



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

Decision

Matter of: Technology Applications and Service Company
File: B-246216
Date: February 25, 1992

Steven R. Goldman for the protester.
Gregory H. Petkoff, Esq., and William M. Lackermann, Jr.,
Esq., Department of the Air Force, for the agency.
Catherine M. Evans, Esq., and John M. Melody, Esq., Office
of the General Counsel, GAO, participated in the preparation
of the decision.

DIGEST

1. Protest that agency misled offerors by furnishing inaccurate historical cost figure in solicitation is denied where agency offered no information on the breakdown of the cost figure, and protester should have known that figure included cost of additional work for which the solicitation did not request prices; protester's reliance on the figure therefore was unreasonable.
2. Where protester, the lowest technically rated offeror, does not challenge its technical evaluation or that of higher rated, lower priced offer, protester would not be in line for award if protest challenging price realism analysis of awardee's considerably lower priced proposal were sustained; protester therefore is not an interested party to challenge award on this basis.

DECISION

Technology Applications and Service Company (TAS) protests the award of a contract to Sacramento Air Logistics Center (SM-ALC), an Air Force activity, under request for proposals (RFP) No. F04606-91-R-0081, for depot maintenance of AN/TRC-97A radio sets. The RFP implemented a pilot program in the Department of Defense for acquiring depot-level maintenance services through competition, to include a comparison of the cost of contracting for the services to the cost of agency in-house performance.¹ TAS contends that the Air Force's

¹The Department of Defense Authorization Act for fiscal year 1991, Pub. L. No. 101-510, § 922, 104 Stat. 1627 (1990), authorized the pilot program. Aside from this program,
(continued...)

award to its in-house maintenance unit was improper because it was based on a faulty price realism analysis, and because the Air Force misled TAS and other offerors in the preparation of their cost proposals by furnishing an inaccurate historical cost figure in the RFP.

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

The solicitation contemplated award of a fixed-price, requirements-type contract for a base year and 2 option years to perform programmed depot maintenance (PDM) on AN/TRC-97A radio sets. PDM generally involves repairing, upgrading or refurbishing items according to specific technical instructions; the items to be maintained here are 15-year-old radio and parabolic antenna sets mounted in portable shelters. The PDM work essentially was broken down into two types: (1) ordinary overhaul, test and repair, for which the RFP required a fixed price, and (2) "over and above" work, which, due to its unusual and unpredictable nature, was not to be included in the fixed price, but instead would be treated on a cost-reimbursable basis. Examples of this type of work include replacement of a portion of a shelter due to damage or corrosion, and major configuration changes. The RFP provided that award would be made based on the best value to the government, considering technical, management, and cost factors, in that order.

SM-ALC and five private firms submitted initial proposals by the July 8, 1991, closing date. A technical evaluation team reviewed the proposals and assigned color-coded ratings for each evaluation factor: blue (exceptional), green (acceptable), yellow (marginal), or red (unacceptable). In addition, the team evaluated each proposal in terms of the risk it presented (high, moderate, or low). Price proposals were evaluated separately for completeness, realism, and reasonableness. The technical evaluation team found that all six offerors were in the competitive range. Following discussions and submission of best and final offers (BAFO), the offerors were rated as follows, in order of technical merit:

¹(...continued)

10 U.S.C. § 2466 (Supp. II 1990) prohibits competition between Air Force activities and private firms for depot-level maintenance.

<u>Offeror</u>	<u>Technical</u>	<u>Management</u>	<u>Price</u> <u>(millions)</u>
Offeror A	Blue/Low	Blue/Low	\$ 4.998
SM-ALC	Blue/Low	Blue/Low	2.919
Offeror B	Blue/Low	Green/Low	3.93
Offeror C	Green/Mod.	Green/High	3.821
Offeror D	Green/Mod.	Green/Mod.	6.151
TAS	Yellow/High	Green/High	3.839

Based on these evaluation results, the agency's source selection authority decided that SM-ALC's proposal represented the best value to the government. The selection decision specifically noted SM-ALC's high technical and management ratings, low risk factors, and low price, and emphasized that the low price reflected SM-ALC's extensive experience and knowledge of the requirement. The agency made award to SM-ALC on September 25. Following an October 8 debriefing, TAS filed this protest on October 11.

AGENCY'S COST ESTIMATE

The RFP as originally issued estimated that eight radio sets would require PDM each year, but did not contain any historical data or estimates regarding labor hours, materials consumption, or cost of the maintenance. Consequently, several offerors submitted requests for this information. The agency responded in an amendment to the RFP, twice stating that data on depot labor hours and materials used in past overhaul activities would not be released because it was proprietary to SM-ALC. The amendment did state, however, that the "overall PDM cost per system" for fiscal year 1991 was \$112,799.

During its debriefing after award, TAS learned that SM-ALC's proposed per-system cost was \$71,020, and that the \$112,799 historical cost represented a different scope of work than that contemplated by the RFP. TAS contends that the Air Force misled TAS and other offerors in the preparation of their price proposals by furnishing a historical cost figure that was not representative of the required effort and asserts that it would not have submitted a proposal had it known SM-ALC's proposed price would be so much lower than its historical cost.

The Air Force contends that the historical cost figure in the RFP was not misleading. The agency explains that while the \$112,799 amount represented the total cost of PDM for each radio set, this total represented more work than did the offerors' proposed prices under the RFP. This was because the historical cost figure included the cost of "over and above" work, while offerors' proposed prices did not. In addition, the agency notes that the \$112,799 cost figure included the cost of materials that were designated

in the RFP as government-furnished materials and thus were not to be included in price proposals. The Air Force argues that TAS should have recognized that SM-ALC's proposed price would be lower than the historical figure since the proposed price excluded the costs of "over and above" work and government-furnished materials, while the historical figure was characterized in the RFP as an "overall" cost; the Air Force concludes that the figure was not misleading.

We agree with the Air Force. First, the Air Force properly withheld the historical cost data requested by offerors; an agency is not required to disclose information that would give other offerors a competitive advantage over a government activity competing to perform the work in-house. See Saxon Corp., B-236194; B-236194.2, Nov. 15, 1989, 89-2 CPD ¶ 462. Further, the information the Air Force did provide was not misleading. The agency never indicated to offerors that the \$112,799 cost figure covered precisely the same work included in this RFP. Rather, the Air Force specified that the \$112,799 figure represented the "overall PDM cost per system." This description was sufficient, we think, to put offerors on notice that the \$112,799 cost figure encompassed all PDM costs, including the government-furnished materials and "over and above" cost items that were to be excluded from offerors' fixed prices.² Thus, TAS had no basis to conclude that this cost figure, so described, was meant to indicate that SM-ALC would propose a similar cost for this RFP. We conclude that the agency did not improperly mislead TAS by providing the \$112,799 historical cost figure.

PRICE EVALUATION

TAS contends that the Navy failed to perform a proper price realism analysis of SM-ALC's proposal. TAS notes that the Air Force considered its proposed per-unit price of \$90,040 to be realistic, and maintains that SM-ALC's much lower price of \$71,020 must therefore be unrealistically low.

Under the Competition in Contracting Act of 1984 (CICA), 31 U.S.C. §§ 3551 and 3553(a) (1988), and our Bid Protest

²In its comments on the agency report, TAS argues that, contrary to the Air Force's assertion, the report shows that the \$112,799 figure did not include the costs of "over and above" work and government-furnished materials. In response, the Air Force submitted a supplemental report explaining in detail how the figure was derived. Since TAS did not respond to the supplemental report, despite being afforded an opportunity to do so, we have no basis to question the agency's explanation that the historical cost figure included the additional work and materials costs.


Regulations, 4 C.F.R. § 21.0(a) (1991), a party must be "interested" before we will consider its protest. An interested party for purposes of eligibility to protest is an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of the contract or by the failure to award the contract. Id. Determining whether a protester meets this standard involves consideration of its status in relation to the procurement. Where there are intermediate parties that have a greater interest than the protester, we generally consider the protester's interest too remote to warrant consideration of the protest under our Regulations. See Automated Servs., Inc., B-221906, May 19, 1986, 86-1 CPD ¶ 470; Brunswick Corp. and Brownell & Co., Inc., B-225784.2; B-225784.3, July 22, 1987, 87-2 CPD ¶ 74.

TAS is not an interested party to protest the Air Force's evaluation of SM-ALC's price proposal. The record shows that TAS was the lowest rated offeror under the technical and management factors, with high risk in both areas; TAS has not offered a timely challenge to the Air Force's determination in this regard.³ In contrast to TAS' ranking, offeror C had higher technical and management ratings than TAS with a lower technical risk rating and also proposed a lower price than TAS. This being the case, even if TAS were correct that SM-ALC's proposed price was unreasonably low, offeror C, not TAS, would be next in line for award. TAS therefore does not have standing to

³TAS alleges that the agency improperly found its subcontracting plan to present a high technical risk. We agree with the agency that TAS' plan to subcontract portions of the work to different firms could adversely impact its cost and scheduling controls; however, even if the agency improperly evaluated TAS' subcontracting plan, this would not have affected TAS' standing relative to other offerors since subcontracting only accounted for a portion of one of the six subfactors under the management factor, and the management factor was less important than the technical factor.

challenge the Air Force's evaluation of SM-ALC's price proposal. See Charles Redwood Ltd. Partnership, B-241050, Jan. 14, 1991, 91-1 CPD ¶ 32.

The protest is denied in part and dismissed in part.


for James F. Hinchman
General Counsel