



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Free Electron Laser Corporation

File: B-236931

Date: January 18, 1990

DIGEST

General Accounting Office has no basis to object to questions raised by agency in regard to protester's initial proposal where protester, who argues that questions were used to unfairly reject its proposal, has not shown that the questions were unrelated to solicitation requirements or that the protester was not given adequate time in which to respond.

DECISION

Free Electron Laser Corporation (Felcorp), protests the evaluation of its proposal under request for proposals (RFP) No. N00014-89-R-EL03, issued by the Naval Research Laboratory (NRL), Washington, D.C., for scientific research services involving the Navy's Novel Space Systems program. The protester principally contends that its offer was not fairly evaluated.

We deny the protest.

The RFP was issued on July 6, 1989, contemplating the award of a cost-plus-fixed-fee contract to the offeror whose proposal was determined to be most advantageous to the government in accordance with the criteria listed in the solicitation. The evaluation criteria subordinated cost to technical merit; technical merit was evaluated on a 100-point scale as follows: personnel (55 points), technical approach (30 points), corporate experience (10 points) and management (5 points). Offerors were specifically cautioned that their proposals had to clearly demonstrate a thorough understanding of the technical requirements of the RFP-- especially 15 specific tasks designated in the statement of work (SOW).

Initial offers, including Felcorp's, were received on August 5, and a technical evaluation was completed on

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August 14.^{1/} Felcorp's score of 53.2 points was the lowest received and appreciably below the competition. The evaluators found that Felcorp's proposed personnel lacked related experience in 12 of the 15 SOW task areas, that its existing technical capabilities were of little relevance to the SOW tasks, that its plans to use modeling techniques for a number of tasks indicated a lack of technical understanding, and that its corporate experience and management plan were inadequate to insure timely performance. As a result, the evaluation panel recommended eliminating Felcorp's proposal from the competitive range.

In subsequent conversations conducted with agency contracting personnel, Felcorp learned of its poor showing in the technical evaluation and wrote several times to NRL requesting, among other things, a debriefing and an opportunity to correct the discrepancies in its proposal.

Thereafter, on September 12, the contracting officer sent Felcorp a letter containing 18 separate requests. Fifteen of these asked for technical explanations as to how Felcorp planned to satisfy various SOW task requirements. One advised Felcorp to base its response on the assumption that up to 95 percent of contract performance would occur on-site at NRL. Another asked for a breakdown of various specified costs, and the final "request" advised the firm that, contrary to the original RFP, it was permitted to add profit to its total estimated costs. Finally, the letter set a 3 p.m. deadline on September 18 for a response, and it cautioned Felcorp that failure to respond would result in an elimination of its offer from further consideration.

In lieu of responding to NRL, on September 14, Felcorp filed a protest with this Office, essentially maintaining that the September 12 letter constituted an improper attempt to eliminate it from the competition.

Felcorp basically asserts that the clarification requests called for detailed responses about ongoing NRL programs that exceeded the stated requirements of the RFP and that could only reasonably be answered with the knowledge of someone with the proper security clearance--something the protester alleges it was improperly denied pursuant to agency procurement policy. These assertions, however, are only stated as conclusions and are supported with no evidence or examples showing how any of the clarification questions go beyond what the RFP expected, or how special

^{1/} Since no award has been made, we disclose neither the number nor the identity of the competition.

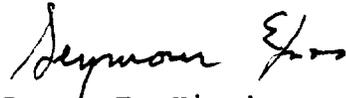
clearance was needed to answer them. Our examination of the technical questions themselves reveals that each is related to a specific SOW requirement and merely appears to ask for an elaboration of the protester's own rather generally described approach to meeting the requirement--something the basic RFP required initial proposals to cover in detail, and something which the agency reasonably concluded that Felcorp's offer failed to do. As far as the request for additional supporting cost data, to which the protester also objects, we note that this also fell clearly within the requirements of the RFP as issued.

Felcorp, which proposed to do most of the contract work away from NRL, also complains that one clarification request improperly amended the solicitation to its prejudice to require a predominant degree of performance on-site at NRL. In our view, there should not have been any appreciable doubt that the protester was on notice of an on-site performance requirement by virtue of the original synopsis of the RFP which indicated that the tasks were to be performed at NRL, a preproposal conversation with contracting officials which reiterated the requirement, and the fact that the RFP indicated that "[a]ll or a portion of the effort under this contract will be performed on a Government installation" in the same clause mentioning NRL's facility. In any event, there is nothing improper in amending a solicitation through a letter sent to offerors which is signed by the contracting officer, even though it is not formally denominated as an amendment. The EC Corp., B-236973, Jan. 5, 1990, 90-1 CPD ¶ _____. For the same reason, and notwithstanding the protester's objection, we find nothing improper with the agency's using the September 12 letter to indicate for the first time that offerors were free to apply profit to their total estimated cost, including the not-to-exceed amounts for travel and material.

Felcorp also objects to the period of time allowed by the agency to respond to the request--from approximately September 13 to September 18--which it maintains was unreasonably short under the circumstances. The time set for such responses is a matter of judgment vested in the contracting agency which the protester must show is arbitrary. See The Kuljian Corp., B-203717, Aug. 28, 1981, 81-2 CPD ¶ 185. The protester in essence argues that the agency used a short response time to unfairly eliminate it from the competition. The record shows that the questions largely asked for what the RFP required in the first place and the protester has not provided the answers nor indicated that it could answer the questions. In view of the above and since the protester has provided no support for its

position other than to argue that the time allowed for responses was too short we have no basis upon which to question the agency's deadline for the answers.

Since, in our view, none of the principal contentions is supported by the record or bears on the legal propriety of the evaluation process, the protest is denied.

for 
James F. Hinchman
General Counsel