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

Decision

Matter of: California Business Interiors
File: B-250963.2
Date: April 19, 1993

Terry Mayhew for the protester.
Starr J. Sinton, Esq., Department of the Navy, for the agency.
Jeanne W. Isrin, Esq., and John M. Melody, Esq., Office of the General Counsel, G.O, participated in the preparation of the decision.

DIGEST

Agency properly reopened solicitation after award to revise specifications and request revised offers--instead of making award to protester--where solicitation overstated the agency's actual minimum needs and required revision could affect pricing such that different offeror could be in line for award.

DECISION

California Business Interiors (CBI) protests the post-award reopening of Department of the Navy request for proposals (RFP) No. N63394-92-R-0045, for the acquisition and installation of 465 systems furniture workstations at the Naval Surface Warfare Center (NSWC) in Port Hueneme, California. CBI agrees that the initial award, to Herman Miller, Inc. (HM), was improper, but believes it should receive the award in lieu of reopening the competition.

We deny the protest.

The procurement was synopsisized in the Commerce Business Daily on May 28, 1992. On July 14, the RFP was issued to all potential offerors who requested it. Due to the number of questions raised by potential offerors, the closing date was extended indefinitely by amendment No. 0001, issued on August 6. Among the questions raised was an issue of ambiguity as to the total number of workstation wall panels required. Specifically, the RFP contained a pricing schedule (section B) listing different items under the work requirement, including specified quantities of 20 different prototype workstations. Attachment 3 to the RFP contained a diagram and specifications for each of the 20 prototype workstations, and attachment 4 consisted of drawings which

showed the workstation layout as it was to be installed for the total requirement.

Potential offerors pointed out that the drawings indicated that adjacent workstations would share common wall panels where possible throughout the layout, whereas section B required pricing for the individual workstations without consideration of the shared panels, which would require a substantially greater number of panels. On August 31, amendment No. 0002 was issued to answer offerors' questions and to revise section B, the statement of work, and the specifications in view of the answers given. In order to correct the panel count ambiguity, the amendment revised section B to require prices for two different quantities of prototype workstations, one "double loaded" (shared panel) and the other "single loaded" (no shared panels). The amendment instructed offerors to base their offers on section B.

Six proposals were received, including CBI's and HM's. Following initial evaluation and discussions with all competitive range offerors, including CBI and HM, best and final offers (BAFO) were requested, received on September 23, and evaluated. Award was made to the low, technically acceptable offeror, HM, on September 28. CBI protested the award to our Office on October 19, claiming that HM's proposal did not meet certain specifications and that a solicitation ambiguity still existed as to the number of workstation panels required under the solicitation, which precluded it from competing on an equal basis. NSWC issued a stop work order to HM.

In the process of answering the protest, NSWC investigated the panel count ambiguity alleged by CBI and discovered that, despite previous efforts to correct this ambiguity, section B still required significantly more panels--2,203-- than were required by the Attachment 4 drawings--2,017. Although CBI had offered two different prices, one based on section B and one based on the drawings, no other offeror had done so, and contracting officials determined that there was no way to know on which part of the solicitation their offers had been based. In any case, since only the lower panel count in the drawings was correct, NSWC concluded that the solicitation essentially improperly overstated its minimum needs. Accordingly, NSWC issued amendment No. 0003 to reopen the RFP, clarify the panel count, and request new revised proposals. The agency also issued a stop work order to HM pending the results of the reopened competition. Based upon the agency's actions, we dismissed CBI's protest as premature on December 4. On December 8, CBI filed this protest.

CBI agrees that HM should not have received the award initially, but objects to the reopening of the solicitation. CBI maintains that HM's price with the correct panel count would have been higher than CBI's, and therefore rather than solicit new prices for the corrected panel count the agency should make award to CBI as the low, technically acceptable offeror based on the last round of BAFOs.¹

Where an agency finds that an RFP overstates its minimum needs, the proper remedy generally is revision of the solicitation to reflect the agency's actual minimum needs, affording offerors an opportunity to respond to the revisions, and, if appropriate based on the recompetition, terminating any prior improperly awarded contract. Honeywell Fed. Sys., Inc. et al.--Request for Recon., 69 Comp. Gen. 445 (1990), 90-1 CPD ¶ 469; see Consulting and Program Mgmt., 66 Comp. Gen. 289 (1987), 87-1 CPD ¶ 229, aff'd, B-225369.2, July 15, 1987, 87-2 CPD ¶ 45.

This is precisely what the agency did here and we find the action unobjectionable. It is undisputed that the RFP contained an ambiguity as to the panel count, and that it was unclear on the face of all but CBI's proposal whether offerors had based their pricing on section B or the drawings. It thus was unclear whether offerors' proposals were based on the agency's actual needs, which were reflected in the drawings, or the overstated needs reflected in section B. Since the panel discrepancy could have a significant impact on the ultimate cost to the government--CBI's own proposal reflects a \$43,691.65 difference in prices based on the drawings versus section B--the agency appropriately decided to seek revised prices based on a correct panel count.

Of course, the appropriate action to correct an erroneous award will vary depending on all the circumstances. Here, we might agree that award to CBI was the appropriate action if it were possible to determine that HM's (and the other offerors') prices would be higher than CBI's under the

¹In its original protest, CBI also complained that revising specifications after the submission of proposals violated Federal Acquisition Regulation § 15.402(d), which provides that "an RFP shall not be used for information or planning purposes." Although the agency responded to this argument in its report, the protester did not respond in its comments, and the issue is therefore dismissed. Where an agency specifically addresses issues raised by the protester in its initial protest and the protester fails to rebut the agency response in its comments, we consider the issues to have been abandoned by the protester. Precision Echo, Inc., B-232532, Jan. 10, 1989, 89-1 CPD ¶ 22.

corrected panel count. However, the RFP did not provide for per-panel pricing, and we find nothing else in the RFP that would have permitted the agency to accurately determine HM's or other offerors' prices for the lower panel count without affording them an opportunity to revise their pricing. CBI has presented its own calculation showing that HM's price would be \$4,241 higher than CBI's under the corrected panel count. It is not clear, and CBI does not explain, how this number was calculated. It is clear, however, that CBI's conclusion that its price for the corrected panel count would be lower than HM's was based in part on adjustments to its offered items based on CBI's belief that HM's offered system did not meet certain specifications. For example, CBI's asserted \$4,241 price advantage is based in part on recalculating its own prices "using a [lower] fabric grade equal to that [allegedly] submitted by Herman Miller." Award to CBI could not be based on such post-BAFO adjustments in its offer.

CBI argues that HM's proposal did not meet certain specifications and thus should have been rejected. In light of the properly reopened competition, and the necessary reevaluation of proposals, this argument is academic and will not be considered.

The protest is denied.

James F. Hinchman
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General Counsel