



Comptroller General
of the United States

334303

Washington, D.C. 20548

Decision

Matter of: Northwest EnviroService, Inc.

File: B-259434; B-259434.2

Date: March 30, 1995

Ruth G. Tiger, Esq., and Kevin R. Garden, Esq., Saltman & Stevens, for the protester.
William E. Hughes III, Esq., Whyte Hirschboeck Dudek, for Laidlaw Environmental Services, Inc., an interested party.
Lou Ann Keenan-Killane, Esq., Defense Reutilization and Marketing Service, for the agency.
Christina Sklarew, Esq., and John Van Schaik, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest alleging that solicitation contained latent ambiguities or that it did not include sufficient information to enable offerors to compete on an equal basis is denied where protester primarily alleges that the awardee cannot be intending to perform in the same manner as the protester--based on awardee's significantly lower price--but does not provide any evidence that the two approaches differ in any material way.

DECISION

Northwest EnviroService, Inc. protests the award of a contract to Laidlaw Environmental Services, Inc., by the Defense Reutilization and Marketing Service (DRMS) under request for proposals (RFP) No. SP4400-94-R-0024. Northwest contends that the award was improper because the solicitation contained latent ambiguities that caused the offerors not to compete on the same basis.

We deny the protest.

The RFP was issued for the removal, transportation, and disposal of hazardous waste from the Defense Reutilization and Marketing Offices located at Elmendorf Air Force Base and surrounding locations in Alaska. The RFP contemplated the award of a firm, fixed-price requirements-type contract with a 1-year base period with 3 option years. The RFP provided that the contract would be awarded to a single, responsible offeror whose offer was technically acceptable,

conformed to the solicitation, and demonstrated the best value to the government in terms of price and past performance. Price and past performance were equally important evaluation factors.

After receiving initial proposals, the agency conducted written negotiations, advising offerors of those contract line items (CLIN) that the agency considered to be potentially overpriced. On September 26, the agency issued amendment No. 0002, which added one CLIN, increased the requirements under certain other CLINs, and permitted proposal revisions. After revised proposals were submitted on October 3, only Laidlaw's and Northwest's proposals remained in the competitive range. Both offerors submitted best and final offers (BAFO) by the deadline of October 25. Laidlaw submitted the lowest-priced BAFO, with a total estimated price of \$9,446,848.95 for the base and option periods. Northwest submitted a price of \$11,121,440.90.

The source selection authority considered the Laidlaw and Northwest proposals to be technically acceptable and determined that the price difference of approximately 18 percent was not offset by any technical superiority on Northwest's part. Accordingly, the agency awarded the contract to Laidlaw.

Northwest argues that when it was informed of Laidlaw's price, it first became aware of the possibility that the two firms were not offering to perform on the same basis. Northwest challenges the specifications pertaining to CLINs for chemical analyses, transportation services, and cleaning services, arguing alternatively that either Laidlaw's proposal was not based on its performing these analyses and services as required, or that Northwest's interpretation of these specifications was not the interpretation upon which the proposal evaluation was based.¹

¹After receiving the agency report on its initial protest, Northwest filed a second protest, B-259434.2, in which it alleged that when DFMS evaluated the proposals, it failed to take into account the impact of recently promulgated regulations pertaining to the disposal of hazardous waste. However, Northwest later withdrew its second protest, explaining that its allegation concerning the new regulations was not a separate basis of protest, but should be considered "as a fact which further supports [Northwest's] initial protest allegation that the offerors were not bidding on the same basis." We address Northwest's allegation that the offerors were not competing on an equal basis below and we therefore will not discuss the second protest further.

Regarding the chemical analysis CLINs, Northwest contends that Laidlaw's proposal was based on an incorrect interpretation of the RFP's requirements for the analysis and identification of the wastes at issue, and that it should have been considered technically unacceptable on this basis. Northwest argues that Laidlaw's proposal stated that the firm would perform "field testing" to identify and analyze chemical wastes, and alleges that laboratory analysis of such wastes (as Northwest proposed) was required. Northwest contends that field testing is inconsistent with the requirements of clauses C.45, C.48, and C.53 in the RFP.

We disagree. Clause C.45 states that the contractor will be required to draw samples from any waste covered under the contract "and conduct verification analysis for pH, color, density, flashpoint, and physical state. After issuance of the written delivery order, the contractor shall be required to draw all samples, complete verification analysis, and provide documented results and profile sheets," and clause C.48 states that the contractor "shall be required to perform appropriate analysis to properly identify material . . . for any waste covered under this contract and complete waste profile forms." There is no mention in these clauses, or in any other portion of the contract, of the specific method of analysis that must be employed. Indeed, the phrase "appropriate analysis" suggests some degree of discretion on the contractor's part as to the analysis method to be used.

Northwest argues, however, that the alleged requirement for laboratory testing is implicit in the RFP's requirement for completed waste profile forms, since (according to Northwest) "if this waste profile form is based on an analysis conducted pursuant to field testing, it is commonly rejected by waste disposers." The protester contends that "[t]his result is due to the common realization that field testing is a relatively inaccurate method of waste analysis."

We find no evidence in the record that the agency's requirement could only be satisfied by laboratory analyses, nor is there any indication (beyond the protester's arguments) that the difference between the two methods of testing is material.

Solicitations must contain sufficient information to allow offerors to compete intelligently and on an equal basis. University Research Corp., 64 Comp. Gen. 273 (1985), 85-1 CPD ¶ 210. However, a solicitation need not be so detailed as to remove any uncertainty from the minds of prospective bidders or to eliminate every performance risk. J&J Maintenance, Inc., B-248915, Oct. 8, 1992, 92-2 CPD ¶ 232.

Bidders are expected to use their business judgment and professional expertise to determine the most efficient and effective manner of meeting the government's requirements. McDermott Shipyards, Div. of McDermott, Inc., B-237049, Jan. 29, 1990, 90-1 CPD ¶ 121.

Here, we do not agree that the solicitation was ambiguous or failed to provide the requisite level of information; we do not think it was unreasonable for the agency to simply require "appropriate analyses," without specifying a particular methodology for testing. In this regard, Northwest's insistence that the agency's needs can only be met by a contractor performing a particular type of analysis essentially amounts to an argument that the solicitation should have been written more restrictively. However, our Office will not consider contentions that specifications should be made more restrictive, since our role in reviewing bid protests is to ensure that the statutory requirements for full and open competition are met, not to consider a protester's assertion that the needs of the agency can only be met under more restrictive specifications than the agency believes necessary. Simula, Inc., B-251749, Feb. 1, 1993, 93-1 CPD ¶ 86.

Moreover, since the RFP did not specify a particular method of testing, we have no legal basis to conclude that Laidlaw's offer was technically unacceptable, as Northwest urges.

Northwest also alleges that the parties did not bid on the same basis with respect to remote transportation services required under the solicitation. While conceding that its own prices for these CLINs were significantly higher than the prices bid by the other competitive range offerors, the protester nonetheless asserts that "[t]he only reasonable basis on which DRMS could have analyzed these CLINs would have been by comparison with the prices negotiated with [Northwest] under the incumbent contract."

We disagree. The record shows that the requirement for transportation services from remote locations was first added to the incumbent contract after it had been awarded, and thus was negotiated with the contractor (Northwest). The agency concluded that the lower prices offered under full and open competition more reliably represented a fair market price than prices that had been negotiated on a sole-source basis with Northwest.² In any event, although

²Northwest challenges Laidlaw's proposal as unrealistically low priced and argues that the evaluation was flawed. However, since the solicitation was for a firm, fixed-price (continued...)

Northwest's counsel had access to Laidlaw's proposal under a protective order, the protester has offered no evidence that the offerors had differing understandings of the remote transportation services or otherwise provided any support for its argument beyond its assertion that Laidlaw's prices for these services were too low to represent the same level of performance that Northwest was offering.

Regarding the cleaning services CLINs, Northwest's protest concerns a requirement that after all pumpable liquids have been removed from the specified tank or oil/water separator, the contractor is to "remove all remaining sludge/solid waste." The protester contends that Laidlaw's offer was based on simply removing such waste, without actually disposing of it. Under certain CLINs in this area pertaining to bulk liquid waste removal, Northwest contends that while the RFP specified that "it may be necessary to pump material from tanks," Laidlaw intended to pump out free liquids only, leaving the sludge and/or solids behind. Northwest asserts that its own interpretation of these requirements--to include the removal of all sludge or solid waste--is correct, and that the offerors were therefore competing on an unequal basis. The protester contends that the management plan in Laidlaw's proposal did not describe any logistical procedures regarding the disposal of sludge or solid waste as part of this requirement.

Section L of the RFP provided guidance for the preparation of proposals, with clause L.49 specifying the documentation and information that was required for the management plan. In the section describing the logistical procedures that offerors were to include in their proposals, the RFP stated generally that "procedures shall be in sufficient detail to demonstrate the offeror's understanding of the scope of the work effort required and the degree of difficulty involved. Offerors procedures must address the following elements--timeframe considerations, material handling and safety

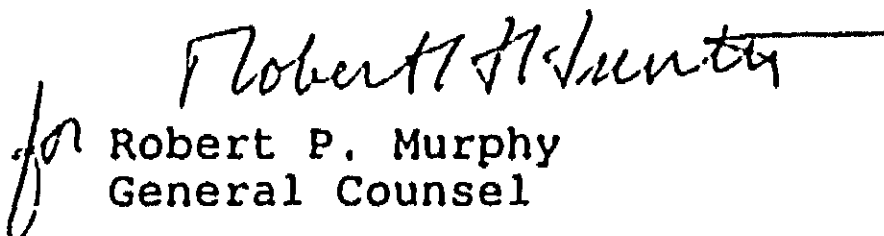
² (...continued)

contract, cost realism was not an issue. (The RFP called for a price analysis, not a cost realism analysis.) See PHP Healthcare Corp.; Sisters of Charity of the Incarnate Word, B-251799 et al., May 4, 1993, 93-1 CPD ¶ 366. Offerors properly could decide to submit prices that were extremely low. Diemaster Tool, Inc., B-238877, Apr. 5, 1990, 90-1 CPD ¶ 375. In addition, to the extent that Northwest argues that the evaluation was flawed because it did not consider the price impact of regulatory changes, there is no merit to this allegation since there was no indication in the RFP that the agency would consider the regulatory changes in the evaluation.

equipment, waste profiling, and waste segregation." More specifically, the RFP stated that the "[o]fferor must address the logistical procedures for drum pumping, tank and/or oil/water separator cleaning, drum removal, sampling, analysis, handling, loading, inspection, overpack use, labeling, marking, waste segregation, waste profiling, manifest preparation, and transporting from a remote location."

We think Laidlaw could reasonably conclude from these instructions that it was not required to describe in detail its intention to dispose of the sludge, and that the agency could reasonably conclude that Laidlaw's proposal, which described the tank and/or oil/water separator cleaning process but did not describe the disposal of wastes beyond stating that "[a]ll waste generated during the cleaning process will be removed using the appropriate disposal CLIN," and "tank cleaning waste will be disposed at a DRMO approved H.22 TSDF [treatment, storage or disposal facility]," met the RFP requirements. Laidlaw addressed the requirements in its proposal sufficient for the agency to reasonably conclude that Laidlaw would meet the requirements at issue. We do not agree with Northwest's contention that Laidlaw's proposal shows that Laidlaw does not intend to dispose of the wastes,³ nor do we find any evidence that the offerors were competing on an unequal basis in this area.

The protest is denied.


for Robert P. Murphy
General Counsel

³The only issue here is whether Laidlaw's proposal met the RFP's requirements for information, and not whether Laidlaw will actually perform the required work. Whether or not an agency will properly administer a contract and require the contractor to perform all of the requirements of the contract is a matter of contract administration which is not a proper subject matter of a protest before our Office.

4 C.F.R. § 21.3(m)(1); GTE Customer Networks, Inc., B-254692.2, Feb. 24, 1994, 94-1 CPD ¶ 143.