



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Coastal Electronics, Inc.

File: B-227880.4

Date: February 8, 1988

DIGEST

1. Protest that agency improperly found offerors who did not use solicitation worksheet to calculate necessary staffing levels to be technically acceptable is denied where the agency advised offerors at preproposal conference that worksheet was provided for information purposes only and where that interpretation is consistent with other solicitation provisions.

2. Agency may exclude a technically acceptable proposal from the competitive range and from further negotiations when the offeror's price is substantially higher than the prices of other acceptable offerors and the agency reasonably determines that the higher-priced proposal has no reasonable chance of being selected for award.

DECISION

Coastal Electronics, Inc., protests the exclusion of its proposal from the competitive range under Department of the Army request for proposals (RFP) No. DAEA08-87-R-0017 for services associated with operating administrative telephone systems at eight Army installations in the Southeast United States. The protester alleges that the agency excluded its proposal based upon a faulty technical evaluation which allowed other offerors to depart from the RFP's mandatory requirements.

We deny the protest.

On March 23, 1987, the agency issued the instant RFP for operation, maintenance, installation and repair of systems

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at eight installations in Alabama, Georgia and South Carolina. The RFP allowed offerors to submit proposals for various line items of service, including providing switchboard operators for a basic year and 4 options. Services were to be provided in accordance with the Performance Work Statement (PWS), attachment 1, based on five factors contained in Para. 5.2.2 of the PWS.

PWS Para. 5.2.2 required a contractor to conduct switchboard operations in accordance with various military directives and regulations and to provide sufficient personnel to insure efficient telephone operator assistance and accurate, current directory service at all hours. This paragraph also provided five criteria for determining staffing: lines in service, hours of operation for the operator function, type of switchboard consoles, military population and number of restricted/dedicated trunks. The current quantities for these factors were disclosed in the RFP.

The record establishes that four of these five criteria (lines in service, hours of operation, type of console and number of trunks) are familiar to and widely used in the industry. No industry standard exists; however, for applying a "military population" factor to calculate the number of operators needed.

On May 1, 1987, the agency held a preproposal conference at Fort Ritchie, Maryland. The agency reports that several vendors expressed concern over developing a formula for considering the military population factor. Despite assurances that they need only meet the minimum needs set out in the RFP, some vendors asked for guidance to develop such a formula. The agency asserts that it was on that basis that it promised to attach a military standard application worksheet to a future amendment for informational purposes only. The agency states that the contracting officer advised offerors that they were free to devise their own staffing proposals, that use of the worksheet was not mandatory, and that they were required to devise proposals meeting the agency's minimum needs as set forth in the RFP. This worksheet was subsequently provided as attachment 8 to amendment No. 0003 issued on May 20. Initial technical proposals were submitted on June 22; cost proposals for initial price evaluation were submitted on August 19.

On August 21, 1987, the agency notified the protester of its exclusion from the competitive range. Coastal subsequently discovered that the agency decision to exclude it from the competitive range resulted from a determination that the protester's proposed price was so much higher than prices

offered by other technically acceptable offerors (approximately 100 percent higher), that there was no reasonable expectation that its price could be reduced sufficiently to make it competitive. Specifically, it appeared that the protester's staffing levels greatly exceeded those offered by other potential competitors.

Upon further examination, the protester found that while it had based its staffing levels on the government-provided worksheet, other offerors had used their own staffing formulas. Consequently, Coastal filed the instant protest, arguing that the RFP mandated use of this worksheet, that offerors who proposed lower staffing levels had not used the worksheet as required by the RFP and that the agency's technical evaluation, which allowed such a departure from the mandatory requirements of the solicitation, was in error and that as a result of this error, Coastal was wrongly excluded from the competitive range.

The agency reports that offerors were clearly advised at the preproposal conference that the worksheet would be provided for information purposes only. The worksheet is not so marked, and the agency characterizes this as an oversight. One of Coastal's competitors in this procurement corroborates the agency's version of events. Mr. John Bean, of Contel Federal Systems, Inc., avers that he attended the preproposal conference and that several offerors complained of the nonavailability of telephone traffic studies. According to Mr. Bean's affidavit, the agency promised to allow review of its own existing traffic studies and to provide "an Army formula" for calculating staffing. Mr. Bean confirms the agency assertion that offerors were told that they could use their own formulas and that the military worksheet would be provided for information only.

In response, the protester simply states that its own records do not support this contention. The protester argues that it relies upon the four corners of the solicitation document and the written record, which does not state that the military worksheet was provided for informational purposes. The protester also contends that absent any indication that the agency provided the worksheet only for information, it is binding on all offerors.

We disagree.

The agency admits that it committed an oversight in failing to mark the worksheet as informational only. Nevertheless, the preponderance of the evidence clearly demonstrates that the protester, which attended the preproposal conference, was informed by the agency that use of the worksheet was not mandatory and was being provided for informational purposes

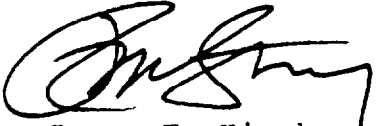
only. See Santa Cruz Construction, Inc., B-226773, July 2, 1987, 87-2 CPD ¶ 7. This fact is supported by the agency and by an affidavit of an interested party, Contel, which is in the competitive range but not necessarily in line for award. Further, the record shows that reliance by the protester on the worksheet was unreasonable; for example, as pointed out by Contel, that worksheet is specifically for electro-mechanical switchboards, which are present at only two of the eight installations involved, and which are to be phased out altogether in the first year of contract performance.

In this connection, the protester also points to clause H-21 of the RFP, which grants contractors an annual equitable adjustment whenever the workload for switchboard operation increases; without mandatory use of some standard such as the military standard application worksheet, according to the protester, the agency has no objective baseline from which to compute equitable adjustments. Otherwise, the protester argues, an offeror may buy in to a system contract and recoup by claiming that workload has increased. However, the agency points out that clause H.21 does not allow an equitable adjustment based upon an abstract staffing formula without first showing an actual increase in workload; the adjustment hinges upon the relationship between that increase in workload and increases or decreases in the five factors listed in PWS para. 5.2.2. A contractor is not free to claim an adjustment at the end of a year just by showing that its staffing formula dictates higher staffing levels; he must first show an increased workload and then demonstrate entitlement to an adjustment by showing how any increase in military population (or one of the other four factors) warrants such an adjustment.

In short, we find nothing that indicates that offerors were required to use the military standard application worksheet in developing operator staffing levels. No other offeror apparently treated the worksheet as mandatory. Since we do not find that offerors were required to use the worksheet to compute staffing, we do not agree with the protester that the agency erred in conducting its evaluation of proposals.

Where the difference in prices offered has been as great as it is here, we have held that an agency may exclude a technically acceptable proposal from the competitive range, and thus from the negotiations process, when the offeror's price is substantially higher than the price of other acceptable offerors and the agency reasonably determines that the higher-priced proposal has no reasonable chance of being selected for award. Dynamics Corporation of America, B-224848, Dec. 1, 1986, 86-2 CPD ¶ 622.

The protest is denied and, therefore, Coastal's claim for the costs of preparing its proposal as well as its costs of filing and pursuing the protest including attorney's fees is also denied.



for James F. Hinchman
General Counsel