

K4008



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Geodetic Services, Inc.

File: B-242604

Date: May 28, 1991

Douglas D. Marks, Esq., Potter, McClelland, Marks & Healy, P.A., for the protester.
Charles J. McManus, Esq., Maryann L. Grodin, Esq., and Susan Hoover, Esq., Department of the Navy, for the agency.
David Hasfurther, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency properly awarded contract to low, responsible offeror where protester's offer did not take exception or deviate from specifications, and agency made requisite affirmative determination of responsibility.

DECISION

Geodetic Services, Inc. (GSI) protests the Philadelphia Naval Shipyard's (PNSY) award to Leica, Inc. of a contract under request for proposals (RFP) No. N00151-90-R-0002, for a 5-year lease with option to purchase of a photo analysis system with installation, maintenance, and training. GSI contends that the system Leica offered was not compliant with the RFP requirements. GSI contends that the Navy improperly relaxed its minimum requirements without giving GSI, the only other competitor, the opportunity to submit an offer based on the relaxed requirements.

We dismiss the protest.

The RFP solicited for a system to be used to obtain, through the use of photography and a computer, dimensional measurements needed for structural ship repairs. The system was to consist of a high precision camera, camera accessories, an analytical compiler, software, and manuals. The RFP, as amended, contained a list of required technical features, including, for example, specified levels of accuracy for measurements and processing speeds. The RFP stated that the equipment offered shall be capable of performing its intended function in accordance with the operational and performance requirements.

The RFP did not require firms to submit technical proposals. The RFP did not contemplate any detailed technical evaluation since it did not contain any technical evaluation factors. The RFP called for award to the low-priced, responsible offeror which the government determined satisfied solicitation requirements.

Two offers, one from Leica and one from GSI, were received. In their offers, Leica and GSI described the equipment each was offering. Both offers were reviewed by PNSY engineering personnel. GSI was found to be capable of meeting RFP technical requirements. While it did not give detailed responses to all the RFP's technical requirements, it took no exceptions to any of the specifications. Leica was found to be unacceptable for two requirements, that the compiler have a certain level of accuracy and that it have a specified processing speed. Leica was advised of these deficiencies and responded that its offered model would meet both requirements. After revised proposals, Leica's offer was found to take no exceptions to the technical requirements and the firm was found capable of providing a product which met requirements.

A preaward survey of Leica, as the low-priced offeror, was conducted, and the survey confirmed that Leica was both technically qualified and capable of meeting all required specifications. Based on a review of the offer and preaward survey, the contracting officer found Leica responsible. Award was made to Leica.

After learning of the award and following discussions with the agency concerning Leica's offer, GSI filed an agency-level protest in which it argued, based on Leica's published descriptive literature, that Leica's compiler did not meet six requirements, including the measurement accuracy and processing speed requirements which the agency had pointed out as deficiencies. GSI stated it offered a separate measuring unit, an automatic film reader, with the compiler which constituted state-of-the-art equipment--its measuring accuracy is three times better than the minimum acceptable accuracy stated in the RFP. GSI alleged that had GSI been offered an opportunity to revise its offer to reflect a "diminished (non-state-of-the-art) system" equivalent to Leica's, it could have simply dropped its separate measuring unit and could have, as a result, offered a total price lower than Leica's.

The agency denied GSI's December 6 protest. The agency concluded that the compiler being offered by Leica complied with all six of the specification requirements cited by GSI. The agency stated that Leica had promised to meet all specifications in its offer, including all compiler accuracy and speed requirements. The agency further stated that Leica's equipment would not be accepted until these two

requirements were shown to have been met by Leica providing a certification after calibration and testing. The agency stated that these matters did not go to an issue of the offer's "responsiveness" (as GSI contended), but rather to the issue of offeror responsibility and that it affirmatively found Leica responsible. This protest followed. The grounds of its protest to our Office were basically the same as those stated in its letters to the agency.

We conclude that award to Leica was proper. As stated above, the RFP did not require technical proposals or contemplate any detailed technical evaluation since it contained no technical evaluation factors. Here, award was to be made to the low, responsible offeror which the agency concluded satisfied solicitation requirements. Leica's revised offer took no deviations or exceptions to the solicitation requirements.^{1/} In short, it promised to meet all technical requirements. Whether Leica will in fact be able to supply conforming equipment is a matter of the firm's responsibility. Where, as here, the contracting officer has determined a firm responsible, we will not review an affirmative determination of responsibility absent a showing of possible fraud or bad faith or that definitive responsibility criteria have been misapplied. Automatic Screw Mach. Products Co., B-238583; B-238584, June 1, 1990, 90-1 CPD ¶ 519. See General Electrodynamics Corp., B-238100, Apr. 17, 1990, 90-1 CPD ¶ 396.

^{1/} While GSI claims that the agency is relaxing the compiler requirement for Leica, there is simply no evidence in the record that this is the case. The RFP called for a compiler with a certain level of accuracy or better and a specified processing speed. Leica has stated in its offer that its equipment will meet these requirements and the agency has concluded that Leica is capable of meeting these specifications and that the equipment will not be accepted until it establishes compliance. While GSI's compiler equipment may perform better than the specification minimums, as alleged by GSI, a product which met the minimums was all that was required for award.

Since GSI has raised no such allegation concerning the Navy's determination of Leica's responsibility, we find the award to Leica as the low, responsible offeror proper.

Accordingly, the protest is dismissed.



Michael R. Golden
Assistant General Counsel