



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Four Process, Ltd.
File: B-226598
Date: July 24, 1987

DIGEST

An offer that did not conform to a reasonable interpretation of a solicitation's delivery schedule was properly rejected.

DECISION

Four Process, Ltd. protests the contract award to Cambro Manufacturing Company under request for proposals (RFP) No. DAAK01-87-R-A064, issued by the Department of the Army for steam-table pans and covers. Four Process contends that the specified delivery schedule was so unreasonably short that only Cambro could meet it, that Four Process' proposal was improperly rejected as technically unacceptable, that Four Process' price for the pans and covers was lower than Cambro's and that Cambro's proposal failed to provide a price for the covers required for the pans.

We dismiss the protest in part and deny it in part.

The RFP established January 23, 1987, as the date for receipt of proposals and asked for fixed-price offers to provide steam-table pans and covers for use in mobile and fixed Army kitchens. The specifications required products manufactured by Cambro or products equal to the Cambro products and listed the salient characteristics of the Cambro products that the equal products would have to meet. Among these was a requirement that the equal product conform to National Sanitation Foundation standard No. 2 (NSF-2).^{1/} Proposals offering equal products were also required to include descriptive literature establishing that the product was, in fact, the equal of the Cambro product.

^{1/} The National Sanitation Foundation is a not for profit organization that develops standards and criteria for equipment, products and services that bear upon the public health. The NSF seal, obtained after product listing and evaluation, is a recognized indication that the product complies with public health requirements. NSF standard No. 2 relates to food handling equipment.

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The Army intended that deliveries begin 28 days after award; this intention, however, was not reflected in the RFP. Instead, the RFP stated specific dates for deliveries, the earliest of which was March 15, 1987. Four Process offered to commence deliveries 150 days after award.

It is clear under any reasonable interpretation of the delivery schedule contained in the solicitation, that the 150 day delivery schedule offered by Four Process did not conform to the delivery requirements of the solicitation. For example, it is apparent from the delivery dates specified that delivery was to commence within a relatively short timeframe after award since the first delivery date of March 15, 1987, was approximately 7 weeks after the proposal due date. No offeror, including Four Process expressed any reservations or requested clarification even though the schedule was stated by specific dates rather than in days after award. For that reason, the protester's challenge to the short delivery schedule is untimely and will not be considered since it was an impropriety that was apparent prior to the closing date for the receipt of proposals and should have been protested prior to that time. 4 C.F.R. § 21.2(a) (1986).

It is also clear that the 150 day schedule after award for deliveries to commence that Four Process proposed could not be measurably improved and may even have proved to be ambitious because the record reveals that it would take 4 to 5 months to obtain NSF approval.^{2/} For this reason alone, the Four Process proposal properly was rejected since its delivery schedule did not conform to the delivery requirements of the solicitation.

In view of the forgoing, it is not necessary to consider the technical bases upon which the Army also rejected the proposal, since the Four Process proposal was properly rejected on the basis of the delivery schedule it offered.

We next consider Four Process' contention that Cambro failed to provide a price for the covers required by the solicitation. Item 0002 of the solicitation (steam pan), specified a quantity of 127,222 pans but included the following notation:

"To include cover with handle- See Item 0003."

^{2/} The protester agrees that NSF confirmation of conformance to NSF standard No. 2 is necessary. It argues only that approval prior to award is not required.

Item 0003, the item in the solicitation for covers, showed a quantity of 73,280. Item 0003 also indicated the salient characteristics the covers must meet to be acceptable. The Army states that its intent was to show that the cover must fit the pan and "to direct the reader to Item 0003 to understand about the quantity and salient characteristics." Four Process, however, interpreted this to mean that a cover had to be provided with each pan and its price for Item 0002 included a factor for the covers. The Army concedes, and we agree, that the Item 0002 reference to the Item 0003 covers could have been written to better reflect its intent. Nevertheless, we think that Four Process' interpretation of the Item 0002 requirements is not reasonable since the price schedule clearly indicated that the Army would buy 127,222 pans and only 73,280 covers. See Ameriko Maintenance Co., B-224087, Dec. 19, 1986, 86-2 CPD ¶ 686. We therefore find no merit to this basis for protest, since Cambro's proposal did provide a separate price for the pans and the covers.

Finally, the fact that the price in Four Process' proposal is lower than that of Cambro is irrelevant since Four Process' proposal was properly rejected and was no longer eligible for award. Digital Devices, Inc., B-225301, Mar. 12, 1987, 87-1 CPD ¶ 278 at 5.

The protest is denied.

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