



Comptroller General
of the United States

Washington, D.C. 20548

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Decision

Matter of: Amstar Communications
File: B-255179; B-255179.2
Date: February 7, 1994

Monroe J. Taranto for the protester.
Michael W. Clancy, Esq., and Kevin P. Mullen, Esq., Pettit & Martin, for GTE Government Services Corporation, an interested party.
Emily Hewitt, Esq., and Pamela J. Reiner, Esq., General Services Administration, 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

1. Protester's contention that agency improperly rejected its proposal for local telecommunications equipment and services as technically unacceptable is denied where the record reasonably supports the agency's conclusion that, despite several rounds of discussions, the protester failed to demonstrate in its proposal that it would provide an integrated services digital network, a mandatory solicitation requirement.
2. Allegation that agency unreasonably required protester to demonstrate compliance with allegedly "unfinalized" industry standards and recommendations contained in request for proposals (RFP) for telecommunications equipment and services is dismissed as untimely where the RFP clearly set forth the standards and recommendations and agency stressed the importance of demonstrating compliance during several rounds of discussions, and allegation was not raised until 3 years after the closing date for receipt of initial proposals, and nearly 7 months after the protester submitted its best and final offer.
3. Technically unacceptable proposal cannot be considered for award regardless of any potential cost savings to the government.

DECISION

Amstar Communications protests the rejection of its offer as technically unacceptable under request for proposals (RFP) No. KEL-TJ-90-0002, issued by the General Services Administration (GSA) to provide digital voice and data local telecommunications services and equipment. Amstar contends that GSA improperly evaluated its proposal. In a supplemental protest, Amstar also challenges the award to GTE Government Services Corporation.

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

BACKGROUND

The RFP is one of several solicitations the agency issued between January 1990 and January 1991, under GSA's Aggregated Switch Procurement (ASP) program. The ASP program is intended to provide state-of-the-art integrated digital voice and data local telecommunications services and equipment to locations within 10 distinct geographic regions of the 48 contiguous states. The RFP at issue here covers the Pacific I zone, consisting of the states of California and Nevada.

The RFP contemplated the award of an indefinite-quantity, indefinite-delivery, fixed-price contract with an economic price adjustment, for a 7-year basic period with up to three 1-year options. Offerors were required to submit proposals organized in four separate volumes. Volume III was to include technical literature and documentation associated with each piece of equipment offered in sufficient detail to allow an in-depth technical analysis of the system hardware and software features, and an assessment of the equipment's suitability to meet the RFP's requirements.

Section M of the RFP stated that in evaluating proposals, the agency would consider the following four technical factors: a) technical response to system requirements; b) management services; c) maintenance; and d) technical plans and procedures. The RFP stated that factor (a) was approximately twice as important as factor (b), and that factors (b) through (d) were listed in descending order of importance. Within each technical evaluation factor, the RFP also listed several subfactors.¹ As for price, the RFP permitted offerors to propose one or more pricing plans

¹Factor (a) contained 29 subfactors; factor (b) contained 18 subfactors; factor (c) contained 6 subfactors; and factor (d) contained 10 subfactors. Each of these subfactors was to be numerically rated and was of equal importance.

(e.g., straight purchase plan, several lease to ownership plans, lease with option to purchase plans, and a straight lease plan). In evaluating price, GSA was to use the pricing plan which resulted in the lowest overall cost to the government. The RFP stated that technical aspects were considered more important than price. Award was to be made to the responsible offeror whose proposal satisfied all RFP requirements and was considered most advantageous to the government.

Five offerors submitted proposals by the time set on November 1, 1990, for receipt of initial proposals.² One of those firms subsequently withdrew from the procurement, leaving four offerors, including the protester and the awardee, in the competition. A technical evaluation team (TET) rated initial technical proposals by assigning numerical point scores to each evaluation subfactor listed in the RFP based on a scale of from 0 to 4 weighted points. Under the TET evaluation scheme, a subfactor assigned a raw score of "0" was considered "unacceptable"; a score of "1" was considered weak; and a score of "2" was considered minimally acceptable. The maximum possible score a proposal could receive was 995 weighted points. Prices were evaluated separately.

The TET concluded that the proposals submitted by two offerors were unacceptable but capable of being made acceptable through discussions; the TET found the other two proposals, including the protester's, unacceptable. Based on the TET's report, however, the contracting officer concluded that a comparison between the proposals considered capable of becoming acceptable and the protester's proposal suggested a comparable level of acceptability. The contracting officer believed that the major deficiency the TET found in the protester's proposal, concerning a requirement referred to as an "integrated services digital network" (ISDN), may have been the result of conflicting or inadequate information, and that such deficiency could be resolved through discussions. Accordingly, the contracting officer included the protester's proposal, along with the two proposals found capable of becoming acceptable, within the competitive range.

Due to the highly technical nature of the procurement, GSA held several rounds of written, oral, and face-to-face discussions with all three competitive range offerors

²The protester submitted a proposal under the name Communications Systems Technology, Inc., CSTI Service Company, and subsequently changed its name to Amstar Communications. For clarity, we refer to the protester under its current name, Amstar, throughout this decision.

between August 14, 1992, and April 1993. GSA afforded these offerors several opportunities to respond to discussion items concerning their offers and submit changes to their proposals. GSA then requested best and final offers (BAFO) from all three.

The TET evaluated BAFOs with the following final results:

<u>Offeror</u>	<u>Total Point Score</u>	<u>Overall Rating</u>
GTE	479.75	Acceptable
B	475.50	Acceptable
Amstar	450.00	Unacceptable

Under several subfactors, the TET awarded less than 2 points to Amstar's BAFO, rendering Amstar's proposal unacceptable overall. Specifically, the TET concluded that, among other things, Amstar had failed to demonstrate that it could provide an acceptable ISDN. Based on these results, the contracting officer determined that GTE's proposal satisfied all RFP requirements and was the most advantageous to the government. By letter dated September 24, the contracting officer notified Amstar that award had been made to GTE on that date, and that Amstar's proposal was unacceptable for failure to satisfy the ISDN requirement. This protest to our Office followed.

PROTESTER'S POSITION

Central to its protest is Amstar's position, which it maintained throughout this procurement, that although the applicable ISDN industry standards and recommendations are better defined today than they were 4 years ago when GSA issued the solicitation, those standards are still not finalized. Amstar contends that notwithstanding the status of the applicable standards, it provided sufficient information with its proposal to demonstrate that it could provide an acceptable, compliant ISDN within the time frame specified in the RFP. The protester argues that given the evolving nature of the ISDN standards and telecommunications environment, GSA unreasonably rejected its proposal as unacceptable. In its supplemental protest, the protester argues that the agency should have rejected the awardee's proposal as well because the uncertainties surrounding the industry standards are equally applicable to GTE's system. Amstar also alleges that award to GTE at a higher total price than Amstar proposed was improper.

DISCUSSION

The evaluation of technical proposals is the function of the contracting agency; our review of an allegedly improper evaluation is limited to determining whether the evaluation was reasonable and consistent with the stated evaluation

criteria, CORVAC, Inc., B-244766, Nov, 13, 1991, 91-2 CPD ¶ 454. Mere disagreement with the agency's evaluation does not render the evaluation unreasonable, particularly, where as here, sophisticated technology is being acquired, friton Marine Constr. Corp., B-250856, Feb, 23, 1993, 93-1 CPD ¶ 171. We find that the record reasonably supports the TET's evaluation of Amstar's proposal and the award decision.

The major deficiency the TET found in the protester's proposal concerns Amstar's failure to comply with the following RFP requirement identified in the RFP as a "SYSTEM MANDATORY OPTION":

"C.13.10 INTEGRATED SERVICES DIGITAL NETWORK (ISDN)

"The [c]ontractor shall follow the North American adaptation of applicable [International Telegraph and Telephone Consultative Committee (CCITT)] I and Q series ([American National Standards Institute (ANSI)] T1.60X series) recommendations for the provision of ISDN. All switching subsystems hardware and software provided shall be 'ISDN-ready'. . . . 'ISDN-ready' means all software, common control equipment and multi-line modules shall conform to ISDN standards or latest ISDN recommendations for which products are commercially available. . . . The [c]ontractor shall conform to the CCITT I.100, I.200, I.300, and I.400 series, which reflect recommendations for the [ISDN] concept, service, network, and network interface aspects of the system. . . . [The system] shall also have access to both Basic Rate Interface (BRI) and Primary Rate Interface (PRI). The ISDN Data Link Layer, Layer 2 shall conform to CCITT recommendation I.441 (Q.921). The ISDN Network Layer, Layer 3 shall conform to CCITT recommendations I.450, I.451 and I.452 (Q.930, Q.931 and Q.932)." [Emphasis added.]

Section C.3 of the RFP stated that the term "mandatory option(s)" meant a mandatory specification, representing the minimum functions required for a proposal to be considered acceptable. As relevant here, the quoted clause required offerors to provide an ISDN-BRI solution which conformed to specified CCITT recommendations and ANSI standards.³

³Sections C.13.10.1 described the BRI requirement, and section C.13.15 described the PRI requirement. Attachment J.10 in Section J of the RFP describes the ISDN requirement in further detail. In recognition of the fact that ISDN-BRI

To assist the agency in evaluating proposals with respect to the ISDN requirement, offerors were required by section L.20(b) of the RFP to describe in detail the hardware and software required to provide all mandatory options at time of award. The detailed description of ISDN was to include the guidelines and features described in the CCITT series recommendations for ISDN referenced in section C.13.10 of the RFP quoted above and incorporated into other sections of the RFP. Offerors were required to provide the results of any ISDN field trials conducted and their application to CCITT I and Q series recommendations. The RFP stated that at a minimum, offerors were required to provide the results of ISDN-BRI field tests and services provided, including a detailed description of equipment configuration.

Mandatory options, including the ISDN requirement, were to be evaluated under factor (a), the most important evaluation factor. Specifically, section M.4.1(c) of the solicitation included the following subfactor under factor (a):

"The appropriateness and demonstrated results of the [ISDN] field test; the degree to which offerors' current system can meet CCITT I and Q [s]eries recommendations without major modifications including adequacy of required hardware and software proposed; the feasibility of the proposed implementation schedule and provisions of selected services at each location; the demonstrated approach and plan for providing ISDN under the contemplated contract; and the flexibility of offered system(s) to adjust to evolving CCITT standards."

Amstar's response to the ISDN-BRI requirement consisted of generalized statements that the proposed equipment "will be designed" and "will conform" to the ISDN standards, and that the system will require upgrades in the future to new ISDN standards. Amstar also failed to provide the required detailed information in Volume III of its proposal. The TET found that Amstar's vague, generalized responses were insufficient and its proposal incomplete.

By letter dated August 14, 1992, GSA submitted written discussion questions to the protester specifically raising, among other things, its failure to fully address in its initial proposal the ISDN-BRI requirement. Although GSA indicated in its letter that it was not then seeking revised

was then relatively new, GSA issued amendment No. 14 to the RFP providing that ISDN-BRI need not be currently available, but that offerors must provide the requisite ISDN-BRI services within 21 months after award.

proposals, it instructed Amstar to "provide a complete, detailed, but succinct response" and an explanation for any proposed changes to its proposal. Each discussion item contained a direct quotation of the relevant evaluation subfactor at issue; referenced the applicable RFP provision and deficient proposal section; identified the clarification question previously submitted to Amstar concerning the same issue; and included the discussion item reflecting the specific TET concerns.

The discussion item addressing the ISDN requirement stated that the protester had failed to provide a detailed description of the hardware, software, and other equipment as required by the RFP, or a description of any changes or replacement items to its proposal. The discussion item also stated that Amstar had not committed to providing the ISDN-BRI within 21 months after award as required by the RFP; that Amstar's proposed equipment would not support ISDN-BRI; and that, contrary to the specific RFP requirements, Amstar had failed to provide any field test results for ISDN-BRI.

In its response, Amstar stated that the required ISDN-BRI would be provided via a "proprietary protocol" called "PROTIMS," and that "[s]upporting documentation (Field Test Report) will be provided with [Amstar's] revised proposal." The protester failed to specifically address whether or how it would provide ISDN-BRI within the required time frame. On December 18, 1992, GSA submitted further discussion questions to Amstar, again raising the ISDN-BRI requirement. This time GSA specifically asked:

"Is it your intent to offer ISDN-BRI (CCITT) as required by RFP section C.13.10? If yes, then please amend your revised proposal to reflect this and include supporting documentation. If no, please clarify and also explain why you are offering two data adapters"

"Please provide the RFP required supporting technical literature on ISDN-BRI and PRI."

In its response to this discussion item, Amstar reiterated that its solution is proprietary and would only offer "ISDN-BRI functionally." Amstar further indicated that since applicable industry standards for BRI did not exist, it could only state that its signaling pattern is "ISDN-like" and offers only "ISDN-like" features and functions.

During a telephonic conference held on January 5, 1993, GSA informed Amstar that its proposed "ISDN-like" solution was unacceptable. The notes from that conference reflect that GSA continued to advise Amstar that it had not demonstrated that it could provide a compliant ISDN-BRI; that the firm

had not provided any field test results as required by the RFP; that Amstar had provided no detailed narrative explaining how it proposed to comply with the ISDN-BRI requirement; and that the protester had submitted no technical literature as specifically required by the RFP.

Although Amstar was afforded another opportunity to revise its proposal, the TET concluded that Amstar's proposal remained unacceptable. The TET's conclusion was primarily based on Amstar's failure to convince the evaluators that it could provide the required ISDN-BRI within the time frame established in the RFP. The TET's report states that despite the several rounds of discussions with Amstar concerning this issue,

"[n]othing was received from [Amstar] that would indicate in any fashion that [Amstar] was moving toward or even planning to provide a compliant BRI within the required time frames. ISDN-BRI test results provided consisted of information relative to their proprietary PROTIMS protocol . . . which is not a CCITT/ANSI standard."

Consequently, the TET assigned Amstar's proposal a score of "0" points under the relevant subfactor, and recommended that Amstar's proposal be rejected as unacceptable.

Notwithstanding the TET's recommendation, the contracting officer still believed that the ISDN-BRI issue could be resolved with further discussions, and retained Amstar's proposal within the competitive range. In an effort to afford the protester another opportunity to demonstrate compliance with the ISDN-BRI requirement, GSA held further written discussions with Amstar on April 5 and April 13, and requested a BAFO from the firm.

The TET found that, despite GSA's specific questions during discussions concerning the ISDN requirement, and despite GSA's emphasis on the importance of compliance with the applicable industry standards and recommendations, Amstar essentially continued to maintain its position that applicable industry standards did not exist or were not final, and that once the applicable standards were finalized the equipment it proposed would be upgraded to comply with the ISDN-BRI requirement. In sum, the TET concluded that Amstar's BAFO did not overcome its doubts that the protester could, in fact, provide the required ISDN-BRI and rated its proposal unacceptable.

Based on our review of the voluminous documentation in this procurement which spanned nearly 4 years, we find that the record reasonably supports the TET's conclusion that Amstar's proposal was unacceptable. The RFP clearly set out

the ISDN-BRI requirement and required offerors to provide a detailed narrative and supporting documentation explaining how they proposed to satisfy that requirement. Although the agency could have properly excluded Amstar's proposal from further consideration based on the results of the initial evaluation, the contracting officer believed that the ISDN compliance issue could be resolved with discussions, and retained Amstar's proposal within the competitive range. Despite the numerous rounds of discussions that followed that determination, however, Amstar failed to submit sufficient information with its proposal to demonstrate how and whether it intended to satisfy the ISDN-BRI requirement.

When viewed in a light most favorable to the protester, the various communications between Amstar and GSA which ostensibly evidence Amstar's commitment to providing a compliant ISDN-BRI are essentially vague, generalized statements which merely parrot the RFP requirement. For example, in response to one of the agency's many requests for a firm commitment to provide the required ISDN-BRI, Amstar submitted a letter from the manufacturer of the proposed system. That letter states that the manufacturer is a "leader in the field of switch manufacture," and that it "will be in compliance with finalized [ISDN-BRI] [r]ecommendations as applicable . . . within the time established [in the RFP] for compliance and conformance." Such general statements, particularly where GSA made it clear throughout this procurement that it sought unambiguous, detailed explanations of how Amstar intended to comply with the mandatory ISDN-BRI requirement, reasonably raised doubts in the evaluators' minds that Amstar either did not understand the requirement or would not provide a compliant ISDN-BRI within the required time frame. Further, the fact that Amstar did not provide any documentation of field test results, despite numerous requests to do so, reasonably led the TET to conclude that Amstar was not even moving towards a goal of developing a compliant system.

The fact that the manufacturer of the equipment Amstar proposed may be "a leader in the field" does not change our conclusion. Such self-serving statements are insufficient to overcome the TET's concerns with respect to the ISDN-BRI issue. No matter how competent Amstar or its manufacturer may be in the telecommunications field, the evaluation of technical proposals must be based on information submitted in or with the proposal. Watson Indus., Inc., B-238309, Apr. 5, 1990, 90-1 CPD ¶ 371. An offeror has an obligation to submit a proposal that fully demonstrates the technical acceptability of its offered product. Compressed Air Equip., B-246208, Feb. 24, 1992, 92-1 CPD ¶ 220. Where an offeror fails to clearly set forth in its proposal the technical information necessary to convince the procuring

agency that its proposal meets the agency's minimum needs, the agency may reasonably find the proposal technically unacceptable. Id.

Here, Amstar had ample opportunity during the numerous rounds of discussions, proposal revision, and in its BAFO to address the agency's concerns and show the TET how it intended to satisfy the ISDN-BRI requirement; it failed to do so. Although the protester incorporated additional information in its BAFO addressing the ISDN-BRI requirement, Amstar's generalized statements that it would comply with the requirement at some future date, when the industry standards are finalized, reasonably led the TET to conclude that either Amstar did not understand the requirement, or that Amstar would be incapable of providing a compliant ISDN-BRI. The fact that Amstar did not make a firm commitment to provide a compliant ISDN-BRI system within the required time frame further supports the TET's conclusion. The TET thus reasonably rated Amstar's proposal "0" (unacceptable) under the applicable subfactor within factor (a) "technical response to system requirements," the most important of all evaluation factors. Based on that result, the contracting officer properly found Amstar's proposal overall technically unacceptable.

The protester also argues, as it maintained throughout the procurement, that since the telecommunications industry is in a state of flux, GSA unreasonably required Amstar to comply with industry standards that were not finalized. Amstar similarly alleges that the award to GTE was improper because the uncertainties surrounding the industry standards and recommendations referenced in the RFP are equally applicable to GTE. In this regard, we understand Amstar to be arguing that the agency could not properly evaluate whether GTE's proposed equipment complied with those standards and recommendations due to the allegedly unsettled status of the standards and recommendations. These allegations are untimely.

Our Bid Protest Regulations require that protests based upon alleged solicitation improprieties which are apparent from the face of the solicitation be filed prior to the time set for receipt of proposals. 4 C.F.R. § 21.2(a)(1) (1993); Professional Performance Dev. Group, Inc., B-252322, June 9, 1993, 93-1 CPD ¶ 447. This rule includes challenges to alleged improprieties which did not exist in the initial solicitation but were subsequently incorporated into the solicitation. In such cases, the solicitation must be protested not later than the next closing time set for receipt of proposals following the incorporation. 4 C.F.R. § 21.2(a)(1); Servicio Int'l de Proteccion Baker, S.A., B-241670, Jan. 22, 1991, 91-1 CPD ¶ 64.

The RFP clearly required offerors to propose an ISDN-BRI fully compliant with CCITT recommendations and ANSI standards incorporated in various sections of the RFP; the agency repeatedly stressed the importance of demonstrating compliance with those recommendations and standards during discussions with Amstar; and GSA repeatedly pointed out its concerns in this regard. In fact, GSA states that despite Amstar's insistence during discussions that no standards existed, the agency produced for Amstar's perusal copies of two applicable standards referenced in the RFP with which GSA expected offerors to comply. If Amstar believed that GSA unreasonably required the firm to comply with "unfinalized" standards and recommendations contained in the RFP, or if it believed that the agency could not properly evaluate any offeror's compliance with those standards, Amstar was required to raise those objections, at the latest, before it submitted its BAFO in April 1993. These allegations, raised 3 years after Amstar submitted its initial proposal, and nearly 7 months after Amstar submitted its BAFO, are untimely and will not be considered.

To the extent that Amstar challenges the award to GTE on the basis that Amstar proposed a lower price, it is well settled that a technically unacceptable offer cannot be considered for award, notwithstanding its low price. Color Ad Signs and Displays, B-241544, Feb. 12, 1991, 91-1 CPD ¶ 154. Since the agency reasonably found Amstar's proposal technically unacceptable, GSA could not properly consider Amstar's proposal for award.

The protest is denied in part and dismissed in part.


 for Robert P. Murphy
 Acting General Counsel