

Anne Perry



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: MCII Generator and Electric Service

File: B-242204.2

Date: April 4, 1991

Paula S. Kent, Esq., Doke & Riley, for the protester.
Michael A. Coscina, for Alturdyne, and Judy Clegg, for Clegg Industries, Inc., interested parties.
Arthur Thibodeau, Esq., Vicki O'Keefe, Esq., and Paul M. Fisher, Esq., Department of the Navy, for the agency.
Anne B. Perry, Esq., Paul Lieberman, Esq., and John F. Mitchell, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that offeror was not allowed sufficient time to prepare proposal after receipt of amendment, which permitted offerors to propose alternatives to system allowed in original solicitation, is denied irrespective of whether contracting agency violated the Federal Acquisition Regulation by not extending the closing date where protester failed to show that it suffered competitive prejudice since evidence in the record suggests that the acquisition costs of the alternative system are very high and solicitation provides for award of contract to low cost, technically acceptable offeror.

DECISION

MCII Generator and Electric Service protests the terms of request for proposals (RFP) No. N47408-90-R-2036, issued by the Department of the Navy for the construction and supply of diesel engine generator plant equipment and switch gear. MCII alleges that the contracting officer should have extended the closing date for receipt of initial proposals in order to give offerors a sufficient period of time to prepare and submit proposals after the issuance of an amendment.

We deny the protest.

The solicitation, a total small business set-aside, was issued on July 30, 1990, with an August 30 closing date for receipt of initial proposals. The solicitation was amended seven times, the first five times only to extend the date for receipt of initial proposals: Amendment No. 1 extended the closing date to September 17; amendment No. 2 extended the

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closing date to October 2; amendment No. 3 extended the closing date to October 10; amendment No. 4 extended the closing to October 24; and amendment No. 5 extended the closing to November 7.^{1/} Until the issuance of amendment No. 6, the specifications remained unchanged from those originally issued. As originally issued, the solicitation required five diesel generator units of 1600 kilowatt (kw) each, which are "high speed" generators. Amendment No. 6, issued on November 5, relaxed this requirement to allow for four diesel generators of 2000 kw each, which are "low speed generators," and provided that offerors were allowed to offer either high or low speed generator units, but whether four or five units were supplied, a combined capacity of eight megawatts of power was required. This amendment also extended the closing date to November 23. A final amendment, No. 7, was issued on November 15, to correct minor technical errors contained in amendment No. 6, and to extend the closing date to November 30.

On November 28, MCII requested a 1-week extension of the closing date, because it was experiencing difficulty in receiving all of the technical information and prices for the low speed generators within the allotted time. The contracting officer denied this request on November 29, stating that:

"The request for additional time is based on poor excuses. The Thanksgiving holiday and the need for unspecified further analysis is inadequate reasoning to further delay this project. The RFP has been out since 29 July [actually July 30] and the closing date has been extended numerous times (92 days from 30 Aug. to 30 Nov.)."

In addition, the contracting activity noted its need for this emergency generator capability to be in place by the Spring of 1992.

In its protest filed in our Office 20 minutes before closing, MCII objects to the contracting agency's refusal to extend the closing date for 1 week on the grounds that:

"(1) the additional time will benefit the Engineering Command by allowing offerors to adequately consider the amended requirements and offer the most competitive responses; and

^{1/} Amendment No. 3 also contained responses to technical questions raised by prospective offerors, but did not change the specifications.

(2) The Federal Acquisition Regulation requires the contracting officer to provide sufficient (we believe this means reasonable) time in which to evaluate the amended solicitation."

The protester alleges that its initial investigation of the usage of the low speed generators suggests "the existence of significant advantages to the Government in such equipment," such as acquisition and operating cost savings. MCII contends that the change contained in amendment No. 6 to include low speed generators was a significant change to the contract requirements necessitating alteration of fundamental technical assumptions, comparisons of the high and low speed generators, and examination of the pricing and new products now allowed. The protester states that this is the only extension MCII requested, and argues that a 1-week extension is reasonable given the nature of the changes, and the fact that the extension would mean that offerors would have approximately 30 days to perform an analysis on the low speed generators, a task which offerors were given 14 weeks to perform for the high speed generators. The protester argues that such a short extension will not unduly delay the ultimate performance of the contract and may result in significant advantages for the government.


The Federal Acquisition Regulation (FAR) prohibits contracting officers from awarding a contract unless offerors have had sufficient time before the closing date to consider solicitation amendments. FAR § 15.410(b). The decision, however, as to the appropriate preparation time lies within the discretion of the contracting officer. L&E Serv. Co., B-231841.2, Oct. 27, 1988, 88-2 CPD ¶ 397.

Here, there are a number of facts that arguably establish that the contracting officer abused his discretion. For example, the record provides no justification for the Navy's refusal to extend the closing date for 1 week. In fact, the Navy's own plan of action and milestones shows a closing date of December 6, a week later than it actually closed, the same amount of time requested by MCII. The protester's description of the significant effort necessary to prepare a proposal for low speed generators is itself reasonable, and certainly not contradicted by the fact that no offeror submitted such a proposal.

Irrespective of whether the agency violated the FAR by not extending the closing date, in our view, MCII suffered no competitive prejudice. The record shows that some offerors and the agency believed the acquisition costs of the low speed generators were very high and therefore not possibly a competitive alternative. These statements are uncontroverted by the protester, even though MCII has had several months

during the protest process to gather all of the price information. MCII alleges that the low speed generator is more efficient and has lower life-cycle costs. However, the solicitation clearly states that award will be made to the low cost, technically acceptable offeror. Low cost is expressly defined in the RFP to mean acquisition cost and not life-cycle cost. Since MCII did not challenge the award criteria and it has offered no suggestion that the low speed generators are possibly competitive in terms of initial acquisition cost, we conclude that MCII was not prejudiced by the Navy's refusal to extend the closing date.

The protest is denied.


for James F. Hinchman
General Counsel