



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Cajar Defense Support Company

File: B-239490.2

Date: October 30, 1990

Mason Ford for the protester.
Judith A. Sukol, Esq., and Karen Grosso, Esq., Department of the Army, for the agency.
David Hasfurther, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging contracting agency's evaluation of protester's proposal and exclusion of the proposal from the competitive range is denied where a review of the agency's evaluation shows that it was conducted in accordance with the solicitation's evaluation criteria and that the agency's conclusion to exclude the proposal was reasonable, notwithstanding the protester's allegation that the evaluation result was unwarranted and made in bad faith.

DECISION

Cajar Defense Support Company protests the rejection of its proposal as technically unacceptable under request for proposals (RFP) No. DAAA21-90-R-1018, issued by the U.S. Army Armament, Munitions and Chemical Command (AMCCOM) as a total small business set-aside for the acquisition of services necessary to support projects managed by the Battlefield Management Branch, Fire Control Division, Fire Support Armament Center, at Picatinny Arsenal, New Jersey. Cajar contends that the rejection was made in bad faith and was, in any event, improper and unwarranted.

We deny the protest.

The RFP, issued on March 16, 1990, was for the award of a firm, fixed-price time and materials contract or contracts for three different task areas: Program or Project Support; System Engineering Support; and Analysis, Test and Evaluation Support. Offerors could submit proposals for the program support task area only or for the system engineering and analysis, test and evaluation support task areas together or for all three task areas. Of particular relevance here, under

049953 / 1 42614

program or project support, a firm was to provide support for development and upgrade of management information systems and cost analyses of a specific concept plan or system; conduct surveys to identify potential applications of fire control technology; perform configuration management; provide technical documentation for certain projects; and develop system concepts for future fire control weapon system requirements.

Offerors were to respond as part of their proposals to a sample task(s) corresponding to the task area(s) for which they were submitting proposals. Award based on a best value analysis could be made to one offeror for the program support task area and to another for the other two task areas combined, or one award for all three task areas could be made.

Proposals were to be submitted as three separate parts--technical, management, and price--so that each could be evaluated separately without regard to the others. The technical and management parts of each proposal were to be point scored with a narrative description of the evaluation findings. These point score ratings (the technical factor was given more weight than the management factor) were to be combined into a merit rating. Price was to be evaluated also, but was not to receive a point score rating. Whether a proposal was considered within the competitive range and therefore eligible for award would be determined by a proposal's merit rating and price, with the merit rating being significantly more important than price. The competitive range was to include all proposals that had a reasonable chance of being selected for award.

Cajar submitted a proposal for the program or project support task area. After all nine proposals submitted for this task area had been evaluated on the basis of the technical and management factors and the two scores had been combined into a merit rating for each proposal, Cajar's was the second lowest ranked proposal with a merit rating of 34 points, which was significantly below (less than one-half of) each of the four highest rated proposals.

Regarding Cajar's technical proposal, AMCCOM determined that Cajar's response to the task area requirements and to the sample task merely restated the RFP's requirements. The proposal was found to contain numerous claims that Cajar could accomplish what was required by the RFP, however, it failed to identify any specific, well-defined approach or methodology for performing the work. While Cajar demonstrated an adequate knowledge of certain areas of the work, it was considered deficient in its discussions of technology and engineering concepting requirements. In this respect, the

number of hours Cajar proposed to devote to engineering efforts was considered grossly insufficient, whereas the hours it proposed to devote to other areas of effort were considered excessive. Further, the evaluators found that Cajar did not identify who would perform any of the technical work required, which led them to conclude that any approach that Cajar might later adopt would not be feasible. Cajar also stated that one of the requirements of the task area, to develop conceptual and notional system concepts for future fire control weapons system requirements, was one that the agency and not the contractor had to fulfill and suggested that this requirement could not be given to the support contractor "unless done on a full scale development contract." AMCCOM concluded that this response could only indicate Cajar's complete misunderstanding of the support effort requirements. This conclusion was based on the agency's view that prior to entry into a full scale development effort, which is the current status of many fire control development efforts, much work in the development of conceptual or notional system layouts would be needed to be performed and that the RFP clearly solicited support for this effort.

The evaluators also found regarding the management portion of the proposal that, while Cajar had ample expertise in other areas, it showed little or no capability in the fire control area. The agency found the proposal failed to identify experienced personnel to perform the support work for fire control efforts. Further, the evaluators found Cajar's offer geared toward fabrication and small caliber ammunition test capabilities, rather than the computer extensive modeling and analysis needs of the RFP. The evaluators found that Cajar never sufficiently discussed management techniques and controls. Finally, while an organizational chart was included in the proposal, the evaluators found it did not specify how it related to performance of the work under the RFP.

Proposals were also evaluated on the basis of price. The evaluation of Cajar's price proposal resulted in the determination that it did not contain firm, fixed prices. In its price proposal, Cajar stated that its overhead and general and administrative (G&A) expenses would vary depending on the amount of business Cajar would do with AMCCOM over a 3-year period--thus overhead and G&A could vary from 25 percent to 50 percent. Cajar stated in its proposal that it was basing its proposal on "an assumed" overhead and G&A of 40 percent (a "best estimate" that "must vary with the level-of-effort"), although the figure might turn out less depending on whether other contracts were obtained during the term of this contract. In view of the above, Cajar was notified by letter of June 1 that its proposal was rejected as technically unacceptable and outside the competitive range.

Cajar first contends that its offer was rejected in bad faith and that this was consistent with its having been blacklisted by AMCCOM. Cajar alleged bad faith originally in the belief that AMCCOM planned to make one award for all three task areas to the incumbent contractor. After its debriefing by AMCCOM regarding the reasons for the rejection of its proposal, Cajar revised its position and instead alleged that the explanation of the rejection given during the debriefing constituted grounds for a finding of bad faith. Cajar argues that if the "evaluation had been truly valid and the debriefing legitimate, rather than merely a cover-up," only a few key deficiencies would have easily justified the rejection of its proposal. Cajar argues that the "gross overkill" of "nit-picking" deficiencies cited by AMCCOM during the debriefing is in itself evidence of the alleged bad faith.

Based upon our review of the record as discussed below, we conclude that there is no evidence showing that AMCCOM exhibited bad faith towards Cajar in its evaluation of Cajar's proposal. There is also no evidence that the rejection of Cajar's offer was the result of the agency's blacklisting of Cajar.

The primary basis of Cajar's protest is its contention that evaluation of its proposal was improper, both because in some instances the evaluators' conclusions were simply incorrect and because in other instances the evaluators lacked the qualifications necessary to have even evaluated portions of the proposal. First, Cajar contends that the agency has failed to substantiate many of the deficiencies it alleges exist in the Cajar proposal and that this failure proves Cajar's position that these deficiencies have no basis and that the corresponding areas of the proposal are acceptable. In this respect, Cajar states that when requested AMCCOM was unable to provide an example of what an acceptable approach to the requirements would have been. Further, AMCCOM was unable to delineate for Cajar the experience level that would have been acceptable to have met the fire control experience requirement. Also, as regards Cajar's proposal that certain work would be subcontracted, Cajar states that the RFP gave no guidance regarding what information a proposal should contain where the offeror proposed to subcontract any work, and AMCCOM was allegedly unable to provide any guidance on this matter during the debriefing--other than conflicting statements--even though it had downgraded Cajar's proposal because Cajar's subcontracting proposal was considered insufficient.

Second, Cajar contends AMCCOM was incorrect in downgrading portions of its proposal because the evaluators were not qualified to evaluate its proposal. Cajar contends that AMCCOM was incorrect in concluding that Cajar did not offer firm prices, apparently because the evaluators do not

understand that overhead and G&A are a function of the level of business a firm does. As concerns the documentation that it submitted to establish its management controls for this work, Cajar contends that from the manner in which the documentation was evaluated it is obvious that AMCCOM does not understand what management is all about or what "controls" means. Cajar believes that only someone familiar with business management should be permitted to evaluate this type of work. Finally, Cajar argues that the evaluators do not have the qualifications that would enable them to know that program/project support and management and engineering support are not the same or that support contracts and development or production contracts are not the same. According to Cajar, if they did they would be able to understand Cajar's position that as a task support contractor under this RFP it could not provide technical conceptual or notional support for fire control absent the award of a development contract.

In reviewing protests of allegedly improper evaluations, our Office will examine the record to determine whether the evaluators' judgments were reasonable and in accord with listed criteria. Metrolina Medical Peer Review Found., B-233007, Jan. 31, 1989, 89-1 CPD ¶ 97. We have consistently held that in negotiated procurements any proposal that fails to conform to the material terms and conditions of the solicitation should be considered unacceptable and may not form the basis for award. Ralph Korte Constr. Co. Inc., B-225734, June 17, 1987, 87-1 CPD ¶ 603. Offers that are technically unacceptable as submitted and would require major revisions to become acceptable are not required to be included in the competitive range. W.N. Hunter & Assocs.; Cajar Defense Support Co., B-237259; B-237259.2, Jan. 12, 1990, 90-1 CPD ¶ 52.

Offerors submitting proposals for the project support area were required to "develop conceptual or notional system concepts for future fire control weapon system requirements." Notwithstanding this requirement, Cajar stated in its proposal that it did not understand the requirement since it was an in-house agency responsibility "that cannot be given to a support contractor unless done on a full scale development contract" and because it appears to be related to "engineering support, rather than the Program/Project support . . ." to which Cajar intended its proposal to respond. Thus Cajar's proposal failed to conform with--indeed it took exception to--one of

the material terms and conditions of the RFP. Cajar effectively proposed no support for this particular task.^{1/}

We also agree with the agency's technical conclusion that Cajar's proposal leaves doubt as to exactly what Cajar intended to offer in response to the RFP program support requirements. For example, in its technical proposal, Cajar states that the work on which its proposal is based does not require in-depth technical knowledge of specific state-of-the-art fire control techniques as this work would be done by the "technical support contractor" [assuming separate awards would be made for the this task and the other two task areas] with whom Cajar would expect to work on tasks requiring combined efforts. Cajar also notes in its proposal that it is only addressing the "Program/Project/Acquisition Management requirements" of the RFP, "with only minimum reference to required engineering skills." In the portion of its technical proposal in which Cajar discusses the sample task, Cajar states that it understands all the requirements of the work, but that it "will define all requirements, in specific detail" only in "brief post award meetings" with the agency. It also states that it "cannot precisely define how these [specified] technical issues will be addressed in this proposal since it cannot be discussed." The proposal also states that the inclusion of technical requirements in the RFP poses a challenge as Cajar is not attempting to qualify in the engineering areas. Cajar offers to perform these requirements either in-house, or by subcontracting the work. The precise manner of accomplishing the performance of the task is left to AMCCOM's discretion. Based on these and other statements in Cajar's offer, we find reasonable the agency's conclusion that Cajar's proposal creates significant doubt concerning what Cajar is actually offering to do in response to the RFP requirements, and that major revisions of Cajar's proposal obviously would be required to make it acceptable. Thus, the rejection of the proposal as technically unacceptable was proper.

Cajar also has raised the question of whether the agency's evaluators lacked proper qualifications for evaluating portions of the proposals submitted in response to the RFP. Evaluator qualifications are within the contracting agency's sound discretion and do not give rise to review by our Office

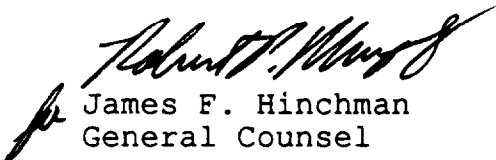
^{1/} To the extent that Cajar is objecting to the inclusion of this specific requirement in this task area, apparent improprieties in a solicitation must be protested prior to the closing date for the receipt of initial proposals. 4 C.F.R. § 21.2(a)(1) (1990). Any protest by Cajar of solicitation requirements is untimely since it was not raised prior to the initial closing date.

unless there is a showing of possible abuse of that discretion. Cajar Defense Support Co., B-237426, Feb. 16, 1990, 90-1 CPD ¶ 286. In view of our above conclusion that Cajar's proposal was properly rejected, we cannot conclude that Cajar has shown any abuse of the contracting agency's discretion in this matter.

Finally, Cajar raises the question of conflicts of interest that may arise if contractors on these task areas use the knowledge gained under this contract to their benefit on later fabrication/production efforts--something Cajar alleges has happened before.

The solicitation included an organizational conflict of interest clause that applies to the support contract(s) and delivery orders to be awarded. Under the terms of the solicitation, contractors are advised that by accepting a contract, a contractor will be required to accept task delivery orders containing organizational conflict of interest clauses which will prohibit the contractor from submitting bids or proposals for procurements that a contractor might otherwise be interested in. Contractors are further advised that refusal to accept tasks incorporating the conflict of interest clause will result in termination of the contract. Consequently, the RFP and the contract address the concerns raised by Cajar and provide for avoidance of conflicts of interest. Cajar Defense Support Co., B-237254, Feb. 13, 1990, 90-2 CPD ¶ ____.

The protest is denied.


James F. Hinchman
General Counsel



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Berema, Inc.--Reconsideration
File: B-239212.2
Date: November 1, 1990

Peo Sollerud for the protester.
Judith A. Sukol, Esq., Department of the Army, for the agency.
Jennifer Westfall-McGrail, Esq., and Christine S. Melody,
Esq., Office of the General Counsel, GAO, participated in the
preparation of the decision.

DIGEST

Request for reconsideration of decision dismissing protest that awardee does not intend to comply with solicitation requirement for a current production model is denied where solicitation did not request technical proposals and thus, by submitting a price, awardee offered to provide items conforming to the solicitation's requirements, one of which was that the item be a current production model.

DECISION

Berema, Inc. requests reconsideration of our decision, Berema, Inc., B-239212, June 22, 1990, 90-1 CPD ¶ 584, in which we dismissed its protest against the award of a contract for paving breakers to the Canadian Commercial Corporation on behalf of Skidril, Inc., under request for proposals (RFP) No. DAAE07-89-R-J108, issued by the U.S. Army Tank-Automotive Command.

We deny the request for reconsideration.

Berema contends that we erred in stating that the RFP did not request technical proposals or otherwise ask offerors to identify the model of paving breaker that they intended to furnish. The protester points out that each offeror was asked to identify the manufacturer's name and the model number of the breaker it planned to furnish in the End Item Characteristics List (EICL) accompanying its proposal. The protester also notes that the model number should have been disclosed in the contractor's commercial off-the-shelf manual, which each offeror was required to submit with its proposal. Berema contends that if Skidril failed to identify the model of paving breaker that it intended to furnish in its proposal,

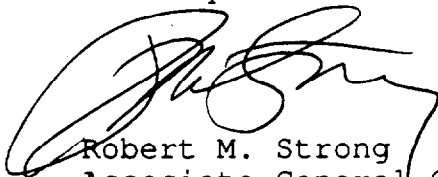
the agency could not reasonably have concluded that it complied with the requirement of the military specification that the breaker be a current production model of a standard product.

The protester is correct that each offeror was asked to identify the model of paving breaker that it would furnish in the EICL that was to be submitted with its proposal. There is no indication, however, that that information was intended to be used for the technical evaluation of proposals. The RFP did not contain technical criteria for the comparative evaluation of proposals or contemplate the submission of technical proposals; rather, the RFP only called for offerors to submit prices for the items required. By doing so, Skidril committed itself to furnishing an item meeting all of the RFP requirements, including the requirement for a current production model. See Trados GmbH--Second Request for Recon., B-237919.3, Jan. 12, 1990, 90-1 CPD ¶ 53.

Even assuming that the information in the EICL could reasonably be interpreted as relating to technical acceptability, the agency reports that neither Berema nor Skidril submitted a characteristics list with its proposal, and that it waived the requirement for both offerors since it viewed the information as unnecessary for the evaluation of offers. Berema responds that although it did not submit a completed EICL with its proposal, it did in fact furnish the information requested in the list, including the model number of its paving breaker, in the technical literature that it submitted with its proposal. The protester therefore objects to waiver of the requirement for Skidril.

Skidril, like Berema, furnished information describing the physical characteristics (e.g., weight, dimensions, engine type, etc.) of the paving breaker that it intended to furnish, including the model number, in the material that it submitted with its proposal. In Skidril's case, this information was disclosed in its technical manual. Thus, Skidril satisfied the requirement for the information requested in the EICL to the same extent that Berema did. Moreover, the agency reports that although the technical manuals were not intended to be used to verify technical acceptability, Skidril's did in fact indicate compliance with the commercial item requirement.

The request for reconsideration is denied.



Robert M. Strong
Associate General Counsel