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The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Consolidated Bell Inc.

File: B-228566

Date: December 29, 1987

DIGEST

1. An agency properly did not consider the cost of extended maintenance support, since the request for proposals (RFP) required only that offerors agree to provide such support at reasonable and customary rates and did not provide that such costs were an evaluation factor.
2. Protest against the failure of a solicitation to include an evaluation factor for the price of maintenance support is untimely when not filed prior to the initial closing date for submission of proposals.

DECISION

Consolidated Bell, Inc. (CBI), protests award of a contract to General Technologies Services, Inc. (GTSI), under request for proposals (RFP) SECHQ1-87-R-0004, issued by the Securities and Exchange Commission (SEC). CBI alleges that it, not GTSI, furnished the lowest price offer for the laptop microcomputers and disk drives solicited.

We deny the protest.

The RFP required offerors to submit technical and business proposals which were evaluated to establish a competitive range. The RFP provided a chart for entering a unit and extended price each for initial and optional quantities of laptop microcomputers and disk drives (four line items).

Section "M" of the RFP, the evaluation factors for award, provided that to be acceptable and eligible for evaluation, proposals "must meet all the mandatory requirements set forth in Section C." Proposals meeting those requirements would be evaluated and award made to the responsible offeror whose proposal was most advantageous to the government, "price and other factors considered." Offers were to be evaluated for award by adding the total prices of all

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optional periods and quantities to the total price of the initial contract period. Section "M" does not mention extended maintenance support or prices for it. It specifically provided that separate charges in any form were not solicited.

Section "C" describes the background of the solicitation, the scope of work, general mandatory specifications, support requirements, documentation, option and execution, and extended maintenance support. It is the extended maintenance support provision on which CBI bases its protest. This provision states:

"As laptop microcomputers will require service and maintenance after the warranty period, the offeror(s) must support third party service and maintenance providers with the necessary documentation, training and materials at reasonable and customary rates for five years after final delivery if the Commission elects to use third party support at any time during that five year period."

There was no requirement in the RFP or on the price chart for provision of a price for the cost of such maintenance support.

CBI's original proposal offered alternate system prices for the line items but no price for extended maintenance support.

During the course of discussions, CBI responded to two clarification requests concerning the systems and the quantity it offered. In response, CBI answered the SEC's questions and provided revised pricing for each of two alternate systems offered. In both responses CBI provided a 3 months warranty for one system, a 1-year warranty for the other, and quoted a price of \$180 per year for "after warranty service." The RFP required that all equipment offered must carry a minimum 90-day warranty.

After a required operational capabilities demonstration (OCD), a best and final offer (BAFO) was requested of each offeror which had successfully completed the OCD. In accordance with the RFP, the BAFO's were evaluated on an aggregate basis of all line items. CBI's aggregate price with a 1-year warranty was \$196,950 and \$237,700 1/ with a

1/ In its protest, CBI calculates its 5-year warranty price as \$235,500, a figure less than the sum of its line item quantities.

5-year warranty. GTSI's BAFO provided an aggregate price of \$179,700 without supplying any price for extended maintenance support. The SEC awarded the contract to GTSI on the basis that its aggregate price was lower than CBI's 1-year warranty aggregate price.

CBI contends that its offer with a 5-year warranty is lower than GTSI's offer would be if GTSI's service rates of \$325 per system per year or the "cheapest third party service available" (\$175 per system per year) had been added to its basic offer. CBI asserts that all offers must be evaluated according to the evaluation factors listed in the RFP, and here those factors include compliance with the requirement for extended maintenance support. CBI sought to demonstrate compliance by furnishing its figures for reasonable and customary rates (i.e., a 5-year warranty). Since it provided a price for the required support, CBI concludes that GTSI's offer must be evaluated on the basis of an additional maintenance support price.

The SEC maintains that it followed the RFP evaluation criteria by choosing the lowest aggregate price of offerors meeting the RFP's requirements. Extended maintenance support rates were not required and so were not considered in the evaluation. Since such rates were not listed as an evaluation factor, SEC states that it would have been inappropriate to consider such rates in evaluating the offers received. We agree with the SEC.

A contracting agency has broad discretion in choosing evaluation factors and their relative importance. Federal Acquisition Regulation (FAR), 48 C.F.R. § 15.605(b) (1986). The solicitation must clearly state all evaluation factors that will be considered in selecting a source. FAR, 48 C.F.R. § 15.605(e). A contracting agency is required to evaluate competitive proposals solely on the factors specified in the solicitation. 41 U.S.C. § 253b(a) (Supp. III 1985); FAR, 48 C.F.R. § 15.608(a). The interjection of new criteria into the evaluation process not set forth in the solicitation is improper unless all offerors are informed of the changes. Olympic Container Corp., B-219424, July 24, 1985, 85-2 C.P.D. ¶ 83; Umpqua Research Co., B-199014, Apr. 3, 1981, 81-1 C.P.D. ¶ 254; Computer Data Systems, Inc., B-187892, June 2, 1977, 77-1 C.P.D. ¶ 384.

It is apparent that CBI has misinterpreted the RFP's evaluation criteria. The requirement for extended maintenance support was mandatory, but no price was solicited. Nowhere in section "M" is the maintenance support requirement listed as an evaluation factor. The statement of a requirement elsewhere in the specifications

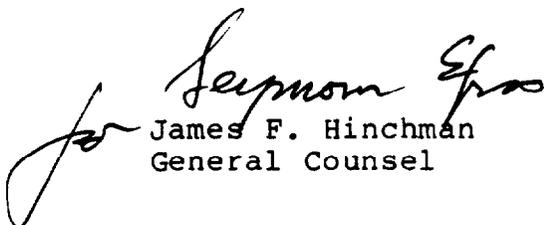
does not make it an evaluation factor. Since it was not an evaluation factor, it would have been improper for the SEC to consider it in evaluating the offers received.

Even assuming it might be considered an evaluation factor from the standpoint of a qualifying requirement, a price was not requested and section "M" states plainly that no separate charges were solicited. All that was required was that offerors agree to provide maintenance support at reasonable and customary rates. Since no separate price was solicited, it was proper for the SEC to use CBI's basis (1-year warranty) price in evaluating its BAFO against GTSI's BAFO. Neither price considered support rates and thus they were comparable prices. Since it proposed the lowest price, GTSI was entitled to award based upon the stated evaluation factors.^{2/}

In response to CBI's rhetorical question of "how can the government determine whether the rates are reasonable and customary" without provision of rates, we note that in the exercise of its discretion the SEC has not sought those rates at this time. Should the SEC require extended maintenance support from a third party, it will then judge whether the rates are reasonable and customary. If the awardee fails to provide such rates, it will be a matter to be resolved under the disputes clause of the contract. See FAR, 48 C.F.R. § 52.233-1 (Alternate I) incorporated by reference in the RFP.

Accordingly, this part of the protest is denied.

To the extent, CBI is protesting the failure of the evaluation criteria to include a requirement for pricing of maintenance support, this basis of protest is dismissed as untimely because it was not filed prior to submission of initial proposals. 4 C.F.R. § 21.2(a)(1) (1987).


James F. Hinchman
General Counsel

^{2/} In any event, it would be inappropriate for the SEC to compare CBI's higher price with an enhanced price for GTSI based solely upon CBI's mere allegation of the "cheapest" rates available for third party service. It would be improper for the SEC to add such a speculative figure to GTSI's offer, especially since CBI has not established that GTSI could not furnish lower rates.