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DECISION

THE COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-215232 **DATE:** March 27, 1985

MATTER OF: B&B Records Center, Inc.

DIGEST:

GAO sustains a protest alleging that the agency improperly rejected a proposal based upon the offeror's failure to submit a firm, fixed price for emergency request services when the solicitation specifically stated that such services were outside the scope of the contract.

B&B Records Center, Inc., protests the rejection of its proposal under request for proposals (RFP) No. BPD-84-3, issued by the Department of the Treasury, Bureau of the Public Debt. The solicitation covers microfilming and destruction of documents. B&B contends that in finding that its proposal violated the firm, fixed-price requirements of the RFP, Treasury misapplied the technical and cost evaluation factors listed in the RFP, misinterpreted the language of its proposal, and arbitrarily disqualified it without conducting negotiations.

We sustain the protest.

Since no award has been made, Treasury has only disclosed limited information to the parties, and our discussion here must of necessity be general, rather than specific as to proposed prices and point scores. Consistent with our settled practice, however, we have examined the record in camera to determine whether the award action Treasury proposes to take has a reasonable basis. See RMI, Inc., B-203652, Apr. 20, 1983, 83-1 CPD ¶ 423, aff'd on reconsideration, June 18, 1984, 84-1 CPD ¶ 630.

The RFP called for a firm, fixed-price contract from the date of award through September 30, 1984, plus two 1-year options. The RFP further provided that a single award would be made to the responsible offeror that achieved the highest number of technical and cost evaluation points

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for the basic contract and the option periods. The solicitation also stated that award might be made on the basis of initial proposals.

At issue here is B&B's response to a solicitation provision requiring offerors to respond to three types of emergency requests: microfilming documents in an order other than received; delivering on an other-than-normal schedule; and locating specific documents in order to provide information to the Treasury. These requirements were described in section L.2(g) (Emergency Requests) of the RFP, which provided:

> "On occasion, the Bureau may have requirements <u>which are outside the terms of the contract</u> and must be met. The frequency of the special requests is generally no more than once a month for each type of request but is not necessarily limited to this. . . ." (Emphasis added.)

Section (g) also requested offerors to describe their ability and willingness to accommodate each of the three types of requests and to state in their proposals the maximum number and frequency of responses they were willing or able to make.

Under the RFP, response to this requirement was assigned only 4 out of a maximum of 80 technical evaluation points, which were divided as follows:

Criterion	Possible Points
Plan of Accomplishment	20
Minimum Production Standards	20
Quality Control Plan	12
Security/Control/Transportation	12
Expenses and Capacity	8
Learning Curve	4
Emergency Requests	4
Total	80

The record shows that B&B received zero points for emergency requests. Its rejection was based on statements in its technical proposal indicating that B&B would charge additional, unspecified amounts if the Treasury requested changes in the order of filming that required additional labor or supplies or if the agency imposed a highly accelerated schedule that would require premium pay. In addition, B&B indicated that there would be an additional, unspecified charge if more than 1 hour a day were required to locate specific documents and return them to the Treasury.

The Treasury states that since the solicitation contemplated a firm, fixed-price contract, any contingencies foreseen by an offeror that could impact on cost should have been factored into the proposal. The Treasury further contends that the qualifications to B&B's proposal introduced an element of uncertainty that made it impossible for the contracting officer to evaluate it in conjunction with other offers that were firm and that included emergency requests. The agency therefore rejected B&B for failure to comply with the firm, fixed-price requirements of the RFP. It proposes to make an award on the basis of initial proposals to California Image Media, Inc.

B&B contends that its proposal fully complied with section D.2(g), stating :

> ". . . [W]e have always been able to respond to such requests. . . . We extend the same assurance to the Bureau of Public Debt. . . . It is difficult to foresee a contingency to which we could not respond unless it were a requirement which was in excess of an additional million images with a turnaround of less that 2 weeks."

Unless the Treasury could reasonably foresee that it would make such a request, B&B contends that its proposal for emergency service was functionally unqualified and that rejection was inappropriate. B&B states that it only reserved the right to seek extra compensation for unforeseen and extraordinary work, concluding that it would be legally entitled to compensation in changed circumstances.

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In appropriate circumstances, we have approved the rejection of proposals for failure to offer a firm, fixed price. See, for example, American Telephone & Telegraph Co., 60 Comp. Gen. 654 (1981), 81-2 CPD ¶ 157; Computer Machinery Corp., 55 Comp. Gen. 1151 (1976), 76-1 CPD ¶ 358, aff'd sub nom C3, Inc., B-185592, Aug. 5, 1976, 76-2 CPD ¶ 128. Here, however, the Treasury rejected B&B for failure to propose a fixed price for work that--by the Treasury's own definition--was outside the scope of the contract.

B&B's proposal included assurance that all emergency requests would be filled. The solicitation did not include a separate line item for such services, and we cannot conclude that they were required to be priced. Under these circumstances, we find that Treasury improperly rejected B&B's proposal for failing to offer a firm, fixed price. If B&B had received the four points assigned to emergency requests for evaluation purposes, its combined technical and cost score would have been slightly higher than that of the proposed awardee.

We therefore recommend that the RFP be amended to define the agency's needs with regard to emergency requests, so far as they are considered to be within the scope of the contract and are required to be priced. The agency should then permit all offerors to submit revised proposals and should evaluate them in accord with the stated criteria, conducting discussions if appropriate.

B&B's protest is sustained.

for Harry R. Van Cleve
Comptroller General
of the United States