



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: ABB Power Company T&D, Inc.

File: B-246249

Date: February 6, 1992

John R. Attanasio, Esq., ABB Power Company T&D, Inc., for the protester
Wally Petro, GEC Alsthom T&D Inc., an interested party.
L. James Tillman, Department of Energy, for the agency.
James W. Vickers, Esq. and Jerold D. Cohen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Where deficiencies are introduced in a firm's best and final offer, the agency is not compelled to reopen discussions with the company (which would require reopening with the other offerors as well) to allow the firm to attempt to cure them.

DECISION

ABB Power Company T&D, Inc., protests the award of a contract to GEC Alsthom T&D Inc., under request for proposals (RFP) No. DE-RP65-91WA08481, issued by the Western Area Power Administration, Department of Energy (DOE). ABB contends that DOE did not evaluate ABB's proposal properly or perform a proper cost/technical tradeoff, and complains that the agency did not apply the Buy American Act to the awardee's offer.

We deny the protest.

The RFP solicited offers to provide line and station relays for installation in power substations, to protect the substations' equipment. The evaluation criteria listed in the RFP were, in descending order of importance, (1) technical, (2) cost, and (3) business management, "with technical criteria being predominant in importance." While the RFP contained 22 line items, ABB's protest concerns only the evaluation and award of line item 001, Line Relaying Terminal, Type I.

The RFP advised that offers had to demonstrate compliance with specific technical features listed for each line item; specified general ratings (for example, frequency) and tests

for all equipment; and listed certain general requirements for all line items offered. For item 001, the specific features were twice as important as the ratings/tests, which were three times more important than the general requirements.

DOE received and evaluated three offers for item 001, and found all three to be in the competitive range. Written discussions were conducted with all the firms and, following receipt of the responses and further evaluation, best and final offers were submitted. In its best and final offer, ABB offered not only the MDAR version 2.0 terminal it had proposed up to that time, but a different model, terminal MDAR version 2.1, as an alternate proposal.

ABB's alternate-based best and final offer scored 6,800 points in the final technical evaluation, ranking second, with a unit price of \$10,200. GEC was ranked first technically, receiving 8,000 points, and proposed a unit price of \$11,161.¹ DOE's evaluators found that ABB's proposal demonstrated a thorough knowledge of the required design and manufacturing, but included a number of "critical weaknesses" as reflected in the 1,200 point difference between ABB's technical proposal and GEC's. DOE awarded the contract for item 001 to GEC based on the offer's technical superiority.

Following a debriefing, ABB protested to our Office, complaining about the rejection of its offer of version 2.1. ABB states that at the debriefing it was advised that there were nine deficiencies in its technical proposal, which were the reasons that GEC's offer was found to be more advantageous. In its protest, ABB contests the existence or seriousness of the technical deficiencies DOE noted; contends that DOE did not perform a proper cost/technical tradeoff; and complains that a Buy American Act differential was not applied to GEC's evaluated price.

DOE has now agreed with the protester that the Buy American Act's 6 percent differential should have been applied to GEC's price, and states that application of the differential results in GEC's evaluated unit price being raised to \$11,830.66 from \$11,161.² DOE maintains, however, that the technical superiority of the GEC proposal (18 percent) still

¹Based on the item 001 evaluation quantity of 42 terminals, ABB's total evaluated cost was \$428,400, and GEC's was \$468,762.

²This raises the evaluated total cost of GEC's offer to \$496,888.

outweighs the price difference (16 percent) as evaluated, and that the award to GEC is still proper.

As to the rest of the protest, we are unable to confirm or dispute whether GEC's offer in fact was worth a 16 percent evaluated price premium, since the selection documents of course address a premium of only 9 percent. Further, DOE, in conceding that the differential should have been 16 percent, has not elaborated on why that did not make more of a difference. We nevertheless find the award to GEC unobjectionable.

According to ABB, at the debriefing the firm was advised of 9 deficiencies in its best and final offer of MDAR version 2.1. The technical evaluation documents summarize these as including the need to add to the carrier equipment, at additional cost, an "unblock loss-of-signal timer"; ABB's reliance on a single microprocessor to perform all measuring, calculations, and logic functions; the lack of any in-service history for the newly proposed alternate version 2.1; and ABB's indication that review documentation, required 45 days after award, would not be available for 100 days.

The RFP made clear that technical considerations were predominant, and it is clear from the record that, for technical reasons, DOE simply was not in a position to accept ABB's alternate offer, at any price, without further discussion. As indicated above, the deficiencies in ABB's offer were, in general, viewed as "critical weaknesses." In this respect, in its report on the protest DOE set forth its reasons for concluding that the specific items noted at the debriefing constituted deficiencies in ABB's offer; in commenting on the report, ABB took little issue with the bulk of DOE's explanation. Thus, even if we assume that ABB's alternate proposal was susceptible of being made acceptable, further discussion would have been necessary.

DOE, however, was not obligated to reopen negotiations in order to allow ABB to explain the features of MDAR version 2.1. DOE already had held discussions with ABB, based on the deficiencies the agency found in the firm's initial proposal with respect to version 2.0. When in its best and final offer ABB chose to propose an item that had never been technically evaluated by DOE, it ran the risk that there would be questions about the alternate's acceptability. Where deficiencies are introduced in a best and final offer, the agency is not compelled to reopen discussions with the company, which would require both reopening with the other offerors as well and a new round of best and finals, to allow the firm to attempt to cure them. See JSA Healthcare Corp., B-242313, B-242313.2, Apr. 19, 1991, 91-1 CPD ¶ 388;

Addsco Industries, Inc., E-233693, Mar. 28, 1989, 89-1 CPD 317.

Finally, ABB, in its comments on the agency report, speculates that GEC may have received additional technical points for offering some features not required by the RFP, so that DOE is paying a premium for features that were not required to meet the agency's minimum needs. Our review of the evaluation documents does not substantiate ABB's suggestion.

The protest is denied.

for Seymour E. Hinchman
James F. Hinchman
General Counsel