The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Trak Engineering, Inc.

File: B-231791

Date: October 28, 1988

DIGEST

1. Protest that awardee of a fixed-price contract submitted an offer that was unreasonably low provides no basis to challenge the contract award. Such a protest essentially questions the awardee's responsibility and does not fall within the exception under which affirmative determinations of responsibility are reviewed.

2. Allegation that contracting agency may have improperly conducted life cycle cost evaluation of maintenance items by not applying a discount factor is denied where calculations provided by agency to General Accounting Office show factor was applied.

3. Awardee's price proposal is not objectionable as materially unbalanced where both for base year and all option years awardee's proposal represents lowest price to government.

4. Allegation that awardee's approach to pricing site survey reports and drawings renders its proposal unbalanced is untimely where that argument was not presented in the initial protest and otherwise not raised within the required timeframe.

DECISION

Trak Engineering, Inc., protests the award of a contract to Howden Coloney Incorporated (HCI), under request for proposals (RFP) No. F09603-85-R-2197, issued by the Department of the Air Force, Warner Robins Air Logistics Center (WRALC), as the second step of a two-step, negotiated procurement. Trak contends that HCI's prices were unreasonably low and its technical proposal noncompliant with one of the technical requirements of the solicitation.

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

The procurement is for the acquisition, installation, and up to 15 years maintenance of an Automated Fuels Service Station (AFSS) system at 145 Air Force bases worldwide. The AFSS system is a computerized data collection system to be installed at various Air Force bases to track and record consumption data of fuel and to transmit this data to the Base Fuels Management Office.

The requirement was synopsized in the Commerce Business Daily (CBD) on August 8, 1985, as a two-step, negotiated procurement. Step one, a letter request for technical proposals (LRFTP), was issued on November 21, 1986, to 33 prospective contractors. The LRFTP contained both a purchase description (PD) and statement of work (SOW) which together specified the minimum performance requirements for the AFSS system; however, the PD cautioned that they were not intended to specify the design of the actual system. The solicitation identified the configuration for each base and advised offerors that the AFSS system must interface with the government's computer and must control access to products on a vehicle by vehicle basis through an independent component referred to as a Vehicle Identification Link (VIL). The solicitation further required that at least one VIL reader (a component which will activate the AFSS system when a valid VIL is presented by a user) be furnished for each of the 145 service stations.

Three firms, including Trak and HCI, submitted technical proposals in response to the LRFTP. The third firm's proposal was later withdrawn. The two remaining proposals were evaluated and found to be technically acceptable.

Pursuant to the two-step procedure, on November 13, 1987, WRALC issued a request for price proposals to Trak and HCI since both firms had submitted acceptable technical proposals in step one. The RFP contemplated the award of a fixed-price contract with economic price adjustment for an initial base period and 14 1-year option periods for AFSS system installation and maintenance. The RFP called for offerors to submit line item prices for various system components, one of which is the VIL. The RFP also advised that competing price proposals would be evaluated using life cycle cost (LCC) calculations. A First Article was also required for inspection and approval.

Trak and HCI submitted their price proposals by the January 4, 1988 closing date. Negotiations were conducted with both firms and best and final offers (BAFOs) were requested and received.

HCI's proposed price in its BAFO was $6,848,956.24 for the base period plus all options. In comparison, Trak proposed in its BAFO a total of $12,592,867.15 including all options. On May 24, the contracting officer awarded the contract to HCI and informed Trak of the award. Trak initially protested the award selection by letters dated May 31 and June 14 to the contracting officer who denied the protest by letters dated June 13 and July 1, respectively. This protest followed.

The RFP's pricing schedule was lengthy, more than 200 pages, because it included the supplies and services needed for each of the 145 installation sites for a base year and 14 option years. These contract line items, however, could be grouped into four general categories: acquisition/installation of equipment; maintenance; data; and the VIL "keys" or encoded devices.

The two offerors' approaches to pricing differed. HCI priced all items; however it priced acquisition/installation and maintenance on an "average" basis. For acquisition/installation of equipment, HCI offered a uniform price per site of $10,193.75, which it obtained by dividing its total installation price by the number of sites, 145. Similarly, it arrived at a uniform first-year maintenance price of $97.52 per month per site, regardless of a site's size or location.

Unlike HCI, which priced all items, Trak did not separately price data, whose cost was included in other items. In addition, Trak's unit prices for acquisition/installation and for maintenance varied widely from site to site. In a few instances, its unit prices for installation approximated HCI's, but for most of these line items its unit prices were above HCI's. Similarly, Trak's monthly prices for maintenance also varied, from below HCI's uniform price to considerably above it.

The contracting officer notes that since Trak did not separately price data, the Air Force was able to evaluate only bottom line prices, and that the several price evaluations performed (including calculations made in discounted dollars under LCC procedures and in real dollars for other comparisons) all yielded the result that HCI was the low offeror. The contracting officer further notes that the two offerors' prices are competitive for the acquisition/installation portion of the procurement plus relevant data items, and that the major price differential is found in the maintenance portion.

In its initial protest letter filed with our Office, Trak essentially contended that it was improper for WRALC to award the contract to HCI on the basis of its lower prices since HCI's prices for installation and system maintenance are unreasonably low. In arguing that HCI's installation prices are unreasonably low, Trak compares HCI's prices submitted in response to this RFP with that firm's prices submitted in response to an RFP issued by the State of Florida for VIL readers and associated equipment. According to the protester, HCI's price for the VIL readers being acquired as part of the AFSS system is considerably below the price HCI offered in response to the State of Florida's solicitation.

Trak also maintains that HCI's price for system installation is not only too low but does not take into account the fact that the amount of equipment to be installed varies from base to base and that the bases vary in location. In this regard, Trak suggests that the pricing approach used by HCI may "constrain" the Air Force in its selection of installation sites, in contravention of the agency's stated request for separate prices for each base, because depending on the size and location of the sites selected, a significant shortfall to HCI or a significant overpayment by the agency could occur.

In addition, the protester argues that HCI's prices for maintenance are even more unreasonably low than the firm's prices for installation. In support of this argument, Trak once again compares the maintenance prices HCI allegedly offered in response to the State of Florida's solicitation, as well as the maintenance prices under another contract HCI has had with the Air Force for similar services at 63 bases within the United States, and concludes that the awardee's maintenance prices under this RFP are 50 percent underpriced.

The protester also contends that HCI's prices for the VIL "keys" or encoded devices are below the market price and over the 15-year life of the contract will result in a financial loss which the protester predicts HCI would not be "willing and able to sustain."1/

1/ The protester also states it was not apparent from the pricing abstract provided it by the Air Force whether a discount factor was applied to the LCC cost calculations of all maintenance items, and asserts that the equipment offered by HCI was not listed by Underwriters Laboratory (UL) as allegedly required by Air Force responses given at

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In response to the protest, the Air Force points out that the technical acceptability of each offeror's approach had been determined under step one. Here, under step two, the agency sought competitive, firm-fixed-price proposals for providing the required supplies and services. HCI's price was lowest and, following a preaward survey, it was determined to be responsible. The Air Force observes that nothing in the solicitation required that each site be priced differently and that under its contract with HCI it retains the right to choose which installations to order, most of which it expects to include in its original order.

In its comments on the agency report, Trak adheres to its position that HCI's prices for the VIL "keys" are below market cost for the devices that offeror proposed to use, and analyzes the solicitation's maintenance requirements at length in support of its contention that HCI cannot possibly provide maintenance at the price it offered. In addition, the protester states that the contracting officer "missed the point . . . entirely" of Trak's objection to the acquisition/installation pricing. Trak concedes that for this portion of the work the bottom line totals are "close" but asserts that its point was that HCI's prices for two related data items--site surveys and drawings--were unreasonably high. According to Trak, these surveys and drawings must be completed within 6 months of contract award and HCI would then be able to collect 1.2 million of the 2.7 million dollars of the firm's system installation prices.

As we have indicated above, much of Trak's protest is devoted to the assertion that HCI cannot satisfactorily perform the contract at the prices it has offered. At times, in conjunction with this argument, Trak seems to question whether HCI had proposed a technically adequate approach under the earlier step one solicitation. It is too late now, however, to challenge the Air Force's determination that HCI's step-one technical proposal was acceptable.

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the preproposal conference. We need not discuss these allegations further. The LCC evaluation was furnished to our Office and our review confirms the Air Force's position that a discount factor was applied. The protester withdrew its UL listing basis for protest in its comments on the agency report.

For the most part, however, Trak appears to question whether HCI can or will devote the resources necessary to successful performance of the contract or absorb the alleged financial losses which will occur at its offered price. In our view, these allegations relate to the question of HCI's responsibility. The fact that HCI's offer is significantly lower than the protester's and may be below what actual performance will cost does not provide a basis to object to the award. The prices offered by HCI are fixed and are not subject to adjustment by it during the contract period and there is nothing illegal or improper in the government's acceptance of a low or below-cost proposal so long as the offeror is judged capable of performing at that price. See Ball Technical Products Group, B-224394, Oct. 17, 1986, 86-2 CPD ¶ 465. The regulations require only that the contracting officer take appropriate action to ensure that losses due to below-cost awards are not recovered. Federal Acquisition Regulation (FAR) § 3.501-2(a) (FAC 84-39).

Whether the awardee can perform the contract at the price offered is a matter of responsibility. Here, the contracting officer has made an affirmative determination of HCI's responsibility which our Office will not review absent a showing that the determination may have been made fraudulently or in bad faith or that definitive responsibility criteria were not met. 4 C.F.R. § 21.3(f)(5) (1988); Ball Technical Products Group, supra. Neither exception is alleged here by the protester. This aspect of its protest is therefore dismissed.

Trak also couches its protest in terms of an allegation that HCI's price proposal is unbalanced. However, the thrust of this argument is again Trak's contention that HCI's installation and maintenance prices are below-cost in various areas. In a negotiated procurement, such as this, an offer in which one element of the price proposal carries a disproportionate share of the total cost or scope of work plus profit is considered mathematically unbalanced and may create a reasonable doubt that acceptance of the offer will ultimately result in the lowest overall cost to the government. Such a proposal is therefore materially unbalanced and must be rejected. Kitco, Inc., B-221386, Apr. 3, 1986, 86-1 CPD ¶ 321 at 5. Thus, where an offer is low overall but significantly front-loaded in the base year so that the offer does not become low until well into the option periods, the offer should not be accepted unless the agency is reasonably certain that the options will, in fact, be exercised. Id. However, HCI's offer is low both in the base year and in each of the option years. Thus, even if the options are not exercised, acceptance of HCI's offer will ultimately result in the lowest overall cost to the government.

In its comments on the agency report, as we noted above, Trak also stated that the contracting officer had "missed the point" made in its initial protest that the awardee's offer is front-loaded inasmuch as it includes an initial charge of 1.2 million dollars for surveys and drawings which, in the protester's view, is unreasonably high and will result in a financial windfall to HCI.2/

We do not agree that the contracting officer "missed the point" of this argument, because it was not made in the protester's initial submission. There, the protester simply asserted that HCI's "pricing . . . is unreasonable, being far below the actual cost [which] is true for all [line items] except [site survey reports] and [drawings]." That is only a statement that site survey reports and drawings were not below actual cost and not, as the protester later asserted in its comments, unreasonably high. Furthermore, there is no other discussion in the initial protest concerning site survey reports and drawings, their cost, delivery schedule or relationships to the other costs of installation. We therefore conclude that this basis for protest is untimely. See 4 C.F.R. § 21.2(a)(2).

In any event, contrary to the protester's assertion, the site survey report and engineering drawings are not required 6 months after contract award; consequently, a payment of 1.2 million dollars would not be made to HCI at that time. The RFP required a site survey report 30 days prior to each service station installation and engineering drawings 2 months after each service station installation. Thus, we conclude that under this delivery schedule HCI's price is not front-loaded.

Accordingly, the protest is denied in part and dismissed in part.

for Ronald Berger
James F. Hinchman
General Counsel

2/ We do not know the protester's own charges for these line items since they were not separately priced.