



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

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Matter of: All State Boiler Work, Inc.

File: B-277362

Date: October 3, 1997

Timothy T. Corey, Esq., Pepe & Hazard, for the protester.

Sam Ridolfi for Frank Lill & Son, Inc., an intervenor.

George N. Brezna, Esq., Christopher M. Bellomy, Esq., and Howard B. Rein, Esq., Department of the Navy, for the agency.

Linda Glass, Esq., and Paul I. Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency properly rejected as technically unacceptable a proposal which contained, despite repeated agency requests for correction, numerous deficiencies in the proposed schedule management that demonstrated the offeror's lack of understanding of the solicitation requirements and the sequence in which tasks were required to be performed.

DECISION

All State Boiler Work, Inc. protests the rejection of its proposal as technically unacceptable and the award of a contract to Frank Lill & Son, Inc. under request for proposals (RFP) No. N62472-94-R-0451, issued by the Department of the Navy for boiler plant modifications at the Portsmouth Naval Shipyard, Kittery, Maine. The protester maintains that its proposal provided a schedule that met the RFP's minimum requirements and that the evaluation and rejection are improper.

We deny the protest.

The RFP was issued on December 13, 1996, and contemplated the award of a firm, fixed-priced construction contract to the responsible, technically acceptable offeror whose proposal was determined to represent the best value to the government. The solicitation was for the modernization and conversion of four existing field erected boilers in the boiler plant to fire natural gas and #2 fuel oil as the plant fuels in lieu of #6 fuel oil. It also required the replacement of furnace refractory in three of the four boilers and the update of the plant to current environmental air emission requirements for the new fuels. Because the boiler plant load and standby

requirements permit only one boiler to be out of service at any time, the RFP contained a critical phased construction schedule which was necessary to maintain the needs of the activity.¹

The RFP stated that the contract would be awarded on the basis of initial proposals, without discussions (although it reserved to the Navy the right to conduct discussions if necessary) and provided that price and technical considerations would be of equal importance. The RFP contained four technical criteria, all equal in importance: (1) relevant experience/past performance; (2) schedule management and control; (3) corporate management; and (4) selected system/products/subcontractors.

With respect to factor 2, schedule management and control, the RFP emphasized the importance of the boiler plant modifications being completed no later than the respective completion dates specified in the RFP. Under factor 2, the RFP specifically required the following:

Provide proposed schedule showing starts and finishes of significant construction events and completion of entire project. The proposed schedule should detail how the phasing requirements of the contract will be incorporated into the overall project schedule. The schedule should reflect critical material delivery dates based on supplier commitments you have obtained, critical work integration points, critical equipment issues, and slack or contingencies for weather or other anticipated delays. No electronic deliverables acceptable. Proposed schedule should be in a CPM or Pert format with a minimum of 100 activities.²

[Deleted] offers were received by the March 18, 1997, closing date for receipt of initial proposals. The initial evaluation by the technical evaluation board (TEB) resulted in [deleted] proposals being evaluated as unacceptable/susceptible of being made acceptable, with [deleted] proposals (including All State's) rated technically unacceptable. The source selection board (SSB) reviewed the proposals and the TEB and price evaluation board (PEB) findings and recommended to the source

¹The boiler produces heating hot water and steam power for all structural operations on the entire Portsmouth Naval Shipyard and produces compressed air and processed steam, which are required in all phases of ship repair processes.

²Critical Path Method (CPM) is a network diagram planning system that is activity oriented, uses single time estimates, and usually starts at the beginning and works to the end of the project. Program Evaluation Review Technique (PERT) is an event oriented system, and is primarily a project monitoring system. In practice, the CPM and PERT techniques are almost identical.

selection authority (SSA) that All State's rating be changed from unacceptable to unacceptable/susceptible of being made acceptable because it was believed that All State's deficiencies could be corrected through a round of discussions. On April 18, written discussion letters were sent to five competitive range firms, including All State. Revised proposals were received on April 29 from all five and were reviewed by the TEB. The revised proposal submitted by All State contained technical deficiencies and was again rated unacceptable/susceptible of being made acceptable.

By letter dated May 8, All State was again advised of the technical deficiencies in its proposal and was also advised that this was its last opportunity to correct the deficiencies in its technical proposal and to submit a best and final offer (BAFO). BAFOs were received on May 15. The TEB reviewed the revised technical proposals received with BAFOs and rated all revised proposals acceptable or above, with the exception of All State's which was rated unacceptable.

All State's proposal was found unacceptable because, despite being advised explicitly of the deficiencies in its proposal schedule and having had two opportunities to correct it, All State's schedule remained deficient. All State's modified schedule failed to show start-up and testing as required by the RFP. The evaluators concluded that All State's revised schedule contained logic errors including: emissions testing occurring only in Phase A and prior to any other construction, when the solicitation required that it be done following successful control room installation and start-up for each phase; asbestos removal tasks not shown as meeting the requirements, with removal work starting before installation of containment areas and continuing after containment removal and air clearance testing; control room construction shown in Phases A, B, and C, although it is required to be completed in Phase A; and delivery of control system equipment shown prior to control room completion, contrary to specifications. The agency concluded that All State's revised schedule required correction of the identified logic errors, which would cause All State to miss the last three-phase completion dates required by the RFP.

On May 27, the SSB reviewed the findings of the TEB and PEB and agreed that All State's proposal should be excluded from the competitive range as technically unacceptable because of its deficient schedule management and control. Among other things, the SSB agreed with the TEB that: (1) although All State's schedule appeared to be in CPM/PERT format, the critical path was not clear, it contained several logic errors, task interdependencies were hard to follow, and no float was shown; (2) the schedule failed to show start-up and testing as required; and (3) correction of the logic errors contained in the schedule would cause All State to miss the completion dates for all three phases of the project. The SSA concurred with the SSB's recommendation and All State's proposal was excluded from the competitive range. On June 12, All State was advised of the determination that its revised proposal was technically unacceptable and that award had been made to

Frank Lill & Son. All State was debriefed by the agency on June 18 and filed this protest with our Office on June 26.

All State contends that its proposal met all of the minimum solicitation requirements. All State maintains that it clearly set forth the start and finish dates of significant construction activities and reflected completion of the entire project in accordance with the required completion date. All State also takes the position that its schedule was in CPM format, and outlined the strategy and sequence of work for project completion. Finally, All State contends that rating its proposal unacceptable because of an unacceptable rating with respect to only one of the four evaluation factors was inconsistent with the RFP evaluation scheme.

In reviewing whether a proposal was properly rejected as technically unacceptable, our Office will not reevaluate the proposal, as the determination of whether a proposal meets the contracting agency's needs is a matter within the agency's discretion. Triton Marine Constr. Corp., B-250856, Feb. 23, 1993, 93-1 CPD ¶ 171 at 2. We will, however, examine the record to determine whether the evaluators' judgments were reasonable and consistent with the stated evaluation criteria. Id. A protester's mere disagreement with the agency's judgment does not show that the agency's judgment was unreasonable. Allied-Signal Aerospace Co., B-250822, B-250822.2, Feb. 19, 1993, 93-1 CPD ¶ 201 at 17.

Here, the record establishes that the agency had a reasonable basis for rejecting All State's proposal as technically unacceptable. As indicated above, the RFP contained specific requirements for a schedule showing starts and finishes of significant construction events and completion of entire project. During initial discussions, All State was advised of the agency's concern that All State's proposed schedule did not meet specific requirements of the RFP, including that the schedule was not in CPM/PERT format and did not show critical path, task interdependencies or float. The evaluators considered All State's proposed task duration to be overly ambitious, and in some instances, unrealistic, and work on follow-on phases was shown starting prior to acceptance of the current phase. The agency advised All State that these deficiencies made its proposed 31-month completion time extremely doubtful and that All State's proposed alternate of combining phases B and C was unacceptable because plant load and standby requirements did not permit two boilers to be out of service at one time. All State was informed that it needed to provide a schedule in accordance with the requirements stated under factor 2 and in accordance with the phasing specifications.

While All State's revised schedule showed some improvement, it still failed to provide a schedule consistent with the requirements, as specifically requested during discussions. All State was again advised of the deficiencies in its revised schedule which included the failure to meet previously identified requirements. Moreover, All State was advised that although it had corrected some overly ambitious and unrealistic task durations, its resubmission was actually worse than

its initial one because it included less than the required minimum 100 activities, the logic was very poor, and many areas were vague.

All State states that, because of the number of activities, it set forth each activity as critical, hence no float was reflected in the schedule. It also asserts that the specifications did not mandate that float be reflected. The protester further claims that although it omitted the words "emissions testing," start up and testing was actually reflected in phases A, B, and C. According to All State, it is impossible to start up the boiler without testing. All State also maintains that its asbestos removal tasks was properly reflected in all phases and that containment will be set forth on the schedule in greater detail upon award and once a working construction schedule is produced. Lastly, the protester contends that, while it is true that its schedule reflected control room construction in all of the phases when the requirement is for the control room to be substantially completed in Phase A, additional work, such as control room tie-ins, needs to be performed in each phase for each boiler.

All State's arguments do not show that the agency unreasonably downgraded its proposal. Float or "slack" was in fact required to be reflected in the schedule. The RFP specifically required that offeror's reflect in the schedule critical delivery dates based on, among other things, "slack" or contingencies for weather or other anticipated delays. The agency reasonably determined that All State's approach of simply showing every activity on the critical path to be methodologically incorrect and indicative of a lack of understanding of project scheduling and schedule formatting. Further, the record shows that All State's schedule suggests that there will be float without clarifying where and how long the float occurs. The record establishes that All State's schedule failed to satisfy and, in fact, conflicted with the requirements of the RFP in several significant areas. For example, it appeared that All State intended to only start up the boilers in the first three phases and to conduct some type of testing only in the last phase, which conflicts with the requirements of the RFP. The RFP requires 30 consecutive days, 24 hours per day of operational testing for each boiler to demonstrate that it is functioning properly in accordance with all the requirements of the RFP, and All State appears to have instead allocated 10 days in Phases A, B, and C and 20 days in Phase D. Concerning asbestos removal, All State's schedule shows the start and finish for "removal of asbestos contained refractories and insulation" occurring prior to the start of "set-up asbestos/lead abatement containment." Moreover, it is not sufficient for All State to now argue that a more detailed containment schedule would be provided after award, when a detailed schedule is necessary in order to demonstrate the ability to timely complete the project. Lastly, while it may be true that tie-ins for all phases are necessary, the RFP requires the actual construction of the control room to be performed in Phase A, and All State has allotted the same amount of days for the control room in Phases A, B, and C.

All State was given three opportunities to submit an acceptable schedule and failed to do so. All State's proposal was reasonably rejected as technically unacceptable because of the continuing major deficiencies in its schedule. While All State asserts that the agency unreasonably rejected its proposal as technically unacceptable based on an unacceptable rating under only one of the evaluation criteria, the evaluated deficiencies in All State's proposed schedule management establish nonconformance with the RFP's required schedule, which constitutes a proper basis for rejection. Allenhurst Indus., Inc., B-256836, B-256836.2, July 8, 1994, 94-2 CPD ¶ 14 at 4-5.

The protest is denied.

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