



GAO

Accountability * Integrity * Reliability

Comptroller General
of the United States

United States General Accounting Office
Washington, DC 20548

Decision

Matter of: Cherokee Information Services, Inc.

File: B-291718

Date: March 3, 2003

Michael I. Hodges for the protester.

Wilsie Y. Minor, Esq., Corporation for National and Community Services, for the agency.

Peter Verchinski and James Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency failed to make award on the basis of the lowest-priced proposal that had been included in the competitive range is denied where this contention is based on the protester's unreasonable interpretation of the solicitation, which contemplated award on the basis of a price/technical tradeoff.

DECISION

Cherokee Information Services, Inc. protests the award of a contract to Information Network, Inc. under request for proposals (RFP) No. HQMWS0215, issued as a competitive section 8(a) set-aside, by the Corporation for National and Community Services (CNCS), to provide integrated computer facility support services. Cherokee argues that CNCS failed to follow the solicitation requirements when it awarded the contract to an offeror that had not submitted the lowest-priced proposal in the competitive range.

We deny the protest.

The RFP contemplated the award of a fixed-price, task order contract, with a time-and-materials component for optional support services. CNCS sought to consolidate into one contract work that had been performed by the protester and two other contractors. Among other things, the solicitation required the contractor to provide support for two separate help lines, one for internal computer support and another to assist CNCS grantees through the CNCS's eGrants system.

The RFP, as amended, included three sections explaining how offerors' proposals would be evaluated. First, section A.17, Evaluation – Commercial Items, stated that award was to be made to the responsible offeror whose offer, conforming to the solicitation, would be most advantageous to the government, price and other factors considered. This section identified the following evaluation factors: technical, past performance, price, and other.

Section A.18, Evaluation of Proposals, advised offerors how the technical factor, the past performance factor, and price factor would be evaluated. The ratings for each listed technical evaluation criterion of the technical factor (in section A.19) were to be combined to determine the overall technical rating, and “the results of the technical evaluation will be used to determine whether an offeror’s proposal will be considered for inclusion within the competitive range.” Past performance was to be evaluated based on the quality of the past performance, taking into consideration the size and complexity of the procurement. Finally, under the subheading “Price Evaluation,” the section stated that “[p]rice proposals will be evaluated to determine which proposal offers the lowest price to the government.” Offerors were also informed that a contract may be awarded without discussions, and thus the initial proposal “should reflect the offeror’s ability to perform at a reasonable price.”

Section A.19, Evaluation Criteria, identified technical capabilities and management plan as the technical factor criteria, and stated that the technical factor was slightly more important than the past performance factor. The section also stated that award would be based on the proposal “determined to be in the best interest of the Government, price and other factors included,” and indicated that this determination would be made using a “trade-off process,” under which “price could become paramount in the selection decision” if offerors’ proposals were “considered approximately the same or equal under the non-price factors.”

As conceded by the agency, notably absent from any section of the RFP was any indication of the relative evaluation weight of price vis-à-vis the non-price factors.¹

Further information regarding how price would be considered in the evaluation was included in the first amendment, where it stated, at question 42: “[Q:] Is this a two-step proposal process? i.e., a. Technically qualified; b. lowest bid. [A:] No.” The amendment also stated, at question 105: “[Q:] Since price is the driving factor, what

¹ Solicitations are required to disclose the relative weight of price in the evaluation. 41 U.S.C. § 253a(c)(1)(C); Federal Acquisition Regulation (FAR) § 15.304(e). To the extent that Cherokee protests the RFP’s failure to disclose the relative weight of price, however, this would constitute an untimely, post-award protest of an impropriety apparent from the face of the solicitation, which was required to be protested prior to the closing date for receipt of proposals. 4 C.F.R. § 21.2(a)(1) (2002).

factors are being used to evaluate best value? Can you describe by example, the pricing methodology? [A:] The solicitation does not indicate that price is the driving factor. However, price could become paramount where offerors['] proposals are considered approximately the same or equal under the non-price factors. Price will not be scored.”

Thirty-five proposals were submitted in response to the RFP. Four proposals, including Cherokee’s, were included in the competitive range. CNCS conducted both written and oral discussions with the four firms. Three of the four offerors subsequently submitted final proposal revisions (FPR). Cherokee decided that its initial proposal, written responses to questions, and the oral discussions were sufficient, and consequently did not submit an FPR. After analyzing the FPRs, the technical evaluation panel gave the proposal of the awardee, Information Network, Inc., the highest score of the competitive range proposals for the technical factor (88.25 points). Information Network also received the highest score for the past performance factor (85.5 points). The protester’s proposal received the lowest total score of the competitive range proposals with a technical score of 61.5 points and a past performance score of 69.6 points. The panel noted, among other things, that Cherokee’s proposal had failed to address the agency’s evaluated concern that Cherokee would not provide sufficient support for the eGrants help desk, even though Cherokee had been informed of this inadequacy in the oral discussions. CNCS awarded the contract to Information Network at a price of \$16,556,802. Shortly thereafter, Cherokee, which had proposed the lowest price (\$14,211,737) of the proposals in the competitive range, protested.

Cherokee protests that the solicitation required CNCS to award the contract to the lowest priced proposal found to be in the competitive range. Since the solicitation failed to specify the relative weight of price to non-price factors as required, Cherokee argues that offerors were forced to “look further [in the solicitation] for evaluation methodologies and importance (weight) of evaluated items.” Protest at 2. Cherokee states that, if the contract was not awarded before discussions, and the agency included more than one offeror in the competitive range, then the statement, “[t]he results of the technical evaluation will be used to determine whether an offeror’s proposal will be considered for inclusion within the competitive range for the purpose of discussions,” RFP § A-18, combined with the statement, “[p]rice proposals will be evaluated to determine which proposal offers the lowest price to the government,” RFP § A-18, required CNCS to use price as the award determining factor in selecting among the competitive range proposals.² Protest at 2-3. We disagree.

² To the extent that Cherokee may have been confused as to the basis for award, it should have sought clarification before the proposals were due or filed a protest contesting what it may have thought was an ambiguity in the solicitation prior to the closing date for receipt of initial proposals. 4 C.F.R. 21.2(a)(1).

In order for an interpretation of solicitation language to be reasonable, it must be consistent with the solicitation when read as a whole. Datacomm Mgmt. Servs., Inc., B-261089, Aug. 8, 1995, 95-2 CPD ¶ 259 at 5.

In a negotiated procurement, the government is not required to award to the lowest priced offeror unless the evaluation criteria specify that price will be the determining factor. D'Wiley's Servs., Inc., B-251912, May 11, 1993, 93-1 CPD ¶ 377 at 3. Here, there was no language in the RFP requiring the government to make an award using price as the determining factor. As indicated by the context, the sentence in section A-18, "[p]rice proposals will be evaluated to determine which proposal offers the lowest price to the government," only places the offerors on notice as to how the agency intended to evaluate the price factor; it did not indicate that price would be the award determinative factor. Moreover, the protester's assertion, that price would become the controlling factor once a competitive range is established, is also essentially contradicted by the agency's response to question No. 105, which informed the offerors that price would not be the "driving factor," and the RFP's statement that price could become paramount if two proposals were deemed to be essentially equal. Furthermore, the RFP's statements that the award would be based on a "trade-off process," and that the award would be made to an offeror whose proposal was in the "best interests" of the government, considering price and other factors, clearly indicate that price would be balanced against the non-price factors in determining the awardee.³

The protest is denied.

Anthony H. Gamboa
General Counsel

³ The statement in section A-18 that the results of the technical evaluation would be considered in determining which proposals would be included in the competitive range cannot reasonably be read as permitting the technical factor evaluation to be considered only in establishing the competitive range. Such a reading would be inconsistent with the RFP when read as a whole, inasmuch as the RFP also listed past performance and price as evaluation factors. All stated evaluation factors, including price, must be considered in establishing a competitive range. Kathpal Techs., Inc., Computer & Hi-Tech Mgmt., Inc., B-283137.3, et al., Dec. 30, 1999, 2000 CPD ¶ 6 at 9-12.