



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

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Decision

Matter of: Scott & Sons Maintenance, Inc.
File: B-255328.2
Date: March 14, 1994

Alex D. Tomaszczuk, Esq., Devon E. Hewitt, Esq., and Darryl G. McCallum, Esq., Shaw, Pittman, Potts & Trowbridge, for the protester.
Michael Trovarelli, Esq., and Sandra L. Guydon, Esq., Defense Logistics Agency, for the agency.
Glenn G. Wolcott, Esq., and John M. Melody, Esq., Office of the General, GAO, participated in the preparation of the decision.

DIGEST

Protest that awardee's proposal should have been rejected because it offered staffing levels below the government's estimate is denied where all three competitive range offerors, including protester, proposed similar staffing levels, confirmed during discussions that they could perform with their proposed staffing, and left their staffing at the same levels in their best and final offers; agency reasonably concluded that original estimate was too high.

DECISION

Scott & Sons Maintenance, Inc. (SSMI) protests the Defense Logistics Agency's award of a contract to Philadelphia Maintenance Company (PMC) under request for proposals (RFP) No. DLA-140-93-R-0006 for base maintenance services at the Defense Personnel Support Center (DPSC) in Philadelphia, Pennsylvania.

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

On May 24, 1993, DPSC issued this RFP seeking proposals to provide labor, equipment, materials, tools and supplies for various maintenance services at the DPSC facility in Philadelphia, Pennsylvania. The RFP was issued as a total set-aside for small disadvantaged business concerns, and contemplated award of a firm, fixed-price contract for a

base year and 3 option years.¹ The RFP required submission of technical and business proposals, stating that price and technical factors would be of equal importance in selecting the successful offeror.²

Under SSMI's contract for the preceding fiscal year, SSMI had negotiated a price of \$1,738,780 based on using approximately 66 staff years to perform the contract requirements. In preparing the solicitation for this procurement, the agency established a government estimate that essentially reflected SSMI's price and staffing level under this predecessor contract.³

On or before the June 30 closing date, proposals were submitted by four firms, including PMC and SSMI. Three of the proposals, including those of PMC and SSMI, were determined to be within the competitive range. Each of the competitive range proposals was based on the use of between 40 and 45 staff years. During discussions, the agency raised the matter of proposed staffing levels with each of the offerors. Each offeror confirmed that it understood the contract requirements and that it could perform the contract with the level of staffing it had proposed. Following discussions, BAFOs were requested and submitted. None of the offerors' BAFOs included any material changes to the proposed staffing levels. PMC's BAFO contained a revised management plan that more comprehensively addressed its proposed method of performing the contract tasks. SSMI's BAFO reiterated the firm's representation that it could successfully perform the contract using the proposed staffing level. Based on the discussions and BAFOs, the agency concluded that its initial staff year estimate was overstated.

¹SSMI had been the incumbent contractor for the 8 years preceding this procurement. Its prior contract was awarded non-competitively under the Small Business Administration's Section 8(a) small disadvantaged business program.

²The agency employed an adjectival rating system under which each technical factor was rated as "highly acceptable," "acceptable," "marginally acceptable," or "unacceptable."

³The scope of work and contract requirements were essentially the same under the preceding contract and the RFP here.

PMC's BAFO received an overall technical rating of "highly acceptable;" SSMI's BAFO received an overall technical rating of "acceptable."⁴ PMC's BAFO offered a total price of \$5,220,938; SSMI's BAFO offered a total price of \$5,506,217.⁵ Based on the fact that PMC's proposal received the highest technical rating and offered the lowest price, the agency selected PMC for award on September 28.

SSMI protests that PMC's proposed staffing level of between 40 and 45 staff years should have caused its proposal to be rejected "since [PMC's] proposed staffing was less than what the agency estimated was needed to successfully perform the contract." This argument is without merit. The agency's initial estimate was based on the 66 staff years negotiated by SSMI under the preceding contract. The agency changed its view, however, and concluded that the original estimate was too high, based on the fact that all three competitive range offerors, including SSMI, proposed the same 40 to 45 staff years; all three firms confirmed their understanding of the work and their proposed staffing during discussions; and all three firms retained the same staffing levels in their BAFOs. We find no basis for challenging the agency's conclusion. SSMI maintains that its performance as the incumbent explains its own reduced staffing from its prior contract levels, and that PMC lacks a similar basis for its staffing. However, given that SSMI's recently negotiated, noncompetitive incumbent contract was at a staffing level of 66 staff years, and the fact that all three competitive range offerors proposed the same 40 to 45 staff years under the current RFP, we think the agency reasonably concluded that the reduced staffing in SSMI's proposal more likely was due to competitive pressures rather than experience.⁶

SSMI also asserts that the solicitation contained an ambiguity. Specifically, SSMI complains that page 1 of the RFP stated that offerors must submit proposals for 4 option

⁴The overall technical rating for PMC's BAFO was based on ratings of "highly acceptable" for one evaluation factor and "acceptable" for all other factors. The overall technical rating for SSMI's BAFO was based on ratings of "marginally acceptable" for one evaluation factor and "acceptable" for all other factors. The third offeror's BAFO was rated "acceptable" under all factors.

⁵The third offeror's total price was \$6,239,454.

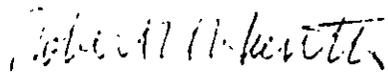
⁶Indeed, according to the agency, SSMI specifically stated during discussions that some aspects of its proposal were considerably more advantageous to the government than under the firm's prior contract due to "the competitive environment versus the single source environment."

years, while the RFP schedule in section B sought prices for only 3 option years. The agency responds that this inconsistency was raised during a pre-proposal conference, at which time the agency explained that it was a clerical error and that proposals were being sought for only 3 option years (as indicated in section B) because the facility had been proposed for closure.

Our Bid Protest Regulations provide that protests based upon alleged improprieties in the solicitation which are apparent prior to the time set for receipt of initial proposals must be filed prior to that time. 4 C.F.R. § 21.2(a)(1) (1993). Here, the alleged RFP ambiguity was clearly apparent to SSMI prior to the submission of initial proposals. Consequently, since SSMI did not raise this argument prior to the initial closing time, it is untimely and will not be considered.⁷

Finally, SSMI asserts that: (1) PMC should have been disqualified from the competition because it suggests one of its former employees "colluded" with PMC in preparing PMC's proposal; and (2) the agency's cost evaluation did not include consideration of the transition costs associated with changing contractors. The agency responds that it has found no evidence to support SSMI's allegation of collusion, and that the evaluation properly did not consider transition costs because the RFP did not provide for this consideration. In its comments responding to the agency's report, SSMI did not further address these issues. Accordingly, we consider SSMI to have abandoned them. See Arjay Elecs. Corp., B-243080, July 1, 1991, 91-2 CPD ¶ 3; The Big Picture, Co., Inc., B-220859.2, Mar. 4, 1986, 86-1 CPD ¶ 218.

The protest is denied in part and dismissed in part.



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⁷In any event, SSMI prepared and submitted a proposal for the base period and 3 option periods, as contemplated by the agency, and thus was not prejudiced.