedy this condition." Agency Report (AR), exhs. 3.2, at 4, 4.2 at 4. In contrast, the awardee's submissions provided

unequivocally that the firm proposed personnel meeting the certification requirement. AR, exhs. 3.1, at 11-12, 4.1 at 12-13. Based on the contents of the firms' submissions, the agency made award to MEVATEC, finding that, although the firm's price was higher than Westar's, the cost premium was justified because MEVATEC met the solicitation's certification requirements, whereas Westar did not (and additionally, its failure to meet the requirement as the incumbent contractor had resulted in previous performance difficulties). AR, exh. 5.

After being advised of the agency's award decision, Westar filed an agency-level protest, maintaining that MEVATEC did not have personnel who satisfied the certification requirement at the time of award. In response to the protest, the agency sought information from MEVATEC regarding the certifications of the individuals that it proposed to perform the requirement. In response, MEVATEC provided documentation from its subcontractor, Huddleston Technical Services (HTS), showing that the HTS employees who would perform the work in fact possessed the required certifications. Based on this information, the agency denied Westar's agency-level protest, finding that MEVATEC, through the employees of its subcontractor, met the certification requirement. After being advised that the agency had denied its protest, Westar filed this protest in our Office.

Westar maintains that the documentation furnished by MEVATEC does not establish that all three of its proposed HTS subcontractor employees meet the certification requirement. The protester concludes that the agency improperly used the certifications as a basis to distinguish between the two firms, and that it should have been awarded the task order based on its lower price.

The protest is without merit. The record shows that, in response to the agency inquiry, MEVATEC provided the ASNT certificate for HTS's senior engineer/scientist, showing that this individual was certified by the ASNT in July 2000 and March 2002 for all applicable disciplines or testing methods, and that his certifications expire no sooner than July 2005 (with two expiring in March 2007). AR, exh. 13, at 3. That individual executed "corporate level" certifications for HTS's remaining two employees,¹ AR, exh. 10, at 4-5, and MEVATEC furnished additional documentation to show that the individuals with the corporate level certifications had in fact performed the required testing and had received their corporate level certifications prior to the date of contract award. AR, exh. 13, at 4-10. GSA forwarded this information to the user activity, the Aviation Ground Support Equipment office, to

¹ Under the terms of the solicitation, one of the three proposed personnel had to be certified by ASNT. The other two individuals could be either ASNT certified, or possess "corporate level" certification, meaning the individuals have been certified by their employer rather than by ASNT. Statement of Work, § 2.1.

obtain that organization's views regarding the adequacy of the certifications. After reviewing the information, the cognizant official at the user agency concluded:

[i]t is the opinion of the Aviation Ground Support Equipment office that the HTS employees meet the certification requirements of [National Aerospace Standard 410—the applicable certification standard] and that MEVATEC Corporation has met the requirements of our Statement of Work.

AR, exh. 13, at 2.

MEVATEC's certification materials were included with the agency report in response to the protest, and were reviewed by Westar. In its comments, Westar does not challenge the adequacy of the information, other than to assert, without support, that GSA misunderstands the applicable certification standard requirements. Under these circumstances, we have no basis to question the reasonableness of the agency's conclusion that MEVATEC's proposed personnel meet the certification requirements.

The protest is denied.

Anthony H. Gamboa
General Counsel