



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Seiler Instrument & Mfg. Co., Inc.

File: B-255194

Date: November 26, 1993

Eugene B. Cortese, Esq., Starfield & Payne, for the protester.

Barbara A. Pollack, Esq., for Hughes Leitz Optical Technologies, Ltd., an interested party.

Vera Meza, Esq., and Robert J. Parise, Esq., Department of the Army, for the agency.

Guy R. Pietrovito, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

In a negotiated procurement, the procuring agency properly rejected the protester's initial offer, which failed to include a technical proposal as required by the solicitation, because the initial offer was so deficient that in essence no meaningful proposal was submitted.

DECISION

Seiler Instrument & Mfg. Co., Inc. protests the rejection of its proposal and the award of a contract to Hughes Leitz Optical Technologies Ltd. under request for proposals (RFP) No. DAAA21-92-R-0058, issued by the Department of the Army for telescope sight units.

We dismiss the protest.

The RFP, issued as a partial small business set-aside, contemplated multiple awards for the telescope elbows and mount telescopes that comprise the telescope sight units for the 120 millimeter mortar. Under the RFP award was to be made to the lowest priced, technically acceptable proposal.

The following evaluation factors and subfactors were set forth in the RFP:

1. Manufacturing Approach
2. Management Area
 - a. Past Performance
 - b. Schedules
 - c. Facilities
 - d. Personnel
 - e. Performance Organization Plan
 - f. Statistical Process Control Plan

The RFP stated detailed proposal preparation instructions that required offerors to submit a technical proposal addressing each of the stated evaluation factors and subfactors. In pertinent part, the RFP required that offerors address, under the manufacturing approach factor, their proposed plan for manufacturing/procuring materials, parts and subassemblies, including the production and assembly processes, to meet the technical data package requirements. Offerors were also required to describe their manufacturing approach and to describe their "[c]orrective [a]ction [p]lan showing how the [c]ontractor will be able to readily recognize, report, and react to problems." Under the management area factor, offerors were required to provide their performance schedules and to describe their management plans "for ensuring performance is readily tracked, reported and controlled."

The Army received eight proposals, including those of Seiler and Hughes, by the closing date for receipt of proposals. Seiler's offer was determined to be unacceptable because it did not submit a technical proposal as required by the RFP addressing any of the stated evaluation factors or subfactors; Seiler only submitted a completed and signed Standard Form 30 that provided the protester's proposed prices. Hughes' proposal and the proposals of the three other offerors were included in the competitive range, discussions were conducted, and BAFOs were received. Award of the non-set-aside portion of the contract was made to Hughes on September 10, 1993. Seiler's protest followed on October 1. The set-aside portion of the contract has not yet been awarded.

Seiler protests that its proposal was rejected on the basis of responsibility-related evaluation factors and that this assertedly was tantamount to a nonresponsibility determination, which, because Seiler is a small business concern, the agency must submit to the Small Business Administration (SBA) for its consideration under the

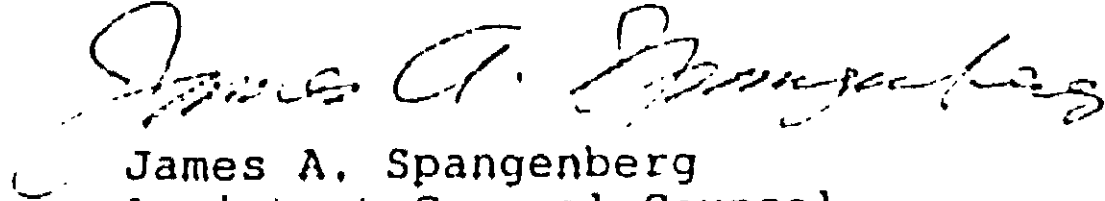
Certificate of Competency (COC) procedures, as required by the Small Business Act, 15 U.S.C. § 637(b)(7) (1988). Seiler also protests that Hughes' contract prices are unreasonable.

We do not agree that the rejection of Seiler's proposal was tantamount to a nonresponsibility determination. Here, the RFP required that offerors submit technical proposals to address, among other things, their understanding and approach to accomplishing the contract work. Technical understanding and approach are not traditional responsibility factors but concern the offeror's technical acceptability. See Paragon Dynamics, Inc., B-251280, Mar. 19, 1993, 72 Comp. Gen. 142 (1993), 93-1 CPD ¶ 248. Seiler provided no information concerning its technical acceptability but only provided its promise to perform the contract work at a firm-fixed price. The rejection of an initial offer is proper where, as here, the initial offer is so deficient that in essence no meaningful proposal was submitted; to allow such an omission to be cured after the date set for receipt of proposals would be inconsistent with the clause governing late proposals. See Panasonic Communications & Sys. Co., B-239917, Oct. 10, 1990, 90-2 CPD ¶ 279; E-Systems, Inc., B-188084, Mar. 22, 1977, 77-1 CPD ¶ 201. Since the record shows that Seiler's initial offer was so deficient that in essence it failed to submit a meaningful proposal, the rejection of its proposal was proper and could not possibly be considered a nonresponsibility determination. See James S. Hutcherson, B-244662, Oct. 28, 1991, 91-2 CPD ¶ 383 (determination that a small business concern's offer was unacceptable was not tantamount to a nonresponsibility determination where the offeror failed to include information required by the solicitation to evaluate the offeror's experience, knowledge and ability to perform).

Seiler is not an interested party to protest that Hughes' contract prices are unreasonable. Our Bid Protest Regulations provide that only an actual or prospective bidder or offeror, whose direct economic interest would be affected by the award of a contract or the failure to award a contract, may have its protest considered by our Office. 4 C.F.R. §§ 21.0(a), 21.1(a) (1993). Since, as noted above, Seiler's initial offer was properly rejected and Seiler is

not in line for award, Seiler is not an interested party to protest the Army's price reasonableness determination. See Mar-Mac Precision Corp., B-221561, Jan. 22, 1986, 86-1 CPD ¶ 72.

The protest is dismissed.


James A. Spangenberg
Assistant General Counsel