



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Sabre Communications Corporation

File: B-233439

Date: March 2, 1989

DIGEST

1. Even though a request for proposals (RFP) did not specifically require the submission of descriptive literature with proposals, where protester submitted with its technical proposal its product brochure which indicated the item it offered did not comply with the RFP specifications without modifications, it was not improper for the contracting agency to reject the proposal as technically unacceptable based on that descriptive literature.

2. Where initial technical proposal makes a blanket offer to provide products that conform to the requirements of the request for proposals, but also takes specific exceptions to the solicitation specifications, the contracting agency's rejection of such proposal without discussions and award of the contract based on the lowest-priced, technically acceptable offer is not unreasonable or in violation of federal procurement principles if the solicitation explicitly provided that award might be made on the basis of initial proposals.

DECISION

Sabre Communications Corporation protests the award of a contract under request for proposals (RFP) No. N60530-88-R-0254, issued by the Department of the Navy for seven self-supporting antenna towers. Sabre contends that the Navy improperly rejected its lower-priced proposal as technically unacceptable. We deny the protest.

The RFP, issued on March 28, 1988, contemplated the award of a fixed-price contract for the acquisition and erection of one 80-foot tower, one 60-foot tower and five 40-foot towers to support antennae which were to be mounted in the center of the top of each tower. The RFP stated that award was to be made to the responsible offeror whose proposal met the requirements of the solicitation at the lowest price. The

044758/138073

RFP further stated that the contract might be awarded on the basis of initial offers received without discussions and, "[t]herefore, each initial offer should contain the offeror's best terms from a cost or price and technical standpoint."

The Navy states that it solicited 48 potential offerors, 13 of which responded to the solicitation. Following the evaluation of technical and price proposals (which were required to be submitted separately), award was made to the Tri-Ex Tower Corporation because its proposal offered the lowest evaluated price (\$134,768) of the three proposals determined to be technically acceptable.

Sabre's lower-priced proposal (\$102,497) was rejected as technically unacceptable on the basis that it did not comply with the RFP requirements. Specifically, Sabre submitted along with its proposal an advertising brochure containing an illustration and description of the tower model it proposed with antennae and accompanying hardware mounted on the sides of the tower, not at the top of the tower as required by the RFP. The only indication in Sabre's "technical proposal"^{1/} that could be construed as referring to where Sabre proposed to mount the antennae was found in three phrases on the first page of its proposal, stated as follows:

"(1. 80 Ft. S.S.
1 ant. (1000 lbs.) 100 sq. ft. at top

"(2. 60 Ft. S.S.
1 ant. (1000 lbs.) 64 sq. ft. at top

"(3. 40 Ft. S.S.
1 ant. (1000 lbs.) 64 sq. ft. at top."

Sabre maintains that the agency's rejection of its proposal based on information depicted in its brochure was improper because its proposal stated that an antenna was to be located at the "top" of each tower, and because the solicitation did not require descriptive literature. The protester further expresses the view that the Navy could have resolved, through an informal inquiry, any questions concerning where it proposed to mount the antennae on the towers.

^{1/} Aside from the brochure, Sabre's proposal consisted of five pages, which included a one-page limited warranty statement and a two-page listing of 14 customer references.

Clause L-15 of the RFP required that the technical proposal constitute a comprehensive statement of the offeror's method of approach, developed in sufficient detail for the technical evaluators to evaluate it thoroughly and determine whether the proposal would satisfy the solicitation requirements. Clause L-15 further stated that technical proposals should be specific, detailed and sufficiently complete to demonstrate how the offeror would accomplish the contract objectives.

In the administrative report filed in response to the protest, the Navy states that because Sabre's proposal failed to demonstrate or provide details concerning how it would accomplish the technical requirements of the solicitation, the evaluators referred to the brochure--the only other data Sabre submitted with its proposal--which showed that the proposed antenna mount location, as well as the mounting hardware, was inconsistent with the RFP specifications and, thus, unacceptable for the government's purpose.

The Navy further states that, although not mentioned in the letter informing the protester of the reasons for its rejection, Sabre's proposal also failed to meet the tower dimensions and load capacity requirements of the RFP, as amended.^{2/} By solicitation amendment 003 (which the protester states it received on June 10), the RFP required a 2,000-pound load capacity for the 80-foot tower and a minimum top width (spread) of 6 feet, 8-3/4 inches for each side of the towers. Although Sabre acknowledged receipt of all amendments, its proposal specifically provided for a 1,000-pound load capacity for the 80-foot tower as initially specified in the RFP statement of work, and tower top widths of 6 feet, 6-3/4 inches. Thus, the Navy maintains that Sabre's proposal was technically unacceptable in that it failed to meet the solicitation requirements based on

^{2/} The agency issued three amendments to the solicitation. Amendment 001 was issued on April 22 to extend the closing date from May 2 to May 21, and to provide responses to technical questions raised by potential offerors. Amendment 002, issued on May 20, extended the closing date from May 21 to June 6, to allow for further modifications and clarifications of the solicitation statement of work (which the amendment stated would be issued at a later date). Amendment 003, which was issued on June 2, further extended the closing date to June 21 and made changes in the windloading, tower platform, tower dimensions, and antenna mount requirements as provided in the statement of work.

descriptive literature submitted with its proposal and because its technical proposal did not comply with the RFP specifications.

The evaluation of proposals is primarily the responsibility of the contracting agency; thus, we generally will not disturb an agency's technical evaluation absent a clear showing that the determination was unreasonable or violated procurement statutes or regulations. Idaho Norland Corp., B-230598, June 6, 1988, 88-1 CPD ¶ 529.

The issue here is whether the agency properly made award on the basis of initial proposals without discussions. Although the RFP did not specifically call for the submission of descriptive literature, the statement of work required offerors to provide tower and footing drawings and calculations for each of the tower designs. However, as indicated above, apart from its brochure Sabre's "technical proposal" consisted of two pages, which essentially included a blanket offer of compliance with the initial RFP specifications, the firm's proposed installation time, payment terms, warranty statement and list of references. Any and all footing drawings or diagrams and calculations were provided only in the brochure Sabre submitted with its proposal. Thus, even though the RFP did not specifically require descriptive literature, it would appear that the protester, in fact, submitted the brochure as a part of its proposal with the expectation that the agency would refer to it in assessing the acceptability of its proposal.

On the first page of its proposal Sabre stated that it was offering its Model SS3T tower. Further in a cover letter to its proposal, Sabre stated:

"We . . . emphasize that we are proposing to provide our Model SS3T tower, this design is the most widely used design in the tower industry."

Although tower model SS3T was shown in the brochure with side-mounted antennae, Sabre's proposal did not explain any difference between the model as shown in the brochure and what it proposed to provide in response to the RFP, or how it proposed to modify its product to meet the specification requirements. Thus, the information Sabre submitted to illustrate what it proposed to provide was clearly inconsistent with the solicitation's requirement that the antenna be mounted in the center of the top of each tower, as well as with Sabre's sole reference in the three phrases on the first page of its technical proposal to "1 ant. (1000 lbs) . . . at top."

Concerning the Navy's position that Sabre's proposal was also unacceptable because it did not comply with the amended load capacity requirement for the 80-foot tower, the protester states that in response to the increased load requirement, "we . . . revised our designs to reflect the revised loadings . . . but overlook[ed] changing the load on our proposal" that had already been prepared to meet previously established closing dates. The protester expresses the view that even though it did not change the load requirement or the tower dimensions in its proposal, its offer complied with the amended specifications by virtue of its acknowledgment of receipt of the amendments.

When an RFP requires the submission of information bearing on the technical adequacy of an offeror's proposal, the offeror must demonstrate the technical sufficiency of its proposal; a blanket offer of compliance with the specifications is not sufficient to comply with an RFP requirement for detailed technical information necessary for evaluation purposes. AEG Aktiengesellschaft, 65 Comp. Gen. 419 (1986), 86-1 CPD ¶ 267 at 4; see Consolidated Bell, Inc., B-228511, Feb. 22, 1988, 88-1 CPD ¶ 179. This is true whether such blanket offer of compliance is stated as a part of the proposal or implied by the acknowledgment of receipt of any or all solicitation amendments--particularly where the proposal takes specific exceptions to the RFP's requirements.

We have recognized that award may properly be made based on initial proposals provided that, as here, notice of that possibility is stated in the RFP, and there is no other lower-priced technically acceptable proposal. See AEG Aktiengesellschaft, 65 Comp. Gen. 419, supra.

In AEG Aktiengesellschaft, 65 Comp. Gen. 419, supra, the RFP required that offerors submit with their proposals "detailed descriptions and/or illustrations for [the] item offered to [facilitate the] technical evaluation" The protester's technical proposal was found unacceptable, in spite of its blanket offer of compliance with the solicitation specifications because the information (descriptive literature showing the protester's standard products) submitted to demonstrate the technical sufficiency of the proposed product showed that it did not comply with the specifications without modifications. As in the instant case, award was made based on initial offers without discussions, in accordance with the RFP provisions, even though the protester's price proposal was lower than that of

the awardee.^{3/} Similarly, in Consolidated Bell, Inc., B-228511, supra, we upheld the agency's rejection of the protester's proposal as technically unacceptable on the basis of descriptive literature submitted with the technical proposal (though not specifically required by the RFP) which demonstrated that the offered product was inconsistent with the specification requirements.

Accordingly, in view of the inconsistencies between Sabre's proposal (including the descriptive literature it submitted) and the RFP specifications, we find that the Navy's rejection of Sabre's proposal as technically unacceptable and award of the contract based on the lowest-priced technically acceptable initial offer has not been shown to have been unreasonable. Furthermore, we note that contrary to Sabre's contention that the agency could have easily resolved the questions concerning its proposal by an informal inquiry, in light of the scope of the deficiencies in the proposal, it would have been inconsistent with the terms of the RFP for the agency to request the information required to ascertain its technical acceptability under the circumstances of this procurement.^{4/}

Sabre also suggests the agency may have conferred with the awardee in view of the changes made to the specifications by amendment 003. However, since Sabre presents no clear evidence in support of that allegation, and there is otherwise no substantiation of it in the record, we find no basis to conclude that discussions were held with the awardee.

^{3/} We recognize that in the instant case, the RFP did not specifically require the submission of descriptive literature, per se, as did the solicitation in AEG Aktiengesellschaft, 65 Comp. Gen. 419, supra. Nevertheless, in this instance the referenced case is not distinguished by the descriptive literature requirement since the technical information requirement in the subject solicitation may properly be considered to encompass descriptive literature, and in any event, that is what Sabre chose to provide in response to the requirement.

^{4/} We note from our review of the record that five offerors who had failed to submit any technical proposals were requested to do so by the agency. The awardee was not among these offerors; its proposal, like the protester's, was evaluated for award based on the initial and only offer which it made.

Finally, we do note that the agency failed to promptly notify unsuccessful offerors of the award of the contract. We conclude that the protester was not prejudiced by this procedural deficiency since award was made in accordance with the provisions of the RFP on the basis of the lowest-priced technically acceptable initial proposal. See American Mutual Protective Bureau, Inc, B-229962, Jan. 22, 1988, 88-1 CPD ¶ 65.

The protest is denied.



James F. Hinchman
General Counsel