



Comptroller General
of the United States

Washington, D.C. 20548

W. Arthur

Decision

Matter of: Cardkey Systems, Inc.

File: B-239433

Date: August 27, 1990

Paul Shnitzer, Esq. and Susan Warshaw Ebner, Esq., Crowell & Moring, for the protester.
Judith Ward Mattox, Esq., Mattox & O'Brien, P.C., for Shorrock Military Systems, Inc., an interested party.
Francis J. Martin, Esq. and Barbara Linden, Esq., Department of Justice, for the agency.
C. Douglas McArthur, Esq., Andrew T. Pogany, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest is sustained where agency did not evaluate a feature--compatibility of card access system with systems at other locations--which the solicitation termed "desirable," where protester reasonably interpreted the solicitation as providing for evaluation of feature and had submitted a more expensive proposal in an effort to gain evaluation credit for that feature.

DECISION

Cardkey Systems, Inc. protests the award of a contract to Shorrock Military Systems, Inc. under request for proposals (RFP) No. JLJMD-89-R-0042, issued by the Department of Justice (DOJ) for a security intrusion detection and access control system. The protester contends that the agency failed to evaluate proposals in accordance with the evaluation criteria set forth in the solicitation.

We sustain the protest.

On July 26, 1989, the agency issued the solicitation for a firm, fixed-price contract to provide, install, test and maintain a stand-alone computer-based proprietary security, intrusion detection, and access control system for the Justice Data Center in Rockville, Maryland, with four 1-year options for maintenance. The agency maintains various computerized records at the Rockville facility, which services several components of the DOJ, including the

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Bureau of Prisons, Immigration and Naturalization Service, Drug Enforcement Administration and offices of the U.S. Attorneys; while the information on file is sensitive, it is not classified, but the agency contemplates adding classified information to the data base in the future.

The solicitation provided for award to that offeror whose proposal, conforming to the solicitation, was determined to be in the best interests of the government, price and other factors included. The evaluation method provided for an initial determination of whether offers complied with the agency's minimum technical requirements, followed by a comparative ranking of proposals, in which technical approach, defined as the degree to which the proposed system met the required specifications, was worth 60 percent of the available points and experience of the firm was worth 40 percent of the available points.

The solicitation provided that in selecting a contractor for award, proposed price would be the determining factor between substantially equal proposals and that where acceptable proposals received a significant difference in technical score, the agency would make a determination whether the technical merit of a higher scored proposal warranted the payment of a premium in price over the low acceptable offer. The RFP further provided that in making this determination, the agency would give technical factors a slightly higher weight than price and would award a contract to other than the low acceptable offeror only if it could identify specific technical advantages worth the difference in price.

Four offerors submitted proposals on September 15. The agency eliminated two offerors from the competitive range and began discussions with the two remaining offerors, Cardkey and Shorrock. Best and final offers (BAFOs) were received on November 22, 1989. The failure to gain necessary approval for award from the General Services Administration delayed award and necessitated revision of the RFP, and the agency again received BAFOs on April 2, 1990. Neither offeror submitted a revised technical proposal.

During the evaluation, the technical evaluation team had given Cardkey a slightly higher point score, 99 points versus 94 for Shorrock, but the team members were unable to articulate any actual distinction in technical merit between the two proposals. The contracting officer determined the two proposals to be substantially equal in technical merit and determined to make award based on price. On April 17, the agency notified the protester that it had awarded a

contract to Shorrock at a total price of \$401,803, versus \$404,700 for Cardkey. This protest followed.

The protester contends that the agency failed to apply the evaluation criteria set forth in the solicitation. Under prior contracts, Cardkey had provided the existing system at the DOJ main building, and it is effectively the only contractor capable of supplying a "compatible" system, which the RFP described as desirable. Because the RFP stated that compatibility was desirable, the protester assumed that its proposal would receive a higher technical rating if it proposed such a system, although that system might be more expensive than a noncompatible system. During a debriefing held on the day of award, the contracting officer advised the protester that, in fact, technical evaluators had given no consideration to compatibility. The protester notes that the RFP provided for evaluation of all technical factors included in the solicitation and argues that it reasonably interpreted the RFP as including the desirability of a compatible system in the technical factors to be evaluated.

In order to clarify certain points in the record, we allowed the protester the opportunity for direct examination of agency personnel, with a written record of the testimony given. The testimony establishes that the agency's Director of Security Staff preferred for all DOJ facilities to have access systems compatible with the system at the main building, allowing DOJ employees to use one card to gain access to all buildings. The agency procurement staff believed, however, that a requirement for compatibility would result in a noncompetitive procurement and challenged the security staff to justify the need for compatibility, as a result of which the requiring activity conceded lack of compatibility would have little adverse impact on its operation.^{1/}

Although the contracting officer questioned whether the statement of work should contain any reference to compatibility, the RFP as issued mentioned compatibility as a desired, but not required, feature. Paragraph C.1 of the RFP statement of work stated that it was "desirable that the system be compatible with the Card Access System presently installed at the [main] Department of Justice building,"

^{1/} The agency concluded that visits to the Rockville facility by employees from the main building would be relatively rare, and the Rockville staff could provide personal escorts with minimal inconvenience and with no significant impact on resources or security needs.

which is located in Washington, D.C. Paragraph C.4.4 also stated that the agency desired a system compatible with that used at the main Department of Justice (DOJ) building. The contracting officer nevertheless directed his technical evaluation team not to consider compatibility in their evaluation of proposals.

The record contains evidence that several offerors believed the solicitation to provide for consideration of compatibility in the comparative technical evaluation, and that the contracting officer was concerned over the RFP reference to compatibility. One potential offeror submitted a question, which was incorporated into the solicitation, asking for an opportunity to inspect the system at the main building and requesting details on the system. At the preproposal conference, the awardee apparently asked whether compatibility would be evaluated. Furthermore, the technical evaluation team was aware that the protester was offering a compatible system that added significantly to the cost of its proposal.

The agency argues that the solicitation reasonably indicated that compatibility was not a mandatory requirement that would be evaluated, since it was not specifically mentioned in the evaluation criteria. The record contains no RFP amendment or written documentation to show that it was unreasonable for offerors to interpret the solicitation as providing for consideration of compatibility in the comparative evaluation. The evaluation criteria included consideration of whether the proposed system met the required specifications, and compatibility was set forth in the specifications as a desired item.

The agency does allege that the awardee asked a question on this point at the preproposal conference, and that its technical team advised the awardee that the agency would not evaluate compatibility. The agency contends that the protester's representative was in the room at the time and should have been aware of this response. However, the contracting officer testified that several conversations were going at one time and that he was unable to insure that all offerors received the advice being provided to individual offerors at the conference. The protester denies hearing any such exchange, and we find that the agency failed to properly communicate to the firm that compatibility would not to be evaluated.

Where a solicitation provides for a comparative evaluation of proposals and denotes a specific feature as "desirable," we think such language conveys to potential offerors that, while an offeror need not provide such a feature to be

acceptable, an offer to provide such a feature will receive consideration in the technical evaluation. See Ametek, Straza Div., B-220384, Feb. 11, 1986, 86-1 CPD ¶ 149. While we have no basis to challenge the agency's determination that it had no valid need for a compatible system, we find reasonable the protester's interpretation of the RFP as indicating that the agency would consider compatibility (which was set forth twice in the specifications) and might pay more to purchase a compatible system. The record before us, including the protester's submissions and the written record of testimony, establishes that the protester, induced by the compatibility provisions of the RFP, proposed costs to provide the compatibility feature that exceeded the difference in price between its proposal and that of the awardee, a difference that was the sole rationale for the award to Shorrock. We therefore sustain this protest.

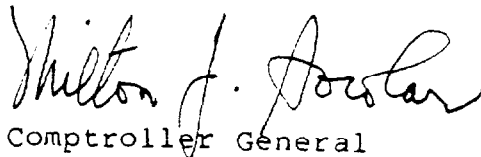
The protester also contends that the agency improperly evaluated those portions of Shorrock's proposal relating to experience. The protester essentially contends that it was unreasonable to give Shorrock a score for experience that was as high as that given to Cardkey, and alleges that the agency should have investigated several instances of poor performance by the awardee.

There is nothing in the solicitation that required the agency to go beyond the information provided by the offeror in evaluating Shorrock's experience. The proposal submitted by the awardee contains ample documentation of extensive experience; the agency advises our Office that it contacted several of the awardee's previous clients and while some of those clients had minor criticisms of Shorrock's performance, the awardee's proposal clearly established that Shorrock was entitled to the maximum score for experience. While the agency later learned of allegations of poor performance on one project, the record shows that the technical team had already completed its evaluation. Additionally, Shorrock has presented evidence to our Office that these allegations are unfounded.

We are recommending by letter of today to the Attorney General that the agency amend the solicitation to accurately reflect its needs, including the appropriate evaluation criteria, and to request another round of BAFOs from the two competitive range offerors. The agency may consider any additional evidence relating to Shorrock's experience at that time. If, as a result, Shorrock is found not to be the successful offeror, its contract should be terminated and award made to the protester. Since we sustain the protest, we find the protester entitled to its cost of pursuing this protest, including attorneys' fees;

the protester should submit its claim for costs directly to the Department of Justice. 4 C.F.R. § 21.6(e) (1990).

The protest is sustained.



Acting Comptroller General
of the United States