Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: McCaffery & Whitener, Inc.

File: B-270814; B-270814.2

Date: April 25, 1996

Thomas F. McCaffery for the protester.
Richard S. Haynes, Esq., Department of the Navy, for the agency.
Robert C. Arsenoff, Esq., and Paul I. Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency properly did not consider transition costs in selecting awardee where solicitation did not provide for the evaluation of such costs.

2. Agency evaluation of awardee's technical proposal which did not take into account the need for a phase-in training period is unobjectionable where phase-in training was neither a requirement nor an evaluation factor.

3. Protest that agency should have rejected awardee's offer as presenting an unacceptable cost risk because it contained disproportionate prices for two labor categories is denied where agency reasonably concluded that the government could control the labor mixes to be used in the issuance of delivery orders.

DECISION

McCaffery & Whitener, Inc. (MWI) protests the award of a contract to Global Associates, Ltd. under request for proposals (RFP) No. N62387-96-D-3017, issued by the Department of the Navy for maritime related engineering, technical and analytical services. MWI alleges that the agency failed to evaluate transition costs in selecting Global for award and that the agency misevaluated Global's technical and price proposals.

We deny the protests.

The RFP, issued on July 17, 1995, contemplated the award of a 1-year indefinite quantity contract (with 1 option year) with provisions for both fixed-price and time-and-materials delivery orders to be issued by the Navy. Award was to be made to the offeror submitting the low technically acceptable proposal.

Technical acceptability was to be measured against four factors listed in descending order of importance: technical approach/understanding; personnel; management; and facilities/resources. Price was to be evaluated by multiplying fixed labor rates submitted by offerors for five labor categories by the estimated labor hours associated with each category.

Three initial proposals were received and one was eliminated, after which discussion were conducted with MWI and Global, the remaining competitive range offerors. Following discussions, each offeror submitted a best and final offer (BAFO), both of which were found to be technically acceptable. Global's evaluated price was $692,115; MWI's was $699,730. Global received the award as the result of its lower price and this protest followed.

The protester's first two bases of protest relate to a transfer plan proposed in the event that MWI did not receive the award. Under the predecessor contract, MWI was required to return software and hardware used during contract performance so that relevant materials could then be provided to the successful contractor. Prior to the submission of BAFOs, MWI--the incumbent contractor--wrote the Navy proposing a transition plan.

Following notice of the award to Global, MWI again wrote the Navy outlining the details of its proposed transition plan over a 30-day period at a cost of $40,078.50. The Navy submitted a counterproposal for a plan to be executed over a 2-week period at a cost of $8,674.40. In particular, the Navy envisioned MWI performing the following tasks:

> "-- Review of existing data bases
> -- Ship Data Base
> -- Ship Access to Ports Evaluator,
> -- Ship Availability Generator, and
> -- the Merchant Marine Manpower Model
>
> "Review shall include data base familiarization, critical assumptions, critical elements and data base maintenance."

MWI submitted another slightly scaled-down proposal at a cost of $30,583.60; negotiations have been suspended in light of the stay of contract performance occasioned by this protest.

Noting that there is a $7,615 difference in prices offered between Global and MWI, the protester first asserts that, since the Navy's estimate of transition costs ($8,674) is greater than the price difference, MWI's proposal reflects the lowest cost to the government and, accordingly, MWI should receive the award. Transition costs may be an evaluation factor in appropriate circumstances, but an agency may only evaluate them if offerors are advised in the RFP that such costs will be evaluated. Since the RFP in this case did not so advise offerors, there was no basis for the agency to consider transition costs in determining the low cost offeror. Cherokee Elecs. Corp., B-240659, Dec. 10, 1990, 90-2 CPD ¶ 467.

Next, MWI alleges that since the transition period contemplated by the Navy to familiarize Global with government furnished data bases was to last 2 weeks, Global could not have been found technically acceptable because it was incapable of performing certain contract tasks which called for completion within 1 to 14 days of the placement of delivery orders. However, since a transition plan was not called for in the RFP, and neither relates to nor affects any of the evaluation factors set forth in the RFP, the agency properly did not consider any such plan in its evaluation of proposals. To the extent that MWI is objecting to the agency's failure to include the transition plan in the RFP as an evaluation factor, the protest is untimely since protests based on alleged apparent solicitation improprieties must be filed prior to the time set for receipt of initial proposals. Bid Protest Regulations, section 21.2(a)(1), 60 Fed. Reg. 40737, 40740 (Aug. 10, 1995) (to be codified at 4 C.F.R. § 21.2(a)(1)).[1]

MWI's final allegation involves Global's pricing structure, which was as follows:

Labor Category	Base Year Rate	Option Year Rate
Project Director (2,000 Hrs/yr)	$54.76	$56.52
Senior Analyst (2,000 Hrs/yr)	$42.71	$43.99
Analyst (2,000 Hrs/yr)	$40.24	$41.72
Junior Analyst (2,000 Hrs/yr)	$13.20	$13.60
Clerical (1,000 Hrs/yr)	$10.74	$11.06

---

[1]Moreover, to read the solicitation as requiring the rejection of any offer from a firm requiring transition training is tantamount to requesting a sole source award to the incumbent protester which does not require transition training. We generally will not review a protest that an agency should award a contract on a sole source basis since the purpose of our bid protest function is to ensure full and open competition for government contracts. See Simula, Inc., B-251749, Feb. 1, 1993, 93-1 CPD ¶ 86.

Citing our decision Stanley Assocs., Inc., B-232361, Dec. 22, 1988, 88-2 CPD ¶ 617, in which we viewed a similar disparity in prices between Junior Analyst and Analyst labor categories as presenting a reasonable basis for the agency's rejection of a low offer as presenting an unacceptable cost risk, MWI alleges that the Navy was here required to reject Global's offer for the same reason. The gist of the protester's argument is that there is a significant incentive for Global to shift work from the allegedly underpriced Junior Analyst category to the allegedly overpriced Analyst category during contract performance; on this basis, MWI argues that there is inadequate assurance that Global will perform at the lowest cost to the government.

The protester's reliance on Stanley is misplaced. Stanley presented the question of whether the agency had discretion to determine whether or not disparate labor rates presented an unacceptable cost risk. The decision was predicated on a number of facts not present here. For example, in Stanley, the underpriced rates were for a labor category which amounted to almost one-half of the government's total requirements; here, the Junior Analyst category accounts for only 22 percent of the total requirements. In Stanley, the protester drastically reduced its Junior Analyst rates in its BAFO despite the agency having discussed the matter with the firm in negotiations; here, there was no such drastic reduction. Moreover, in Stanley, the agency expressed concern that, although it had the unilateral right to determine the labor mix required for each delivery order, it believed that in the circumstances of the contract at issue, this did not provide adequate control to ensure that the government would receive the lowest price during contract performance. Here, in contrast, the agency expresses confidence that it has the wherewithal to control the labor mix to assure this result.[2]

Accordingly, the potential cost uncertainty in this case does not rise to the level presented in Stanley, and we see no basis to conclude that the agency acted unreasonably in determining that Global's pricing structure did not present an undue risk.

The protest is denied.

Comptroller General
of the United States

---

[2]In cases decided subsequent to Stanley, we have given weight to an agency's assurances that careful contract monitoring can ensure that a particular awardee's performance will result in the lowest cost to the government. Here, we have no basis to question the Navy's ability in this regard. See Science Applications Int'l Corp., B-232548; B-232548.2, Jan. 23, 1989, 89-1 CPD ¶ 52.