



Comptroller General
of the United States

Washington, D.C. 20548

Gilhooly

Decision

Matter of: Cherokee Electronics Corporation

File: B-240659

Date: December 10, 1990

Michael L. Sterling, Esq., Vandeventer, Black, Meredith, & Martin, for the protester.
Kenneth S. Kramer, Esq., Fried, Frank, Harris, Shriver & Jacobson, for Raytheon Service Company, an interested party.
Michael D. Rigg, Esq., and Theodore H. Hoffman, Esq., Department of the Navy, for the agency.
Kathleen A. Gilhooly, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that agency failed to properly evaluate awardee's corporate experience is denied where agency's technical evaluation is not shown to be unreasonable or inconsistent with the solicitation's evaluation scheme.
2. Evaluation of offers based on the application of a small disadvantaged business concern evaluation preference, not provided for by the solicitation, would be improper. Protest that solicitation should have included such an evaluation preference is untimely under Bid Protest Regulations since it alleges a solicitation impropriety apparent before the closing date for receipt of proposals but was not filed before that time.
3. Contracting agency properly did not evaluate transition costs where the solicitation requesting fixed-price proposals did not provide for the evaluation of such costs. Protest that such costs should have been included in the evaluation criteria is untimely under Bid Protest Regulations when protested after the closing date for receipt of proposals.

DECISION

Cherokee Electronics Corporation protests the award of a contract to Raytheon Service Company under request for proposals (RFP) No. N00189-89-R-0321, issued by the Naval Supply Center, Norfolk, Virginia, for the operation of a depot level electronic maintenance center. Cherokee protests that

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the Navy failed to properly evaluate Raytheon's corporate experience. Cherokee, the incumbent contractor, also protests that the Navy failed to apply an evaluation preference for small disadvantaged businesses (SDB) or account for the costs of transition to Raytheon from Cherokee.

We deny the protest in part and dismiss it in part.

The RFP contemplated award of an indefinite quantity/ indefinite delivery, time and materials contract for a 1-year basic period with 4 option years. The RFP listed personnel, corporate experience, and management and technical approach as the technical evaluation criteria. The personnel criterion and management and technical approach criterion were stated to be of equal importance, and corporate experience was said to be weighted twice that of personnel or management. The RFP advised that the technical evaluation factors combined would be of slightly more importance than cost factors, and that a contract would be awarded to the offeror whose proposal was determined to offer the greatest value to the government, cost and other factors considered.

Four proposals were received by the RFP's amended closing date of March 19, 1990. Following an initial evaluation, three of the proposals, including those of Raytheon and Cherokee, were included in the competitive range. After cost discussions and best and final offers, Raytheon was evaluated as the highest technically rated offeror proposing the second lowest price. Cherokee, the second highest rated offeror, proposed the highest price. The contracting officer awarded the contract to Raytheon since he determined that its proposal represented the greatest value to the government.

Cherokee protests that the Navy failed to evaluate Raytheon's proposal properly under the corporate experience factor. According to Cherokee, the Navy failed to take into account Raytheon's performance problems on a delivery order to overhaul the AN/SSQ-74 van.^{1/} Cherokee alleges that Raytheon delivered the overhauled van late with major portions inoperative, and, as a result, the van overhauls were reassigned to Cherokee's contract for operation of a depot level Electronic Maintenance Center (EMC). Under the circumstances, Cherokee argues, Cherokee should have been rated higher than Raytheon.

^{1/} A van is a trailer containing electronic equipment to be sent on a naval warship in furtherance of the warship's electronic warfare functions.

The Navy replies that it has checked its records and determined that the delivery order referred to by Cherokee required Raytheon to repair three air conditioners, three heat exchangers, two radar antennas and one microwave antenna. The three antennas, one air conditioner and one heat exchanger were repaired and returned to the government. According to the Navy, the two remaining sets of air conditioners and heat exchangers had been heavily "cannibalized" by the activity submitting them for repair and were, therefore, in very poor condition. Ultimately, it was determined that there was not enough funding support available to complete repair of these units under the Raytheon contract, so the remaining portion of the contract was terminated. The surplus hardware and spare parts were transferred to the EMC facility as part of a previously planned consolidation of all depot level work. In short, the Navy states, financial considerations, and not any concern over competence, led to the transfer of the equipment to the EMC facility. Indeed, the Navy adds, Raytheon's performance led a Commanding Officer to forward a letter of appreciation to Raytheon, commending the efforts of several "extremely capable and professional individuals" and noting the leadership of one individual as ". . . a significant factor in the successful completion of the AN/SSQ-74(v) Reconfiguration/Overhaul."

Moreover, the delivery order referenced by Cherokee was one of many issued under the "van" contract and, although Raytheon's proposal contains a list of many contracts to demonstrate its experience, it does not mention the "van" contract. Thus, this contract apparently was given no weight in the technical evaluation. We cannot say that Raytheon's score for corporate experience would be lower than that received had the Navy investigated Raytheon's performance on the delivery order as part of the technical evaluation, given the existence of the letter from the Navy Commanding Officer commending Raytheon for its work on the "van" contract. In these circumstances, we find no basis to conclude that the agency's evaluation was unreasonable. See Summit Research Corp., B-225529, Mar. 26, 1987, 87-1 CPD ¶ 344.

Cherokee also protests that the Navy failed to give it an evaluation preference as an SDB. The solicitation as amended did not contain any provision for applying an SDB preference. The longstanding rule is that the evaluation of offers must be in accordance with the solicitation's evaluation provisions; in the absence of solicitation language providing for the application of a preference, evaluation on the basis of a preference would be improper. See Mycon Constr. Co., Inc., B-231544, June 14, 1988, 88-1 CPD ¶ 572.

To the extent that Cherokee contends that the solicitation should have contained an SDB evaluation preference clause, the protest is untimely. Our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1990), require that alleged solicitation improprieties which do not exist in the initial solicitation, but which are subsequently incorporated into the solicitation, must be protested no later than the next closing date for receipt of proposals following the incorporation. Here, amendment No. 0002 of the RFP deleted the SDB preference provided for in the original RFP. Cherokee therefore should have filed its protest regarding the absence of a preference prior to the September 29, 1989, closing date provided for by that amendment. See Basic Supply Co. Inc., B-239267, June 1, 1990, 90-1 CPD ¶ 522.

Cherokee argues this should be considered under the significant issue exception to our timeliness requirements provided by 4 C.F.R. § 21.2(b). The significant issue exception to our timeliness rules is strictly construed and sparingly used to prevent the timeliness rules from being meaningless. We will invoke it where the protest raises issues of widespread interest to the procurement community which have not been considered on the merits in prior decisions. DynCorp, B-240980.2, Oct. 17, 1990, 70 Comp. Gen. ____, 90-2 CPD ¶ ____. The applicability of the SDB preference to a particular solicitation generally has been addressed in previous cases and is not of widespread interest. See B&S Transport, Inc., B-240906.2; B-240909.2, Sept. 14, 1990, 90-2 CPD ¶ 216.

Cherokee also protests that, in determining that Raytheon's offer represented the "greatest value" to the government, the Navy failed to consider significant costs of transition from Cherokee, as the incumbent contractor, to Raytheon. According to Cherokee, the government should have taken into account the costs of relocating government office equipment currently at Cherokee facilities, and other costs resulting from disruption to government services and inefficiencies inherent in changing to a new contractor.

Transition costs may be an evaluation factor in appropriate circumstances, but an agency may only evaluate them if offerors were advised such costs were to be evaluated. See Tichenor & Eiche, B-228325, Dec. 28, 1987, 87-2 CPD ¶ 631; Olympic Container Corp., B-219424, July 24, 1985, 85-2 CPD ¶ 83.

The Navy properly did not evaluate transition costs here since the RFP did not provide for the evaluation of such costs.^{2/} Here too, since it was obvious that the RFP, requesting fixed-price proposals, did not contemplate the consideration of transition costs, Cherokee should have filed any protest that such costs must be considered prior to the closing date for receipt of proposals. 4 C.F.R. § 21.2(a)(1); CDI Marine Co., B-219934.2, Mar. 12, 1986, 86-1 CPD ¶ 242.

The protest is denied in part and dismissed in part.



for James F. Hinchman
General Counsel

^{2/} The RFP as amended provided that the government would relocate its own office equipment.