



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: BDM Management Services Company

File: B-228287

Date: February 1, 1988

DIGEST

1. Protest that the procuring agency misled the protester by including in the solicitation an estimate of the staffing levels needed to perform the statement of work when, in fact, the agency intended to accept only a proposal offering the exact staffing levels stated in the solicitation is denied, where: (1) the agency accepted a proposal which offered staffing levels below the solicitation's estimated levels; (2) the agency told the protester during discussions that its proposed staffing was inadequate in several areas and gave the protester a chance to revise its proposal or explain lower staffing levels; and (3) the evaluation examined the protester's staffing resources in light of the protester's proposed methodologies and still found the personnel levels to be inadequate.
2. In a negotiated procurement, award to a higher priced, higher technically ranked offeror is not objectionable where the solicitation award criteria made technical considerations more important than cost and the agency reasonably concluded that the awardee's superior proposal provided the best overall value.
3. Protest alleging that the solicitation improperly directed that lack of past performance would not be considered negatively in the evaluation of proposals is untimely, where the protest was filed after the closing date for receipt of initial proposals.
4. Protest that the agency improperly included certain of the protester's (the incumbent contractor) proprietary plans used in an earlier contract in an offerors' library available to all offerors in the present procurement is untimely, where the protester waited 5 months after it knew this basis of protest to raise the issue.

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5. Dispute between the protester and the contracting agency over what information the agency was required to give the protester during a debriefing conference is a procedural matter that does not affect the competitive standing of offerors or the validity of the award.

6. The contracting agency is not required to order suspension of contract performance where the protest is filed on the 10th calendar day after award but the agency receives General Accounting Office notification of the protest on the 11th calendar day after award.

DECISION

BDM Management Services Company protests the award of a contract by the Department of the Army to PRC Kentron, Inc., pursuant to request for proposals (RFP) No. DABT60-87-R-0003. The contract requires PRC to provide non-personal services on a cost-plus-award-fee basis to support the test, experimentation, and instrumentation functions of the Army's Training and Doctrine Command Combat Arms Test Activity (TCATA) at Fort Hood, Texas. BDM has alleged several improprieties in the procurement, and contends that it should have been awarded the contract because it submitted the lowest-priced, technically acceptable proposal.

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

The RFP was issued on April 6, 1987, and, as amended, required initial proposals to be submitted by May 29. Four proposals were received, and both written and oral discussions were conducted with each of the four offerors. The Army allowed all offerors to revise their proposals and to submit best and final offers, after which the proposals were evaluated by the source selection evaluation board in three areas: management, technical, and cost realism. Ultimately, the Source Selection Authority determined that the proposal submitted by PRC provided "the best overall value to satisfy the Army's needs," and the contract was awarded to PRC on September 14. BDM filed its protest in our Office on September 24.

Staffing Levels

BDM alleges that the Army misled it regarding the staffing levels required to perform this contract. Specifically, BDM contends that, even though the RFP included a government estimate of 140 man-years per year to fulfill the RFP's requirements, the Army had assured it during discussions that this staffing level was only an estimate and that the Army sought the benefit of the offerors' knowledge and

expertise in proposing appropriate staffing levels. BDM argues that, in reality, the Army was soliciting a required level of effort of 140 man-years per year and failed to disclose this fact to BDM in the solicitation or during discussions. BDM alleges that an offeror's deviation from the required staffing level was reflected in a negative evaluation and scoring of an offeror's proposal.

We find no legal merit to the protest on this matter. We first point out that the Army denies that it misled any offeror as alleged. Further, it is clear from the record that the Army was not soliciting offers on a required level of effort basis. In fact, all four offerors proposed staffing at levels below the government estimate. PRC's proposal was evaluated as meeting or exceeding all of the RFP requirements even though PRC proposed a staffing level of only 132 man-years. Similarly, BDM's proposal was rated as "generally adequate" to meet the RFP requirements although BDM proposed a staffing level of only 126 man-years.

The record also shows that the Army advised BDM during discussions that the firm had not provided sufficient justification for its proposed deviation from the government estimate of the proper staffing levels, and provided BDM with a comparison of BDM's proposed staffing in each labor category with the government's estimate of the quantity of personnel resources needed to provide the services under the RFP. The Army then gave BDM an opportunity either to revise its proposal or to show its methodology or rationale for deviating from the government estimate, or some combination of both. The evaluators examined the methodologies proposed by BDM and attempted to determine the resources needed in terms of staffing to accomplish the work using those methodologies. The record further shows that the evaluators were not satisfied with BDM's staffing because they viewed it as inadequate to accomplish the required work in a number of areas.

The determination of an agency's minimum personnel needs is primarily the responsibility of the procuring agency. See Pacific Computer Corp., B-224518.2, Mar. 17, 1987, 87-1 CPD ¶ 292 at 6. The fact that BDM disagrees with the Army as to the staffing necessary to meet the Army's requirements does not make the evaluation improper. Id. The Army fully informed BDM that, in the Army's view, the company's personnel resources were not sufficient, and gave BDM an opportunity to change its proposal or to explain the amount of personnel resources in view of its proposed methodologies. Then, the Army's evaluators examined BDM's revised proposal against the statement of work and still found BDM's personnel resources to be weak in a number of areas.

Accordingly, we cannot agree with BDM's assertion that it was misled by the Army, and we deny the protest on this point.

Evaluation

BDM next contends that the Army's evaluation of proposals was arbitrary and capricious and that the evaluation team did not follow the evaluation criteria set forth in the RFP. BDM does not give any detail concerning exactly what it believes was improper about the manner in which proposals were evaluated. Rather, BDM appears to derive its conclusion that the evaluation was unfair from two factors: (1) BDM's proposed prices were lower than those proposed by PRC; and (2) BDM was the incumbent and had been the TCATA contractor for the last 7 years. Thus, BDM concludes, it should have been awarded this contract.

In a negotiated procurement, the government is not required to make award to the firm offering the lowest cost unless the RFP specified that cost will be the determinative factor. University of Dayton Research Institute, B-227115, Aug. 19, 1987, 87-2 CPD ¶ 178. We have upheld awards to higher rated offerors with significantly higher proposed costs where it was determined that the cost premium was justified considering the significant technical superiority of the selected offeror's proposal. Id.

Further, it is not our function to reevaluate technical proposals, since the determination of the government's needs and the best method of accommodating those needs is primarily the responsibility of the procuring agency. We will examine an evaluation only to ensure that it was reasonable and consistent with the stated evaluation criteria. Fairfield Machine Co., Inc., B-228015, et al., Dec. 7, 1987, 87-2 CPD ¶ _____. In assessing the relative desirability of proposals and determining which offer should be accepted for award, the procuring agency has the discretion to select a more highly rated technical proposal if doing so is in the government's best interest and is consistent with the evaluation scheme set forth in the solicitation. Comarco, Inc., B-225504, et al., Mar. 18, 1987, 87-1 CPD ¶ 305.

Here, the RFP stated that proposals would be evaluated in three areas, listed in order of their importance as technical, management, and cost realism. However, only the technical and management proposals were to be scored. Proposals also were to be evaluated under the cost realism factor, and award was to be made to the "superior offer" provided its most probable cost estimate was reasonable and affordable.

After reviewing all of the evaluation documents, we find that the Army's evaluation was reasonable and in conformance with the evaluation scheme set forth in the RFP. The record shows that the technical criterion represented 60 percent of the total evaluation, while the management criterion represented 40 percent. PRC's proposal was evaluated as better than BDM's in five of the six evaluation subfactors listed under the technical area, and equal in the sixth. Similarly, PRC's proposal was rated better than BDM's in two of the three management subfactors, and equal in the third. BDM's proposal was considered "generally adequate" by the evaluation team, while PRC's proposal was considered "a very good proposal that met or exceeded all of the RFP requirements." The evaluators concluded that BDM's proposal had many significant deficiencies in the areas of documentation, maintenance, and the quantity of resources proposed. The evaluators also felt that BDM's proposal contained many inconsistencies and had a confusing format that made evaluation difficult and caused them doubt as to BDM's ability to perform quality work. The evaluators' overall impression was that BDM had sacrificed technical superiority for lower cost.

On the other hand, the evaluators found very few deficiencies in the PRC proposal, with its primary disadvantage being in the quantity of clerical personnel proposed. The evaluators felt that PRC's proposal was well-organized, was clear and concise, and made a "high quality" impression upon them. As both proposals were found to have a reasonable and affordable most probable cost estimate, the Source Selection Authority recommended award to PRC as the "best overall value."

In our opinion, the evaluation was reasonable, based upon the proposals submitted, notwithstanding the BDM had been the incumbent contractor for 7 years and had offered a lower proposed price. BDM's proposal simply was not as good as PRC's proposal, and the Army determined that it would receive better services from PRC for the premium price PRC offered. Furthermore, the RFP advised offerors that award would be made to the superior offeror provided that its most probable cost was reasonable and affordable. The award to PRC thus was consistent with the RFP scheme, and the protest therefore is denied on this point.

Experience/Past Performance

BDM next argues that it should have received credit for the experience it gained as the incumbent contractor for the past 7 years, but that it was denied such credit because the solicitation improperly directed that:

"An offeror with no relevant past performance shall so indicate in the proposal. Lack of past performance will not be considered as a negative assessment."

The contracting officer explains that past performance was not considered as a specific evaluation criterion because the Army was attempting to encourage full and open competition in the procurement. The Army also argues that this objection to the RFP provision was untimely filed.

We agree that this protest issue is untimely. Under our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1987), a protest alleging an impropriety in a solicitation which is apparent before the closing date for receipt of initial proposals must be filed prior to the time set for closing. BDM therefore should have protested the quoted solicitation provision before the May 29, 1987, closing date. BDM, however, waited until after the contract had been awarded to PRC to object to this solicitation provision, on September 24. Accordingly, we will not consider the argument on its merits.

Proprietary Data

BDM contends that the Army improperly disclosed certain BDM proprietary information to BDM's competitors in the procurement. According to BDM, when it was competing for a TCATA contract in 1985, it submitted as part of its proposal a number of plans (including configuration control, quality control, supply, property, security, maintenance, and safety plans) that were labeled as proprietary. BDM was awarded that contract but claims it never authorized the Army to disclose any proprietary information or trade secrets from its 1985 proposal. The disclosure came through the present RFP's statement that all offerors would have access to an "offerors' library" (a compilation of documents pertinent to this requirement); the record shows that the library included BDM's 1985 plans as part of the incumbent contractor's materials and documents.

The Army contends that while BDM did label its plans as proprietary, the government purchased those plans when it awarded the 1985 contract to BDM. Accordingly, the Army argues that the plans were proprietary to BDM only prior to its receiving the 1985 award, and that once the Army bought the plans, it could use them as it pleased under the terms of the 1985 contract. Furthermore, the contracting officer points out that PRC never requested, nor was it provided, BDM's plans from the offerors' library.

This protest issue is untimely. As stated above, the RFP notified all offerors that they could use the offerors' library. The record shows that an officer of BDM visited that library on April 24, 1987, and saw the BDM plans that were housed there. Even though the BDM representative at that time pointed out to the contracting officer that BDM still considered the material to be proprietary, BDM did not file its protest until September 24. Under our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2), BDM had to protest within 10 working days after it knew this basis for protest. As BDM waited 5 months to protest on this basis, this issue is dismissed as untimely.

Debriefing

BDM also alleges that the debriefing it was given on September 22 was not complete, an allegation that the contracting officer denies. This matter, however, would not affect the evaluation of proposals, which we have found to have been reasonable, and thus the validity of the award to PRC. See Professional Analysis, Inc., B-224096, Nov. 18, 1986, 86-2 CPD ¶ 579. Therefore, the protest is dismissed on this point.

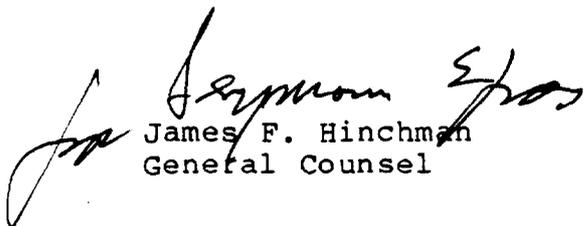
Failure to Suspend Performance

The protester also objects to the fact that the Army did not order PRC to suspend performance in accordance with the stay provisions of the Competition in Contracting Act of 1984 (CICA), 31 U.S.C. § 3553(d) (Supp. III 1985), once the agency received notification of BDM's protest from our Office.

The Army awarded the contract to PRC on September 14, 1987, and BDM filed its protest in our Office at 4:25 p.m. on September 24, the 10th calendar day after award of the contract. We notified the Army of the protest at 8:25 a.m. the next day, in accordance with the CICA requirement to provide an agency with notice of a protest filing within 1 working day. 31 U.S.C. § 3553(b)(1). As September 25 was the 11th calendar day following award of the contract, the stay provisions of the statute were not applicable, because the Army did not receive notice of the protest from our Office within 10 calendar days after the award.

Accordingly, the Army was not required to order suspension of contract performance, and this portion of the protest is denied.

The protest is denied in part and dismissed in part.



James F. Hinchman
General Counsel