



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: GTE Customer Networks, Inc.

File: B-254692.2

Date: February 24, 1994

George W. Stiffler, Esq., Bastianelli, Brown & Touhey, for the protester,
Victor G. Klingelhofer, Esq., Cohen & White, for the Fortran Corporation, an interested party.
George Conril Brown, Esq., Valerie G. Preiss, Esq., and Margaret Moore Caine, Esq., Securities and Exchange Commission, for the agency.
Aldo A. Benejam, Esq., and Ralph O. White, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Allegation that awardee's offer is unbalanced is denied where record does not show that the awardee's offer contained overstated prices and there thus is no basis to conclude that the offer is mathematically unbalanced.
2. Allegation that agency should have evaluated price on the basis of present value is denied where solicitation did not provide for the evaluation of offerors' prices for future years on the basis of present value; instead, solicitation stated that the agency would evaluate price by adding the price for each option period to the price for the basic requirement, and the agency properly evaluated prices in accordance with the stated evaluation scheme.
3. Contention that agency could not reasonably determine whether awardee would provide equipment called for by solicitation amendment because the amendment did not require offerors to submit technical proposals establishing that they would provide compliant equipment is untimely where it is not raised until after award. Whether awardee actually will comply with the requirement is a matter of contract administration for consideration by the agency.

DECISION

GTE Customer Networks, Inc. protests the award of a contract to the Fortran Corporation under request for proposals (RFP) No. SECHQ1-93-R-0026, issued by the Securities and Exchange Commission (SEC) for equipment, maintenance, and support

services necessary for the installation and operation of a private automatic branch exchange (PABX) system and associated equipment. The protester alleges that Fortran submitted a materially unbalanced offer and failed to comply with the RFP's technical requirements.

We deny the protest.

BACKGROUND

The RFP, issued on July 30, 1993, contemplated the award of a fixed-price contract for the required equipment and services for a base period and up to four 1-year option periods. For the base period, section B required offerors to submit separate prices for the PABX system including a 1-year warranty (contract line item number (CLIN) 001), installation of the system (CLIN 002), and various customer premises equipment (CPE) with a 1-year warranty (CLIN 003). The individual CPE items were listed as CLIN 003 subline items A003A through A003F.¹ Amendment No. 0005 to the RFP called for additional CPE--digital recorders/announcers and digital telephones--designated as CLINs B002A and CLIN B002B, respectively. Each of the 4 options called for 12 months of post-warranty maintenance services for the PABX system and each included separately listed CPE; a space was provided next to each subline item for offerors to insert prices for the post-warranty maintenance.² Amendment No. 0006 added a fifth option for a "remote module subsystem" for SEC's operations center in Alexandria, Virginia, including installation, at a "not-to-exceed" price of \$290,000.

Offerors were required to submit separate technical and business (price) proposals. Section M of the RFP listed the following technical evaluation criteria in descending order

¹These subline items were: Integrated Voice Messaging System (A003A); Automated Attendant and Interactive Voice Response System (A003B); Digital Recorders/Announcers (A003C); Comprehensive Station Message Detail Recording and Processing (A003D); Digital Telephones (A003E); and Maintenance and Administration via a Graphical User Interface (A003F).

²Section C.1.1.10 of the RFP required that all equipment provided under the RFP be covered under a warranty for all preventive and corrective maintenance to be performed when needed at no additional cost to the SEC. Upon expiration of the warranty, the RFP stated that all maintenance services "shall be performed [at the SEC's option] at the fixed prices as listed in the appropriate Section B pricing schedules."

of importance: equipment, understanding of requirements, maintenance services, installation, training, instructions for user maintenance, past performance, management, and the remote module subsystem. The RFP stated that technical factors would be considered significantly more important than price, and that in evaluating offers, the government would add the total price for all options to the total price for the basic requirement. Award was to be made to the responsible offeror whose offer conformed to the solicitation and was most advantageous to the government, price and other factors considered.

Five offerors, including the protester and the awardee, responded by the August 30 due date for initial proposals. After the evaluation of initial proposals, the agency held discussions with all competitive range offerors, including GTE and Fortran, and requested best and final offers (BAFO). Fortran's BAFO received the highest technical score and offered the lowest price. As relevant here, Fortran submitted prices for CLINs 001, 002, and the CPE--i.e., CLINs A003A through A003F, and B002A and B002B. For all the option periods, however, Fortran inserted "\$0.00" in the spaces provided next to each CPE for the post-warranty maintenance services.

Based on the results of the final evaluation, the contracting officer determined that Fortran's proposal was most advantageous to the government, and awarded the contract to that firm on September 30. The SEC debriefed GTE on October 7. This protest to our Office followed.³

PROTESTER'S CONTENTIONS

The protester argues that award was improper because Fortran failed to submit separate prices for the post-warranty maintenance services covered by the option periods, rendering its offer materially unbalanced. GTE argues that had the SEC used present value analysis to evaluate price, the agency would have realized that GTE's total price was lower than Fortran's. The protester also contends that Fortran's proposal failed to meet the requirement for a remote module subsystem.

³Pursuant to 31 U.S.C. § 3553(d)(2)(A)(ii) (1988), the head of the contracting activity determined that urgent and compelling circumstances significantly affecting the interests of the United States would not permit awaiting our decision and authorized contract performance notwithstanding the protest.

DISCUSSION

Our review of the record does not support GTE's argument that Fortran submitted a materially unbalanced offer. There are two aspects to unbalancing: mathematical unbalancing--where an offer is based on nominal prices for some of the work and overstated prices for other work, and material unbalancing--where the offer is mathematically unbalanced and there is reasonable doubt that award based on the offer will result in the lowest overall cost to the government. See Federal Acquisition Regulation § 15.814; Food Servs., Inc., B-243173; B-243173.2, July 10, 1991, 91-2 CPD ¶ 39; All Star Maint., Inc., B-231618, Aug. 25, 1983, 88-2 CPD ¶ 181.

Although Fortran offered post-warranty maintenance services during each of the option periods at no charge, there is no showing that Fortran's prices for the equipment it offered are overstated. For example, BAFO prices for the basic equipment requirement ranged from \$1,381,587 to \$1,844,771; Fortran's price for the basic requirement (\$1,544,610) was only slightly higher than GTE's price, and comparable to the prices submitted by the other three offerors.

Thus, even if Fortran's offer is considered to contain "nominal" prices because it offered to provide the post-warranty maintenance services at no charge during the option periods, it is not mathematically unbalanced because there is no evidence in the record of any overstated prices. See Ampex Corp., B-243855.3, Dec. 9, 1991, 91-2 CPD ¶ 525. Since we conclude that Fortran's offer is not mathematically unbalanced, we need not consider GTE's contention that Fortran's offer is materially unbalanced. C.F.S. Air Cargo, Inc., B-240726.5, June 6, 1991, 91-1 CPD ¶ 539.

The protester next contends that the agency should have used a present value analysis to evaluate prices, and that had it done so the SEC would have found that GTE's 5-year price is lower than Fortran's. The solicitation did not provide for the calculation of proposed prices on a present value basis. Rather, section M.3 of the RFP stated that "the [g]overnment will evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement." The agency did just that, and awarded the maximum number of points available for price to Fortran's overall lowest-priced proposal.⁴ Since agencies are required to evaluate proposals on the basis set forth in

⁴In its report, the agency provided detailed calculations to show that even if it had considered prices using GTE's analytical present value approach, GTE's offer is higher priced overall than Fortran's offer.

the solicitation, Canaveral Maritime, Inc., B-231857.4; B-231857.5, May 22, 1989, 89-1 CPD ¶ 484, the SEC's evaluation of proposals on the basis of total price was proper.⁵

GTE also contends "on information and belief" that Fortran cannot meet the requirement in the RFP for a remote subsystem. The protester argues that the agency could not reasonably determine whether Fortran could comply with this requirement since offerors were not required to submit a separate technical proposal in response to the amendment.

In a letter dated September 22, 1993, issued after receipt of initial proposals, the SEC circulated to all offerors a proposed amendment to the solicitation calling for a remote module subsystem. The letter stated that the SEC would purchase the subsystem, including installation, on "mutually agreeable terms and conditions to be negotiated in accordance with the changes provisions of the contract after exercise of the option. Price not to exceed \$290,000." The letter explained that the option was to be evaluated under section M of the RFP as a new subcriterion; that all offerors indicating a willingness to accept exercise of the option would receive an equivalent credit in the technical evaluation; and that \$290,000 would be added to their prices.

The agency explains that offerors were not required to submit separate technical proposals for this item because it believed that any offeror that submitted a technically acceptable initial proposal should have no difficulty in providing the required subsystem. The letter requested that offerors indicate concurrence with the proposed amendment by transmitting a facsimile notice to the SEC. The following day, the protester transmitted to the SEC a one-sentence letter signed by the protester's district sales manager stating that "GTE concurs in the [SEC's] issuing amendment 06." On September 23, the agency issued the amendment, as promised, calling for the remote module subsystem and essentially repeating the language contained in the SEC's September 22 letter. The agency received BAFOs

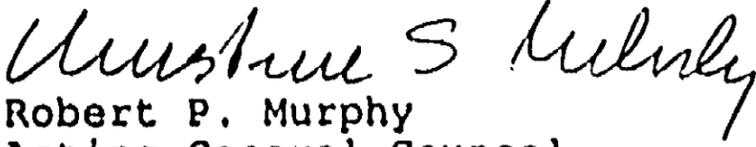
⁵To the extent that GTE objects to the RFP's stated price evaluation scheme, its protest is untimely. Our Bid Protest Regulations require that protests based upon alleged improprieties in a solicitation which are apparent prior to the closing date for receipt of initial proposals must be filed prior to the closing time set for receipt of initial proposals. 4 C.F.R. § 21.2(a)(1) (1993). Since GTE filed its protest after the closing date for receipt of initial proposals, its protest is untimely. See Contract Servs., Inc., B-232689, Jan. 23, 1989, 89-1 CPD ¶ 54.

on September 24, and all offerors indicated their willingness to provide the required remote subsystem.

GTE's contention that the agency could not reasonably evaluate Fortran's proposal with respect to the subsystem requirement is untimely. The SEC's September 23 letter advised all offerors of the proposed amendment, stated that no technical proposals were required, and specifically requested comments or concurrence with the proposed amendment. All offerors, including GTE, expressly agreed to the terms of the amendment, submitted BAFOs, and the evaluation documents show that all offerors were given the promised technical evaluation credit. The solicitation required the agency to do nothing more.

If GTE believed that the agency should have required revised technical proposals or additional information in order to evaluate compliance with the subsystem requirement, it should have raised its objections prior to the closing date for receipt of BAFOs. 4 C.F.R. § 21.2(a)(1); NASCO Aircraft Brake, Inc., B-237860, Mar. 26, 1990, 90-1 CPD ¶ 330 (alleged improprieties which did not exist in the initial solicitation but which are subsequently incorporated into the solicitation must be protested no later than the next closing date for receipt of proposals following the incorporation). Since GTE expressly concurred with the SEC's issuance of the amendment, and waited until after award to raise its objection, this protest basis is untimely and will not be considered. To the extent that GTE argues that Fortran cannot comply with the subsystem requirement, whether an awardee will meet its contractual obligations is a matter of contract administration which our Office will not review. See Ridge, Inc., 65 Comp. Gen. 663 (1986), 86-1 CPD ¶ 583.

The protest is denied.


 for Robert P. Murphy
 Acting General Counsel