

**Matter of:** Johnson Controls World Services, Inc.

**File:** B-254887.2

**Date:** December 13, 1993

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Kathleen C. Little, Esq., Howrey & Simon, for the protester.  
Virginia D. Green, Esq., Reed, Smith, Shaw & McClay, for  
Intelcom Support Services, Inc., an interested party.  
Paul M. Fisher, Esq., Department of the Navy, for the  
agency.

Andrew T. Pogany, Esq., Office of the General Counsel, GAO,  
participated in the preparation of the decision.

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**DIGEST**

Contracting agency properly did not include protester's proposed reduced award fee in price evaluation of proposal, where it was clear from the solicitation that offerors were not intended to propose other than the fee stated on the pricing schedule contained in the solicitation, and that different award fees would not be evaluated.

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**DECISION**

Johnson Controls World Services, Inc. protests the award of a contract to Intelcom Support Services, Inc. under request for proposals No. N62742-92-R-0509, issued by the Department of the Navy for base operating support services at the Pacific Missile Range Facility, Hawaii. Johnson essentially argues that the agency improperly evaluated Johnson's price proposal as other than low because the agency refused to consider Johnson's unilaterally reduced award fee.

We deny the protest.

The RFP provided for award of a firm, fixed-price/indefinite quantity type contract with the possibility of an award fee. The RFP stated that award would be made to the responsible offeror whose proposal conformed to the requirements of the solicitation and was considered to be the most advantageous to the government, price and other factors considered. The RFP included a pricing schedule on which offerors were to enter their proposed unit prices on contract line items (CLIN) Nos. 0001 through 0003 (with numerous sub-CLINs) for the base year, as well as on corresponding CLINs for each of 5 option years. (The pricing schedule for the first option

year, for example, included CLIN Nos. 0011 through 0013, and for the second, CLIN Nos. 0021 through 0023.) In addition, the RFP included CLIN No. 0004 (and a corresponding CLIN for each option year), labeled, in part, "Award Fee." While the schedule for CLIN Nos. 0001 through 0003 provided blank spaces in which offerors were to enter their prices for various services, CLIN No. 0004 included preprinted dollar amounts that represented the maximum award fees that could be earned under the contract. Those maximums were specified as \$1,300,000 for the base year and each of the first three option periods, \$1,100,000 for the fourth option period, and \$110,000 for the fifth option period, for a total award fee available of \$6,420,000.

Further, the RFP specifically provided as follows:

"An award-fee provision is included in this contract to encourage the contractor to provide the management, equipment, materials, transportation, labor and supervision required to result in excellent performance. . . . The contractor will be rewarded with payment of an award fee directly related to the contractor's level of performance. . . . These amounts are fixed and not subject to any variances in ordering work or any changes made."

The RFP contained detailed award-fee evaluation procedures to determine during the course of performance whether and to what extent the contractor had earned and was entitled to receive any award fee. As for price evaluation, the RFP simply contemplated that the unit prices proposed by each offeror for all CLINS would be added to the preprinted amounts established for the award fee CLINS to arrive at a total price for each offeror.

The agency received initial proposals on April 30, 1993, from Johnson and several other offerors. All initial price proposals, including Johnson's, offered the pre-established maximum award fee of \$6,420,000. The agency evaluated initial proposals and then conducted discussions. On July 26, Johnson submitted a revised proposal in which it did not change the pre-established award fee amounts but again included the entire \$6,420,000 as the award fee. Upon completing its evaluation of revised proposals, the agency requested best and final offers (BAFO) on August 17. When

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<sup>1</sup>Each award-fee CLIN stated that the "maximum amounts of award fee available for these periods are not subject to negotiation," and that the government was under no obligation to award any or all of the available amounts to the contractor. (Emphasis added.)

the agency subsequently received Johnson's BAFO on August 24, it discovered that Johnson had unilaterally reduced the total award fee amount of \$6,420,000 to \$1,559,083, approximately 24 percent of what the agency states it considered necessary as an award fee to obtain high quality performance from the contractor. In its BAFO, Johnson offered no explanation for its reduced fee, but merely stated in its cover letter that "we have modified the fee structure of our proposal to include a fixed fee to cover fixed price contingencies, and have reduced the available award fee to 2 1/2 percent of costs." Had the agency considered Johnson's reduced fee, that firm would have been the low offeror; exclusive of fee, however, Intelcom was the low offeror. The agency determined that consideration of Johnson's reduced fee would not be appropriate; the agency therefore determined that Intelcom should be awarded the contract as the most advantageous offeror. This protest followed.

The protester argues that the agency unreasonably refused to consider a proposed maximum fee that was some \$5,000,000 less than the "maximum allowed under the solicitation," even though nothing in the RFP prohibited Johnson from proposing a lower fee. According to the protester, the preprinted award-fee amounts in the solicitation only represented the maximum award fees that the agency would permit, but the Navy never notified the firm that proposing a lower amount would be considered "nonconforming." The protester further disagrees with the agency that the higher award-fee amounts were necessary to ensure high quality contract performance.

We think the agency properly disregarded the protester's unilateral award-fee reduction. The RFP's pricing schedule clearly indicated to offerors that award-fee prices different from those already printed on the schedule were not being solicited; the schedule provided spaces for offerors to enter prices for CLINs for various services, but included a preprinted amount for the award fee instead of a space, and nowhere invited offerors to propose a different award fee. Indeed, we think the agency could not have made its intent in this regard any clearer. See Aquasis Servs., Inc., B-240841.2, June 24, 1991, 91-1 CPD ¶ 592.

Certainly, there was no basis for the protester to reasonably assume that the agency contemplated receiving a unilateral award-fee reduction on the initiative of a particular offeror for the first time during BAFOs without the agency previously having advised all offerors of the opportunity to do so, thereby permitting them to propose on an equal basis. We also think it is significant that the award-fee provisions here were designed to obtain high quality performance by providing the contractor with an incentive for such performance; permitting an offeror, on

its own initiative, to reduce or eliminate this incentive in hopes of enhancing its chances of receiving the award would defeat the purpose of the provision. See id. If Johnson desired to reduce its total price, it easily could have done so by reducing its line item prices for the various services solicited.

The protest is denied.

James F. Hinchman  
General Counsel