



Decision

Matter of: Ursery Companies, Inc.
File: B-258247
Date: December 29, 1994

Sally B. Pfund, Esq., Barbara E. Wixon, Esq., and Robert J. Martinez, Esq., Williams & Jensen, for the protester.
Cheryl A. Phillips, Esq., Department of the Navy, for the agency.
Robert C. Arsenoff, Esq., and John Van Schaik, Esq., Office of General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest alleging that solicitation included protester's proprietary information and placed protester at a competitive disadvantage is denied where a substantial portion of the information was publicly disclosable and release of all the information did not competitively harm the protester.

DECISION

Ursery Companies, Inc. protests the terms of request for proposals (RFP) No. N00140-94-R-CB72, issued by the Department of the Navy as a competitive 8(a) procurement for mess hall attendant services for a base year with 4 option years. Ursery is the incumbent noncompetitive 8(a) contractor. Ursery alleges that it was placed at a competitive disadvantage since the RFP disclosed proprietary data which would enable its competitors to determine the protester's intended price.

¹Section 8(a) of the Small Business Act, 15 U.S.C. § 637(a) (1988 & Supp. V 1993), authorizes the Small Business Administration to enter into contracts with government agencies and to arrange for performance through subcontracts with socially and economically disadvantaged small business concerns. Federal Acquisition Regulation (FAR) § 19.805 and 13 C.F.R. § 124.311 (1994). We review competitive 8(a) procurements to ensure that they conform to applicable federal procurement regulations. See Communication Network Sys., Inc., B-255158.2, Feb. 8, 1994, 94-1 CPD ¶ 88.

We deny the protest.

The RFP was subject to the Service Contract Act (SCA) and minimum unburdened labor rates were fixed for all offerors. The competitive aspect of this acquisition was a "Management and Support Price" which included all labor burden such as health and welfare, vacation, holiday, sick and bereavement leave, pension, uniform allowance, payroll taxes, equipment and supplies, pay differentials over the basic SCA labor rates, uniform costs, management and supervision costs and profit.

Ursery objects to the release of three categories of data which were included in the RFP. First, the RFP contained a listing of the number of meals served and the number of hours worked by mess attendants during each of the last 18 months of Ursery's incumbency. Next, it stated that the monthly materials cost incurred by the incumbent was approximately \$2,700. Finally, the RFP provided a breakdown of Ursery's mess attendant work force by the number of years of seniority; in this regard, the RFP did not identify specific employees or indicate their particular assignments or provide information regarding the number of hours worked by each employee or the labor category of the employees.

As stated above, Ursery maintains that this information is proprietary and provides competitors with a way of calculating Ursery's intended management and support price and its staffing strategy for performing any new contract. For the reasons set forth below, we deny the protest because we find that a substantial portion of the information is not even arguably proprietary to Ursery and, taken as a whole, the information did not place Ursery at a competitive disadvantage.

As a general rule, proprietary information is that which is marked proprietary or otherwise submitted in confidence to the government. See Zodiac of North Am., Inc., B-220012, Nov. 25, 1985, 85-2 CPD ¶ 595. Generally, this includes such information as a firm's overhead and profit rates and not information that the firm could expect to be released to the public. JL Assocs., Inc., B-239790, Oct. 1, 1990, 90-2 CPD ¶ 261.

Where a protester alleges that such information was improperly disclosed, the record must establish that the protester was competitively prejudiced by the release before we will sustain a protest. Management Servs., Inc., 55 Comp. Gen. 715 (1976), 76-1 CPD ¶ 74. The possibility of competitive prejudice may not be established on the basis of speculation. JL Assocs., Inc., supra.

The historic information concerning the number of meals served and mess attendant hours worked is not proprietary to Ursery. It is based on government-prepared contract administration documents which compiled information from invoices submitted to the government by the protester without restrictive legend. That information was submitted in order to establish how much Ursery was to be paid--which itself is a matter of public record. Thus, we find that there could have been no reasonable expectation that the information would be treated confidentially and, accordingly, its release is not objectionable. JL Assoc., Inc., supra.

Moreover, we fail to perceive how the historical information contributed to Ursery's competitive disadvantage. At best it may have operated to normalize to a small degree the competition so that all offerors would have an idea about how many labor hours would be spent in contract performance, but it did not reveal (or otherwise aid in the revelation of) how competing offerors should burden their fixed-labor rates or how Ursery calculated its profit, overhead, and management costs--all important elements of the overall management and support price. Thus, even if we were to conclude that the information was proprietary, the effect of releasing the information on Ursery's competitive position under the terms of the RFP is speculative at best and, therefore, provides no basis for sustaining the protest. Management Servs., Inc., supra.

Likewise, the disclosure of Ursery's estimated material costs of \$2,700 per month and the broad categorization of its mess attendant staff by seniority levels do not appear to have affected the protester's competitive position in any appreciable manner. The record reflects that the material estimate constitutes only approximately 5 percent of the previous management and support price so its disclosure would likely not skew the competition. While the staff breakdown by seniority levels may have provided some information concerning, for example, the amount of vacation time certain categories of Ursery's employees were entitled to, it does not, by itself or in combination with other data, directly provide information relating to Ursery's historical overall labor burdens. Additional information, such as the number of hours each type of employee worked would be necessary to arrive at such a conclusion. Moreover, the RFP provides no information concerning profit and overhead rates or the cost of management--which are significant elements of the management support price.

Finally, Ursery's essential argument is that, by having historical information about Ursery's performance on the previous contract that was awarded without competition, other offerors could determine Ursery's pricing and staffing

strategy in the present competitive environment. In our view, this general proposition is flawed because it ignores the likelihood that the competitive environment itself would have a substantial impact on pricing and staffing strategies.

The protest is denied.

\s\ Ronald Berger
for Robert P. Murphy
General Counsel