



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Baytex Marine Communication, Inc.

File: B-237183

Date: February 8, 1990

Sam Zalman Gdanski, Esq., for the protester.
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Douglas P. Larsen, Jr., Esq., Office of the General Counsel, Department of the Navy, for the agency.
James Vickers, Esq., and John Brosnan, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest is sustained where agency failed to discuss with offerors spare parts requirement contained in RFP for facsimile machines and related items in spite of evidence in the proposals that the offerors had widely divergent views as to what was required which was reflected in some offerors pricing requirement 40 times higher than awardee.

DECISION

Baytex Marine Communications, Inc., protests the Naval Oceanographic Office's award of a contract to Alden Electronics, Inc., under request for proposals (RFP) No. N62306-89-R-0043, for marine facsimile recorders and related items. Baytex argues that the Navy failed to properly evaluate the responses received to the RFP's spare parts requirements. We agree with the protester that the selection process was flawed because of confusion among the offerors as to what was required by the solicitation line items for depot level spare parts and sustain the protest on that basis.

The RFP, which was issued on June 27, 1989, provided for the award of a requirements contract based on the lowest price for a maximum estimated basic quantity of 150 portable

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marine facsimile recorders and related items and for the same quantity for each of 2 option years. The solicitation consisted of 15 line items; items 0001 through 0005 were for the base quantity and items 0006 through 0010 and items 0011 through 0015 represented essentially the same items for the option years. Line item 0001 called for the actual facsimile recorders, which were described as "Alden Marinefax Model TR1, Furuno Model FAX 208A/N or equal" in accordance with salient characteristics stated in the RFP. Line item 0002 called for an estimated quantity of 150 "field level" spare parts kits, while item 0003 called for 30 "depot level" spare parts kits. The RFP did not contain any description of the required spare parts kits but merely stated that offerors were to include with their offers a price list of the components which comprise the kits. Line items 0004 and 0005 were for paper and technical data. Substantially the same schedule was repeated for each of the 2 option years.

The agency received five responses on the July 27 closing date. Alden Electronics, Inc., total offer of \$914,234.40, including both option years, was low despite the fact that its unit price of \$1,895 for the facsimile recorders was the highest of the five offerors. Baytex's initial offer, which totaled \$1,102,004.70, was the fourth highest despite the fact that its unit price of \$1,730 for the facsimile recorders was lower than Alden's price for its machines. After discussions were held with all offerors and revised offers were received on August 22, Alden's prices remained unchanged and its total price of \$914,234.40 was still low. Baytex's price also remained the same, but because the other offerors raised their prices, Baytex's total of \$1,102,004.70 became second low. No further discussions were held and on September 21, award was made to Alden as the lowest priced, technically acceptable offeror.

Baytex's protest is based primarily on the premise that the proposals could not have been properly evaluated because Alden's extremely low price for depot level spare parts kits of \$55.16 each, or a total of \$1,657.80 for the required base amount of 30 kits, shows that Alden was not offering on the same basis as the others. As indicated earlier, the solicitation only described the line items for depot spare parts kits (line item 0003 for the base year and line items 0008 and 0013 for the option years) as "spare parts kit recommended at the depot repair level" and required offerors to submit a list of the parts which comprised the kits and their prices.

The following final offers were received for depot level spare parts:

<u>Offeror</u>	<u>Base Year</u>	<u>Option #1</u>	<u>Option #2</u>	<u>Total</u>
Alden	\$ 1,657	\$ 1,675	\$ 1,657	\$ 4,971
Baytex	75,127	77,081	83,243	235,451
Offeror A	60,883	65,927	67,128	193,938
Offeror B	63,120	66,150	69,540	198,810
Offeror C	\$116,158	\$116,158	\$116,158	\$348,474

Each of the prices represents the total for the required 30 kits for each year.

The Navy states that the solicitation allowed each offeror to determine the composition of its depot level spare parts kit because the agency did not have repair experience with the various machines; according to the agency, the manufacturers were in the best position to know what was required to repair the machines above the field level. Consequently, the Navy determined that all offerors' proposed depot level spare parts kits were acceptable, notwithstanding a wide variation in prices for the kits (from a low of \$1,657 for 30 kits to a high of \$116,158) and in the scope of the kits (for example, Baytex's kit included 12 items encompassing such major components as a \$371 CPU and a \$675 PCB receiver while Alden's kit was made up of only two items, a print head cable and a print head). The agency, however, did not mention the matter of depot level spare parts during discussions even though these disparities existed in the initial offers.

Based on this information and considering the fact that in the initial offers the prices for the facsimile recorders only varied from a low of \$224,437 to a high of \$284,250 for 150 machines, it should have been evident that the low overall offeror had interpreted the depot level spare parts requirement differently than the other offerors. The agency should have been especially concerned since it is obvious that the depot level spare parts had a significant impact on the selection as the awardee's machines were priced highest. Thus, it is our view that the Navy should have clarified this matter through discussions and assured that all offerors had the same understanding of the requirement. MSI, Division of the Bionetics Corp., B-233090, Feb. 22, 1989, 89-1 CPD ¶ 185.

The Navy was therefore left with one proposal offering a kit with a few, relatively inexpensive parts and four other proposals offering kits consisting of a dozen spare parts valued at over \$2,500. Further, our review of the abstract shows that a similar problem may have existed with the field

level spare parts kits which some firms offered at no charge while others charged from \$4,500 to \$6,600 for the 150 kits required for each year.

As a result of the Navy's failure to clarify its imprecise requirements as to the spare parts kits it needed and to take reasonable steps to assure that all offerors had a common understanding of those requirements, we cannot conclude that the offerors here in fact competed on an equal basis. See MSI Division of Bionetics Corp., B-233090, supra. We recognize as the agency argues, that it may indeed be difficult for it to determine its needs with precision for the spare parts; nevertheless, it must establish some sort of common baseline so that firms cannot define the requirement as they see fit and offers may be meaningfully evaluated.

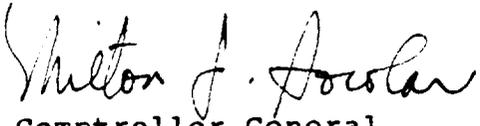
Next, the Navy argues that Baytex was not prejudiced by the pricing of the depot level spare parts because the facsimile machine offered by Baytex is of foreign origin and would be subject to the Buy American Act's evaluation differentials and therefore, even if the three line items representing the depot level spare parts are deleted from the evaluation, the protester would not displace Alden as the low price offeror.

We do not agree. This argument ignores the possibility that if all offerors, including Alden, had prepared their offers with a common understanding, the awardee's prices could have increased while those of the protester or another offeror could have decreased.

Therefore, we sustain the protest and recommend that the Navy reopen negotiations with the offerors and assure, either through discussions or by the issuance of an amendment clearly delineating the agency's needs, that the offerors are competing on an equal basis. In this regard, we note that the agency furnished Baytex with the abstract of offers and the protester now knows the other offerors' prices. Therefore, to be assured of equal competition, the Navy should furnish the abstract to the other offerors before the submission of best and final offers. See Sperry Corp., 65 Comp. Gen. 715 (1986), 86-2 CPD ¶ 48. While this may result in an auction, we believe the risk of an auction is secondary to the need to preserve the integrity of the competitive procurement system through appropriate corrective action. Cubic Corp.--Request for Reconsideration, B-228026.2, Feb. 22, 1988, 88-1 CPD ¶ 174.

We also find that the protester is entitled to its costs of filing and pursuing the protest, including attorneys' fees. 4 C.F.R. § 21.6(d)(1) (1989).

The protest is sustained.

for 
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