



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

Decision

Matter of: L.S. Womack, Inc.
File: B-244245
Date: September 30, 1991

Christopher Solop, Esq., Ott, Purdy & Scott, for the protester.
Donald O. Pratt, Esq., Gandy, Michenez, Swindle, Whitaker & Pratt, for John M. Welch, Company, Inc., an interested party.
L. James Tillman, Department of Energy, for the agency.
Robert C. Arsenoff, Esq., and John Brosnan, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Allegation that contracting officials should have accepted a nonconforming offer is denied where protester was specifically advised in the request for best and final offers (BAFO) that the timber it initially proposed was not in accordance with solicitation specifications and where the evaluators reasonably concluded that protester had not adequately justified the use of a lesser grade of timber in its BAFO.
2. Allegation that evaluators erred in concluding that protester lacked sufficient resources to perform within the prescribed time frame is denied where protester has not substantively rebutted detailed findings of the evaluators.

DECISION

L. S. Womack, Inc. protests the award of a subcontract to John M. Welch Company, Inc. under request for quotations (RFQ) No. DES-90-2090, issued by Boeing Petroleum Services, Inc. for the fabrication and construction of manifold valves and piping in support of the Department of Energy's (DOE)

Strategic Petroleum Reserve.^{1/} The protester alleges that its proposal was improperly found to be technically unacceptable.

We deny the protest.

As amended, the RFQ provided that a fixed-price subcontract would be awarded to the technically competent offeror submitting the lowest priced proposal which was technically acceptable. Technical competence was an evaluation factor to be measured on the basis of a survey which, among other things, was intended to gauge an offeror's ability to meet a 225-day delivery schedule for completion of the project. Also, the RFQ's specifications called for the storage of manifold valves on preservative-treated timbers made of "southern pine, Dense Structural 72"; the numerical rating of "72" refers to the level of stress timber can sustain.

Four initial proposals were received. Three proposals, including Womack's, were eventually found to be within the competitive range and the offerors' facilities were the subject of preaward surveys. In its proposal, Womack took exception to the "Dense Structural 72" timber specification. Also, the results of Womack's survey detailed concerns with the firm's ability to meet the delivery schedule and included findings of inadequate facilities and property control systems, and an unsatisfactory production capacity. These concerns, together with a request that the protester offer specification timbers, were communicated to Womack in a letter dated April 19, 1991, requesting best and final offers (BAFO). As were the other offerors in the competitive range, Womack was instructed to submit, with its BAFO, a fabrication matrix indicating the number of welds to be performed and the personnel resources needed to accomplish those welds.

In the cover letter to its BAFO, Womack again took exception to the requirement for Dense Structural 72 timbers, which it maintained were unavailable within the delivery time frame set forth in the RFQ; instead, Womack based its offer on lower-priced Dense Structural 65 timbers. Womack also stated its plan to construct additional facilities to perform indoor

^{1/} Boeing is DOE's management and operations contractor for the Strategic Petroleum Reserve and, as such, must conduct its procurements in accordance with agency-approved procedures. Since federal procurement regulations and statutes do not apply per se to the award of subcontracts by such agents, our review is limited to determining whether the procurement conforms to the "federal norm," i.e., the policy objectives contained in the federal statutes and regulations. Merrick Eng'g, Inc., B-238706.2, June 14, 1990, 90-1 CPD ¶ 564.

welding to alleviate a concern of the evaluators that exclusive outdoor welding would likely result in schedule delays; likewise, Womack expressed an "intention" to purchase two automatic welding machines to enhance productivity and indicated that it would increase its welding personnel as needed during performance.

Womack's BAFO price was \$5,589,516; the second-low offer from Welch--which was found to comply with the RFQ in all respects--was priced at \$5,650,828.

In reviewing Womack's BAFO, including the accompanying fabrication matrix, the evaluators found that the number of hours proposed to perform the required welding was only 51 percent of that established by industry estimating standards; they also found that the 10,095 labor-hours listed in the matrix conflicted with the 18,875 labor-hours contained in Womack's cost breakdown. As to Womack's general plans to construct additional facilities, install automatic welders, and add additional welding crews if necessary, the protest report notes that none of these proposed changes was explained in any detail or reflected in the BAFO cost breakdown and states that, therefore, Boeing had no reasonable assurance that the protester was likely to meet the delivery schedule. Accordingly, and because Womack continued to offer non-specification timber, its proposal was found to be technically unacceptable and award was made to Welch.

Womack argues that its proposed exception to the timber specification was, in fact, authorized by the RFQ; Womack based its exception on information from one of its suppliers that Dense Structural 72 grade timber was commercially unavailable. With regard to Boeing's continuing concerns about the protester's production capacity and ability to meet the delivery schedule, Womack argues that an examination of its past experience shows that it is capable of meeting the schedule and asserts that the contracting officials should have considered this experience, with the firm's financial resources, in concluding that it could expand its production capacity, as promised, during performance.

A proposal that fails to conform to the material terms and conditions of a solicitation is unacceptable and therefore may not form the basis for award. AMDATA, Inc., B-239216, Aug. 13, 1990, 90-2 CPD ¶ 123. It is fundamental that an offeror has an obligation to submit a proposal that fully complies with the terms and conditions of the solicitation and runs the risk of having its proposal rejected if it fails to do so. Id. Further, concerning the evaluation of the firm's proposal and resources, while we will not substitute our judgment for that of the evaluators, we will examine their evaluation to insure that it was fair and reasonable and

consistent with the stated evaluation criteria, CVD Equip. Corp., B-239916, Oct. 4, 1990, 90-2 CPD ¶ 272. A protester's mere disagreement with the evaluation is itself not sufficient to establish that the evaluation was unreasonable. See Research Analysis and Maintenance, Inc., B-239223, Aug. 10, 1990, 90-2 CPD 129.

We are not persuaded by Womack's principal assertion that 72 grade timber was, in fact, commercially unavailable and that, therefore, its proposed exception to the specification was warranted. The other firms in the competitive range offered compliant timber; thus, we believe that Boeing reasonably regarded the protester's proposed exception to the specifications to be inadequately justified. Moreover, the record shows that Womack was again placed on notice of the requirement for 72 grade timber in the April 19 request for BAFOs. Thus, Womack should have known that its exception to the specification proposed in its initial offer was not approved and that, because of its insistence in proposing noncompliant timber in its BAFO, it ran the risk of having its proposal rejected. AMDATA, Inc., supra.

With regard to the finding that Womack's fabrication matrix and BAFO cost breakdown were inconsistent and indicative of insufficient resources to perform in accordance with the delivery schedule, Womack has provided us with nothing more than a generally-stated disagreement with those conclusions. Since the evaluators' conclusion in this regard appears to be reasonable, we have no basis upon which to disturb it. Research Analysis and Maintenance, Inc., supra.

Finally, while Womack expressed its intention to upgrade its facilities and machinery and to add additional welding personnel as needed, all in response to Boeing's concerns as communicated in the request for BAFOs, the evaluators found that these proposed enhancements to its resources were insufficiently detailed to warrant a reversal of their earlier conclusion that the protester would not likely meet the delivery schedule. Our review of Womack's expressed intentions to upgrade its resources as needed reveals that they are general in nature. Under such circumstances, and since the protester has provided no detailed rebuttal to the

detailed evaluation findings, we have no basis to find that Boeing acted unreasonably in assessing Womack's BAFO as it did. See Interceptor Group Ltd., Inc., B-239490.3, Dec. 4, 1990, 90-2 CPD ¶ 451.

The protest is denied.



for James F. Hinchman
General Counsel