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

Decision

Matter of: Southeastern Enterprises, Inc.--Request for Reconsideration

File: B-244989.2

Date: April 20, 1992

Craig S. Taschner, Esq., Tarlow, Levy & Droney, for the protester.
Tania L. Calhoun and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Prior decision dismissing a protest challenging the rejection of an offer for failure to include information regarding price realism is affirmed where, notwithstanding agency's express request for explanation as to price realism figures, protester's best and final offer did not provide adequate information to permit an effective realism analysis.

DECISION

Southeastern Enterprises, Inc. requests reconsideration of our December 4, 1991, dismissal of its protest challenging any award under request for proposals (RFP) No. N00123-91-R-0485, issued by the Department of the Navy to supply mess attendant services to the Naval Construction Battalion Center at Port Hueneme, California. Southeastern protested that its proposal was improperly determined to be unacceptable; we dismissed the protest because it failed to state a valid basis of protest.

We affirm the dismissal.

The RFP was issued as a small business set-aside on April 18, 1991, for a firm, fixed-price contract; offerors were to provide a price proposal for a 1-year base period and two 1-year option periods. The RFP further provided that award would be made to the "low, realistically priced, responsible offeror."

Under the RFP, each offeror's price proposal was to be comprised of three completed solicitation sections. First, offerors were required to complete three fixed-price schedules--one for the base year and each option year

period.¹ Second, to demonstrate that the prices set forth in the fixed-price schedules represented realistic pricing, each offeror was required to complete a "Cost Proposal Breakdown" chart. On this chart, offerors were required to indicate in monthly figures their general and administrative (G&A) and overhead (OH) costs, as well as their expected profit.² With regard to completing this chart, the RFP instructed all offerors that adherence to the explicit elements on the form was mandatory. Offerors were also advised that "[i]f information is not provided in the format required to permit an effective price realism analysis, offers may be rejected as not realistic." Third, offerors were required to complete and submit four manning charts.³

Two amendments to the RFP modified various requirements and extended the date for receipt of proposals to May 21. In evaluating initial proposals, the contracting officer determined that Southeastern's G&A, OH, and profit figures were unrealistic since they represented a "token amount."⁴ Accordingly, in its June 20 best and final offer (BAFO) request, the Navy advised Southeastern that the amounts proposed for indirect costs and profit appeared inadequate. The Navy further asked Southeastern to provide an explanation in sufficient detail to indicate that it understood and would provide during performance the staffing level necessary to fulfill the contract requirements.

On the June 27 date for receipt of BAFOs, 10 BAFOs, including Southeastern's, were received. Southeastern submitted the lowest price but, without any explanation,

¹On these schedules, offerors were to provide fixed monthly prices based on estimates for three separate requirement levels, as well as fixed monthly prices for estimated cashier services and hours worked beyond normal estimated hours.

²Offerors were also required to specify the wage rates, fringe benefits, insurance, and tax allowances to be paid for each staff position.

³These charts were to indicate each offeror's compliance with the minimum monthly staffing requirements set forth in the RFP's statement of work.

⁴The contracting officer also noted as a deficiency Southeastern's failure to insert wage figures for four of the chart's seven positions. Since the protester does not raise this issue on reconsideration, we will not consider it.

reduced its figures for G&A and OH to zero.⁵ As a result, the contracting officer determined that Southeastern's proposal was unacceptable; accordingly, on July 22, the Navy made award to Eagle Management, the second-low offeror. On July 26, Southeastern filed an agency-level protest of the rejection of its BAFO; the Navy denied this protest. Southeastern subsequently filed a protest with our Office on July 31.

In our prior decision, we stated that while price realism ordinarily is not considered in the evaluation regarding the award of a fixed-price contract, Fairchild Space and Def. Corp., B-243716; B-243716.2, Aug. 23, 1991, 91-2 CPD ¶ 190, a price realism analysis may be used in the solicitation of firm, fixed-price contracts for mess attendant services since performance of such an analysis allows the agency to ascertain whether all offerors fully understand the services required as well as the staffing necessary to maintain the continuity of services. Industrial Maintenance Servs., Inc.; Logistical Support, Inc., B-235717; B-235717.2, Oct. 6, 1989, 89-2 CPD ¶ 324. Where, as here, a solicitation makes clear that an offeror must furnish adequate information to permit an effective realism analysis and places offerors on notice that offers might be rejected if prices are not realistic, proposals that do not establish that proposed prices are realistic may be rejected. Id.

The Navy's BAFO request explicitly alerted Southeastern to the fact that the indirect costs in its initial proposal were unrealistically low and specifically requested an explanation of these figures. Southeastern failed to provide any such explanation; we therefore found that the protester's proposal was properly rejected. Id.

In its request for reconsideration, Southeastern, for the first time, questions the propriety of conducting a price realism analysis under this RFP. This objection is an allegation of impropriety in the solicitation and is therefore untimely under our Bid Protest Regulations. A protest based upon alleged improprieties apparent on the face of a solicitation must be filed prior to the closing time for receipt of initial proposals. 4 C.F.R. § 21.2(a)(1) (1992); Seer Publishing Inc., B-237359, Feb. 12, 1990, 90-1 CPD ¶ 181. Here, because the alleged defect in the RFP, the requirement for a price realism analysis, was apparent on the face of the solicitation, Southeastern would have had to file a protest on this ground prior to the time set for receipt of initial proposals on May 21, in order to be timely.

⁵In the spaces for the figures for both G&A and OH was the notation "--".

Southeastern also argues that the information it submitted in its BAFO was sufficient for the Navy to determine that Southeastern understood the solicitation's requirements. Southeastern asserts that information was wrongly interpreted and that it did explain its indirect cost figures.

Southeastern argues that various notations on the cost chart it submitted in its BAFO comprised of a "breakout" of specific categories of G&A and OH sufficient to allow the Navy to assess Southeastern's indirect costs. Specifically, in a place on the cost chart separate from the spaces provided for indirect costs, Southeastern inserted the notations "uniforms" and "supplies," as well as a figure for each.⁶ Southeastern provided no explanation for these notations, and their location on the cost chart did not indicate that they were a "breakout" of indirect costs. We fail to see how the mere insertion of these notations could be construed as an explanation of Southeastern's indirect costs, especially in light of the unexplained notations of zero ("--") inserted as the figures for both G&A and OH.⁷

In view of Southeastern's failure to explain the indirect costs which the Navy found inadequate,⁸ the Navy had sufficient cause to question whether the firm would perform as represented. Since the risk of poor performance when a contractor is forced to provide services at little or no profit or with an undercompensated workforce is a legitimate concern in the evaluation of firm, fixed-price proposals,

⁶Southeastern also included, in the space marked "Other," the notation "phone," as well as a figure.

⁷Moreover, even if we assumed that Southeastern's cost chart notations regarding uniforms, supplies, and phones comprised a "breakout" of its indirect costs, Southeastern would still not comply with the requirement to furnish adequate information to permit an effective realism analysis; the indirect costs to be incurred by a Connecticut-based firm in establishing a California-based operation should include more than these three categories of costs.

⁸Southeastern in fact reduced the figures; the figure in its initial proposal for G&A was reduced to zero in its BAFO.

Industrial Maintenance Servs., Inc., Logistical Support, Inc., supra, Southeastern's proposal was properly rejected. Trauma Servs. Group, B-242902.2, June 17, 1991, 91-1 CPD ¶ 573.

The established standard for reconsideration is that the requesting party must show that our prior decision contains either errors of fact or of law or any information not previously considered that warrant reversal or modification. 4 C.F.R. § 21.12(a). Southeastern has not met this standard.

The dismissal is affirmed.


Ronald Berger
Associate General Counsel

Southeastern argues that since there was no significant price disparity among the proposals submitted, it was clear that it understood the solicitation's requirements despite the price realism analysis. However, mere absence of price disparity does not indicate an understanding of the requirements since a proposal providing for adequate indirect costs may be priced similarly to a proposal without such provision; Southeastern's unexplained inadequate indirect costs created a risk that it would be unable to perform properly.