



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: International Code Services, Inc.

File: B-276457

Date: June 16, 1997

Richard C. Walters, Esq., Kevin P. Mullen, Esq., and Stanley R. Soya, Esq., Piper & Marbury, for the protester.

David R. Johnson, Esq., Kathleen C. Little, Esq., and Dennis E. Wiessner, Esq., McDermott, Will & Emery, for Symtron Systems, Inc., an intervenor.

Thomas T. Basil, Esq., Department of the Navy, for the agency.

Adam Vodraska, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that multiple awards should be made because this would result in a lower price to the government is denied where the solicitation indicated that a single award in the aggregate would be made.

DECISION

International Code Services, Inc. (ICS) protests the award of a contract to Symtron Systems, Inc., by the Department of the Navy, Naval Air Warfare Center, Training Systems Division, Orlando, Florida, under request for proposals (RFP) No. N61339-97-R-0006 for fire fighting training systems. ICS asserts that the Navy should have made multiple awards under the RFP with ICS receiving an award for that portion of the requirement on which its price was low.

We deny the protest.

The RFP, issued on November 19, 1996, contemplated the award of a firm, fixed-price contract for commercially available, propane-fueled, fire fighting training systems for use at various Army installations in the following configurations: 2-floor and 3-floor modular/fixed structural trainers, mobile structural trainers, and mobile aircraft rescue/fire fighting trainers. These computer-controlled systems safely replicate flames, heat, and reduced visibility (using non-toxic smoke) during fire fighting training exercises. Offers were to include fabrication and delivery of the trainers, as well as set-up, testing, training, documentation, and warranty coverage.

The RFP's price schedule consisted of three different lots. Lot I, the base quantity, requested line item prices for a 3-floor modular/fixed structural trainer for

Ft. Monmouth, New Jersey; a 2-floor modular/fixed structural trainer for Ft. Belvoir, Virginia; a 2-floor modular/fixed structural trainer for Ft. Lewis, Washington; a mobile structural trainer for Ft. Rucker, Alabama; a mobile aircraft trainer for Ft. Belvoir; and a mobile aircraft trainer for Ft. Rucker. Lot II consisted of optional line items for extended warranties for the Lot I trainers by site, *i.e.*, extended warranties for Ft. Monmouth, Ft. Belvoir, Ft. Lewis, and Ft. Rucker. Lot III consisted of options for four 3-floor modular/fixed structural trainers, four 2-floor modular/fixed structural trainers, nine mobile aircraft trainers, and 12 mobile structural trainers. Besides requesting unit and extended prices for the different line items, the price schedule requested that offerors supply total prices by lot.

The RFP listed the following evaluation factors:

1. System Operations
2. System Performance
3. Logistics
4. Past performance--assessed for risk
5. Price (affordability)

The system operations, system performance, and price factors were equally important; the logistics factor was more important than the past performance factor, but less important than the system operations factor. Although all evaluation factors other than price, when combined, were significantly more important than price, the solicitation provided that as competing proposals were determined to be substantially equal in technical merit, past performance and total evaluated price could become paramount.

The RFP required offerors to propose prices for all requirements and stated that prices were to be evaluated for the basic system requirements (Lot I) and the two option quantities (Lot II and Lot III) by adding the total for all priced line items in Lots I and II together with the estimated quantities priced in Lot III. Offerors were also required to complete an "Affordability Pricing Worksheet," which essentially replicated the price schedule, but which also asked for a total proposed price based on the total Lot I, Lot II, and Lot III prices. This total proposed price was to be evaluated for completeness and balance and the total evaluated price was to be assessed for reasonableness. The solicitation stated that award would be made to the offeror whose acceptable proposal was most advantageous to the government, technical merit, past performance, and evaluated price considered.

The RFP included the clause found at Federal Acquisition Regulation (FAR) § 52.212-1, Instructions To Offerors--Commercial Items (OCT 1995), which provides, in relevant part:

"(h) Multiple awards. The Government may accept any item or group of items of an offer, unless the offeror qualifies the offer by specific

limitations. Unless otherwise provided in the Schedule, offers may not be submitted for quantities less than those specified. The Government reserves the right to make an award on any item for a quantity less than the quantity offered, at the unit prices offered, unless the offeror specifies otherwise in the offer."

The Navy received proposals from two offerors--ICS and Symtron.¹ The Navy determined both proposals to be acceptable; placed them in the competitive range; conducted discussions; and requested best and final offers (BAFO), including the offerors' best price terms. Following its evaluation of the discussion responses and BAFOs, the Navy rated Symtron's proposal higher overall than ICS' for the technical evaluation factors, but determined "after comparing both proposals together and taking into consideration the different benefits and disadvantages of all the required trainer configurations (as a whole)" that "paying an extra premium price [for technical merit] would not be justified." On past performance, the Navy rated both Symtron and ICS as acceptable (low risk). Symtron's total evaluated price for the basic contract and the option quantities was slightly lower than ICS' total price, although ICS' prices were lower for some of the line items. The Navy regarded the total evaluated prices from both offerors as reasonable. Based on the foregoing, the Navy made award to Symtron, determining its offer to be most advantageous to the government, technical factors and price considered.

ICS alleges that the Navy considered its proposal as essentially technically equal to Symtron's because the Navy concluded that there were no discriminating characteristics between the two proposals that would have merited the payment of a price premium. ICS thus asserts that the determining factor for award should have been price and that because the RFP reserves the right to the agency to make multiple awards, ICS was entitled to award of that portion of the total RFP quantity which would result in the lowest cost to the government. In this regard, ICS offered lower prices in Lot I for the 3-floor modular/fixed structural trainer for Ft. Monmouth and the 2-floor modular/fixed structural trainers for Ft. Belvoir and Ft. Lewis, as well as for these configurations of trainers in Lot III.² ICS contends that the Navy could realize almost \$2.9 million in savings over Symtron's aggregate \$15,394,568 evaluated price if the Navy awarded ICS the line items for which its price was low, and that if ICS had realized an aggregate award would be made it would have submitted a lower overall price.

¹Neither offeror qualified its proposal on an "all or none" basis.

²ICS also had a slightly lower price than Symtron for the Lot I mobile structural trainer for Ft. Rucker, but a higher price than Symtron for the additional quantities of this configuration of trainer in Lot III. In Lot II, ICS' price for the extended warranty for the Ft. Lewis site in Lot I was lower than Symtron's. Otherwise, Symtron's line item prices were lower than ICS'.

The basic premise of ICS' protest is flawed since the RFP basically contemplated one award in the aggregate rather than multiple awards.³ Other than the clause reserving the government's right to make multiple awards, every relevant statement in the RFP suggested that a single award would be made, e.g., the term "award" is used in the singular. See Knoxville Glove Co., B-251598, Apr. 21, 1993, 93-1 CPD ¶ 339 at 4. More significantly, the RFP evaluation methodology addressed proposals in the aggregate and did not provide for proposal evaluation on a separate line item or lot basis, so as to indicate that multiple awards were contemplated. Specifically, under the terms of the solicitation's evaluation scheme, the offerors' total prices for all of the line items, rather than prices for individual line items, were to be considered in the award selection and price was not the only evaluation factor, or even the most important factor, specified by the RFP. Moreover, the Lot II options for extended warranties for the Lot I trainers are by site, not by trainer configuration or line item, and two of the sites will receive two different types of trainers; it thus follows that the requirements are not severable and must be provided by the same contractor.⁴

³We note that prior to the issuance of the final RFP, the Navy posted the following response to a query about the draft RFP:

Question: "Will the Government entertain proposals for individual systems versus the entire project? For instance, the [aircraft rescue/fire fighting] mobile trainer only?"

Answer: "No."

The RFP actually issued was not materially different from the draft RFP in this respect. Had the Navy instead contemplated making multiple awards under the RFP, it should have included in the RFP the provision at FAR § 52.215-34, "Evaluation of Offers for Multiple Awards," as required by FAR § 15.407(h); that provision, which was not included in the RFP, assumes administrative costs for each contract issued in determining whether multiple awards would result in the lowest aggregate cost to the government.

⁴Under its scenario for multiple awards, ICS suggests that the Navy could merely deduct ICS' extended warranty price (which is determinable per trainer) from Symtron's for sites where both ICS and Symtron would supply different configurations of trainer. However, this arrangement is not feasible because Symtron priced the extended warranty line items taking into account the cost savings resulting from providing the extended warranty coverage at sites with multiple trainers based on its reasonable understanding that the solicitation contemplated a single award.

Where, as here, a solicitation contemplates a single award for the requirement, the contracting agency should generally award on that basis, even where the RFP reserves the right to the agency to make multiple awards. See Knoxville Glove Co., supra at 3-4. Because the RFP here contemplated an aggregate award, ICS was not entitled to award of individual line items.

The protest is denied.

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