

U.S. Gov. 7-11-86



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Communications Facility Automation Systems
International

File:

B-224181

Date:

January 9, 1987

DIGEST

1. Protest that evaluation of price proposal for a telecommunications system was inaccurate is denied where protester does not demonstrate any error in the evaluation or offer any evidence that an error was made except its opinion that the telecommunications system it proposed was less expensive than that of the other offerors.

2. Issue raised by a protester that is not in line for award even if the issue is decided in its favor will not be considered because the protester does not have the requisite direct economic interest required to be considered an interested party under General Accounting Office Bid Protest Regulations.

DECISION

Communications Facility Automation Systems International (CFI) protests the award of a contract to GTE of Wisconsin under request for proposals (RFP) No. 5FCG-TC-84-031, issued by the General Services Administration (GSA) for installation and maintenance of a telephone system for federal agencies in the Twin Cities, Minnesota area. We dismiss the protest in part and deny it in part.

The solicitation, issued on March 8, 1984, calls for an indefinite quantity, indefinite delivery, fixed-price contract with economic price adjustment covering 10 years, including option periods. The solicitation instructed offerors to propose on the basis of lease, lease with option to purchase or lease with purchase of augmentations plans. It informed offerors that award was to be made on the basis of the technically acceptable offer with the lowest present value cost to the government over a 9-year evaluated systems life.

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Six firms submitted initial proposals on June 8. Technical and price negotiations were conducted with all six and prices were evaluated in accordance with section T-419 of the solicitation to determine the life cycle cost to the government of each offer. Section T-419 contained a discount schedule to be applied in evaluating the present value of the offeror's charges. Best and final offers were requested from five firms on March 18, 1986.^{1/}

The four offers submitted were evaluated as follows:

GTE	\$7,972,278.46	Lease with option to purchase
Offeror B	\$8,776,105.69	" " " " "
Offeror C	\$8,862,203.86	" " " " "
CFI	\$11,231,558.90	Lease to ownership

Since all four proposals were technically acceptable and GTE's offer was the lowest submitted, in accordance with the solicitation's award provision, award was made to GTE as the low offeror on September 3.

CFI maintains that GSA's price evaluation was inaccurate because, after the technical evaluation, but before the award, the local telephone company "drastically changed tariffs and network offerings," and that these changes should alter the evaluated prices. CFI says that it prepared its proposal with the assistance of the local telephone company and in doing so it kept the number of circuits, or electrical transmission lines, in its proposed system to a minimum. According to the protester, it used a less expensive system than other offerors so the disparity in prices can only be due to a change in applicable tariffs or an evaluation error. As evidence of a change in tariffs, CFI has submitted a letter from the local telephone company that lists tariff charges that were approved on March 19, 1985.

^{1/} Although there is no explanation for the delay between the submission of initial proposals and the request for best and final offers, GSA issued five amendments to the solicitation. These amendments informed offerors of changes in the government's equipment and service requirements and of basic tariff charges of the local telephone company.

In response, GSA states that the evaluation was done in accordance with the solicitation and contends that it was not aware of any major changes in telephone rates that would have benefited the protester and adversely affected GTE.

Although CFI argues that GSA's evaluation was inaccurate, the protester does not specifically explain the error that it believes was made and does not offer any evidence in support of its claim other than its opinion that it proposed a less expensive system than the other offerors. While it has submitted a letter from the local phone company indicating that there were some tariff revisions approved in March 1985, the protester does not explain in any meaningful way how such tariff changes would have caused its evaluated costs to drop from the highest received to the lowest.

Further, although CFI maintains that the agency applied incorrect tariffs in its evaluation, GSA has informally advised us that the tariffs or rates of the local telephone company were used by offerors to prepare their offers and are not directly used by GSA in the price evaluation. Further, amendments to the solicitation did notify offerors of some local tariff changes. Moreover, the price evaluation under section T-419 of the solicitation does not allow for changes in telecommunications costs that occur after the offers are submitted and evaluated. Under the circumstances, where the protester has presented no specific explanation that we can understand for its view that GSA's cost evaluation was erroneous, we have no basis to disturb that evaluation.

CFI also argues that as a result of tariff changes, "the evaluation process may not be in keeping with FAR 17.103-1." That regulation contains criteria for determining whether multiyear contracting is appropriate. See Federal Acquisition Regulation (FAR), 48 C.F.R. § 17.103-1 (1985). The solicitation here did not call for a multiyear contract as defined in FAR, Part 17. In any event, the protester merely says that there "may" be a violation of those procedures but does not explain the alleged violation. We do not consider such unsupported allegations. Lanier Business Products, Inc., B-211641, Oct. 25, 1983, 83-2 CPD ¶ 493.

CFI next contends that GSA and GTE did not comply with the FAR and RFP requirements relating to small business subcontracting plans. We find that the protester is not an interested party to raise this issue. Our Bid Protest Regulations require that a protester be "an interested party" before we will consider its protest. 4 C.F.R. § 21.1(a) (1986). A

protester is not an interested party where it would not be in line for award if its protest were upheld. C.A. Parshall, Inc., B-220650 et al., Jan. 14, 1986, 86-1 CPD ¶ 38. Here, the solicitation required award on the basis of the lowest priced technically acceptable offer and CFI's best and final offer was the highest of the four technically acceptable offers submitted. Since we have found no merit to CFI's only challenge to the second and third low offers--that the price evaluation was in error--CFI would still not be in line for award if the awardee were eliminated from the competition. Thus, even if CFI's protest relating to GTE's small business subcontracting plan was successful, the firm would not receive the award. Accordingly, CFI is not an interested party to protest this matter.

In any event, according to GSA, GTE negotiated a subcontracting plan providing for substantial small business subcontracting possibilities and the plan has been approved by GSA and the Small Business Administration (SBA). Contrary to CFI's contention, there was no requirement that GTE submit a plan with its best and final offer. Rather, the plan was required to be submitted and approved prior to award. See RFP Clause T-374; Devcon Systems, Corp., B-197935, July 18, 1980, 80-2 CPD ¶ 46.

Finally, the protester says that SBA was not given an opportunity to review the solicitation prior to issuance as required. While the agency admits that it did not comply with this requirement in FAR, 48 C.F.R. § 19.705-3, no offeror was prejudiced by this error since SBA was notified of the award, as required, and SBA and GSA determined that GTE's subcontracting plan provides the maximum practical opportunity for small and small disadvantaged firms to participate as subcontractors.

The protest is denied in part and dismissed in part.

for *Raymond E. ...*
Harry R. Van Cleve
General Counsel