



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Spectrum Sciences & Software, Inc.

File: B-282373

Date: June 22, 1999

Jesse W. Rigby, Esq., Clark, Partington, Hart, Larry, Bond, Stackhouse & Stone, for the protester.

Lt. Col. Gary L. Halbert and Capt. Karen L. Deimler, Department of the Air Force, for the agency.

Linda C. Glass, Esq., and Paul I. Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency misled offeror into believing that it would have an additional opportunity to revise its price because the request for final proposal revision did not state that the government intended to make an award without obtaining further revisions is denied where the notice reasonably conveyed this intention by specifying that discussions had been concluded and requesting a final proposal revision.

DECISION

Spectrum Sciences & Software, Inc. protests the award of a contract to C. Martin Company under request for proposals (RFP) No. F16602-99-R-0003, issued as a small business set-aside by the Department of the Air Force for the operation and maintenance of the Claiborne Bombing Range. The protester objects that the Air Force's letter requesting Spectrum's final proposal revision failed to specify that the agency intended to make an award without obtaining further revisions, thereby leading Spectrum to conclude that it would have a further opportunity to revise its price, which was not provided.

We deny the protest.

The solicitation, issued on December 31, 1998, contemplated the award of a fixed-price requirements contract for a base period of 1 year, with four 1-year options. The RFP stated that award would be made to the responsible offeror whose offer conforms to the solicitation, is determined technically acceptable based on the minimum mandatory evaluation criteria, and offers the lowest evaluated price, based on the total price for the base year and all options years. RFP § M-502. The RFP provided that the technical evaluation would result in a determination of

conformance or non-conformance in respect to the following technical evaluation areas: (1) general and specific tasks; (2) government furnished property; (3) contractor furnished items and services; and (4) specific tasks. RFP § M-502.c.1, c.2. In order to be rated acceptable, a proposal had to achieve a rating of acceptable in each of the technical areas. RFP § M-502.c.3.a. The RFP warned offerors to propose their best offer initially since award could be based on initial proposals without discussions. RFP § M-502.b.3.

Five proposals were received by the February 8, 1999 closing time. Two proposals were rejected as technically unacceptable. Air Force Memorandum of Law at 1. On February 12, requests for additional information and clarifications were sent to the three remaining technically acceptable offerors, in a letter, which stated that it was not a request for final proposal revision. Responses were received and evaluated. On February 22, the three offerors were notified that discussions were concluded and that their proposals were found to be technically acceptable, and each was requested to submit a final proposal revision. The text of Spectrum's notice was as follows:

1. Written discussions have been concluded for subject solicitation and your proposal was found to be technically acceptable. Request you submit your final proposal revision on the attached schedule, pages 2 through 11. Be sure to recheck your figures to eliminate any calculation errors.
2. Final proposal revisions are due in the 2d Contracting Squadron, 841 Fairchild Ave., Suite 204, Barksdale AFB LA 71110-2271, no later than 4:00 P.M. CST on 4 March 1999. If you have any questions, please contact

Agency Report (AR), Tab 8, Memorandum from Contracting Officer to Spectrum (Feb. 22, 1999).

On March 2, Spectrum submitted its response entitled "Final Proposal Revision," referencing the Air Force's February 22 "Request for Final Revision." AR, Tab 12, Letter from Spectrum to Contracting Officer (Mar. 2, 1999). Spectrum's cover letter stated that it was "pleased to provide the enclosed Final Proposal Revision," and the cover sheet to its price schedule stated in large type "Price Proposal Final Revision." Spectrum's price was the highest of the three technically acceptable offerors. On March 17, the Air Force notified offerors that C. Martin Company, Inc. was the low offeror. On March 25, award was made to C. Martin, the unsuccessful offerors were notified, and Spectrum filed this protest with our Office.

Spectrum argues that the award is improper because the Air Force failed to comply with Federal Acquisition Regulation (FAR) § 15.307(b) because it made the award without first explicitly notifying all competitive range offerors that the government intended to make award without obtaining further revisions. Spectrum maintains that because there was no such notice in the agency letter requesting a final proposal revision, “Spectrum concluded that the contracting officer was still in discussion (negotiations) concerning the Price Proposal,” and Spectrum further claims that it “fully intended to submit other price revisions until the contracting officer provided notice that no further revisions would be accepted.” Protest at 2-3.

Part 15 of the FAR has been recently rewritten and contains a new provision concerning requests for final proposal revisions. Currently FAR § 15.307 (b) provides as follows:

The contracting officer may request or allow proposal revisions to clarify and document understandings reached during negotiations. At the conclusion of discussions, each offeror still in the competitive range shall be given an opportunity to submit a final proposal revision. The contracting officer is required to establish a common cut-off date only for receipt of final proposal revisions. Requests for final proposal revisions shall advise offerors that the final proposal revisions shall be in writing and that the Government intends to make award without obtaining further revisions.

The earlier language, at FAR § 15.611, required that, upon completion of discussions, the contracting officer issue requests for best and final offers (BAFO) to all offerors still remaining in the competitive range, and required that such requests include notice that discussions were concluded, state that this was an opportunity to submit a BAFO, and specify a common cutoff date and time for submission of written BAFOs.

The current language at FAR § 15.307(b), which substitutes the term “final proposal revision” for the previously denominated “BAFO,” includes a requirement that offerors be advised that award is contemplated without obtaining further revisions. While the agency did not include precise language to this effect in its request for final proposal revision, we fail to see how this could reasonably have misled the protester in the manner that it asserts, and Spectrum’s own submission strongly suggests that it was not so misled.

The solicitation provided that award was to be made to the lowest price technically acceptable offeror, and contained a notice of the possibility of award on the basis of initial proposals. In fact, the agency held discussions after which it requested a final proposal revision in a notice that advised each of the competitive range offerors that discussions had been concluded and that their proposals had been found technically acceptable. At this point, Spectrum knew that the only plausible purpose

for the requested final proposal revision was to provide offerors an opportunity to modify their prices. In these circumstances, Spectrum could not reasonably assume that it would be given any additional opportunities to submit its best price.

Moreover, as noted above, Spectrum's submission in response to the agency's request specifically stated in several places that it was a final proposal revision, in particular, labeling its price schedule cover sheet as "Price Proposal Final Revision." Thus, notwithstanding Spectrum's current assertion that it had every intention of submitting additional revisions until the agency specifically stated no further revisions would be accepted, its actual proposal indicates that it understood otherwise.

In its comments on the agency report, Spectrum contends that under FAR § 15.611, the contracting officer had the authority to reopen discussions after requesting BAFOs, while the currently applicable FAR § 15.307(b) does not contain a similar provision. From this, Spectrum concludes that the current scheme "prohibits the Government from reopening the bidding process once it is finally closed, but requires explicit compliance with the FAR in order to close discussions and revisions of offers." Protester's Comments at 3. In fact, the predecessor FAR provision admonished the contracting officer not to reopen discussions after receipt of BAFOs unless it was "clear that information available at that time is inadequate to reasonably justify contractor selection and award based on the best and final offers received." FAR §15.611(c) (June 1997). There is no such admonition against reopening discussions in the new FAR provision. Moreover, under the old FAR provision, we recognized that a request for BAFOs that did not contain the similarly specifically prescribed language was unobjectionable as long it reasonably provided notice that it was a BAFO request. Israel Aircraft Indus., Ltd., B-239211, July 30, 1990, 90-2 CPD ¶ 84 at 4.

Here, the request for a final proposal revision specified that discussions were concluded and reasonably provided notice that the agency was requesting final prices. The protester should have and appears to have understood this to be the case, and has no reasonable basis to complain that it was misled because it did not receive adequate notice.

The protest is denied.

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