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

Decision

Matter of: Canadian Commercial Corporation--Request for Reconsideration

File: B-246311.2

Date: July 22, 1992

Michael A. Gordon, Esq., Holmes, Schwartz & Gordon, for the protester.
Major H. Jack Shearer, Defense Information Systems Agency, for the agency.
Aldo A. Benejam, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Request for reconsideration is denied where request contains no statement of facts or legal grounds warranting reversal but merely restates arguments made by the protester and previously considered by the General Accounting Office.

DECISION

Canadian Commercial Corporation (CCC) on behalf of Canadian Marconi Company (CMC)[1] requests reconsideration of our decision in Canadian Commercial Corp., B-246311, Feb. 26, 1992, 92-1 CPD ¶ 233. In that decision, we denied CMC's protest of the Defense Information Systems Agency (then known as the Defense Communications Agency (DCA)) decision to terminate a contract awarded to CMC under request for proposals (RFP) No. DCA200-91-R-0020, and to reopen discussions with the two offerors whose proposals were in the competitive range.

We deny the request for reconsideration.

[1]CMC is a Canadian corporation and pursuant to applicable regulations, CCC is the actual offeror. When CCC is awarded a contract, it subcontracts 100 percent of the contract to a Canadian corporation, such as CMC. See generally Dohrman Mach. Prod., Inc., 69 Comp. Gen. 22 (1989), 89-2 CPD ¶ 344. The protest was filed on behalf of CMC, which we hereafter refer to as the protester.

BACKGROUND

The RFP was issued on March 25, 1991, and contemplated the award of a fixed-price contract for three UHF wideband radio systems and supporting equipment to be delivered during the base year, with two 1-year options for up to 23 additional radio systems and supporting equipment. The RFP required the successful contractor to supply all necessary electronics, cabling, hardware, technical manuals, tools and packaging necessary to deploy, install, and interconnect the radios. Award was to be made to the low, responsible offeror submitting a proposal that complied in all material respects with the conditions and requirements in the RFP. Of the 32 firms solicited, only two offerors, CMC and Loral TerraCom, submitted timely proposals. Following an evaluation of initial proposals by a technical evaluation panel, DCA determined that both offers were in the competitive range. The agency held written discussions with the firms and requested best and final offers from both offerors. On August 29, DCA determined that CMC was the low, responsible, technically acceptable offeror and awarded the contract to that firm.

Subsequently, Loral filed an agency-level protest challenging the award to CMC. Loral alleged that the radio systems CMC proposed did not meet five technical requirements in the RFP. On October 9, after reviewing Loral's allegations and CMC's proposal, DCA denied Loral's agency-level protest with respect to four of the five issues raised, but agreed with Loral that CMC's proposal was unacceptable with respect to one technical requirement of the RFP. Specifically, a review of CMC's proposal by DCA's technical experts concluded that the proposal upon which award was based was materially deficient and therefore unacceptable, because it did not meet certain requirements of paragraph 3.3.7 of the RFP's statement of work. CMC filed its protest with our Office after DCA informed it that it would terminate CMC's contract and reopen discussions with both offerors.[2]

In its protest CMC alleged that the agency's decision to terminate its contract was improperly based upon DCA's unreasonable interpretation of the RFP's requirements. Specifically, the protester argued that the alleged technical deficiencies in its proposal were not material defects which required termination of its contract. Rather,

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[2]On November 4, in accordance with Federal Acquisition Regulation § 52.212-13, the agency issued a stop-work order directing CMC to stop contract performance pending our decision.

according to CMC, they were minor contract administration issues which DCA should have resolved through "touch up" clarifications with CMC, rather than by reopening discussions with both offerors. CMC also argued that since its price was disclosed, reopening discussions would result in an impermissible auction.

The solicitation section at issue here, paragraph 3.3.7 of the RFP, states in pertinent part:

> "The transceiver must employ a comprehensive Built In Test Equipment (BITE) module. The BITE must provide the technician easy to read and understandable information on the operational status and problems with the radio, baseband interface, and the entire system. The BITE must also serve as the means to configure the radio. . . . The readout must not require look-up tables to understand."

That section further requires that specific information concerning various functions of the radio systems be monitored and/or displayed by the BITE, such as "receive signal strength, in dBm" and "bit error ratio." We specifically found that these were material requirements of the RFP, and since CMC's proposal failed to comply with them, it was materially deficient and technically unacceptable. We therefore concluded that the agency properly determined to terminate CMC's contract and reopen discussions with the competitive range offerors.

The issue of CMC's compliance with paragraph 3.3.7 of the RFP and CMC's argument concerning the potential for an auction due to disclosure of its price were thoroughly considered in our initial decision. In its reconsideration request, CMC reasserts that the alleged technical defects in its proposal were not material defects requiring the agency to reopen discussions, and that reopening discussions would result in an impermissible auction. Under our Bid Protest Regulations, to obtain reconsideration the requesting party must show that our prior decision contains either errors of fact or law or that the protester has information not previously considered that warrants reversal or modification of our decision. 4 C.F.R. § 21.12(a) (1992). CMC's repetition of arguments made during our consideration of the original protest and mere disagreement with our decision simply do not meet this standard. R.E. Scherrer, Inc.--Recon., B-231101.3, Sept. 21, 1988, 88-2 CPD ¶ 274.

CMC further argues that we should reconsider our decision in light of the agency's recent decision to select the firm for award. The record shows that on March 31, 1992, following our decision, the contracting officer conducted another

round of discussions with CMC. The agency explains that through its responses to those questions, CMC remedied the specific problems the agency had identified in CMC's initial proposal; consequently, the agency again selected CMC for award. The protester maintains that the agency's selection of the firm for award shows that our decision was flawed because CMC is not proposing any new or different equipment from that which it proposed in its initial proposal.

While CMC may not be proposing different equipment, the record shows that in response to the contracting officer's latest discussion questions, CMC submitted additional explanatory materials and tables--not previously included in its proposal--clearly illustrating how the equipment it proposed complies with the RFP's material requirements. For example, CMC provided new tables illustrating sample operational status display readouts and sample alarms indicating problems with the radio. Each table was accompanied by narratives explaining the significance of the various indicators displayed and, in some cases, appropriate responses. The protester thus fully explained and clearly illustrated material functional characteristics of the proposed equipment. Such clarity and level of detail was precisely what was lacking from CMC's initial proposal. Since we based our decision on the record then before us, which included CMC's informationally deficient proposal, the fact that the agency selected CMC for award after we issued our decision does not affect our initial conclusion.

The request for reconsideration is denied.

James F. Hinchman
General Counsel