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Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Cellular One

File: B-250854

Date: February 23, 1993

William A. Shook, Esq., Preston, Gates, Ellis & Rouvelas Meeds, for the protester.
James L. Weiner, Esq., Department of the Interior, for the agency.
Mary G. Curcio, Esq., and John G. Brosnan, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision

DIGEST

Protest challenging an award for cellular phone services is sustained where the request for quotations required vendors to submit prices for local phone service on a per-minute basis and did not guarantee any minimum amount of usage and awardee submitted its prices on a monthly basis with a requirement that the government pay the monthly charge regardless of how much it used the service.

DECISION

Cellular One protests the issuance of a purchase order to Liaison Cellular Services under request for quotations (RFQ) No. L974-RFQ2-317, issued by the Bureau of Land Management (BLM), Department of the Interior, for cellular telephone service.

We sustain the protest.

The RFQ was issued on September 12, 1992, for cellular telephone service in Alaska for a 1-year period with an additional option year. The RFQ set forth the following schedule on which offerors were to quote:

Item No.	Description	Qty.	Pay Unit	Unit Price	Amount
1.	Cellular Phone Service (regular)	15	ea./mo.	_____	_____
2.	Cellular Phone Service with call forwarding-no answer	5	ea./mo.	_____	_____
3.	Cellular Phone Service with voice mail box	2	ea./mo.	_____	_____
4.	Air time local	600*	min./mo.	_____	_____

TOTAL (ALL OR NONE) _____
* denotes estimated quantities

The RFQ also provided, "[q]uotes will be received on the . . . schedule on an all-or-none basis. No quote will be considered for only part of the schedule. Award will be made to the responsible, responsive quoter submitting the lowest price, based upon the unit prices quoted. Quoters are cautioned, therefore, to be sure that a unit price is shown for each subitem. . . ." In addition, section L of the RFQ provided, "[f]or each item offered, offerors shall (1) show the unit price/cost . . . and (2) enter the extended price/cost for the quantity of each item offered in the amount column of the schedule."

Cellular One provided the following quote:

Item No.	Description	Qty	Unit Price	Monthly Amount
1.	Cellular Phone Service (regular)	15/mo.	$ 10.00	$150.00
2.	Cellular Phone Service with call forwarding-no answer	5/mo.	$ 10.00	$ 50.00
3	Cellular Phone Service with voice mail box	2/mo.	$ 10.00	$ 20.00
4.	Air time local	600* min./mo.	$ .25	$150.00
		TOTAL (ALL OR NONE)		$370.00

Liaison's quote was as follows:

Item No.	Description	Qty	Unit Price	Monthly Amount
1.	Cellular Phone Service (regular)	15/mo.	$ N/A	$ N/A
2.	Cellular Phone Service with call forwarding-no answer	5/mo.	$ N/A	$ N/A
			* See Voice mail box pg.	
3.	Cellular Phone Service with voice mail box	2/mo.	$_____	$_____
			* See Bulk rate pg.	
4.	Air time local	600* min/mo	$_____	$_____
			*See Bulk rate	
		TOTAL (ALL OR NONE)	$_____	pg.

The terms of Liaison's quote were included in an attachment which contained the firm's commercial rates. The attachment stated that the firm provided bulk air time rates in four different plans ranging from plan 1, "1,000 minutes (included) for $330.00/MONTH, $.33 a minute over 1,000 minutes" to similar plans for 1,500 minutes, 3,000 minutes and 4,000 minutes per month. In addition, the attached rate provided that the bulk air time rates included two features, such as regular service or call forwarding, at no additional charge. Finally, the rate included 2 different voice mail box services; economy at $10 per month and regular at $15 per month. Liaison did not state which option it was quoting on either in the case of the bulk air time or the voice mail. Liaison did not include prices for line items 1 and 2 because the cost of these items were included in its price for bulk air time.

BLM calculated Liaison's total monthly price for all the services at $350, by computing the voice mail box service at $20 per month (using the economy rate of $10 per month multiplied by 2 phones per month) and Liaison's plan 1 bulk air time rate of $330 per month for 1,000 minutes. Based on this calculation, BLM concluded that Liaison offered the phone services at the lowest price--Liaison at $350 vs. Cellular One at $370--and on September 29, issued the purchase order to Liaison.

On October 9, Cellular One filed its protest with our Office. Subsequently, BLM issued a determination that it was in the government's best interest to continue performance of the contract while the protest was pending.

Cellular One argues that BLM improperly made award to Liaison because the agency did not follow the evaluation scheme set forth in the solicitation. Specifically, Cellular One points out that the RFQ required that vendors submit unit prices for each line item and provided that the low price for award purposes would be calculated based on unit prices. The protester asserts that contrary to these provisions, the awardee did not submit a quote based upon the required unit prices and therefore the agency could not properly evaluate it.

The small purchase procedures of Federal Acquisition Regulation Part 13 set forth abbreviated competition requirements designed to minimize administrative costs that otherwise might equal or exceed the cost of procuring relatively inexpensive items. While small purchases therefore are not governed by normal competition procedures, all procurements, including small purchases, must be conducted consistent with the concern for a fair and equitable competition that is inherent in any procurement. In this regard, it is fundamental that an agency may not solicit quotes on one basis and then make award on a materially different basis when other vendors would be prejudiced by such an award. Ann Riley & Assocs., Ltd., B-241309.2, Feb. 8, 1991, 91-1 CPD ¶ 142.

While BLM argues that the RFQ did not prohibit vendors from submitting their quotes for air time on a monthly basis, that position does not comport with the RFQ provisions. The RFQ schedule as well as section L specifically require firms to provide unit prices and state that the award decision would be based upon the unit prices quoted. Thus, we think that the only reasonable interpretation of the RFQ is that quoters under item 4 for local air time were expected to provide per minute charges for the service. BLM nevertheless states that it could determine the per minute price for Liaison's local air time by dividing the firm's extended price-$330 per month-by 600 minutes, the RFQ estimate of the number of minutes of service per month BLM would require. The problem with this is that Liaison's quote provides that it is offering a month of local air time, to include up to 1,000 minutes, for a flat price of $330; there is nothing in the quote to indicate that the agency would be permitted to break this per month cost down and pay for the service on a per minute basis. Rather, as we understand the awardee's rate--which has been confirmed by BLM--the agency would be required to pay $330 per month if it used 1 minute or 1,000 minutes of local air time.

The RFQ envisioned the purchase of air time on a requirements basis; that is, the agency was to pay only for the air time it in fact used. Thus, while the RFQ provided an estimate of monthly air time which was used for evaluation purposes, the vendor was to take the risk that the agency would use less air time than the estimated amount and consequently pay for less. Cellular One's quote was consistent with this RFP scheme. Liaison's quote, however, which was submitted on the basis of a flat monthly rate that included a specified number of minutes, shifted the risk to the agency that actual phone usage would be less than estimated. This is so because under Liaison's quote, the government is obligated to pay the full $330 per month regardless of whether only 1 minute of service time is required in a single month or whether considerably more time is used.

In our view, this pricing strategy, with its guaranteed minimum monthly payment, could have enabled Liaison to offer a lower overall price. The agency's decision to accept Liaison's quote on this basis therefore was prejudicial to Cellular One, which accepted the risk that it could be required to provide only 1 minute per month of service for $.25. See Valix Federal Partnership, Inc., B-250686, Feb. 1, 1993, 93-1 CPD ¶ ___. In this regard, we note that Cellular One states that it has a bulk air time package that is competitive with the package offered by Liaison which it would have offered if it had been aware that BLM would have accepted quotes for local air time on a monthly rather than a per-minute basis. We also note that it is unclear that Liaison's quote will result in the lowest cost to the government since, as BLM admits, if air time usage falls below 520 minutes in any month, Cellular One's quotation actually provides a lower price than that submitted by Liaison.

We sustain the protest. In light of BLM's willingness to accept Liaison's pricing approval, it is not clear whether the RFQ schedule, with its estimated air time, represents BLM's actual needs. If BLM's actual needs are accurately expressed in the RFQ, BLM should terminate the purchase order awarded to Liaison and award the remainder of the requirement to Cellular One if that firm is otherwise eligible. On the other hand, if Liaison's flat monthly rate meets the agency's needs, BLM should amend the RFQ to permit quotes on that basis from both Liaison and Cellular One. If Cellular One's quote is low, the Liaison purchase order should be terminated and the remainder of the requirement awarded to Cellular One. In addition, we conclude that Cellular One is entitled to be reimbursed for the costs of

pursuing it protest, including attorneys' fees. Bid Protest Regulations, 4 C.F.R. § 21.6(d) (1992). Cellular One should submit its claim for those costs directly to the agency.

The protest is sustained.

for Milton J. Socolar
Comptroller General
of the United States