



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Consolidated Photocopy Company, Inc. and
Downtown Copy Center, A Joint Venture
File: B-225526
Date: March 20, 1987

DIGEST

Protester's contention that it was placed at a competitive disadvantage because FCC waived material requirement for competitor is denied where record shows that if there was any waiver it was applied equally.

DECISION

Consolidated Photocopy Company, Inc., and Downtown Copy Center, a joint venture (Consolidated), protests the award of a contract to International Transcription Services, Inc. (ITS), under request for proposals (RFP) No. 86-08, issued by the Federal Communications Commission (FCC) for nonpersonal services and materials for the search, retrieval and duplication of documents, and the distribution and sale to the public of these documents which are maintained by the FCC and which are releasable to the public under the Freedom of Information Act or FCC regulations. Consolidated contends that the agency prevented it from competing on an equal basis with ITS by effectively relaxing a solicitation requirement for the benefit of ITS without informing Consolidated. We deny the protest.

The RFP provided that award would be made to the responsible offeror whose offer conforming to the solicitation is the most advantageous to the government, cost or price, and other factors specified in the solicitation considered, including an offeror's understanding of the requirements, its technical approach, its corporate experience, and its proposed personnel and their experience. The solicitation required, among other things, that the successful contractor install, maintain, and fully service copier-duplicating machines and microfiche reader/printers on-site at various FCC locations. The solicitation stated that machine malfunctions must be responded to within 2 working hours and repairs completed within 8 working hours of notification of machine failure.

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The solicitation also contained (at paragraph C.6.5.5) the following provision:

"Contractor shall provide a minimum of two experienced factory trained repair personnel on-site at the Commission's Washington, D.C. offices at all times. On call factory repair personnel shall be provided by the contractor to serve the Laurel, MD and Gettysburg, PA facilities. Back-up shall be provided by the contractor through a service agreement with the vendor of the equipment."

The solicitation also stated that "factory-trained repair personnel" would be considered essential to the performance of the contract and that the resumes of such personnel must be provided for evaluation. In amendment 2 to the solicitation, the FCC emphasized that the demands from the public for higher quality and greater reliability of copiers, the intensity of use and abuse of copiers, the number of machines, and other factors, necessitated these "qualified factory trained technicians."

Four proposals were received by September 3, 1986, the initial closing date for receipt of proposals. Discussions were held with the offerors determined to be within the competitive range, and best and final offers were received by the November 14 due date. The FCC technical evaluators found the ITS proposal to be technically acceptable and the proposal was later deemed to be the most advantageous proposal received. Accordingly, FCC awarded the contract to ITS on November 18. Consolidated filed a protest with the FCC, and the present protest followed the FCC's denial of Consolidated's agency-level protest.

The FCC has not released any detailed information to the protester concerning the evaluation of proposals because it believes this information to be privileged. Consolidated nevertheless asserts that ITS failed to propose "two experienced factory trained repair personnel" as required by the RFP. Consolidated also asserts that ITS proposed using Xerox personnel as repair persons instead of ITS' own personnel as allegedly required by the RFP and that Xerox, as a subcontractor, failed to commit itself to provide such repair personnel on-site. Additionally, Consolidated questions whether ITS submitted resumes of the Xerox personnel. In short, Consolidated contends that it was placed at a competitive disadvantage because FCC waived these requirements for ITS and the competition therefore was not conducted on an equal basis.

The FCC states that ITS "adequately addresse[d]" the requirement for two experienced factory trained repair personnel in its proposal; that Xerox, as a subcontractor, did commit itself to provide experienced repair personnel on-site at all times; and that therefore the FCC did not waive any mandatory technical requirements.

In order to resolve the matter concerning ITS' compliance with the RFP requirement for factory trained repair personnel, we have reviewed the proposals and evaluation materials in camera and will discuss to the minimum extent necessary the portions of ITS' proposal which address this requirement. Based on our review of the ITS proposal, we find the following. Xerox did in fact submit a letter on behalf of the ITS proposal in which Xerox committed itself to providing "fully trained, qualified Xerox operators and technicians," and also to respond to all service calls within 2 hours and to complete repairs within 8 hours as required. In this regard, there is no RFP provision which would preclude ITS from subcontracting this work to Xerox. However, the resumes submitted by ITS for the on-site Xerox factory trained repair personnel indicate that the proposed personnel are titled "technicians," rather than "repair personnel" or a similar title. The job description for one of the technicians states only the following responsibilities: -

"Supply, paper, toner/developer, all copiers each day and assure adequate levels throughout the Commission day. Monitor copiers each morning, make same copy and take reading and deliver recorded results to Production Manager for delivery to Contracting Office. Clear all jams, clean equipment, and assure all 'down' machines are responded to within two hours and fixed within eight hours. Keep accurate log of all 'down' time and preventative maintenance time and resupply time. Also, record time equipment is back in operation."

Similarly, the other technician is also essentially responsible for cleaning and supplying the equipment only. There is no commitment by Xerox to provide on-site repair personnel.

Based on our review of Consolidated's proposal, we find that it also did not meet the requirement for experienced factory trained repair personnel. In its best and final offer, Consolidated only proposed two reasonably qualified factory trained repair personnel who would be on-site for a two-week "break-in" period. After this initial period, "newly trained

technicians" would be provided and would be trained at the factory so long as Consolidated has a "thirty-day lead time." These replacement technicians were not yet hired or trained and thus no resumes of their background and experience were provided in the offer. The short period of time proposed for factory training, and the accompanying proposed course schedule at the factory, indicate that these proposed technicians will not be fully trained and experienced repair personnel. In any event, the lack of resumes for the permanently assigned repair personnel proposed by Consolidated does not provide an adequate basis for evaluation. In the circumstances, we deny this protest ground, since if there was any waiver of the subject requirement it was applied equally to ITS and Consolidated.

Next, Consolidated complains that the contracting officer failed to give the firm preaward notice of the award to ITS so that it could file a timely size protest. However, we simply note that no notice is required where, as here, the contracting officer determines in writing that the urgency of the requirement necessitates award without delay. See Federal Acquisition Regulation (FAR), 48 C.F.R. § 15.1001-(b)(2) (1985). Finally, Consolidated also complains that the contracting officer failed to give the firm appropriate post-award notice of the award to ITS. We note, however, that Consolidated filed a timely protest within 10 calendar days of the award and that the agency has directed ITS to cease performance under the contract. See 4 C.F.R. § 21.4 (1986). We therefore, fail to see any prejudice to Consolidated even if appropriate notice procedures were not followed by the agency.

The protest is denied.

Harry R. Van Cleve

Harry R. Van Cleve
General Counsel