



Comptroller General
of the United States

916188

Washington, D.C. 20548

Decision

Matter of: Saxon Export
File: B-253441
Date: September 7, 1993

Walter T. Ortega for the protester.
Albert J. Joyce, Esq., Panama Canal Commission, for the agency.
Jennifer D. Westfall-McGrail, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency properly rejected protester's offers of copier equipment not complying with solicitation's stated requirements where solicitation did not authorize offers for supplies or services other than those specified.

DECISION

Saxon Export protests the award of a contract to Lanier de Panama, S.A. under request for proposals (RFP) No. CNR-150015, issued by the Panama Canal Commission for the lease of copying machines. Saxon contends that it proposed several different combinations of equipment capable of satisfying the Commission's requirements at a price lower than Lanier's and that it should therefore have received the award.

We deny the protest.

The RFP requested proposals to furnish, install, and maintain copier equipment at various locations around the Republic of Panama. The solicitation identified three classes of copiers to be furnished and listed the features that copiers of each class would be required to possess. Group No. 1 consisted of copiers capable of generating 25 to 69 copies per minute, with a monthly volume range of 15,000 to 75,000 copies; Group No. 2, copiers capable of generating 15 to 24 copies per minute, with a monthly volume range of 3,000 to 25,000 copies; and Group No. 3, copiers capable of generating 0 to 14 copies per minute, with a monthly volume range of 0 to 1,000 copies. Among the required features for all three classes of copier was an automatic document feeder. The bid schedule asked offerors to furnish prices for the monthly lease of an

estimated 30 Group No. 1 copiers, 80 Group No. 2 copiers, and 80 Group No. 3 copiers for a base period of 1 year and for two optional periods of 1 year each. In addition, offerors were asked to furnish prices for extra copies, for the relocation of copiers, and for containers of toner and developer.

The solicitation advised offerors that all equipment to be furnished under the contract must be new and unused. The RFP also included data as to the monthly average usage per copier under the previous contract and advised offerors that they should furnish the most cost effective equipment capable of generating the indicated volume of copies at each location.

The RFP instructed offerors to include in their technical proposals a phase-in installation plan (worth 25 percent of the offeror's technical score), a preventive maintenance plan (worth 50 percent of the technical score), and a response plan for remedial maintenance (worth the remaining 25 percent). The solicitation further advised that award would be made to the offeror whose offer was most advantageous to the government, considering these factors and price (which was identified as an unweighted evaluation factor).

Seven offerors submitted proposals by the March 1, 1993, closing date. Saxon submitted five alternative price schedules based on different combinations of equipment. Under its first alternative (identified by Saxon as its "base bid"), Saxon proposed to furnish "new and unused copiers within the ranges specified." Saxon noted that the model that it was offering to meet the Group No. 3 requirements, the SX-14Z, did not possess an automatic document feeder, as required by the solicitation. (According to the protester, such a feature would be superfluous in such a low volume copier.) Under its Alternative Bid A, Saxon proposed to furnish the same equipment as under its "base bid" for Group Nos. 1 and 2, and to substitute its model SX-18Z, which has an automatic document feeder, for the SX-14Z for Group No. 3. The following two alternatives (Alternative Bids C and D) consisted of combinations of new and used equipment, while the final alternative (Alternative Bid D) consisted of the equipment that Saxon, the incumbent contractor for the services, had installed under its existing contract.

In evaluating the offers, the contracting officer considered only Saxon's Alternative Bid A, since this was the only alternative under which Saxon proposed to furnish equipment in full compliance with the solicitation's requirements. The contracting officer included Saxon and three other offerors within the competitive range, conducted discussions with all four, and requested best and final offers (BAFO). Upon receipt of the BAFOs, the contracting officer conducted

technical, price, and most probable cost¹ analyses, with the following results:

	Technical	Price	Most Probable Cost
Offeror #1	42	\$1,874,400	\$1,704,412
Saxon	100	\$1,665,140	\$1,618,160
Offeror #3	100	\$1,756,989	\$1,523,944
Lanier	81	\$1,513,114	\$1,369,688

The record shows that the difference in the technical scores between Lanier and Saxon was solely in the area of the phase-in plan. The contracting officer concluded that the scores did not reflect a significant difference in technical merit and did not warrant the higher cost associated with Saxon's proposal. The contracting officer determined that Lanier's offer represented the offer most advantageous to the government and, on April 20, notified Saxon and the other offerors that he had awarded a contract to Lanier.

Saxon protests the award to Lanier on the ground that each of its alternatives, with the exception of A, was lower in price than Lanier's offer. (Preliminarily, we note that only Saxon's prices for its "base bid", Alternative C, and Alternative D, which totalled \$1,313,060, \$1,196,660, and \$1,004,430, respectively, were lower than Lanier's; its price for Alternative B totalled \$1,546,940, and thus was not lower than Lanier's.) The protester contends that the solicitation instructed offerors to furnish their most cost effective equipment, and that the equipment that it offered under its "base bid" and under its Alternative Bids C and D would meet the agency's needs more cost effectively than equipment meeting the agency's stated requirements.

As noted above, the equipment offered under Saxon's "base bid" did not comply with the solicitation requirement for automatic document feeders on Group No. 3 copiers; the equipment offered under Alternative Bids C and D did not comply with the requirement for only new and unused machines. The RFP did not authorize the submission of

¹The most probable cost analysis was performed based on the estimated number of copies to be made during the 36-month performance period, considering the cost per copy of equipment rental, charge for extra copies, and cost for toner, developer, and relocation of copiers.

alternate products and in fact advised, through its incorporation of Federal Acquisition Regulation (FAR) § 52.215-13,² that offers for supplies or services other than those specified would not be considered. Where a solicitation containing FAR § 51.215-13 does not authorize alternate offers, such offers may not be considered. Midland Brake, Inc., B-225682, June 3, 1987, 87-1 CPD ¶ 566. Thus, Saxon's "base bid," and Alternative Bids C and D, could not be considered for award.

In making its argument, the protester appears to have interpreted the background section of the solicitation--which advised offerors that "[c]ontractor-furnished copier equipment [should] represent the most cost effective equipment capable of satisfying the copying needs based on volume requirements at each location"--as inviting offerors to propose equipment deviating from the solicitation's stated requirements. [Emphasis in original]. We think that this clearly is an unreasonable interpretation of the language in the RFP, which merely advised offerors that in determining which class of copier (i.e., Group No. 1, 2, or 3) to install at any particular location, they should select the least expensive model capable of generating the required volume of copies.

To the extent that Saxon's protest may be interpreted as a challenge to the solicitation requirement that all copier equipment be new and unused and to the requirement that Group No. 3 copiers contain an automatic document feeder, the protest is untimely. To be timely, any objection to the terms of the RFP itself should have been raised prior to the closing date for receipt of proposals. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1993); Englehard Corp., B-237824, Mar. 23, 1990, 90-1 CPD ¶ 324.

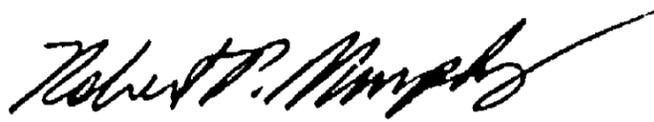
The protester also argues, in commenting on the agency report, that the equipment that it proposed to furnish would be more cost effective than the equipment furnished by Lanier since its copiers would be equipped with remote metering devices and surge protectors. According to Saxon, both devices would help to decrease copier downtime: the former, by improving the contractor's ability to schedule preventive maintenance, and the latter, by preventing surges which could cause equipment breakdown.

In its proposal, the protester discussed both of these features as elements of its preventive maintenance plan, and the agency took them into consideration in assigning

²FAR § 52.215-13(d) provides in full that "[o]ffers for supplies or services other than those specified will not be considered unless authorized by the solicitation."

Saxon a perfect score under that technical evaluation factor. The agency thus properly gave Saxon's proposal full credit for offering these features.

The protest is denied.


for James F. Hinchman
General Counsel