



Comptroller General
of the United States

Washington, D.C. 20548

Burkard

Decision

Matter of: Gulf Weather Corporation

File: B-238332

Date: February 22, 1990

F.J. Schatzle, for the protester.

Richard P. Burkard, Esq., and Michael Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Award to firm which submits low, technically acceptable offer was proper since it was in accordance with solicitation award provision which called for award to low, technically acceptable offeror.
2. Protester's contentions, not raised until after award, that the solicitation should have been set aside for labor surplus area concerns and that amendments to solicitation favored a particular offeror are untimely and will not be considered.

DECISION

Gulf Weather Corporation protests the award of a contract to Vaisala Corporation, under request for proposal (RFP) No. N62306-89-R-0052, issued by the Naval Oceanographic Office for depot level maintenance. We dismiss the protest.

The RFP sought prices for a base item and options for 1991 and 1992. Award was to be made to the low, technically acceptable offeror. The Navy received only two proposals under the RFP. Gulf Weather's price was low for the basic item and the 1991 option. Vaisala's proposal, however, was the low aggregate offer. Consequently, the Navy awarded the contract to Vaisala. Gulf Weather received notification of award on January 2, 1990. This protest followed.

Gulf Weather argues first that the agency improperly evaluated its price, since its price for the base item and the 1991 option on the contract were low. However, it concedes that Vaisala's aggregate price was \$21,153 lower than Gulf Weather's. The protester merely asserts that

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because its overall price was within 6 percent of Vaisala's, the prices were close enough to be considered a tie. The evaluation factors in the RFP, however, provided for award to the firm whose proposal was low-priced and technically acceptable, and merely because a price is not significantly lower than another price does not mean that it is not the low price for evaluation purposes. Thus, we find nothing improper in the agency's award to the lowest-priced acceptable offeror, Vaisala.

Second, Gulf Weather objects to the agency's decision not to set aside the contract for Labor Surplus Area (LSA) concerns. The protester also asserts that the RFP was amended twice to permit longer turnaround time for component repair which provided a competitive advantage to Vaisala.

Under our Bid Protest Regulations, protests alleging solicitation improprieties that are apparent from the face of the solicitation must be filed prior to the time set for receipt of proposals; alleged improprieties which do not exist in the initial solicitation but which are subsequently incorporated into the solicitation must be protested by to the next closing date. 4 C.F.R. § 21.2(a)(1) (1989); Custom Programmers Inc., B-235716, Sept. 19, 1989, 89-2 CPD ¶ 245. Gulf's objections involve solicitation improprieties which were apparent from the face of the solicitation or the solicitation as subsequently revised. Since these allegations were not raised until after contract award, we find them to be clearly untimely.^{1/} Moreover, we note that the protester merely speculates that the agency decided to further amend the RFP due to favoritism towards the awardee. However, there is no evidence that these agency decisions were the result of improper motives. In fact, the protester concedes that the original turnaround time contained in the RFP was too short.

Third, the protester argues that Vaisala's offer was unbalanced. Vaisala proposed a unit price of \$10,686 for the base year; \$10,624 for the first option year; and \$10,731 for the second option year. Specifically, Gulf Weather objects to Vaisala's small price increase of less than one percent from the first option period to the

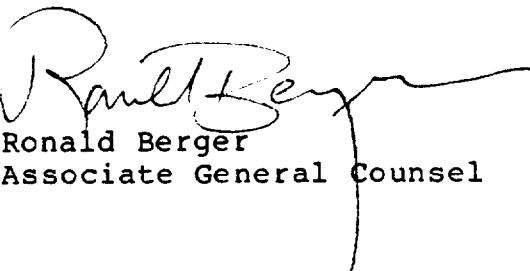
1/ In any event, we note that the agency is prohibited from issuing total set-asides for LSA concerns. Department of Defense Federal Acquisition Regulation Supplement (DFARS) 220.7002(a)(2) (DAC 88-5). Further, partial set-asides for LSA concerns are appropriate only under limited circumstances which do not appear to be present here. See DFARS § 220.7003 (DAC 88-5).

second. Gulf Weather argues that Vaisala should have further increased its price for the 1992 option in anticipation of higher costs.

An offer is unbalanced where it contains both overstated prices for some work and understated prices for other work. See Consolidated Photo Company, Inc., B-234137, Apr. 18, 1989, 89-2 CPD ¶ 386. Here, since Vaisala's prices varied less than one percent from the basic year to the second option year (the entire period covered under the proposal), we have no basis to conclude that the awardee's offer was unbalanced.^{2/}

Finally, Gulf Weather states that it suspects that some form of price auctioning must have taken place to favor the awardee. The protester, however, provides no support for this allegation; therefore, we will not consider it since we have consistently held that we will not find an agency's actions improper based upon inference or conjecture. Cubic Defense Sys., B-229884, Apr. 22, 1988, 88-1 CPD ¶ 395.

Accordingly, we dismiss the protest.



Ronald Berger
Associate General Counsel

^{2/} Gulf Weather also contends that Buy American Act provisions are applicable but does not argue that the Act has been violated. Apparently, Vaisala is proposing to supply certain repair items of foreign manufacture. We note that the Act does not preclude award to a foreign manufacturer. See Qualimetrics, Inc., B-222726, June 3, 1986, 86-1 CPD ¶ 519. Consequently, we dismiss this protest ground for failure to state a valid basis of protest. 4 C.F.R. § 21.3(m) (1989).