



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

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Matter of: Christie Constructors, Inc.

File: B-271759; B-271759.2

Date: July 23, 1996

Hiram S. Dillin, Esq., and David J. Bader, Esq., Dillin & Bader, Inc., for the protester.

Justin P. Patterson, Esq., and James L. Weiner, Esq., Department of the Interior, for the agency.

Andrew T. Pogany, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. In reviewing an agency's evaluation, the General Accounting Office will not reevaluate proposals but instead will examine the agency's evaluation to ensure that it was reasonable and consistent with the stated evaluation criteria. An offeror is responsible for providing a full discussion of its technical approach and methodology within the four corners of the proposal.
2. Protests based upon alleged solicitation improprieties which are apparent prior to the time set for receipt of initial proposals must be filed prior to the initial closing. Protesters do not have the option of simply making unilateral assumptions regarding the meaning of conflicting or patently ambiguous provisions in a solicitation and then expect relief when the agency does not act in the manner the protester assumed.
3. In the absence of a timely objection to the solicitation's award methodology, award may be made consistent with the agency's reasonable interpretation of the request for proposal award provisions.

DECISION

Christie Constructors, Inc. protests the exclusion of its proposal from the competitive range and the award of a contract to Dillingham Construction N.A., Inc. under request for proposals (RFP) No. 1425-6-SP-20-03730, issued by the U.S. Bureau of Reclamation, Sacramento, California for the installation of a new spillway gate and repair of seven other gates at Folsom Dam, California. The agency

excluded Christie's proposal because it did not contain sufficient technical information to substantiate Christie's ability to accomplish the RFP requirements.

We deny the protest.

This contract was the last of four contracts awarded by the agency on an emergency basis following the failure of spillway gate No. 3 in July 1995, a failure that resulted in the uncontrolled release of water into the American River which endangered downstream communities.¹ Accordingly, because gate failures could occur in the absence of additional repairs under reasonably foreseeable storm conditions, the agency executed a Justification for Other than Full and Open Competition (J&A), pursuant to Federal Acquisition Regulation (FAR) § 6.302-2, and solicited offers only from eight pre-selected construction firms, including the protester and Dillingham.²

The RFP, issued March 12, 1996, required the submission of initial proposals by April 9; as stated above, because of the urgent nature of the work, the agency contemplated making an immediate award after receipt of initial proposals. In fact, the RFP itself stated that "[i]t is anticipated that the Notice to Proceed for [the work] will be issued on April 15, 1996."³ The RFP contemplated a fixed-price contract and stated that award would be made to either "the lowest price 'acceptable' offer[or] or [to an] acceptable offer[or], the price or cost of which is not the lowest, but which is sufficiently more advantageous than the lowest price [offeror] so as to justify the payment of higher price or cost."⁴ The RFP, among

¹The first contract was for the installation of several stoplogs to block the flow of water. The second contract was for the removal of the damaged gate. The third contract was to reinforce and perform other repairs to the remaining seven gates.

²The J&A was formally executed after the RFP was issued. The protester does not dispute that the required work was critical to avoid life threatening flooding downstream should another failure occur in the dam prior to the final repairs. The J&A itself stated that "[b]ecause of the urgency associated with this work, it is anticipated a contract will be awarded within 2-3 days after proposals are received."

³Further, the RFP required the offerors to base their proposals on performance beginning April 15 in order to meet 5 different construction milestones with specific dates as contained in the proposed contract.

⁴Under the RFP's evaluation scheme, all offerors would be rated as being "acceptable," "capable of being made acceptable," or "unacceptable." The RFP also specifically stated that "[t]echnical proposals that would require extensive changes
(continued...)

other things, required that technical proposals address: (1) safety provisions for workers; (2) list of major equipment and key support equipment to be used; (3) procedures to maintain access to the seven existing gates through completion of each phase of construction; (4) procedures to install the new gate, including, as a minimum, a brief discussion of the sequence of frame construction; (5) containment of hazardous materials; (6) procedures for rotating the "trunnion pins"; (7) procedures for maintaining the required openings of Folsom Dam Road; (8) a preliminary bar chart showing the construction sequencing, durations, including start and finish dates, for 25 schedule items listed in the RFP; and (8) personnel resumes. Section M of the RFP also advised offerors as follows:

"Notice is given of the possibility that an award may be made after receipt of initial proposals without further discussions or negotiations. It is therefore emphasized THAT ALL PROPOSALS SHOULD BE SUBMITTED INITIALLY ON THE MOST FAVORABLE TERMS THAT THE OFFEROR CAN SUBMIT TO THE GOVERNMENT." (Emphasis in original.)⁵

Five proposals were received by the initial closing date of April 9; the proposals were expeditiously evaluated by the agency by April 10 with the following results:

⁴(...continued)
and/or revisions in order to be determined 'acceptable' will be determined 'unacceptable.'"

⁵The protester notes and the agency concedes that Section L of the RFP incorporated by reference FAR § 52.215-16, Contract Award, which provides in paragraph (c) that the government "intends to evaluate proposals and award a contract after conducting written or oral discussions with [competitive range offerors]." We discuss these conflicting provisions of the RFP below.

Offeror	Price	Technical Rating
Christie	\$ 5,599,400	Unacceptable ⁶
Dillingham	\$ 6,055,000	Acceptable
Offeror A	\$ 7,411,200	Acceptable
Offeror B	\$ 8,621,000	Unacceptable
Offeror C	\$10,453,300	Capable of being made Acceptable

The agency states that it intended to award the contract on April 10, but it could not secure the necessary funding until April 11. The agency excluded the two unacceptable proposals from the competitive range (as well as the proposal of the highest priced offeror) and awarded the contract to Dillingham on April 12. This protest followed. The agency then made a determination to continue performance of the contract notwithstanding the protest.

Evaluating the merits of competing proposals is a matter within the discretion of the contracting agency since the agency is responsible for defining its needs and the best method of accommodating them. Simms Indus., Inc., B-252827.2, Oct. 4, 1993, 93-2 CPD ¶ 206. In reviewing an agency's evaluation, we will not reevaluate proposals but instead will examine the agency's evaluation to ensure that it was reasonable and consistent with the stated evaluation criteria. Id. Generally, an agency may reject a proposal for "informational" deficiencies that are so material that major revisions and additions would be required to make the proposal acceptable. Source AV, Inc., B-234521, June 20, 1989, 89-1 CPD ¶ 578. Further, an offeror is responsible for providing a full discussion of its technical approach and methodology within the four corners of the proposal. See Wyle Labs., Inc., B-260815.2, Sept. 11, 1995, 95-2 CPD ¶ 187.

The protester argues that its proposal was acceptable or at least capable of being made acceptable and presents in its protest extensive narrative explanations concerning the meaning of several critical sketches that it submitted in its proposal

⁶Briefly, the agency's evaluators found that in several major technical areas Christie presented only unexplained "sketches" to present its technical approach without any narrative support. In short, the agency found that Christie's proposal "was poorly presented, contained illegible portions, and lacked a narrative discussion of most of the items to be addressed. This made portions of the proposal impossible to understand, or subject to interpretation."

without any narrative explanation. Christie contends generally that its sketches or diagrams were adequate to "clearly [inform] a competent [technical] reviewer the outline it intended to use."

We give the following example. The RFP required each offeror to outline the procedure to be used for installation of the new gate, including, as a minimum, a brief discussion of the sequence of frame construction, method for assuring stability of the gate as it is being placed into and assembled in the bay, access of the skin to the gate prior to and during welding, quality control measures to assure proper alignments during construction of the gate and trunnion placement. The agency technical evaluators found that Christie did not submit a narrative discussion for the installation sequence of the new gate but simply provided four sketches which lacked information and detail to be able to evaluate the firm's capabilities or concepts for gate installation.

Christie responds that its sketches along with "drawings incorporated by reference" in these sketches were sufficient for evaluating the sequence of frame construction, the method of assuring stability of the gate, access of the skin during welding, and quality control measures to assure proper alignments during construction of the gate trunnion placement. However, we simply note that Christie's explanation in its protest submissions of its construction sequence begins with page 1 of its proposal, then turns to one of the sketches, then skips to a separate vertical bar chart, then refers to a drawing incorporated by reference in the previous sketch, then explains two otherwise unexplained notes in that drawing, and contains other additional and extensive narrative sequential explanations of other sketches and other drawings incorporated by reference into these drawings. Nowhere do these narrative explanations appear in Christie's proposal.

We need not decide here whether Christie's proposal was unacceptable on its face; the record, including the protester's own extensive technical explanation of its sketches and drawings in its protest submissions, convincingly shows that the agency reasonably concluded that Christie's initial proposal, lacking any technical narrative explanation of critical construction items, could not be accepted without discussions. The only issue remaining is the authority of the agency to award on the basis of initial proposals.

The protester argues that the agency was required to conduct discussions with the firm because the RFP contained the clause (FAR § 52.215-16) stating the agency's intent to delay awarding any contract until after discussions.

As stated above, Section M of the RFP clearly stated that the agency reserved the right to make award based on initial proposals without discussions. At the same time, Section L incorporated the standard clause requiring discussions with offerors. We think an offeror reasonably should have realized prior to the date set for receipt

of initial proposals that the RFP contained two provisions which directly contradicted each other since this conflict was apparent on the face of the solicitation. In such situations, protesters do not have the option of simply making unilateral assumptions regarding the meaning of conflicting or patently ambiguous provisions in a solicitation and then expect relief when the agency does not act in the manner the protester assumed; rather, the patent impropriety in this solicitation had to be challenged prior to the closing. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1996); See Inland Marine Indus., Inc., B-249914; B-249918, Dec. 24, 1992, 92-2 CPD ¶ 442.

Given the lack of a timely objection to the award methodology relied upon by the agency in making the award, we conclude that this award was consistent with the RFP as reasonably interpreted by the agency (that is, that the boldfaced provisions of Section M controlled).

The protest is denied.

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