



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Triple P Services, Inc.

File: B-271629.3

Date: July 22, 1996

F. D. Bowden for the protester.

Col. Nicholas P. Retson and Capt. Philip T. McCaffrey, Department of the Army, for the agency.

Aldo A. Benejam, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Provision announcing agency's intent to perform a "cost realism" analysis in a request for proposals (RFP) for a fixed-price contract is unobjectionable where the RFP states that the analysis is for the limited purpose of aiding the agency in measuring the offerors' understanding of the RFP's technical requirements, and RFP includes as part of the evaluation of technical proposals an assessment of the offerors' understanding of the RFP's technical requirements.
2. Protest that solicitation is ambiguous with respect to the agency's intent to conduct discussions with offerors is denied where protester's interpretation of solicitation is unreasonable and contrary to applicable Federal Acquisition Regulation provision relating to the award of contracts without discussions.
3. Protest that solicitation requires information in unnecessary detail and provides the incumbent with an unfair competitive advantage is denied where required information is reasonably available to non-incumbent offerors.

DECISION

Triple P Services, Inc. protests the terms of request for proposals (RFP) No. DABT10-95-R-0010, issued by the Department of the Army for operation of 23 dining facilities located at Fort Benning and Camp Merril, Georgia, and Camp Rudder, Florida. The protester contends that the RFP's price evaluation provision is defective, and that the RFP is ambiguous with respect to the agency's intent to conduct discussions. Triple P also maintains that the information the RFP requires offerors to include in their proposals gives the incumbent an unfair competitive advantage.

We deny the protest.

The RFP, issued September 29, 1995, contemplates the award of a firm, fixed-price-plus-award-fee contract for a base year, with up to four 1-year option periods. Award is to be made to the offeror whose proposal is technically acceptable and lowest in total price. Section M of the RFP states that proposals will be evaluated for technical acceptability under the following factors: (1) comprehension of the RFP requirements; (2) general management; and (3) past performance. The RFP has been amended several times, and as discussed in greater detail below, Triple P takes issue with several of the resulting changes.

Price Evaluation

Section M of the RFP states as follows:

"PRICE EVALUATION. Cost realism will be used as an aid to determine the offeror's comprehension of the requirements of the RFP as well as to assess the validity of the offeror's approach. Proposals will be evaluated to assess the degree to which proposed price accurately reflect[s] proposed performance. A price which is found to be either unreasonably high or unrealistically low in relation to the proposed work will result in the overall proposal being considered unacceptable, and further evaluation will be discontinued."

The protester argues that this provision is inconsistent with the "BASIS FOR AWARD" announced in the RFP, i.e., technically acceptable, low price. Triple P maintains that the effect of this provision is to improperly permit the agency to conclude that a low price is an indication that an otherwise technically acceptable proposal should be rejected solely by virtue of its price being too low, regardless of the technical merit of the proposal.

As the protester correctly points out, a determination that an offeror's price on a fixed-price contract is too low generally concerns the offeror's responsibility (i.e., the offeror's ability and capacity to successfully perform the contract at its offered price), not technical acceptability. See Coastal Science and Eng'g, Inc., 69 Comp. Gen. 66 (1989), 89-2 CPD ¶ 436 (a low fixed-price offer cannot be downgraded by virtue of its low price absent a finding of nonresponsibility); Monopole S.A., Inc., B-254137, Nov. 4, 1993, 93-2 CPD ¶ 268; Video Ventures, Inc., B-240016, Oct. 19, 1990, 90-2 CPD ¶ 317; Ball Technical Prods. Group, B-224394, Oct. 17, 1986, 86-2 CPD ¶ 465. In other words, the fact that a firm's offer may be an attempted buy-in does not render the firm ineligible for award. This is so because below-cost pricing is not prohibited and the government cannot withhold an award from a responsible offeror merely because its low offer is below cost. Norden Sys., Inc., B-227106.9, Aug. 11, 1988, 88-2 CPD ¶ 131.

This does not mean, however, that an agency may never assess price reasonableness within the context of evaluating technical proposals under a solicitation that contemplates awarding a fixed-price contract. In this regard, as part of the technical evaluation, an agency may properly assess the reasonableness of a low price to evaluate an offeror's understanding of the solicitation requirements, so long as the RFP provides for evaluation of the offerors' understanding of the requirements as part of the technical evaluation. See PHP Healthcare Corp., B-251933, May 13, 1993, 93-1 CPD ¶ 381; Family Realty, B-247772, July 6, 1992, 92-2 CPD ¶ 6; Binghamton Simulator Co., Inc., B-244839, Nov. 5, 1991, 91-2 CPD ¶ 429.

Here, section M of the solicitation clearly includes as part of the evaluation of the technical acceptability of proposals an assessment of the offerors' "comprehension of the RFP requirements." Accordingly, we see nothing improper with the agency providing, as it does here, for the use of "cost realism" analysis.¹ See Simmonds Precision Prods., Inc., B-244559.3, June 23, 1993, 93-1 CPD ¶ 483.

Discussions

As originally issued, the RFP contained inconsistent language concerning the agency's intent to hold discussions. The RFP stated that the agency intended to request best and final offers (BAFO), but also incorporated by reference the Federal Acquisition Regulation (FAR) clause found at § 52.215-16, Alternate II, which states in part that the government intends to award a contract without discussions.

The agency states that since it intends to conduct discussions, it decided to clarify its intent by deleting the inconsistent language from the RFP. Accordingly, on April 24, soon after this protest was filed in our Office, the agency issued amendment No. 0009, which, among other things, substituted the basic contract award clause at FAR § 52.215-16, for Alternate II.

Regarding discussions, FAR § 52.215-16(c), which is now incorporated into the RFP, states:

"The [g]overnment intends to evaluate proposals and award a contract after conducting written or oral discussions with all responsible offerors whose proposals have been determined to be within the

¹To the extent that Triple P contends that the agency will apply the RFP's price evaluation provision improperly or in a manner inconsistent with the basis for award, these allegations, which merely anticipate improper agency action, are premature and, therefore, too speculative for our consideration at this time. See General Elec. Canada, Inc., B-230584, June 1, 1988, 88-1 CPD ¶ 512.

competitive range. However, each initial offer should contain the offeror's best terms from a cost or price and technical standpoint."

In addition, section M of the RFP contains the following provision:

"d. DISCUSSION OR NEGOTIATIONS. Discussions may be held with all offerors within the competitive range for the purpose of identifying deficiencies in proposals and obtaining clarification. Should discussions be held, [BAFOs] may be requested at which time the offerors may submit revisions to their proposals by an established cut-off date. [BAFOs] will be evaluated against the same factors as were the initial offers. All revisions must assess the impact on all elements of cost."

According to Triple P, it is unclear from this provision whether the agency intends to conduct discussions. The protester argues that the agency is apparently attempting to reserve the right to make award based on initial proposals without conducting discussions. Triple P argues that the agency's approach is improper because the solicitation fails to notify offerors that it intends to make award without discussions in contravention of FAR § 15.610. The protester maintains that since amendment No. 0009 deleted the applicable notice to offerors contained in § 52.215-16, Alternate II, the agency does not have the discretion it seeks to award a contract based on initial proposals.

Where a dispute exists as to the actual meaning of a solicitation, we will resolve the matter by reading the solicitation as a whole and in a manner that gives effect to all provisions of the solicitation. Honeywell Regelsysteme GmbH, B-237248, Feb. 2, 1990, 90-1 CPD ¶ 149. To be reasonable, an interpretation must be consistent with the solicitation when read as a whole and in a reasonable manner. Aerojet Ordnance Co., B-235178, July 19, 1989, 89-2 CPD ¶ 62. The mere allegation that a solicitation is ambiguous does not make it so. RMS Indus., B-247465; B-247467, June 10, 1992, 92-1 CPD ¶ 506. Here, we conclude that Triple P's interpretation of the RFP, with respect to the agency's intent to conduct discussions, is unreasonable.

As the protester correctly points out, FAR § 15.610(a) requires that the solicitation notify all offerors where the agency intends to award a contract without discussions. Since the RFP does not specifically advise offerors that the agency intends to award a contract on the basis of initial proposals without discussions, the agency could not properly award a contract on the basis of initial proposals. Although section M of the RFP quoted above states that "[d]iscussions may be held with all offerors . . . , " the gist of this provision is clearly to describe the purpose of the discussions (i.e., "for the purpose of identifying deficiencies in proposals and obtaining clarification"); to explain that offerors would be permitted to "submit

revisions to their proposals . . . "; and to describe how BAFOs will be evaluated. The protester's contention that the agency improperly intends to award a contract without conducting discussions is not only an unreasonable reading of the RFP, but is contrary to the applicable FAR provisions relating to the award of contracts on the basis of initial proposals; we will not assume that the agency will act in contravention to the applicable regulation.²

RFP Requirements

Triple P argues that the solicitation calls for information that only the incumbent can provide, thus giving that firm an unfair competitive advantage in the procurement. We have considered all of the protester's allegations in this regard and, based on our review of the record, including the agency's explanations, conclude that Triple P has failed to show that the information requested by the RFP is unreasonable or gives the incumbent an unfair competitive advantage.

Attachment E to the RFP contains specific instructions to offerors on proposal format and content. One section of that attachment with which Triple P takes issue is paragraph No. 5.1.3, which states as follows:

"The offeror's proposal must show that the offeror recognizes the scope of services required under the proposed contract. The offeror shall explain work control methods and intent to meet all requirements in the solicitation while satisfying the quality control requirements. The offeror shall specifically address any unique approaches toward meeting staffing and solicitation requirements and shall address the benefits of both to the offeror in terms of contract compliance and to the [g]overnment for benefits received. The offeror shall discuss the percentage of the incumbent's workforce (excluding managers) to be hired, projected turnover ratio, and whether a learning curve is utilized (if so, explain learning curve percentage and how it was derived) in preparation of proposal. Since it is common practice to retain a large percentage of incumbent service contract employees, the offeror shall explain if their proposed workforce would

²Triple P also contends that the agency failed to adequately respond to its pre-proposal question concerning extended meal services. We have reviewed the protester's question and the agency's response thereto and conclude that the solicitation provides offerors with sufficient detail to enable them to compete intelligently and on an equal basis. In any event, there is no requirement that an agency draft solicitations in such detail as to eliminate any risk or remove every uncertainty from the mind of every prospective offeror. A&C Bldg. and Indus. Maintenance Corp., B-230270, May 12, 1988, 88-1 CPD ¶ 451.

be particularly more skilled or efficient than another offeror's workforce. General statements (such as, past experience) will not be accepted without supporting rationale. Supporting rationale may include completed training courses, exceptional personnel resumes and recognized performance awards."

The protester generally questions the need for the level of detail of the information required by this provision. In addition, according to Triple P, no offeror can provide this type of information except the incumbent. In particular, the protester objects that only the incumbent can meaningfully discuss the percentage of the incumbent's work force to be hired; accurately project personnel turnover ratio; or provide information concerning the use of a learning curve to predict contract performance. The protester also argues that only the incumbent can provide detailed information concerning employee training.

Attachment E contains specific instructions on the level of information required so as to allow the agency to evaluate offerors' understanding of the RFP's technical requirements. To this end, offerors must propose appropriate staffing levels, adequate personnel mix, and methodology to be used in performing the required tasks. Given the nature of the services required (operation and support of 23 different military dining facilities), we see nothing improper in requiring all offerors, particularly non-incumbents, to indicate in their proposals whether they intend to hire incumbent personnel; to provide an estimated or expected personnel turnover ratio; and to provide some explanation of the expected learning curve for inexperienced personnel. Regarding personnel experience and training, the protester's arguments overlook the fact that the proposed key employees themselves should be able to provide the required information concerning their backgrounds, training, and experience. We fail to see why other offerors, besides the incumbent, could not obtain this type of information from their proposed employees and include it in their proposals.

In short, we see nothing improper with the requirement for the requested information and no basis for concluding that the requirement unfairly favors the incumbent. We think that the information required by the quoted provision is neither unusual nor burdensome and is reasonably available to non-incumbents.

The protest is denied.

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