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Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Comstock Communications, Inc.

File: B-242474

Date: May 6, 1991

Charles W. McFarland for the protester.
Roger A. Briney, Esq., for AT&T, an interested party.
Bruce W. McLaughlin, Esq., Department of the Army, for the agency.
Robert C. Arsenoff, Esq., and John G. Brosnan, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest is denied where protester's analysis of 17 line items out of 2,500 fails to establish that allegedly inaccurate estimated quantities contained in the solicitation served to misrepresent the agency's needs, made a difference to the relative competitive standing of offerors or resulted in an award to other than the low evaluated offeror.

2. Allegations that awardee submitted an unbalanced offer which was not otherwise in conformance with solicitation subcontracting restrictions are dismissed where protester would not be in line for award if they were sustained and is, thus, not an interested party to protest.

DECISION

Comstock Communications, Inc. protests the award of a fixed-price indefinite delivery/indefinite quantity contract to AT&T under request for proposals (RFP) No. DAEA08-89-R-0018, issued by the Department of the Army for supplies and installation services in support of an agency-wide outside cable rehabilitation (OSCAR) program to upgrade telephone cable at 93 bases in the United States, Puerto Rico and Panama over a period of 5 years. The protester principally asserts that the estimated quantities contained in the RFP were inaccurate, that the awardee submitted an unbalanced offer and violated RFP restrictions on the amount of permissible subcontracting.

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

The RFP contemplated the award of a 1-year contract with four 1-year options to the technically acceptable offeror with the lowest overall price on approximately 2,500 contract line items (CLINs) to be installed under the OSCAR program.

The Army reports that the estimated contract quantities listed in the RFP for each CLIN represented, in approximately 800 cases, data based on historical ordering information under Comstock's predecessor OSCAR contract which primarily involved projects using copper cable. For approximately 1,700 CLINs, primarily involving fiber-optic supplies not previously covered by the program, the Army reports that it reviewed the 800 CLINs under the old contract and used its best engineering judgment in estimating the supplies needed to complete the previous copper cable projects using fiber-optic cable and multiplexing equipment.

In addition to submitting a separate price for each CLIN, offerors were required to specify a location factor for each Army base covered by the contract, based upon a figure of 1.0 standard location factor at Fort Belvoir, Virginia, to accommodate, for example, varying labor rates and transportation costs at a given location.^{1/} Offerors were also required to develop and submit delivery order size factors using 1.0 as the standard. In the RFP, the Army projected that the following percentage of orders would be issued under the contract based upon dollar amount:

<u>Dollar Size</u>	<u>Order %</u>
Over \$1M	43%
\$500K - \$1M	44%
\$250K-\$500K	6%
\$100K-\$250K	5%
\$50K-\$100K	1%
\$10K- \$50K	1%

Based on a formula which took into account the CLIN prices as submitted and the location and order size factors, final prices were evaluated as follows:^{2/}

^{1/} Thus, for example, an order for a CLIN which might be priced at \$1,000 by a contractor for installation at Ft. Belvoir would be priced at \$1,200 at another location for which the offeror had proposed a 1.2 location factor.

^{2/} The maximum estimated amount of the contract is only \$150,000,000. The evaluated prices are considerably higher than that because they are calculated using a formula which totals the maximum estimated quantity of each CLIN (with
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AT&T	\$32,810,700,647.45
T-CAS	\$34,131,690,572.02
Comstock	\$56,260,913,113.92
ANSCO	\$57,428,294,046.86

On September 30, 1990, AT&T was awarded a contract as the low-priced, technically acceptable offeror. Comstock then requested and received information from the Army concerning AT&T's proposal and the firm's pricing structure as well as the first five delivery orders placed under the new contract. Based on its analysis of this information, Comstock filed this protest on December 28.

Comstock's review of the first five delivery orders under AT&T's contract reveals, in the protester's view, that approximately 50 of the RFP CLINs had inaccurate estimated quantities. In support of this contention, the protester specifically sets forth an analysis of the 17 CLINs it views as most troublesome and which were the subject of the initial set of orders and multiplies the quantity ordered for each by 10 (since the aggregate value of the orders was approximately 10 percent of the "potential annual contract value") to arrive at what Comstock terms "anticipated ordered quantities" which in all cases in its analysis vary considerably from the estimates contained in the RFP.

Comstock also reviewed the pricing of the initial set of delivery orders and concludes that, for three of the initial five, it, rather than AT&T, was actually the low-priced offeror, and that, in no case, did the variation in the actual prices between itself and the awardee accurately reflect the 42 percent difference in evaluated prices.

Based on these analyses, Comstock maintains that the discrepancies in RFP quantity estimates, which it asserts must be pervasive based on the examples it proffers, were so great that the government likely had no assurance that AT&T would actually provide the best price during contract performance. In addition, Comstock maintains that AT&T submitted a materially unbalanced offer which exploited the allegedly inaccurate estimated quantities, and the protester suggests

2/ (...continued)

associated order size and location factors), as if the maximum amounts would be ordered at each and every one of the 93 bases covered by the OSCAR program. The relative competitive standing of offerors--with Comstock as third in line for award--is not changed where only extended CLIN pricing, without order size factors and location factors over the total of 93 bases, is considered.

that the awardee otherwise will not comply with RFP restrictions on the permissible levels of subcontracting.

When the government solicits offers on the basis of estimated quantities to be ordered over a given period, the estimates must be compiled from the best information available; while the estimates must be a reasonably accurate representation of the agency's anticipated needs, there is no requirement that they be absolutely correct. The Saxon Corp., B-232694 et al., Jan. 9, 1989, 89-1 CPD ¶ 17. In order for this Office to question estimates contained in a solicitation in a case like this where the award has already been made, the record must show that they somehow misrepresented the government's needs, that the allegedly inaccurate estimates likely made a difference to the relative competitive positions of firms participating in the procurement, see Nationwide Roofing & Sheet Metal Co., B-234222.2, June 22, 1989, 89-1 CPD ¶ 588, or that the award based on the estimates would not result in the lowest cost to the government in terms of actual performance. See Petchem Inc., B-233006, Feb. 8, 1989, 89-1 CPD ¶ 126.

Comstock's position rests upon the premise that the initial set of delivery orders is necessarily reflective of what will later be ordered under the contract and upon the premise that the examples it has analyzed show an estimating problem which pervades the 2,500 CLINs to the extent that it is likely that AT&T was not, in fact, the low offeror. The agency reports that the initial set of orders is not indicative of orders which are yet to be placed since three of the five orders are for dollar values under \$250,000, which represent less than 7 percent of the types of orders to be placed, and that it is not representative of the types of CLINs to be ordered since the initial set of orders involved to some degree a "holdover" project involving copper cable (where AT&T's prices are admittedly high) while the remainder of the contract will more likely involve the installation of fiber-optic supplies (where AT&T's prices are generally lower than the protester's).

We have reviewed the record and are unpersuaded by Comstock's argument that the RFP estimated quantities are not accurate enough to reasonably insure that AT&T will provide the lowest cost of performance to the government. The Army has admitted that an insignificant number of the 2,500 estimates contained in the RFP are inaccurate and Comstock's calculations concerning only 17 CLINs out of this total simply do not establish, as the protester asserts, that this was a pervasive problem in the RFP. Comstock's calculations are based on a universe of initial orders which, by the estimated order size distribution in the RFP alone is simply not representative of the type of orders which are likely to be placed in the future. Without more, we have no basis for questioning the RFP

estimates as misrepresenting the agency's needs. See Nationwide Roofing & Sheet Metal Co., B-234222.2, supra.

In addition, when the two large dollar-value orders (representative of 87 percent of the types of orders to be placed under the contract) of the initial set of five delivery orders are considered together with a similarly large sixth order placed after the protest was filed, a comparison of a total of all the awardee's prices to all of the protester's prices reveals that the government saved almost \$600,000 by its award to AT&T over Comstock in the first set of six orders alone. In fact, the claimed savings on three orders selected by the protester to support and illustrate its allegation that the award was not actually made to the low offeror amount to about \$3,300. Thus, it is evident from our review that, the RFP estimates provided a reasonable basis for predicting that AT&T will provide the required supplies at the lowest cost to the government during contract performance. See Petchem Inc., B-233006, supra.

Comstock has also challenged AT&T's offer as materially unbalanced and not in compliance with RFP provisions restricting subcontractor participation. Our Bid Protest Regulations, 4 C.F.R. §§ 21.0(a) and 21.1(a) (1991), require that a party be "interested" before we will consider its allegations. A protester is not "interested" where it would not be in line for award if its protest were upheld. American Indian Business & Technologies Corp., B-238470, May 25, 1990, 90-1 CPD ¶ 502. Based on the evaluation results Comstock is third in line for award behind another offeror, T-CAS. Although the protester argues that its status as third-low offeror is, in essence, irrelevant because the RFP deficiencies in estimating quantities render such a distinction meaningless, as our earlier analysis indicates the RFP estimates have not been shown to be impermissibly inaccurate. In view of this and since Comstock has only challenged AT&T's eligibility for award, even if we were to sustain its protests on these issues, the firm would not be in line for an award. Accordingly, the protester is not an interested party to protest the award to AT&T, and we dismiss its allegations in this regard.

The protest is denied in part and dismissed in part.



James F. Hinchman
General Counsel