



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Fairchild Weston Systems, Inc.

File: B-229843

Date: April 1, 1988

DIGEST

1. Where evaluation scheme clearly provided that for purposes of award, proposals would be evaluated by adding option price to the price for the basic system, termed the instant contract price, no ambiguity is created by the statement elsewhere that the instant contract price would be "evaluated" where evaluation of the instant contract price clearly refers to evaluation of the cost realism of the basic system price without the option.
2. Protest is denied where record fails to support protester's contentions that it was misled during discussions into not reducing the price of its software effort or that cost information from its proposal was disclosed by the agency to the ultimate awardee under solicitation.

DECISION

Fairchild Weston Systems, Inc. protests the award of a contract to Hughes Aircraft Company under request for proposals (RFP) No. F08635-87-R-0216 issued by the Department of the Air Force for manufacture of a GBU-15 Automatic Test System (GATS) which diagnoses and tests air-to-ground weapon components. Fairchild protests the award evaluation, allegedly improper discussions and the alleged leakage of information about Fairchild's proposal to Hughes.

We deny the protest.

The agency issued the RFP on April 15, 1987, for manufacturing a GATS utilizing current technology to perform depot level test and diagnosis for Air Logistics Center repair of the modular components and subassemblies of the

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GBU-15 weapon and training systems and to provide an AN/GJM-54 aircraft test set. The RFP also required growth capability for use of the system with the AGM-130 air-to-ground guided weapon and included an option for testing of the AN/GJM-55 weapon set.

The RFP provided that the source selection authority would select a proposal for contract award based on an integrated assessment of the proposals to determine which proposal was most advantageous to the government. Under the RFP, cost/price was considered less important than technical criteria and equal in importance to logistics. For evaluation of cost/price, offerors were to submit a firm, fixed price (FFP) for the basic system, which was termed the instant contract price. RFP clauses M(3)(c)(1) and M(3)(c)(5) provided for evaluating cost data for the instant contract price for realism, reasonableness, completeness and continuity. Additionally, RFP clause M(3)(c)(3) provided that, for purposes of award, option prices for the AN/GJM-55 would be added to the instant contract price.

The agency invited offerors to a preproposal conference on May 12, 1987. At that conference, a potential offeror stated that he read the evaluation factors as indicating that the option for the AN/GJM-55 weapon test set would not be included in the "instant contract price." The agency confirmed this interpretation.

Offerors submitted initial proposals on July 1, 1987. On October 6, the agency requested all offerors in the competitive range to submit best and final offers by October 20. The protester submitted an offer that was lower than Hughes' for items exclusive of the option but higher when the AN/GJM-55 option cost was included. On December 9, 1987, the agency awarded Contract No. F08635-88-C-0064 to Hughes at a price of \$10,670,000 with option based on its technical superiority in the areas of operational effectiveness, design and reliability and its overall cost. On December 18, 1987, Fairchild filed a protest with this Office.

The protester argues that it was confused by the evaluation factors because the statement in clause M(3)(c)(1) that instant contract price would be "evaluated" led it to presume that only the instant contract price would be evaluated for award. Clause M(3)(c) reads in pertinent part:

" . . . (1) The cost item to be evaluated is Instant Contract Price. A most probable cost estimate, which is the Government estimate of the

total cost most likely to be incurred by each of the competing offers, will be made . . .

. . . (3) Proposals will be evaluated for purposes of award by adding the total price for all options to the Instant Contract Price (FAR 52.217-5) . . .

. . . (5) Instant Contract Price. The offeror's cost/price proposal will not be rated or scored, but will be evaluated for realism, reasonableness, completeness and continuity which are of equal importance"

The protester argues that M(3)(c)(1) and M(3)(c)(3) are inconsistent and ambiguous. In our view, there was no ambiguity. Any ambiguity concerning what was meant by "instant contract price" in clause M(3)(c)(1) was resolved at the preproposal conference where the agency advised all offerors that instant contract price did not include the option for the AN/GJM-55 weapon set. A copy of conference questions and answers was sent to all potential offerors. To the extent that the protester remained uncertain what the term meant, a protest of such an ambiguity should have been filed prior to the closing date for receipt of initial proposals. 4 C.F.R. § 21.2(a)(1) (1987).

The agency intention to restrict the cost realism analysis to instant contract price is clearly stated both in M(3)(c)(1) and in M(3)(c)(5), which set forth the manner of evaluating instant contract price for realism, reasonableness, completeness and continuity. Furthermore, the intent to evaluate options for award is clearly stated in clause M(3)(c)(3), which provided that the agencies would evaluate proposals for award by adding option price to instant contract price. The protester has not demonstrated the existence of any ambiguity as to whether the AN/GJM-55 option was to be evaluated, nor has the protester shown that the agency deviated from the cost realism evaluation established in the solicitation.

The protester also complains that during negotiations, agency personnel misled it by indicating that any reduction in the scope and cost of its software development effort, representing approximately 50 percent of contract performance, would cause its proposal to be downgraded. The protester complains that contrary to this advice, the agency made award to an offeror (Hughes) whose software development effort was approximately \$1 million dollars below the level urged upon the protester. The agency flatly denies so advising the protester. The agency also states that it in

fact specifically concluded discussions by advising that "[g]overnment points for negotiations are for your consideration only and not to be construed as direction to change your proposal."

As evidence of its contention, the protester points to an agency inquiry during discussions concerning the personnel and resources allocated for software development, the agency's request for the protester's manpower projections and a comment during negotiations that the protester's labor effort might be understated, particularly in the software development area. Agency negotiators also recommended that the protester review its labor effort projections. According to the protester, these "continuing complaints" amounted to a direct warning against reducing its software development effort. We disagree; the documentary evidence falls short of supporting protester's allegation that these discussions indicated it would be downgraded if it reduced its scope and cost in this area. It appears that the agency was concerned that Fairchild's labor for software development may have been understated and requested Fairchild to review its labor effort projections. The agency, however, indicated its views were for Fairchild's consideration and not a direction to change its offer. There is no suggestion in the record that it would be downgraded if it reduced its cost and effort in this area, provided it properly justified its actions. We therefore cannot conclude that the Air Force misled Fairchild during discussions concerning the scope and cost of software development.

The protester asserts on "information and belief" that procurement sensitive cost information from Fairchild's proposal was disclosed to Hughes. The agency is conducting an investigation of these allegations but as the protester acknowledges, there is yet no evidence available to support the protester's charges. We also note that the agency, as early as December 1987, requested that Fairchild provide the Air Force investigators with the basis for its allegation and, to date, Fairchild has failed to provide support for its allegation. Accordingly, on the record before us, we find no merit to this protest basis. See Le Don Computer Services, Inc., B-225451, Jan. 9, 1987, 87-1 CPD ¶ 46.

The protest is denied, and, therefore, Fairchild's request for attorneys fees and proposal preparation costs is also denied.

for 
James F. Hinchman
General Counsel