

Matter of: Pulau Electronics Corporation
File: B-254443
Date: December 17, 1993

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Damon A. Martin, Esq., and Alan Arblaster, Naval Training Systems Center, for the agency.
Mary G. Curcio, Esq., and John Van Schaik, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Where solicitation requires that prices for lot VII be based on prices for lot VI and in its best and final offer (BAFO) protester based its lot VII prices on its lot III prices, and there is nothing in the BAFO to demonstrate that the error was a mistake, procuring agency properly refused to permit protester to change its lot VII prices as a clerical error.
2. Contracting Officer was not required to reopen discussions to permit protester to change its proposed prices where the government would not benefit from reopened discussions because the agency would not have received a better price as the result of discussions and there is no indication that there would be any other benefit to the government.

DECISION

Pulau Electronics Corporation protests the award of a contract to Reflectone Training Systems under request for proposals (RFP) No. N61339-93-R-0001, issued by the Naval Training Systems Center for contractor operation and maintenance (COMS) of simulators for EA-6B training devices. Pulau asserts that the Navy improperly failed to permit Pulau to correct a mistake in its offer.

We deny the protest.

The solicitation contemplated the award of a fixed-price contract for a 2-year base period (lots I and II), three 1 year options (lots III, IV, and V), one 8-month option (lot VI), and one 2-month "transition" option (lot VII). Each lot included line items. In the RFP pricing schedule, for all lots except lot VII, offerors were to insert a unit or monthly price and an extended price for each line item. For lot VII, the RFP instructed offerors to "See Note 2," which notified offerors that the unit price for lot VII was to be the same as the unit price for lot VI.

The RFP also required offerors to complete an evaluation worksheet in attachment No. 22. That attachment listed each lot with its line items and instructed offerors to fill in the line item prices and total lot prices used in the pricing schedule. The attachment advised offerors that the total price for all seven lots in the attachment would be the amount used to determine the lowest-priced offer and reiterated that lot VII prices "must be submitted using the previously established" lot VI prices.

The RFP provided that the contract would be awarded to the responsible offeror which submitted a technically acceptable offer which offered the lowest reasonable and realistic price and that the prices would be based on the attachment No. 22 worksheets. In addition, the solicitation included Defense Federal Acquisition Regulation Supplement (DFARS) § 252.219-7006, which provides an evaluation preference for small disadvantaged business (SDB) concerns. Under that preference, the agency was to add 10 percent to the offered price of any offeror that is not an SDB if any SDB firm submitted an offer.

The Navy received seven offers. The agency evaluated the offers, held discussions, and requested best and final offers (BAFO) from all seven firms. In the attachment No. 22 worksheet submitted with its initial offer, Pulau complied with the RFP requirement to base its prices for lot VII on the prices used in lot VI. In its BAFO worksheet, however, Pulau changed its lot VII prices so that they no longer were based on lot VI; rather, in Pulau's BAFO, its lot VII prices were based on its lot III prices.

The Navy notified Pulau that it suspected a mistake in the firm's BAFO because Pulau's lot VII prices were not based on its lot VI prices, as required by the RFP, but instead, apparently, were based on its lot III prices. In response, Pulau submitted a revised attachment No. 22 worksheet which included lot VII prices based on its lot VI prices.

In a second letter, the Navy informed Pulau that if it wished to seek correction of its alleged mistake, it must provide evidence of the existence of the mistake and the

intended offer from the solicitation and its proposal only. Pulau responded with a letter that requested permission to correct its offer and explained that the firm had mistakenly used its lot III prices, instead of its lot VI prices, to calculate its lot VII prices. The Navy then concluded that it could not permit Pulau to correct its offer and notified Pulau that it could either withdraw the proposal or verify its BAFO. Pulau verified its BAFO, stating that the prices for lots I through VI in its BAFO were accurate and that the firm had corrected attachment No. 22 by submitting a revised worksheet after the BAFO was submitted. The Navy concluded that Pulau's nonconforming offer could not be considered for award and did not evaluate that offer. The Navy then awarded the contract to Reflectone.

Pulau asserts that its total price, as reflected in its verified BAFO and the corrected worksheet, is low when the SDB evaluation preference is applied to Reflectone's offer. Pulau asserts that the Navy improperly failed to utilize the prices in Pulau's corrected worksheet to evaluate the firm's offer. According to Pulau, in using its lot III prices rather than its lot VI prices, it made an obvious clerical error in its BAFO worksheet. Pulau argues that the contracting officer's letter informing Pulau of the suspected mistake demonstrates that the mistake was obvious since the contracting officer recognized that Pulau should have used its lot VI prices to compute its lot VII prices. Pulau concludes that based on its BAFO worksheet and the requirements of the solicitation, both the existence of Pulau's error and the correct prices for lot VII were obvious. Pulau also reasons that the Navy knew that Pulau did not intend to take exception to the solicitation's mandatory requirements for lot VII pricing since in its initial proposal Pulau correctly used its lot VI prices to compute its lot VII prices and because any other scheme would violate the terms of the solicitation.

In response, the Navy asserts that an examination of the protester's BAFO does not reveal any evidence of a mistake. Rather, according to the Navy, Pulau's BAFO worksheet shows only that its lot VII prices were based on its lot III prices. The Navy asserts that there are no other markings to indicate that Pulau intended anything else. Thus, the Navy argues that its decision not to permit Pulau to correct its offer was proper. The Navy also asserts that when Pulau introduced unacceptable pricing into its BAFO the agency was not required to reopen discussions to permit Pulau to correct its offer.

Pulau's failure to base its lot VII prices on its lot VI prices in attachment No. 22 did not constitute a "mistake" within the meaning of the Federal Acquisition Regulation (FAR) provision governing correction without holding

discussions. FAR § 15.607(a) directs contracting officers to examine proposals for "minor informalities and irregularities and apparent clerical mistakes," and provides that such mistakes can be corrected through clarifications. FAR § 14.405 (referenced in FAR § 15.607(a)) explains that minor informalities or irregularities are matters of form and not substance. The thrust of the regulation is that correction of a mistake, without holding discussions with all offerors, is appropriate only where the existence of the mistake and the proposal actually intended can be clearly and convincingly established from the RFP and the proposal itself. See Stacor Corp., B-231095, July 5, 1988, 88-2 CPD ¶ 9.

Here, there is nothing which suggests that Pulau made a mathematical or clerical error in its lot VII prices. It submitted lot VII prices that were based on lot III prices, and while that was contrary to the RFP requirement that lot VII prices be based on lot VI prices, nothing in Pulau's proposal (or even in its later submissions to the agency) provides any basis for concluding that Pulau submitted anything other than what it intended to submit. Thus, it is not clear that Pulau made a mistake in its proposal that could be corrected through the clarification process.

As to whether or not discussions should have been reopened to permit Pulau to change its pricing, contracting officers, especially those within the Department of Defense, are admonished not to reopen discussions after submission of BAFOs unless reopening is clearly in the best interest of the government. FAR § 15.611(c); DFARS § 215.611(c); Mine Safety Appliances Co., B-242379.5, Aug. 6, 1992, 92-2 CPD ¶76. The decision whether to reopen discussions is largely a matter of contracting officer discretion; our review of assertions that a contracting officer abused his or her discretion by not reopening discussions focuses on whether further negotiations would prove sufficiently advantageous

¹In any case, even if Pulau had made a clerical mistake in preparing its BAFO, that mistake could not be corrected through the clarification process under the circumstances here. Under FAR § 15.607(a), if correction through clarification would prejudice the interests of other offerors, the contracting officer must hold discussions with all competitive range offerors. If Pulau were permitted to correct its prices, that correction, and the application of the 10-percent SDB preference to Reflectone's price, would permit Pulau to displace Reflectone as the low-priced offeror. Under the circumstances, Pulau could only correct its proposal through discussions. See ALM, Inc., 65 Comp. Gen. 405 (1986), 86-1 CPD ¶ 240.

to the government to justify reopening discussions. Mine Safety Appliances Co., supra.

Pulau did not argue that the contracting officer abused his discretion by failing to reopen discussions to permit Pulau to correct its lot VII prices. Further, an offer from Pulau which includes lot VII prices based on its lot VI prices would be evaluated as low only if the 10-percent SDB preference is added to Reflectone's offer. Thus, there is no argument that the Navy would have received a better price if it had reopened discussions. Nor is there anything else in the record to indicate that it would have been in the Navy's best interest to reopen discussions. Given these factors, we have no basis to conclude that the contracting officer abused his discretion in not reopening discussions.

The protest is denied.

James F. Hinchman
General Counsel