



Comptroller General
of the United States

Washington, D.C. 20548

III/C Arthur

Decision

Matter of: Marine Hydraulics International, Inc.

File: B-240034

Date: October 17, 1990

William E. Franczek, Esq., Vandeventer, Black, Meredith & Martin, for the protester.

Sandra E. Dickerson, Esq., Department of the Navy, 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

Agency properly rejected protester's offer which did not contain a technical proposal, as required by the solicitation.

DECISION

Marine Hydraulics International, Inc. protests the rejection of its offer under request for proposals (RFP) No. N62381-90-R-0228, issued by the Military Sealift Command for alteration, repair and maintenance of the USNS Joshua Humphreys. We deny the protest.

The agency issued the solicitation on March 13, 1990, and, by amendment, established April 20 as the date for receipt of initial proposals. The solicitation essentially provided for award of a fixed-price contract to the low, technically acceptable offeror and required the submission of a proposal in two separate sealed volumes, consisting of a technical proposal and a price proposal. Technical volumes were to include a time phased sequencing network with milestones, and a manhour chart, subdivided into hull, machinery and electrical departments, as well as prime and subcontractor efforts, and the identification of problem areas, including long leadtime items.

By letter dated May 9, the agency advised the protester that it had received and reviewed MHI's proposal and had found it to be outside the competitive range, without stating any reasons. On June 4, the protester learned from the Commerce Business Daily that the agency had awarded a contract at a price of \$675,349, an amount "very close" to the protester's initial offer of \$681,578. The protester contacted the agency

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and learned that its initial offer contained a lower price than did the eventual awardee's initial offer but that the agency had not received the protester's technical proposal. This protest followed.

The protester first denies that it failed to submit a technical proposal. The protester has submitted affidavits from two of its personnel, to the effect that they placed both volumes of the protester's proposal in the package that Federal Express delivered to the procuring activity. The protester contends that the agency's failure to mention the absence of a technical proposal or any other technical concern in the May 9 letter is evidence that its offer was technically acceptable. The protester concludes that absent the expression of any technical concern, the agency should have included its competitively low priced proposal in the competitive range.

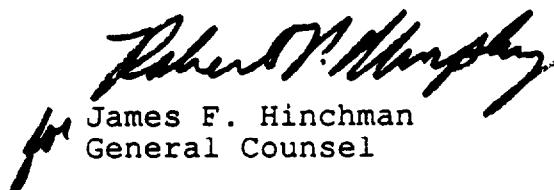
The agency has submitted an affidavit from the contracting specialist, attesting that she opened the protester's proposal and found no technical volume; at that time, she immediately wrote on the face of the protester's offer the notation "no technical proposal." Statements of other agency personnel, who prepared the May 9 notice, attest that the agency rejected the protester's proposal solely because it lacked a technical proposal for evaluation.

We need not resolve this factual dispute because it makes little difference whether the protester failed to submit a proposal or whether the agency lost that proposal. Assuming the protester failed to submit a technical proposal, rejection of a proposal is proper where the initial proposal is so deficient that in essence no meaningful proposal was submitted, and to allow the omissions to be cured after the time set for receipt of initial proposals would be inconsistent with the clause governing late proposals. See Panasonic Communications & Sys. Co., B-239917, Oct. 10, 1990, 90-2 CPD ¶ 66, where bid samples necessary for technical and cost evaluation were not submitted on time; American Video Channels Inc., B-236943, Jan. 18, 1990, 90-1 CPD ¶ 67, where a videotape that was to be the technical proposal was not submitted on time; and E-Systems, Inc., B-188084, Mar. 22, 1977, 77-1 CPD ¶ 201, where only a letter referencing a technical proposal was submitted on time. Here, in the absence of any technical proposal under a solicitation calling for award to the low, technically acceptable offeror, we find

that the agency could reasonably determine that no meaningful proposal had been submitted by the protester.^{1/}

Alternatively, assuming the agency lost the protester's technical proposal, an agency may not allow an offeror to submit after the closing date a copy of the proposal, as the award of a contract on the basis of statements as to what the contents were of the proposal initially submitted would not be consistent with the maintenance of the competitive system. See Watson Indus., Inc., B-238309, Apr. 5, 1990, 90-1 CPD ¶ 371. Specifically, there is no certainty that the proposal presented after the closing date for receipt of offers is identical to the technical proposal received and lost. Although we have allowed award to be based on the late submission of a copy of a proposal, after the agency lost the original, we did so only where the record "clearly and convincingly establish[ed] that the duplicate [was] identical to the original offer" Physio Control Corp., B-234559 et al., June 26, 1989, 89-1 CPD ¶ 599. There is no basis for such a conclusion here, and we therefore find that the agency properly rejected the protester's proposal.

The protest is denied.


James F. Hinchman
General Counsel

1/ The protester also contends that if, in fact, the agency found no technical proposal with its offer, the agency was obligated to bring this "clerical mistake" to the protester's attention and allow the firm to cure it after the closing date. We merely note that correction of the protester's alleged clerical mistake (i.e., the submission of a new technical proposal) would have been tantamount to the submission of a late proposal.