



Comptroller General
of the United States

215311

Washington, D.C. 20548

Decision

Matter of: Monopole S.A., Inc.

File: B-254137

Date: November 4, 1993

James P. Duffy, III, Esq., for the protester.
Jack P. Janetatos, Esq., Baker & McKenzie, for Med Services,
an interested party.
Anita M. LeBlanc, Esq., and Cornelius J. Collins, Jr., Esq.,
Department of the Navy, for the agency.
Paula A. Williams, Esq., and Andrew T. Pogany, Esq., Office
of the General Counsel, GAO, participated in the preparation
of the decision.

DIGEST

1. Protest that awardee's proposal did not comply with the requirements of the request for proposals because the awardee listed the wrong address for its proposed approved source supplier of bread products is denied where the record shows that the awardee made a clerical error in typing the information on its proposal. Agency properly allowed awardee to correct this clerical error concerning its proposed approved source.
2. Submission or acceptance of a below-cost offer on a fixed-priced contract is legally unobjectionable where the agency has determined that the awardee is a responsible contractor.

DECISION

Monopole S.A., Inc. protests the award of a contract to Med Services, under request for proposals (RFP) No. N68171-93-R-0058, issued by the Department of the Navy, Naval Regional Contracting Center (NRCC), Italy, for quantities of fresh provisions.¹ Monopole contends that Med Services' proposal

¹The Navy made two awards under this RFP. Monopole was awarded a contract on the basis of its initial proposal to provide fresh fruits and vegetables for geographic Areas I, II, III, and IV and fresh eggs and bread products for Area III. Med Services' contract is to supply fresh eggs and bread products for Areas I, II, and IV.

did not comply with the RFP requirement regarding the use of approved sources and that the awardee submitted a below-cost offer.

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

The RFP, issued on May 10, 1993, contemplated the award of a fixed-priced requirements contract for a period of 1 year plus 2 option years to provide fresh fruits, vegetables, eggs, and bread products for the United States Sixth Fleet vessels and Military Sealift Command ships that might visit various French ports. Offerors were asked to submit prices only,² and the solicitation contemplated multiple awards on a lot basis if such awards would result in the lowest aggregate cost to the government. Offerors were also informed that award could be made on the basis of initial proposals without discussions.

Of relevance to this protest is the requirement in section C-1.1 of the RFP that eggs and bread products must be provided from a United States Government approved source. A list of currently approved sources was included in the solicitation as Attachment A. Offerors could choose a supplier from this list or submit alternate sources for approval by the United States Government sanitary inspector. In either event, offerors were required to furnish the name and address of their intended supplier for eggs and bread products in section B of their proposals.

The agency received four initial proposals, including those from Monopole and Med Services. The offers were evaluated, and NRCC determined that split awards would be made to Monopole and Med Services on the basis of their initial proposals. The award to Med Services of a fixed-priced contract to supply bread products is the focus of this protest.

The crux of Monopole's protest is that Med Services failed to comply with the RFP's requirement to provide the correct name and address of the approved source the firm intended to use for bread products. Monopole maintains that while Med Services listed Harry's S.A.--one of two approved sources of bread products--as its supplier, the firm furnished an incorrect address for Harry's.

²The RFP did not request submission of technical proposals nor contained technical criteria for the comparative evaluation of proposals.

The awardee explains that in preparing its proposal, it mistakenly typed the wrong address for its proposed bread supplier, Harry's. Med Services states that its typist erroneously typed the address of the vendor immediately preceding Harry's on the Navy's list of approved sources. The awardee argues that this mistake was a clerical error which may be corrected or waived by the agency as a minor informality. The agency determined that the incorrect address was an apparent clerical error and allowed Med Services to correct the mistake after award.

We agree with the agency that Med Services' listing of an incorrect address for Harry's, an approved supplier of bread products, was a minor clerical error. Our review of Med Services' proposal and the Navy's list of approved sources, Attachment A, confirms that the address in Med Services' proposal was, in fact, the same as the address of the vendor (an approved source for cheese) which immediately precedes the name and address for Harry's. Had the Navy realized the existence of this minor clerical error prior to award, clarification of such a minor irregularity to correct the discrepancy would not have constituted discussions requiring discussions with other offerors in the competitive range. See Southern Sys., Inc., B-224533, Feb. 25, 1987, 87-1 CPD ¶ 214. We therefore conclude that Med Services' inadvertent use of an incorrect address for its supplier of bread products is a matter of form rather than substance and could be corrected after award.

The protester next questions the awardee's prices for bread products on the ground that the firm had not contacted Harry's nor obtained a written quotation from Harry's prior to the submission of its offer. In this regard, Monopole contends that Med Services' prices for bread products are significantly below the costs of Harry's, its listed supplier.³ Since Med Services had not contacted its listed supplier and the firm's prices were significantly lower than its listed supplier, Monopole asserts that Med Services never intended to use an approved source to supply the bread products.

While Monopole argues that Med Services submitted an unreasonably low price, and further alleges that Med Services is incapable of supplying bread products from an approved source at those prices, these are matters concerning the awardee's responsibility which our Office will not review absent a showing of possible fraud or bad faith on the part of procurement officials, or that

³For example, Harry's price per pound, in French francs, for American bread is 6.11; Med Services' price for this item is 4.07.

definitive responsibility criteria in the solicitation may have been misapplied, 4 C.F.R. § 21.3(m)(5) (1993); MEDLINC Transcriptions--Recon., B-246896.2, Feb. 14, 1992, 92-1 CPD ¶ 192. Monopole has made no such showing.

To the extent Monopole is simply protesting that Med Services' prices are unreasonably low or unrealistic, the allegation is not for consideration as there is no legal basis to object to the submission or acceptance of a below-cost offer on a fixed-priced contract. See M.B. Shaw Co.--Recon., B-247247.2, Feb. 12, 1992, 92-1 CPD ¶ 182; Star Brite Constr. Co., Inc., B-244122, Aug. 20, 1991, 91-2 CPD ¶ 173. Since price was the only evaluation factor for award, the agency necessarily considered whether Med Services could perform at its offered price. In making award to Med Services, NRCC has determined that Med Services is a responsible contractor that can perform at its offered price. Id. Furthermore, contrary to the protester's assertion, there is no requirement that an offeror obtain a written quotation from its supplier prior to submitting an offer. We dismiss this portion of Monopole's protest.

The protest is denied in part and dismissed in part.



JFH James F. Hinchman
General Counsel