



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: American District Telegraph Company
File: B-228308
Date: January 22, 1988

DIGEST

Protest that agency failed to hold meaningful discussions because it did not raise a specific perceived deficiency with a protester whose proposal the agency determined to be technically unacceptable is denied where the agency maintains that in fact it did discuss the specific deficiency, and, even assuming the agency did not discuss the perceived deficiency in specific terms, the record establishes that the deficiency was only one among many shortcomings that led to rejection of the proposal.

DECISION

American District Telegraph Company (ADT) protests the award of a contract to Mosler, Inc., under request for proposals (RFP) No. 84-0109, issued by the United States Marshals Service for court security systems. We deny the protest.

This protest concerns phase II of a Marshals Service program for security systems installations in court facilities nationwide. Under phase I, which was conducted competitively, four contracts were awarded to install and maintain security systems in different jurisdictions. ADT received one of these contracts. Under phase II, one contract was to be awarded to enhance the security systems of all court facilities throughout the country. The phase II solicitation stated that the phase II mission need is to provide an increased or enhanced level of security, known as a "law enforcement level of security." This law enforcement level of security was defined as a "high-security alarm system comprised of state of the art alarm components and alarm sensors that are equipped with tamper switches and with high-security line transmission systems."

As part of phase I performance, each contractor was required to submit for evaluation, as a phase II proposal, its system concept for the implementation of the enhanced security system. The phase II contract was to be awarded to the firm

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system. The phase II contract was to be awarded to the firm that exhibited the potential for the most advantageous phase II performance, as established by the firm's phase I performance and phase II systems concept.

Three of the four contractors that performed under phase I, including ADT, submitted a phase II systems concept. A technical evaluation board evaluated the systems concepts, the offerors' phase I performance, and the proposed prices, and included all three offerors in the competitive range. The agency sent each offeror a letter with a list of deficiencies in its systems concept, conducted oral discussions, and requested each offeror to submit its best and final offer (BAFO). After evaluating the BAFOs, the evaluation team found that only the proposal submitted by Mosler was technically acceptable, and the contract was awarded to that firm. The Marshals Service determined that the proposal submitted by ADT was technically unacceptable because ADT's systems concept did not provide a law enforcement level of security; among other things, the evaluation board specifically found that ADT failed to offer an adequate quantity of equipment.

ADT protests that the agency did not conduct meaningful discussions because, while it found ADT's proposal technically unacceptable for failing to propose a sufficient quantity of equipment, the agency never pointed out this deficiency to the firm.^{1/} The protester avers that if it had been informed of this weakness in its proposal it could have corrected the problem at a price lower than Mosler's and, thus, would have received the award. The Marshals Service responds that during the oral discussions it told ADT that the firm failed to offer enough equipment to meet the law enforcement level of security.

The Competition in Contracting Act of 1984, 41 U.S.C. § 253b(d)(2) (Supp. III 1985), requires that written or oral discussions be held with all responsible sources whose proposals are within the competitive range. Such discussions must be meaningful, which means that the agency must point out weaknesses or deficiencies in a proposal unless doing so would result either in technical leveling or

^{1/} ADT also has asserted that since its proposal was in the competitive range, it must have been technically acceptable. The competitive range, however, may include proposals that are technically unacceptable but are susceptible of being made acceptable. See Telecommunications Specialists, Inc., B-224842.2, Feb. 26, 1987, 87-1 CPD ¶ 221.

requirement contemplates that the agency point out all deficiencies in the offeror's proposal, not merely selected ones, in as specific a manner as practical considerations will permit. Education Development Center, Inc., B-224205, Jan. 30, 1987, 87-1 CPD ¶ 99.

Here, the Marshals Service and ADT have presented irreconcilable versions of the facts concerning whether the Marshals Service specifically told ADT that the firm had failed to offer enough equipment. We note, however, that whether or not the Marshals Service in fact mentioned the proposed quantity of equipment, ADT was specifically told that it had not addressed all facilities, a factor which suggests that the proposed amount of equipment was inadequate. In any event, it is not necessary for us to resolve the dispute, since it is apparent from the record as a whole that ADT's offer was rejected because, overall, it did not meet the mission need for an enhanced level of security; the amount of equipment offered was only one of many shortcomings in that respect that caused the agency to conclude that the offer was technically unacceptable. The other deficiencies were brought to the attention of ADT during discussions, and the Marshals Service found they were not adequately addressed in the firm's BAFO. In sum, as explained below, even if we were to accept ADT's position that the agency did not discuss the narrow point in issue, we still would be unable to find that ADT would have won the competition.

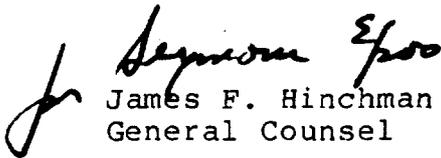
Mosler's proposal was scored 64.2 percent better than ADT's with regard to systems concept. Our review of the evaluators' written comments about ADT's proposal shows that in considering whether ADT offered an acceptable proposal, the evaluators were concerned with ADT's responses in all evaluation areas. For example, the evaluators were concerned that ADT did not address the security needs of all facilities, including some magistrates' offices, and did not have adequate materials projections. The Marshals Service also was concerned because ADT's plan called for replacement of equipment in circumstances of system failure without a full diagnosis of the problem and consideration of alternative, less drastic, solutions, and because ADT's plan called for standardization of security systems without analyzing if this was beneficial or cost effective. The Marshals Service found that these defects, pointed out to ADT during discussions, were not corrected in the company's BAFO.

Further, none of the categories was scored solely on the basis of the amount of equipment proposed, but even if ADT's proposal received the full number of evaluation points

permitted in those categories where the evaluators did consider quantity of equipment, ADT's score would still be approximately 50 percent below the score obtained by Mosler. In addition, the proposals also were scored for phase I performance, for which ADT received 20 points while Mosler received 35.5. (The record is not clear as to whether 40 or 50 points were available for this factor.) In this regard, we note that the evaluators' comments show substantial dissatisfaction with ADT's phase I performance.

Finally, while ADT's proposed price is significantly less than Mosler's, the Marshals Service found that, given the difference in the quantity of equipment proposed, ADT and Mosler proposed approximately the same per-item cost. Therefore, and in view the above-stated factors, we find no reason to object to the agency's selection of Mosler over ADT.

The protest is denied.

 James F. Hinchman
General Counsel