

Ahearn



Comptroller General
of the United States

1157144

Washington, D.C. 20548

Decision

Matter of: Crown Engineering

File: B-255439.2

Date: April 14, 1994

Lorraine O'Hara, Esq., and Donald J. Kinlin, Esq., Thompson, Hine and Flory, for the protester.
Robert A. Lombardi, Lombardi Water Management, Inc., an interested party.
Susan P. McNeill, Esq., Department of the Air Force, for the agency.
M. Penny Ahearn, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Where solicitation did not state that only experience with systems with same high operating temperature range as current system would be considered to satisfy employee experience requirement, and indicated in other areas that such a strict reading of experience requirement was not intended, agency reasonably determined that requirement was met by awardee's employee's experience with lower operating temperature system.
2. Offer was not mathematically unbalanced--and thus properly was not rejected as materially unbalanced--where base year price was only approximately 10 percent higher than each of the 4 option year prices, even though, due to protester's unlevel pricing, awardee's offer became low only in the fourth option year.

DECISION

Crown Engineering protests the award of a contract to Lombardi Water Management, Inc. under request for proposals (RFP) No. F33601-93-R-0151, issued by the Department of the Air Force to provide technical consulting services for water treatment of heating systems at Wright-Patterson Air Force Base. Crown, the second-low offeror, argues that Lombardi's proposal does not meet RFP personnel experience criteria and was unbalanced.

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We deny the protest.

The solicitation was structured as a requirements contract with estimated quantities for a base and 4 option years. The services requested related to the chemical treatment of water used in central and stand-alone heating systems. This treatment prevents corrosion and scale, which can cause explosion. The services requested include collecting data and performing tests, as well as making recommendations for corrective actions.

The solicitation provided that award would be made to the lowest-priced, technically acceptable, responsible offeror in compliance with the solicitation. For award purposes, the total price for all options was to be added to the total price for the basic requirement. Technical acceptability was to be determined based on two requirements: technical consultant experience and technical consultant qualifications. In regards to the former, at issue here, the solicitation provided:

"The technical consultant and alternate(s) shall have no less than three years of experience, within the past ten years, in water treatment for steam boilers and High Temperature Hot Water (HTHW) generators and steam converter tube bundles of the type described in [attachments] 1, 2, and 3."

The attachments listed the three types of heating systems, i.e., steam boilers, HTHW generators, and steam converter tube bundles, and their location at Wright-Patterson, as well as the water softening systems used in conjunction with the systems. Attachment No. 3, at issue here, described a system with HTHW generators supplying water at 400 degrees fahrenheit and generating water at 440 degrees. The RFP defined HTHW as "heating system water that is generally circulated at temperatures from 320 to 440 degrees."

The Air Force received initial proposals, held discussions, and received three best and final offers (BAFO) by the September 17, 1993, closing date. All three proposals were determined technically acceptable. Lombardi offered the lowest total price of \$277,996 and Crown offered the second-low price of \$292,654. Award was made to Lombardi on this basis and this protest ensued.

Crown alleges that Lombardi is not eligible for the award because the firm's proposed alternate technical consultant does not meet the 3-year experience requirement. While the

record shows Lombardi's proposed alternate has experience treating a system that operates at 400 degrees,¹ Crown reads the RFP as requiring experience with systems at the high end of the stated 320- to 440-degree temperature range, that is, 440 degrees. Crown asserts generally that operating lower-temperature systems is not equivalent to operating higher-temperature systems because treatment of higher-temperature systems is "inherently more complex." The Air Force disagrees, arguing that any experience treating systems operating over 320 degrees--the low end of the temperature range used in the RFP to define an HTHW system--went toward satisfying the requirement.

We agree with the agency. The RFP nowhere stated that only experience with 440-degree systems would satisfy the experience requirement. The RFP did, on the other hand, suggest that experience such as that shown for Lombardi's alternate consultant would be considered. First, the language of the requirement stated that experience with systems "of the type" described would be acceptable, and the descriptions of the "types" referred only to an operating temperature range of 400 to 440 degrees for HTHW generators. Further, we think the RFP's definition of HTHW as heating system water circulated at temperatures ranging "from 320 to 440 degrees" suggested that experience with systems with operating temperatures in that range would be considered. While it is Crown's general view that experience with low-temperature systems is not equivalent to experience with high-temperature systems, we conclude that the RFP made no such distinction. Thus, the agency's less restrictive reading of the requirement was reasonable, as was its determination that Lombardi's proposed employee met the requirement.²

¹A letter obtained by the agency from Lombardi in response to the protest indicates that the alternate consultant had experience with water treatment processes "identical to the water treatment processes used at [Wright-Patterson AFB]."

²Crown also alleged that Lombardi's technical consultant does not meet the experience requirement. However, the letter statement from Lombardi indicated that the firm's proposed consultant satisfied Crown's interpretation of the requirement--he had water treatment experience with a boiler system operating in excess of 500 degrees from 1989 to 1992. Although the protester questions this consultant's compliance with the experience requirement on other grounds, we find that the agency properly determined he satisfied the requirement.

Crown also argues that Lombardi's offer was materially unbalanced because it did not become low until the fourth (final) option year. Lombardi's option year prices (\$54,500 for each of the 4 years) are approximately 10 percent lower than its base year price (\$59,996). In comparison, Crown's prices escalate from 9 to 13 percent each year as follows: base--\$47,935.00; option No. 1--\$52,271.50; option No. 2--\$57,498.00; option No. 3--\$63,240.00; option No. 4--\$71,709.50.

An offer can be found to be materially unbalanced--that is, there is a reasonable possibility that it will not result in the lowest cost to the government--only if it is mathematically unbalanced--that is, nominal prices are stated for some items and enhanced prices for others. Ogden Gov't Servs., B-253350, Sept. 14, 1993, 93-2 CPD ¶ 161; see also Federal Acquisition Regulation (FAR) § 15.814.

Lombardi's offer is not mathematically unbalanced. Crown does not assert, and there is no evidence, that Lombardi's base year price is overstated--that is, that it carries more than its proportionate share of costs--or that the option prices are understated. See Hughes & Smith, Inc., B-250770, Jan. 22, 1993, 93-1 CPD ¶ 60.³ The fact that the base year price is 10 percent higher than the option prices does not by itself establish mathematical unbalancing. Applicators, Inc., B-215035, June 21, 1984, 84-1 CPD ¶ 656. While Lombardi's offer does not become low compared to Crown's until the fourth option year, this is only because of Crown's unlevel pricing; obviously, an offer with lower prices in the early years of a contract and higher prices in the later years will be cheaper in the early years. There is no basis for rejecting a mathematically balanced offer such as Lombardi's on the ground that it does not compare favorably to another offer until the final option year, so

³Indeed, on their face, Lombardi's prices are fairly level; approximately 21.6 percent of Lombardi's total contract price is in the base year and 19.6 percent in each option year.

long as it is low under the evaluation scheme set forth in the solicitation.

The protest is denied.⁴

Robert P. Murphy

Robert P. Murphy
Acting General Counsel

⁴The protester contends that the agency improperly failed to stay performance in the face of its protest, as required by the Competition in Contracting Act of 1984 (CICA), 31 U.S.C. § 3553(d)(1) (1988). Under CICA and our Bid Protest Regulations, a contracting agency is required to suspend contract performance if it receives notice of a protest from our Office within 10 calendar days of the date of contract award. Id.; 4 C.F.R. § 21.4(b) (1993). The contract document, submitted as part of the agency report, shows a September 28 agency signature, and clearly indicates an "award effective date" of October 1. Since Crown's protest was not received in our Office until October 15, more than 10 calendar days later, the Air Force was not required to suspend performance. See Alpha Technical Servs., Inc., B-250878; B-250878.2, Feb. 4, 1993, 93-1 CPD ¶ 104.