



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Contract Services, Inc.
File: B-232689
Date: January 23, 1989

DIGEST

1. Where protester alleges that information regarding the replacement of engines in trucks to be maintained by the contractor under a contract for trash collection services was provided to another offeror but not to it, but record contains no evidence to support the allegation, General Accounting Office will not attribute improper action to the agency on that basis.
2. Although request for proposals required the submission of cost or pricing data, awardee's failure to provide this information was not a material deficiency where adequate price competition was obtained and therefore no cost analysis was performed.
3. Where request for proposals did not provide for the evaluation of offerors' prices for future years on the basis of their present value or provide for consideration of offerors' experience, agency properly did not evaluate proposals on those grounds.

DECISION

Contract Services, Inc. (CSI) protests the Army's award to Edsansu, S.A. of a contract for the collection and disposal of refuse generated at United States military installations in the Atlantic sector of the Republic of Panama under request for proposals (RFP) No. DAHC92-88-R-0173. The protester alleges that the Army provided Edsansu, but not it, with certain information regarding the replacement of engines in government furnished trash trucks. CSI also

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objects to the Army's decision to award to Edsansu without discussions despite its failure to submit cost or pricing data. We deny the protest.

The RFP divided the refuse collection work to be performed under the contract into two lots (Lots I and II), covering the Pacific and Atlantic portions of the country respectively, and requested fixed prices for each lot for a base year and for each of 4 option years. Offerors were advised that award would be made based either on both lots or a single lot, whichever was most advantageous to the government considering prices for the basic requirement plus the options.

The RFP provided that the government would furnish the contractor with certain equipment to be used in performing the services. The equipment to be furnished to the contractor for the Atlantic sector work included two trucks. The RFP provided that the contractor would be responsible for the maintenance and repair of the government furnished equipment, including parts, and provided an item on the schedule for prices to be inserted for this service.

Four offerors submitted proposals for Lot II. Edsansu's price of \$2,069,343.12 was low, while CSI's price of \$2,075,832.31 was second low. The Army did not conduct discussions with any of the offerors and awarded a contract for Lot II to Edsansu on the basis of initial proposals.^{1/} This protest followed.

CSI argues that since the trucks to be furnished by the government are fairly old (8 years) and in such condition that their maintenance and repair will be relatively costly, its representative inquired at the preproposal conference whether the Army intended to replace any of the engines during the course of the contract. According to the protester, the Army responded that it did not intend to replace any of the engines during the base or option years. CSI further alleges that the Army subsequently decided that it would in fact replace the older vehicles' engines and informed Edsansu--but not it--of its intention prior to receipt of proposals. The protester contends that because CSI had access to information not provided to it, the two offerors prepared their proposals based on materially

^{1/} Lot I was also awarded to Edsansu.

different understandings regarding the amount of work that would be required to maintain and repair the trucks during the 5-year period covered by the solicitation.

In response, the Army maintains that at no time did any government employee indicate to Edsansu that certain old engines would be replaced. The Army further indicates that at no time during the solicitation process did it intend to replace the engines in question, and that it does not so intend now. The Army also denies that its representative made any statement at the preproposal conference specifically regarding engine replacement.

The protester has offered a statement from one other individual representing another firm who was present at the preproposal conference which supports its assertion that the Army indicated at that time that it did not intend to replace any of the engines during the course of the contract. CSI has offered no evidence, however, that the Army subsequently decided to replace the engines and informed Edsansu of that intent, and the agency has denied that it did so and also denies that it intends to replace the engines. In view of the fact that there is nothing in the record which substantiates CSI's allegation and since we will not find improper action by an agency based on speculation or inference, we deny this basis of the protest.

CSI also objects to the Army's decision to make award on the basis of initial proposals without requiring Edsansu to submit cost or pricing data as required by the solicitation. The protester contends that without this information, it was impossible for the Army to determine that Edsansu intended to comply with the laws of the Republic of Panama regarding employee compensation (i.e. minimum wages, fringe benefits, and severance pay), as required by the RFP, or that its proposal adequately reflected the reasonable cost of performing maintenance on the government furnished equipment. CSI argues that pursuant to Federal Acquisition Regulation (FAR) § 15.610(a)(3), award on the basis of initial proposals is permitted only if the contracting officer can determine that the lowest offered price is fair and reasonable, and that here, until the Army had satisfied itself that Edsansu understood the RFP's requirements, it could not determine that Edsansu's price was fair and reasonable.

The Army explains that it did not perform a cost analysis of Edsansu's fixed-price proposal since there was adequate price competition under the solicitation.

CSI argues in the alternative that Edsansu's proposal should have been viewed as materially deficient for failure to include cost or pricing data even if adequate price competition existed, because the RFP contained a clause requiring the submission of such data.

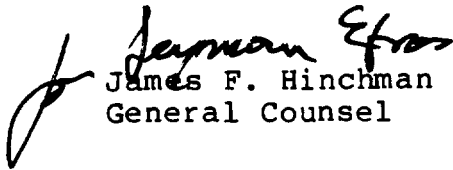
First, we agree with the agency that since four offerors submitted fixed-price proposals under Lot II of this solicitation, which provided for award to the low priced technically acceptable offeror, adequate price competition was obtained and the agency was not obligated to perform a cost analysis. FAR §§ 15-804-3(a)(1), 15-805-1(b); Ramal Industries, Inc., B-224375, Oct. 6, 1986, 86-2 CPD ¶ 397. Further, where an RFP requires the submission of cost or pricing data, but performance of a cost analysis proves unnecessary because adequate price competition is obtained, it is immaterial whether or not an offeror in fact submitted sufficient data because the data will not be used. Id. We therefore agree with the Army that Edsansu's failure to submit cost or pricing data was not an impediment to its receiving the award on the basis of its initial low priced proposal. Synthes (U.S.A.), B-231748, Aug. 19, 1988, 88-2 CPD ¶ 164. Further, in this regard, CSI implies in its arguments that if an offeror's cost or pricing data does not show that an offeror did not separately consider the cost of a particular element, e.g., the cost of maintenance, then the firm does not offer to perform that function. That is not the case under this fixed-price solicitation. The firm is bound to provide the service it offered in its proposal. Whether or not there was separate coverage of the particular element in any cost data submitted has no effect on the offeror's obligation to perform.

In its post-conference comments, the protester raised additional grounds of protest. CSI argues that when the present value of the offerors' prices for performance in future years is calculated, its price is low because its prices for the base and first option year are in fact lower than Edsansu's. The protester also argues that it has greater experience than the awardee and that experience should have been considered in selecting the awardee.

The solicitation here did not provide for the calculation of proposed prices on a present value basis. Rather, it provided that offers would be evaluated for award purposes by adding the total price for all options to the total price

for the basic requirement. The protester was therefore on notice at the time it received the solicitation that future year prices would not be discounted to reflect their present value. If the protester wished to object to the failure to consider present value as an evaluation factor, it was required to do so before the due date for submission of initial proposals. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1988). System Development Corp. and International Business Machines, B-204672, Mar. 9, 1982, 82-1 CPD ¶ 218. Similarly, there was nothing in the solicitation which indicated that an offeror's experience would be evaluated in determining the awardee.

The protest is denied.


James F. Hinchman
General Counsel