Comptroller General of the United States

Washington, D.C. 20548

Decision

Matter of: Federal Computer International Corporation

File: B-276885

Date: July 29, 1997

Lawrence J. Sklute, Esq., for the protester.
Michael Briskin, Esq., Defense Logistics Agency, for the agency.
Amy C. Lohr, Behn Miller, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Where solicitation contained general statement regarding price evaluation, but was silent as to the actual calculation method which would be utilized to evaluate prices, protest that agency performed an improper evaluation is denied where: (1) the basis for the evaluation challenge--the protester's interpretation of an ambiguous solicitation--was apparent from the solicitation but not challenged prior to the solicitation's closing time; and (2) except for mere disagreement, the protester has not shown--and the record does not suggest--that the agency's price evaluation was unreasonable.

DECISION

Federal Computer International Corporation (FCIC) protests the selection of Technical Specialties, Inc. (TSI) under request for quotations (RFQ) No. SP4700-97-Q-0001, issued by the Defense Logistics Agency (DLA) for computer maintenance at various DLA sites in the Washington, D.C. metropolitan area. FCIC contends that the agency failed to adhere to the RFQ's pricing evaluation criteria, and that under a proper evaluation, FCIC should have been selected because it submitted the lowest quote.

We deny the protest.

This requirement was initially issued on December 31, 1996, as a request for proposals; on January 23, 1997, DLA converted the solicitation to a small purchase RFQ, in accordance with Federal Acquisition Regulation Part 13. As amended, the RFQ contemplated the award of a fixed-price, time-and-materials contract for a performance period not to exceed either a maximum funding ceiling of $50,000 or 1 year, whichever occurred earlier. The RFQ stated that award would be made to the firm submitting the technically acceptable quotation offering the best value to the government, based on a "comparative assessment" of past performance and price, which were ranked as equal factors.

Firms responding to the RFQ were required to complete and submit a past performance questionnaire (indicating three recent contract references for similar work) and the solicitation's "pricing table," which required separate unit prices for the following five items: (1) "labor rate per hour"; (2) "minimum per call charge (if any)"; (3) "travel costs (if any)"; (4) "material handling charge (if any)"; and (5) "other costs (if any)." The RFQ stated that "[a]ll [prices] indicated on the Pricing Table will be evaluated and compared among offerors." The RFQ also included a prohibition which precluded quoters from submitting a "minimum per call charge" that was higher than the quoted "labor rate per hour."

By the March 18 closing date, 12 quotations were received; after evaluating each firm's past performance, DLA performed the following price evaluation. First, the agency multiplied each quoter's "minimum per call charge" by the RFQ's corresponding estimate (240 calls). Next, DLA multiplied each quoter's "labor rate per hour" by the RFQ's corresponding labor hour estimate (323 hours). DLA then selected the higher of these two prices, and added this figure to the sum of each quoter's remaining three pricing schedule items to determine each quoter's overall price. Eight quoters, including TSI and FCIC, received past performance ratings of "outstanding"; of these eight, TSI's price was lowest and FCIC's was second lowest. On April 21, DLA selected TSI as offering the best value to the government.

FCIC contends that DLA performed an improper pricing evaluation. FCIC argues that the RFQ's statement that "[a]ll prices included on the Pricing Table will be evaluated" required the agency to include both the "minimum per call charge" and the "labor rate per hour" in its overall pricing calculation. Since DLA's pricing evaluation was performed by eliminating either the "minimum per call charge" or the "labor rate per hour"--whichever was lower-- from the total calculation of each quoter's evaluated price, FCIC argues that the agency failed to evaluate "[a]ll prices indicated on the Pricing Table" as required by the RFQ's pricing evaluation criterion.

FCIC's protest derives from an ambiguity apparent on the face of the RFQ; that is, while the RFQ states that all prices "will be evaluated and compared among offerors," it is silent as to the actual method to be used to calculate the evaluated price total. In this regard, the evidence in the record shows that FCIC was aware that the RFQ did not clearly state how prices would be evaluated. According to contemporaneous notes taken by the contract specialist, a representative of FCIC telephoned the contract specialist on January 28 to ask how the "minimum per call charge" would be evaluated. The notes show that the contract specialist initially replied that the agency would perform the "minimum per call charge" calculation and the "labor rate per hour" calculation and then take the higher figure; however, the contract specialist contacted the FCIC representative later that day, told him not to rely on the explanation given earlier, and advised him to submit his question by facsimile to the contracting officer. FCIC disputes that the agency gave its representative any indication that the "minimum per call charge" would be evaluated

in the manner that the agency selected, but does not otherwise dispute the agency's statement of facts regarding the telephone conversation.

Under our Bid Protest Regulations, a solicitation defect apparent on the face of the solicitation must be protested prior to the time set for receipt of initial proposals or quotations, when it is most practicable to take effective action against such defects. 4 C.F.R. § 21.2(a)(1) (1997); Cleveland Telecommunications Corp., B-247964.3, July 23, 1992, 92-2 CPD ¶ 47 at 3. Furthermore, an offeror who chooses to compete under a patently ambiguous solicitation does so at its own peril, and cannot later complain when the agency proceeds in a way inconsistent with one of the possible interpretations. CardioMetrix, B-274585, Nov. 18, 1996, 96-2 CPD ¶ 190 at 3; Watchdog Inc., B-258671, Feb. 13, 1995, 95-1 CPD ¶ 69 at 5. In this case, despite FCIC's awareness of the ambiguity in the RFQ regarding price evaluation, it waited until after award to raise its challenge. Accordingly, FCIC's protest is untimely. Watchdog Inc., supra.

In the absence of a timely challenge to the RFQ, there is no basis to object to the evaluation method the agency used unless it is unreasonable or inconsistent with the RFQ. See Fort Wainwright Devs., Inc. et al., 65 Comp. Gen. 572, 583 (1986), 86-1 CPD ¶ 459 at 14, recon. denied, B-221374.9, Aug. 11, 1986, 86-2 CPD ¶ 172 at 6 (where solicitation mandated the use of "Economic Indicators" in the required cost evaluation, but did not specify the inflation rate that it would use for evaluation purposes, the agency was free to use any reasonable economic index in its evaluation). The test here is thus whether the evaluation method was reasonable and consistent with the general statement in the RFQ that all prices would be evaluated. As the record shows, the agency in fact reviewed and considered--and thus evaluated--all prices. Contrary to the protester's argument, nothing in the RFQ or common usage requires concluding that the RFQ's statement that all prices would be "evaluated" meant that they would be added together, which would assume the agency was paying both the minimum per-call charge and the hourly rate on every service call. The agency then concluded that the higher of its two calculations--minimum per charge call or labor hour rate--should be used for evaluation purposes as the most reliable indicator of the likely cost to the government. FCIC does not argue that this method produced an unreliable measure

of each offeror's likely charge to the government, and on its face the agency's decision was a reasonable one. Under these circumstances, we see no basis to object to the agency's evaluation.[1] Id.

The protest is denied.

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[1]In its report on the protest, the agency recognizes a potential flaw in its evaluation method--it failed to take into account that, for short service calls, a pricing arrangement with a relatively high hourly rate but no minimum charge per call could cost the government less than one which, while including a lower hourly rate, also included a minimum charge per call. Extrapolating from actual work orders issued under the prior contract, the agency calculated the effect of this possibility on FCIC's and TSI's prices and concluded that FCIC's price remained higher. Given that FCIC and TSI had equal past performance ratings, the award to TSI would clearly not be affected. FCIC did not respond to the agency's position in this regard.