

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-218533

DATE: July 23, 1985

MATTER OF: ECI Telecom, Inc.

DIGEST:

1. Where solicitation required contractor to have host country approval for installation of its telecommunications equipment and offeror's proposal indicated that such approval would be obtained, agency acted properly in accepting the proposal since the solicitation did not require submission of evidence of having that approval prior to award.
2. Where solicitation indicated that each technical evaluation element would be considered on a "responsive/non-responsive" basis to determine technical acceptability without relative ranking of offers on each such element, and protester and awardee were both judged technically acceptable for all requirements and therefore essentially equal, agency properly did not consider whether protester in fact was technically superior in any evaluation element, instead making award on the basis of price.
3. Although solicitation indicated that technical specifications and delivery were more important than price, where competing proposals for a fixed-price contract were rated essentially equal in accordance with evaluation method stipulated in the solicitation, price properly became the determinative factor for award.

ECI Telecom, Inc. (ECI), protests the Defense Communications Agency, Defense Commercial Communications Office's (DCA) award of a contract to Republic Telcom Systems Corporation (Republic)^{1/} pursuant to request for proposals (RFP) No. DCA200-85-R-0004, covering the lease of

^{1/} In the course of this procurement on January 23, 1985, the original offeror Comtech Communications Corporation was acquired by Republic Telcom Systems Corporation which acted immediately to verify the existing corporate offer under this solicitation.

communications service equipment in Europe. ECI protests that the award to Republic was improper because it was inconsistent with the solicitation's evaluation criteria. We deny the protest in part and dismiss it in part.

DCA sought proposals to establish a commercial Time Assignment Speech Interpolation (TASI) system^{2/} with specific initial and expansion capabilities, as well as service requirements to engineer, furnish, install, test, interface, interconnect and maintain a full period, full duplex telecommunications system in support of the Department of Defense's AUTOVON telephone system between 13 European sites.

In response to the RFP, three proposals were received by the January 15, 1985 closing date; one proposal was determined to be nonresponsive because it was incomplete. A technical evaluation was initiated on January 21 during which the two remaining offerors, Republic and ECI, provided sufficient clarification to warrant findings that both offerors were technically responsive on each of the evaluation criteria.^{3/} The price analysis which was completed by January 31 resulted in a lower evaluated price for Republic on either a straight lease or lease to ownership plan. The user activity in Europe indicated that a straight 60-month lease plan would be the most economical for its needs. Accordingly, in mid-May 1985 the agency awarded Republic a contract for the first year on a 60-month straight lease plan totaling \$884,132.84 with a 30-day delivery schedule.

ECI contends that Republic's offer was nonresponsive to the solicitation's requirement that "Host nation approval and/or connection approval is required for all locations in

^{2/} Such systems take advantage of the pauses, or listening periods occurring in the typical two-way telephone conversation by inserting speech from another conversation into the unused circuit to give the effect of doubling the number of conversations that may be carried on a given number of telephone circuits.

^{3/} We point out that the concept of responsiveness is not applicable to negotiated procurements. National Council for Urban Economic Development, Inc., B-213434, Aug. 1, 1984, 84-2 CPD ¶ 140. Here, even though the procurement was negotiated, the contracting agency inappropriately dealt with the matter of technical acceptability in terms of "responsiveness" or "nonresponsiveness." In essence, the offers were evaluated to determine whether they were technically acceptable.

Spain." ECI claims it has such approval whereas Republic does not. Republic disputes this claim by assuring this Office and the contracting agency that, through its numerous contacts with officials of the Spanish Telephone Company, CTNE, all necessary approvals will be granted in connection with delivery of service.

The agency considers host nation approval and/or connection approval to mean that the appropriate authority in the country (Spain) where the equipment is to be located approves of the installation of equipment which is to be connected to that country's circuit transmission facilities. ECI points out that the "Evaluation Factors for Award" set out in section "M" of this solicitation indicate that the "technical evaluation will insure that the proposal is responsive, i.e., it meets the Government requirements as stated in Section C of this solicitation." ECI argues that this wording makes host nation approval a performance requirement, with which Republic's offer does not comply.

The contracting officer reports that he was not aware of any specific host country approval procedure or any specific certification documenting such approval and therefore did not intend for such approval to be reflected in proposals or to be a prerequisite to award. Rather, the contracting agency makes clear, it views the approval requirement as simply one with which the contractor will have to comply during performance. Republic's proposal, we note, did not take exception to the requirement; rather, Republic's proposal indicated that it would have all necessary approvals to perform the contract. In these circumstances, we find no merit to the protester's argument that Republic had to have host country approval before award or that the agency improperly accepted Republic's proposal.

ECI advances a number of arguments regarding the efficiency, capacity, and maintenance of its equipment to bolster its contention that its proposal was technically superior to Republic's offer. ECI contends that agency evaluators failed to take the steps necessary to establish--or otherwise ignored--ECI's technical superiority and, therefore, misapplied the solicitation's evaluation factors which provided that "The evaluation consists of three parts listed in the following descending order of importance: technical specifications, delivery and price." ECI similarly contends that the agency failed to establish or ignored altogether its more advantageous 14-day (compared to Republic's 30-day) delivery schedule. Thus, ECI contends that the contracting agency improperly evaluated the pricing

factor as more important than technical specifications and delivery schedule.

DCA states that the technical evaluation was performed on a "go/no go" basis, and that agency evaluators found both ECI's and Republic's offer to be acceptable as to all technical criteria evaluated and the delivery schedule. The agency therefore determined Republic to be the winning offeror on the basis of its lower price. We find nothing improper with this evaluation.

The solicitation advised offerors that "The technical review criteria will be evaluated on a 'responsive/non-responsive' basis for each paragraph," and the agency simply determined whether the offeror's proposal on each technical review criterion was "responsive" (technically acceptable) or "nonresponsive" (not technically acceptable). Based upon this method of evaluation, both ECI and Republic were determined to be technically acceptable on each of the evaluated criteria. The proposals, therefore, were rated essentially technically equal.

The agency took a similar approval with delivery. The solicitation advised offerors that "proposals with delivery of less than 90 days will be given the most consideration." Since both ECI and Republic proposed delivery schedules of less than 90 days, they were both judged equally acceptable in that regard.

Based on our reading of the solicitation, we conclude that the agency's evaluation had a reasonable basis and was conducted in conformance with those factors. The solicitation clearly indicated that each technical evaluation element would be considered as acceptable or otherwise; there was not to be a relative ranking of offers on each such element. Thus, the fact that one proposal may have indicated some superiority in certain areas did not entitle that proposal to more evaluation credit than was given to other proposals that were acceptable in those same areas. Under the evaluation scheme here, the fact that technical concerns were weighted more heavily than price simply meant that a proposal that was technically acceptable in more areas than another proposals would be entitled to greater evaluation weight in the technical area.

Similarly, we think the solicitation clearly indicated that an offeror proposing a delivery period of substantially less than 90 days, while entitled to more credit than one proposing 90 days or more, would not be entitled to more

weight than one also proposing substantially less than 90 days.

Our decisions recognize that where competing proposals are essentially equal technically, price may become the determinative factor, notwithstanding the fact that, in the overall evaluation scheme, price was less important than other factors. EG&G Ortec, B-213347, Feb. 13, 1984, 84-1 C.P.D. ¶ 182 at 5; see also Alturdyne, B-214103.2, Oct. 2, 1984, 84-2 C.P.D. ¶ 379. In accord with the evaluation scheme set forth in the RFP here, the agency properly determined the two proposals to be equal technically. Therefore, we cannot conclude that DCA did not follow the evaluation criteria by ultimately emphasizing the price criterion.

Finally, to the extent that ECI's protest can be construed as a charge that the RFP should have required a comparison of the relative merits of technically acceptable proposals to determine which offeror was technically superior and which offeror had the best delivery schedule, the protest is untimely under our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1985), which require that a protest based upon an alleged impropriety in a solicitation which is apparent prior to the closing date for the receipt of proposals must be filed before the closing date for receipt of proposals.

We deny the protest.

for 
Harry R. Van Cleve
General Counsel