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The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Union Natural Gas Company

File: B-231461

Date: September 13, 1988

DIGEST

1. Exclusion of a proposal from the competitive range is proper based on significant informational deficiencies, the correction of which would have required a major revision to the proposal.
2. Protest against a solicitation provision regarding the evaluation of an offeror's experience is untimely where the protester did not protest the alleged impropriety in the solicitation until after the closing date for the receipt of initial proposals.

DECISION

Union Natural Gas Company protests the rejection of its proposal under request for proposals (RFP) No. DAKF15-88-R-1504, issued by the Army for supply of natural gas to Fort Sheridan, Illinois. Union principally contends that the contracting officer's decision to reject its proposal as technically unacceptable was improper inasmuch as any deficiencies in the proposal were at best only minor irregularities that could have been corrected through proposal clarifications.

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

Paragraph L-22 of the RFP required proposals to be submitted in five distinct parts: the RFP (solicitation, offer, and award document), a technical proposal, transportation and/or distribution arrangements, a record of experience, and a price proposal. With regard to the contents of the technical proposal, paragraph L-23 of the RFP provided that each offeror was to describe its business organization and the type of service it provided; its involvement in the production, distribution, and sale of

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natural gas; and the type of natural gas supplies-- "residue, wellhead, tailgate, or general pipeline gas or a combination thereof"--to be used in fulfilling the government's requirements. Union's offer did not include a technical proposal, and, according to the agency, the required information was not contained anywhere else in Union's offer. As a result, the contracting agency concluded that Union's proposal was technically unacceptable and excluded it from the competitive range because Union had not provided the information required by the RFP to determine the technical acceptability of its proposal.

Union argues that its proposal contained sufficient information to establish its technical acceptability. Specifically, Union states that its proposal addressed the issue of Union's business organization by providing Union's Dun and Bradstreet identification number and by indicating that Union was a large business and a Texas corporation. According to Union, the type of service it would provide was indicated by Union's agreement, through submission of its proposal, to the terms of the RFP and the obligation to deliver natural gas in accordance with the RFP requirements. Union also states that, while it did not do so in its proposal, it would have supplied details regarding the gas it was offering such as atmospheric pressure, British thermal units, gas field, and firm delivery if this information had been requested. As discussed in detail below, we do not agree that the information submitted by Union on these matters was sufficient, and we find that the agency's decision to exclude Union from the competitive range was reasonable.

In reviewing protests concerning the evaluation of proposals and the resulting determination of whether a proposal is in the competitive range, our function is not to reevaluate the merits of proposals and make our own determinations. This is the responsibility of the contracting agency, which is most familiar with its needs and must bear the burden of any difficulties resulting from a defective evaluation. Tiernay Turbines Inc., B-226185, June 2, 1987, 87-1 CPD ¶ 563. Procuring officials have a certain degree of discretion in evaluating proposals, and we will examine an agency's evaluation only to ensure that it has a reasonable basis. Maxima Corp., B-220072, Dec. 24, 1985, 85-2 CPD ¶ 708. Generally, offers that are technically unacceptable as submitted and would require major revisions to become acceptable are not for inclusion in the competitive range. Rice Services, B-218001.2, Apr. 8, 1985, 85-1 CPD ¶ 400.

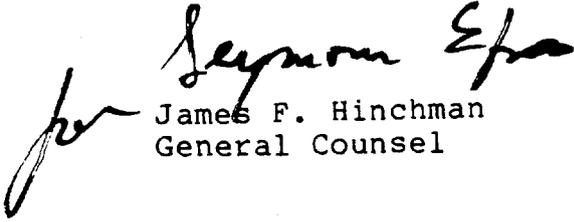
Here, Union, while acknowledging that it did not submit a separate technical proposal, in essence argues that it furnished sufficient information to demonstrate its technical acceptability by providing such information as its Dun and Bradstreet number and its state of incorporation, and by implicitly agreeing to the terms of the RFP by submitting a proposal. We disagree. The basic information Union supplied in its proposal clearly was not sufficient to satisfy the detailed requirements set out in the RFP regarding Union's organization, its involvement in the production, distribution and sale of natural gas, and the type of gas to be supplied. Moreover, even regarding Union's submission of the basic solicitation documents as an implicit acceptance of the terms of the RFP, a blanket offer of compliance with RFP requirements is not sufficient to comply with a solicitation requirement for detailed information which an agency deems necessary for evaluating the technical acceptability of proposals. Consolidated Bell, Inc., B-227894, Sept. 23, 1987, 87-2 CPD ¶ 292.

In view of Union's failure to furnish sufficient information in its proposal to determine its technical acceptability, we find that the agency acted reasonably in concluding that Union's proposal was technically unacceptable and excluding it from the competitive range. Contrary to Union's contention, where, as here, an initial proposal is technically unacceptable due to omission of material information, a contracting agency has no obligation to include the proposal in the competitive range and give the offeror an opportunity to furnish the missing information. See Federal Home Maintenance, B-214609, Mar. 27, 1984, 84-1 CPD ¶ 363. Further, since the RFP provided that award was to be made to the lowest priced, technically acceptable offeror, once Union's proposal was found technically unacceptable, the fact that its proposed price may have been low did not prevent the agency from excluding Union from the competitive range. Tucker Electronics Co., B-227913, Oct. 2, 1987, 87-2 CPD ¶ 327.

Union also suggests that the five amendments issued to the RFP created confusion as to the evaluation criteria that would be used and as to the proposal format required, and contends that a delay of 4 months between the issuance of two of these amendments was detrimental to it. Union also objects to the evaluation scheme in the RFP to the extent that it limits consideration of an offeror's experience to only government, not private, contracts. These grounds of protest are all untimely since they are based upon alleged improprieties in the solicitation but were not filed prior

to the closing date for receipt of initial proposals.
See Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1988).

The protest is denied in part and dismissed in part.

A handwritten signature in black ink, appearing to read "James F. Hinchman". The signature is written in a cursive style with a large, sweeping initial "J".

James F. Hinchman
General Counsel