



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: COMSAT International Communications, Inc.
File: B-223953
Date: November 7, 1986

DIGEST

1. Agency decision to award contract to the only offeror whose proposal indicated that it would provide satellite communications system by delivery date required in request for proposals (RFP) was proper, where RFP indicated that delivery date was critical and RFP evaluation scheme specifically stated that offers which failed to meet "required service interval may be declared technically non-acceptable." Evaluator's error in calculating protester's evaluated life-cycle price is not sufficient to invalidate award determination.
2. Where protest is denied, General Accounting Office will deny claim for proposal preparation expenses and costs of pursuing protest.

DECISION

COMSAT International Communications, Inc. (COMSAT), protests award of a contract to Overseas Telecommunications, Inc. (OTI), by the Defense Commercial Communications Office, a field office of the Defense Communications Agency (DCA), pursuant to request for proposals No. DCA200-86-R-0028. The contract requires OTI to provide a satellite communications link between Cape Canaveral Air Force Station, Florida, and Antigua Air Station, West Indies. COMSAT contends that the agency's decision to award to OTI was based, in part, upon a faulty price analysis which incorrectly overstated COMSAT's full period maintenance charges. COMSAT also contends that, in determining to award to OTI, the agency improperly relied upon OTI's offer to have the system in operation by the required November 17 date when, in fact, OTI was in no better position to meet this target date than was COMSAT or any other offeror.

We deny the protest.

037326-131546

The solicitation was issued on April 16, 1986, and called for proposals to provide, install and maintain telecommunications equipment (earth stations), circuit support facilities, and physical interconnections to existing government-owned or commercially-leased equipment at Cape Canaveral Air Force Station and at Antigua Air Station over a period of 60 months at fixed rates. Five offerors responded to the solicitation, and written and oral discussions were held with all five firms. Best and final offers were submitted by July 9 and proposals were evaluated to determine whether they were technically acceptable, whether they offered to meet the required service date, and to compute each offer's total discounted price for all services/supplies over the duration of the contract. When technical and price evaluations were completed, the offer with the lowest evaluated price was determined to be "technically unacceptable." The contract was awarded to OTI on July 28 because DCA had determined that only OTI could meet the desired service date, and OTI's offer had the lowest evaluated price of the technically acceptable offers.

By letter dated July 28, COMSAT was notified of the award to OTI and of the grounds upon which that award had been based. COMSAT protested to our Office on August 8. DCA has determined that it is in the best interest of the United States to allow OTI to continue to perform work under the contract pending resolution of this protest based in part upon its finding that failure to meet the November 17 service date will have a "mission critical impact" on a number of Department of Defense missions.

As a general rule, our Office will defer to the agency source selection officials' judgments. Consolidated Group, B-220050, Jan. 9, 1986, 86-1 C.P.D. ¶ 21. The selection decision and the manner in which the officials use the results of the technical and price evaluations and the extent, if any, to which one is sacrificed for the other are governed by the tests of rationality and consistency with established evaluation factors. Id. The evaluation of proposals is the function of the procuring agency, requiring the exercise of discretion and informed judgment. Cadillac Gage Co., B-209102, July 15, 1983, 83-2 C.P.D. ¶ 96. We do not conduct a de novo review of proposals or make an independent determination of their acceptability or relative merit. Corporate Health Examiners, Inc., B-220399.2, June 16, 1986, 86-1 C.P.D. ¶ 552. We will question contracting officials' determinations only upon a clear showing of unreasonableness, abuse of discretion or violation of procurement statutes or regulations. Id.; KET, Inc., B-190983, Dec. 21, 1979, 79-2 C.P.D. ¶ 429.

COMSAT argues that DCA's evaluators made a mistake in computing COMSAT's life-cycle costs. Basically, COMSAT contends that the evaluators erroneously construed the line item charges COMSAT had listed for maintenance services as daily rates rather than the intended monthly rates; therefore, DCA incorrectly multiplied these charges by three to calculate the monthly service charge for the estimated 3 days of maintenance needed per month. COMSAT argues that, based upon the discounting method indicated in the RFP, its total evaluated price should correctly have been computed to be \$3,272,114, or \$213,913 less than OTI's evaluated price of \$3,486,027.

COMSAT also argues that DCA improperly accepted OTI's offer to install the satellite communications system and have it operational by the November 17 date specified in the solicitation. According to COMSAT, there is only one authorized provider of international telecommunications for Antigua-- Cable and Wireless, Ltd. (C&W). COMSAT reasons that, since C&W had informed COMSAT that it would take about 4-1/2 months to construct the earth station and to establish service in Antigua, and since best and final offers were to be submitted on July 9, no offeror could meet the November 17 date. COMSAT states: "C&W, as the sole source for all offerors in this procurement, was the principal impediment to meeting the November 17 date. OTI and COMSAT Internacional were both on equal footing with respect to schedule, and neither is more, or less, able to meet this requirement."

Thus, COMSAT believes that its offer and OTI's offer were both technically acceptable and were equal with respect to scheduled commencement date. Accordingly, COMSAT concludes that it should have been awarded the contract on the basis of its lower evaluated price. For the reasons that follow, we do not agree with this conclusion.

Concerning the evaluation of proposals and award of a contract, section M of the solicitation stated, in relevant part:

"1. The evaluation consists of three parts listed in the following descending order of importance: technical specifications, delivery, and price.

a. Technical - The technical evaluation will insure that the proposal meets the Government requirements as stated in the Performance Specification of this solicitation. The Technical proposal will be evaluated on a 'technically acceptable or technically non-acceptable' basis for each paragraph of the performance specification.

b. Delivery - The offeror's proposed delivery will be evaluated to determine if it is acceptable to the required service date of 17 November 1986. However, the Government reserves the right to award on the basis of lowest evaluated price if the service date/price relationship does not justify the expenditure of additional funds for the earlier date proposed.

c. Price - The Government will evaluate offers for award purposes based on the total price of the basic requirements. . . .

"2. Award will be made to that responsible offeror who is technically acceptable to the stated requirements, able to meet or better the required service interval, and whose overall discounted life cycle price/service date relationship is most favorable. Offers which fail to meet one or more critical performance requirements and/or the required service interval may be declared technically non-acceptable, and therefore not considered for price competition. . . ."

In our opinion, the evaluators did incorrectly multiply COMSAT's scheduled maintenance charges by three and thereby miscalculated COMSAT's total evaluated price as COMSAT contends. In spite of solicitation instructions which specifically directed offerors to list both the domestic and international maintenance charges as daily or "Man-Day" rates in the "NRC" (nonrecurring charges) column of the RFP's preprinted schedule, COMSAT listed its maintenance rates in the "MRC" (monthly recurring charges) column of the schedule. Nevertheless, the evaluators should have realized that the maintenance rates in COMSAT's proposal were already stated as monthly charges and they should not have multiplied these figures by three to compute the monthly rates (based upon 3 days of maintenance per month). In any event, this error in the price evaluation is not sufficient to invalidate the award decision.

The above-quoted evaluation factors show that, after "technical acceptability" of a proposal was determined, the offeror's proposed "delivery" or ability to meet or better the required service interval was the second most important factor in the selection process. Furthermore, the solicitation indicated in a number of other places that service was to begin not later than November 17. Accordingly, it should have been clear to all offerors from the RFP that the delivery date was extremely important.

COMSAT argues that all offerors were on "equal footing" with regard to delivery, because all offerors had to use the same subcontractor, C&W, for the Antiqua link in this telecommunications system. However, the record shows that the proposals of COMSAT and OTI were not equal in this regard. OTI's best and final offer assured DCA that it could meet the required service date provided award was made on or before August 1. OTI stated that it would be able to install and test the system in 3-1/2 months and that it had made several major installations similar to this one on 60 to 120 days' notice. On the other hand, COMSAT stated in its best and final offer that it would take 4-1/2 months to procure, construct and test the system. COMSAT also indicated that this was an "extremely tight schedule" which already allowed less time than is normally allocated to a project of this size. Finally, COMSAT specifically stated in its best and final offer, "If contract award is delayed beyond July 1, a day for day slip in the service date is expected." Since best and final offers were not due until July 9 and award was not made until July 28, it is clear that OTI's proposal satisfied the delivery requirement while COMSAT's proposal did not.

COMSAT further argues that DCA should have questioned whether OTI would really be able to meet the required delivery date in light of the fact that all offerors had to use C&W as a sole-source subcontractor. However, the record shows that two of OTI's proposed suppliers, including the firm which would supply the Antiqua earth station to C&W, sent letters to the contracting officer before award to confirm that there would be no problem in meeting the November 17 service date. Furthermore, OTI has submitted comments on this protest which indicate that it dealt directly with the earth station supplier rather than merely dealing with C&W in a successful effort to expedite delivery of the earth stations to C&W for installation in Antiqua. OTI explains that it had to pay a 5-10 percent premium and had to agree to certain other subcontract concessions with the earth station supply firm in order to get an expedited delivery schedule to meet the critical November 17 date. Without the necessity to meet this accelerated delivery schedule, OTI states that it would have been able to offer the government a significantly lower price.

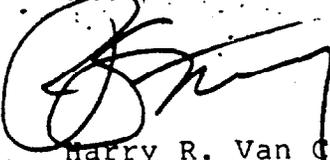
DCA reports that, regardless of whether COMSAT's actual evaluated price was lower than OTI's evaluated price, it would still have made award to OTI, because COMSAT's proposed delivery schedule "was not compliant with the requirements of the solicitation." DCA argues that award to OTI was justified under the RFP's evaluation scheme based upon delivery schedule alone. DCA also points out that:

"The critical importance of meeting the service date is further underscored by the Head of the Procurement Activity's Determination to continue performance on the contract after being advised of the protest by COMSAT"

The solicitation specifically stated (in paragraph 2 of section M) that, "Offers which fail to meet one or more critical performance requirements and/or the required service interval may be declared technically non-acceptable, and therefore not considered for price competition." Based upon the solicitation's clear emphasis on the criticality of the November 17 delivery requirement we conclude that DCA's decision to award to OTI had a reasonable basis, was consistent with the RFP's stated criteria, and was therefore proper. See Cadillac Gage Co., B-209102, supra.

The protester has requested that it be paid the costs of preparing its proposal and the costs of pursuing this protest. However, since we find the protest to be without merit, we deny the claim for costs. Designware, Inc., B-221423, Feb. 20, 1986, 86-1 C.P.D. ¶ 181.

The protest is denied.



for Harry R. Van Cleve
General Counsel