



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: International Business Systems, Inc.

File: B-270632.2

Date: June 12, 1996

Michael A. Hordell, Esq., Gadsby & Hannah, for the protester.

Jane Converse, Esq., and Dennis Foley, Esq., Department of Veterans Affairs, for the agency.

Behn Miller, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Correction of offeror's insertion of an improper quantity figure in request for proposal line items does not warrant reopening of discussions since matter is properly correctable through the clarification process.

DECISION

International Business Systems, Inc. (IBSI) protests the agency's proposed action under request for proposals (RFP) No. 101-21-95, issued by the Department of Veterans Affairs (VA) for the installation of a replacement telecommunications system at the VA Medical Center in Washington, D.C.

The RFP was issued as a competitive set-aside for small disadvantaged businesses under section 8(a) of the Small Business Act, 15 U.S.C. § 637(a) (1994), and contemplated the award of a firm, fixed-price requirements contract to the lowest-priced, technically acceptable offeror for a base year with nine 1-year option periods. On November 22, 1995, the VA awarded a contract under the RFP to IBSI; however, in response to a protest filed at this Office by the second lowest-priced offeror--Dulles Networking Associates (DNA)--the VA determined that it had failed to conduct meaningful discussions with DNA, and as a result, proposes to reopen the competition with a new round of discussions and a second request for best and final offers (BAFO).

In its protest, IBSI contends that the agency's corrective action is unwarranted (and therefore improper) because the agency's discussions with DNA were adequate. Alternatively, IBSI challenges the proposed corrective action on the ground that its prices have been disclosed to the other offerors in the agency's award letter, placing IBSI at a competitive disadvantage in any subsequent negotiations.

We deny the protest.

BACKGROUND

The RFP, issued on May 8, 1995, required offerors to submit both technical and price proposals. For their price proposals, offerors were directed to complete and submit five pricing tables set forth in section B of the solicitation; in particular, "Table B-1 Equipment and Software Unit Price Schedule" required a unit price, a basic monthly maintenance (BMM) price, an installation price, and quantity estimates for the telephone system hardware (contract line item number (CLIN) 1001); the public address system hardware (CLIN 2001); the fiber optic cables necessary for the replacement telecommunications and public address system installation (CLIN 3001); and the copper cables necessary to perform the replacement system installation (CLIN 4001). Of significance to this protest, the RFP also required offerors to propose unit prices for an "Optional Cable Plant," which was identified as encompassing any additional distributional cable (fiber optic and/or copper) which might be required to connect newly constructed or renovated VAMC building areas to the base replacement installation performed under CLINs 1001 through 4001. Unlike the other replacement installation CLIN series, for CLIN 5001, the solicitation instructions advised that "[o]fferors shall provide pricing for all cabling on a per foot basis with a quantity of '0'." (Emphasis added.) The solicitation also required offerors to submit their pricing proposals in both hard copy and electronic media (computer disk) format.

By the June 13 closing date, nine proposals were received. Shortly thereafter, the contracting officer began conducting a "validation" process of each offeror's pricing proposal; to accomplish this, the contracting officer ran each offeror's computer disk through a price evaluation program; for Table B-1, the program multiplied each CLIN item's total price (unit price + BMM price + installation price) by the estimated quantity figure to arrive at an evaluated price computation, which could be compared with each offeror's proposed price. However, when the contracting officer attempted to process DNA's computer disk, the VA program was unable to access the DNA software. Consequently, the contracting officer did not perform any "validation" analysis of DNA's initial price proposal.¹ Had she done so, the contracting officer would have discovered that DNA had improperly completed the CLIN 5001 series portion of its B-1 pricing table by inserting actual cable quantities, instead of a "0" quantity, as directed by the RFP instructions.

On September 15, after receiving the technical evaluation team's (TET) evaluation results, the contracting officer issued discussion letters to each offeror. In DNA's

¹Of the nine proposals received, software problems prevented the contracting officer from validating three offerors' prices, including DNA's.

discussion letter, the contracting officer advised the firm that because its "electronic media files could not be opened due to the version of software [DNA] used," a validation--that is a comparison of the agency's evaluated pricing with DNA's proposed total prices--could not be performed. The letter also advised DNA that with regard to Table B-1, the firm had improperly included telephone system hardware (CLIN 1001) in the CLIN 5001 series (which, as noted above, was only to include optional distributional cable items). Finally, the letter contained a general warning that "[d]efective pricing submissions, tables, pricing questionnaires or documentation will make an offer ineligible for award." Each discussion letter directed offerors to submit a BAFO by September 28.

After the TET completed its evaluation of each offeror's BAFO, the contracting officer performed a second validation analysis of each offeror's pricing proposal. Based on her validation analysis, the contracting officer concluded that IBSI had submitted the lowest-priced, technically acceptable offer at \$3,397,675, and that DNA had submitted the next lowest-priced, technically acceptable offer at \$3,509,770. By letter dated November 21, the contracting officer notified all offerors that IBSI had been selected for award at a price of \$3,397,675. After attending a November 29 debriefing provided by the agency, DNA filed a protest at this Office on November 30, challenging the IBSI award as improper.

In its protest, DNA contended that the agency had improperly evaluated its pricing proposal. First, DNA maintained that the contracting officer failed to hold meaningful discussions with it because it was never apprised that it had improperly used actual quantities--instead of the required "0"--for its CLIN 5001 estimates; alternatively, DNA contended that the contracting officer should have waived its CLIN 5001 error since this portion of the B-1 pricing table was for explanatory purposes only, and was not intended to be part of the agency's price evaluation.

On January 29, 1996, VA advised this Office that in response to DNA's protest, it had decided to take corrective action comprised of terminating the IBSI award and reopening discussions with all offerors. On January 30, DNA withdrew its protest. On February 8, IBSI filed this protest at our Office challenging the agency's proposed corrective action; VA has withheld proceeding with the corrective action pending our decision on this protest.

PARTIES' POSITIONS

IBSI contends that the solicitation's clear pricing instructions--which expressly directed offerors to use a quantity figure of "0" for all Table B-1 CLIN 5001 items--and the language in the September 15 discussion letter warning offerors that defective pricing tables would render proposals unacceptable were adequate to place DNA on notice of its Table B-1 pricing error. IBSI also contends that providing DNA with an additional discussion opportunity essentially gives DNA an

improper second chance at the competition, and also creates an improper auction atmosphere--since any successive negotiations will essentially constitute a bidding war by IBSI's competitors to beat IBSI's price, which was disclosed by the agency to all offerors in the November 21, 1995, award letter.

The agency responds that although it believes the solicitation instructions regarding the Table B-1 CLIN 5001 series were clear, neither these instructions nor the September 15 discussion letter were sufficient to apprise DNA of its pricing error. The contracting officer reports that because she could not use the initial price proposal computer disk submitted by DNA, she never realized that the firm had improperly inserted actual estimates in the quantity column of Table B-1 for the CLIN 5001 series, in contravention of the solicitation's instructions. The contracting officer also reports that when VA's computer program was unable to analyze the DNA disk, she should have conducted a manual validation process--which would have required her to input the numbers from the firm's hard copy pricing submission into the pricing analysis program. The contracting officer maintains that because she never performed this validation analysis using DNA's submitted hard copy pricing proposal, DNA was not alerted to its B-1 Table CLIN 5001 quantity error during discussions. In reaching this conclusion, the contracting officer reports that like DNA, IBSI also had included quantities for the CLIN 5001 series in its initial B-1 table submission; however, after receiving the contracting officer's validation results--which consisted of a table comparing the firm's proposed B-1 prices with the contracting officer's evaluated pricing figures--IBSI apparently discovered and corrected the quantity error in its BAFO Table B-1 CLIN 5001 series by inserting a "0" in each CLIN 5001 series quantity column.

As explained below, the error in DNA's pricing table is a clerical one and is correctable without discussions; any communication with DNA regarding this correction would simply be clarification pursuant to Federal Acquisition Regulation (FAR) § 15.607 (FAC 90-31). Consequently, while we agree that the agency should not reopen discussions, correction of the mistake results in award to DNA.

DISCUSSION

The VA apparently is driven to reopen discussions by its Price Evaluation Plan, which was established by the agency for all VA telephone system procurements. This plan directs the contracting officer to review each offeror's hard copy price proposal for compliance with the solicitation criteria, and to disclose any deviations in the hard copy as "identified deficiencies" to each offeror. Had the contracting officer followed the Price Evaluation Plan, she would have discovered the Table B-1 CLIN 5001 quantity error in DNA's hard copy price proposal, and so advised DNA. However, while raising the error during discussions with DNA was contemplated by the agency's evaluation plan, the agency's failure to do so does not warrant reopening the competition at this point. First, contracting officers are encouraged

by the FAR not to reopen discussions after submission of BAFOs. FAR § 15.611(c) (FAC 90-31); second, DNA's error can be corrected without resort to discussions.

In this regard, FAR § 15.607(a) provides for correction of minor informalities or irregularities and clerical mistakes in a proposal; in fact, the regulation places an affirmative obligation on contracting officers to examine proposals for such waivable errors--a duty which the contracting officer failed to comply with in this case. Correction of a mistake, without holding discussions with all offerors, is appropriate where the existence of the mistake, and the price actually intended, can be clearly and convincingly established from the RFP and the proposal itself. See Action Serv. Corp., B-246413; B-246413.2, Mar. 9, 1992, 92-1 CPD ¶ 267.

Here, the RFP in effect contemplated that offerors' Table B-1 CLIN 5001 series pricing was not to be considered in the agency's price evaluation. Instead, as noted above, the RFP instructions specifically directed offerors to insert a "0" in the quantity column for this CLIN; in the pricing evaluation formula, which required each CLIN unit price to be multiplied by the quantity figure, this had the effect of rendering all CLIN 5001 series pricing calculations "0," making the 5001 CLIN series essentially advisory in nature. For the Table B-1 CLIN 5001 series, the only pricing evaluation that was to occur under the terms of the RFP was for realism. This pricing scheme is consistent with the intent of the CLIN 5001 series; orders were to be placed under this "OPTIONAL" CLIN series only in the event that the agency needed to connect the installed replacement telecommunications and public address system to a renovated or newly constructed building area.

Further, the clerical nature of DNA's mistake is obvious from the face of its proposal. The cable parts and unit prices for DNA's Optional Cable Plant CLIN 5001 series are identical to those proposed in its CLIN 3001 and CLIN 4001 series; it is apparent that like the other offerors, DNA simply copied its CLIN 3001 and CLIN 4001 series pricing and estimated quantities into the CLIN 5001 series portion of its B-1 pricing table. While it is true that this mistake should have been discovered by the contracting officer and corrected before award, correction at this point is appropriate in view of the obvious nature and correctability of the mistake, as well as the solicitation's evaluation scheme which clearly contemplated that the CLIN 5001 series would play no role in the agency's pricing evaluation.² See id.

²Correction of a mistake through clarification is not permitted where "the resulting communication prejudices the interests of other offerors." FAR § 15.607(a) (FAC 90-31). Such prejudice arises where a clarification would permit an offeror to change its offered price. See ALM, Inc., 65 Comp. Gen. 405 (1986), 86-1 CPD ¶ 240; Pulau Elecs. Corp., B-254443, Dec. 17, 1993, 93-2 CPD ¶ 326. However, there is no change to DNA's offered price--the change in essence simply permits evaluation of

(continued...)

Since the solicitation clearly contemplated that all Table B-1 CLIN 5001 pricing was to be multiplied by a quantity of "0," we think the agency should simply reperform its evaluation of DNA's price proposal using the correct quantity figure--"0"--for the CLIN 5001 series. If a "0" is inserted for each quantity in DNA's Table B-1 CLIN 5001 series, the record shows that DNA's proposal is the lowest-priced, technically acceptable offer, with a price of \$2,915,925.96. Thus, had the agency simply performed its pricing evaluation in accordance with the RFP's pricing instructions, DNA would have been selected as the lowest priced, responsible offeror.

Under these circumstances, although we agree with IBSI that the VA should not reopen discussions, because the record shows that DNA--and not the protester--should receive the contract under a proper pricing evaluation, the award to IBSI should not stand. See Tek Contracting, Inc., B-245590, Jan. 17, 1992, 92-1 CPD ¶ 90.

The protest is denied.³

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²(...continued)

DNA's offer on the basis advertised and consistent with how all proposals were to be evaluated.

³The record shows that at one point, the TET determined that DNA had proposed a technically noncompliant piece of telecommunications equipment--a determination which the contracting officer overrode, based on this part's success at other VAMC replacement telecommunications system installations. The TET later reversed its conclusions and found the part technically compliant. Although IBSI argues in its comments on the agency report that the initial technical determination of non-compliance should have kept DNA out of the competitive range, in light of the TET's evaluation reversal, and the supporting rationale in the record for this conclusion, we see no merit to IBSI's argument. Further, to the extent IBSI also challenges DNA's experience, this is a responsibility matter which we will not consider as IBSI does not allege either bad faith or that definitive responsibility criteria were not met. 4 C.F.R. § 21.5(c) (1996); Carter Chevrolet Agency, Inc., B-270962; B-270962.2, May 1, 1996, 96-1 CPD ¶ 210.