



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Bridge Street Acquisition Corporation

**File:** B-239121.3

**Date:** November 13, 1990

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James A. McDonald for the protester.

Leslie R. Burdick, United States Marshals Service, for the agency.

Anne B. Perry, Esq., and John F. Mitchell, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

Agency reasonably found protester's proposal unacceptable where financing plan contained in its business proposal took exception to material terms of the solicitation and therefore did not evidence, as required by the solicitation, the financial ability of the protester to perform the work in manner required by the RFP.

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### DECISION

Bridge Street Acquisition Corporation protests the award of a contract to Corrections Corporation of America (CCA) under request for proposals (RFP) NO. USM-LB-R-90-202-C-016, issued by the United States Marshals Service (USMS), Department of Justice, for a private-sector, pre-trial detention center in the Kansas City, Kansas/Missouri Metropolitan Area. Bridge Street alleges that its proposal, which the agency rejected as unacceptable, was improperly evaluated and was more in the government's interest than CCA's.

We deny the protest in part and dismiss it in part.

The solicitation was issued on December 27, 1990 with an amended closing date for receipt of proposals of February 20, 1990. The RFP sought the provision of a 220-bed detention facility in each of the Kansas City and the Boston/Providence areas under 5-year service contracts with mandatory options to

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the government for 20-year leases. The agency also reserved the right to expand each contract to 440 beds.1/

The RFP advised offerors that proposals would be evaluated in accordance with the following evaluation criteria, in descending order of importance:

- a. The comprehensiveness of response to the Statement of Work
  - i. Demonstrated Knowledge of ACA [American Correctional Association] Standards, Direct Supervision and Secure Detention Operations.
- b. Financial Capability
- c. Location of Facility
- d. Adequacy of the Facility Plan
- e. Schedule of Occupancy
- f. Capability and Ease of Expansion
- g. Adequacy of Parking Provisions
- h. Experience and Previous Projects of a Similar Nature
- i. Quality of Pre-Service Training Curriculum.

Also contained in the solicitation was a separate set of evaluation factors for proposed prices which essentially provided for a "total evaluated price" which included the basic contract period and all option periods.

Four proposals were received by the USMS for the Kansas City area detention center. A Technical Evaluation Board (TEB) composed of five individuals evaluated all of the proposals,

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1/ Bridge Street submitted offers for both requirements and protested both awards. Subsequent to the protest, however, the procurement for the Boston/Providence area was canceled due to changed circumstances. Accordingly, that aspect of Bridge Street's protest is dismissed as academic.

and ultimately, all were included in the competitive range.<sup>2/</sup> Discussions were conducted with each offeror. Best and final offers (BAFOs) were requested from each, with a due date of April 16. The TEB reconvened on April 17 to evaluate BAFOs. CCA, which received the highest technical score, was awarded the contract on June 22.

Bridge Street filed a protest in our Office on July 6 challenging the award to CCA on the basis that CCA's operation of similar facilities for the state of Texas had been criticized and that the site selected by CCA was not suitable for later expansion as the RFP required. The protester also alleges that the contracting agency can obtain these services at a lower cost than that offered by CCA because Bridge Street can offer alternate sites at lower prices than the site and price it provided in its proposal.<sup>3/</sup> The protester contends that its proposal was more in the government's interest than CCA's and was improperly evaluated.

Since the evaluation of technical proposals is the function of the contracting agency our review of allegedly improper evaluations is limited to a determination of whether the evaluation was fair and reasonable and consistent with the stated evaluation criteria. Sikora & Fogleman, B-236960, Jan. 17, 1990, 90-1 CPD ¶ 61. A protester's disagreement with the evaluation, or its good faith belief that its own proposal was superior, does not establish that the agency's evaluation was flawed. Sach Sinha & Assoc., Inc., B-236911, Jan. 12, 1990, 90-1 CPD ¶ 50.

The agency determined Bridge Street's proposal to be unacceptable on the grounds that it: (1) failed to demonstrate the firm's financial capability; (2) improperly relied upon the government's power to exercise eminent domain over its proposed site to acquire the zoning necessary for the facility; and (3) provided several versions of the pricing schedule which precluded a definitive price evaluation. Our review of the record demonstrates that Bridge Street's failure to demonstrate the financial capability to perform the

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<sup>2/</sup> Initially, one of the offerors, Pentagon Systems, Inc. was excluded from the competitive range, but following a protest filed in our Office the USMS reconsidered its position and included Pentagon Systems' proposal in the competitive range and the protest was withdrawn.

<sup>3/</sup> This allegation is based on an attempt made by Bridge Street in its protest to replace the site it offered in its proposal with a new one in Cameron, Missouri. It would be improper for the agency now to reopen negotiations with the protester to allow this change.

contract requirements was by itself a sufficient ground for the determination that its proposal was unacceptable.

Both section L, the proposal preparation instructions, and section M, the evaluation factors for award, required offerors to provide evidence of financial capability that was sufficient to demonstrate the ability to successfully finance the design and construction of the facility, and to provide pre-opening services prior to occupancy and operating capital for not less than 90 days of operation without cash flow from monthly billings to the user agencies.

Bridge Street's BAFO included a "Financing Exhibit" provided by Citicorp Securities Markets, Inc. The letter from Citicorp, however, did not demonstrate that it was willing to finance this contract absent significant changes to it. For example, Citicorp stated that:

"We have reviewed all of the documents contained in the RFP and strongly suggest that certain modifications to such documents will be required in order to finance the facility in the private market. . . . The service contract provided by the USMS is not financeable on its terms. . . . Although our proposed financing alternatives deviate somewhat from the USMS RFP, our proposal represents a realistic assessment of what is necessary to make this transaction financeable." (Emphasis added.)

Citicorp's "proposal" then provides three financing alternatives and states that Citicorp's ability to finance each of the options is subject to "critical conditions," such as a guaranteed fixed-price construction contract, which is not how the RFP is structured. Essentially, Citicorp only offered to finance Bridge Street on the basis of conditions materially different than those contained in the RFP.

Bridge Street argues that Citicorp did not "take exception" to the RFP requirements, but suggested approaches which are less costly than what the RFP required and which have met with acceptance in the private sector and on some government projects.

To the extent that Bridge Street is arguing that a guaranteed fixed-price construction contract, or any of the other alternatives offered by Citicorp were not provided for by the solicitation, its protest is untimely. Our Bid Protest

Regulations require that protests based upon alleged improprieties apparent in the solicitation be filed prior to the date set for receipt of initial proposals. 4 C.F.R. § 21.2(a)(1) (1990). Accordingly, to the extent that Bridge Street believed that the solicitation should have provided for these alternatives, it was required to protest before the closing date.

In negotiated procurements any proposal that fails to conform to material terms and conditions of the solicitation should be considered unacceptable and may not form the basis for an award. Martin Marietta Corp., B-233742.4, 69 Comp. Gen. \_\_\_, Jan. 31, 1990, 90-1 CPD ¶ 132. Here Bridge Street's financing plan, which related to the second most important evaluation criterion, called for financing on terms materially different from those contained in the RFP. Therefore, it was reasonable for the agency to reject Bridge Street's proposal.

Since we find that the agency reasonably rejected Bridge Street's proposal because of the financing deficiency we need not address the other bases of rejection. Further, we dismiss Bridge Street's protest against the award to CCA, since we have determined that the protester's proposal was reasonably rejected. Under our Bid Protest Regulations, a party is not interested to maintain a protest if it would not be in line for award if the protest were sustained. 4 C.F.R. §§ 21.0(a), and 21.1(a).

Accordingly, the protest is denied in part and dismissed in part.



James F. Hinchman  
General Counsel