



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Kaiserslautern Maintenance Group

File: B-240067

Date: October 12, 1990

Jacob B. Pompan, Esq., Pompan, Ruffner & Bass, for the protester.

Paul Shnitzer, Esq., Crowell & Moring, for Federal Electric International, Inc., an interested party.

Gregory H. Petkoff, Esq., and C. Richard Pennington, Esq., Department of the Air Force, for the agency.

Linda C. Glass, Esq., Andrew T. Pogany, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protester does not have the direct economic interest to be considered an interested party to protest either the reasonableness of the cost-technical tradeoff or the cost reasonableness of the awardee's proposal where the protester would not be next in line for award if either protest issue were sustained.

2. Where contracting agency determines that second low cost proposal had a reasonable chance for contract award, contracting agency reasonably included the proposal within the competitive range even if the proposal had some deficiencies.

DECISION

Kaiserslautern Maintenance Group (KMG) protests the award of a contract to Federal Electric International, Inc. (FEI) under request for proposals (RFP) No. F61546-89-R-0097, issued by the Department of the Air Force for facilities engineering services to 16 U.S. Army installations located throughout the Kaiserslautern Military Community in West Germany.^{1/} KMG challenges the award to FEI, the incumbent

^{1/} The engineering services include operation, maintenance, repair and minor construction, and inspection of U.S. Army real property, as well as certain environmental services.

049736 / 142442

contractor, and, alternatively, questions the inclusion of its proposal in the competitive range.

We dismiss the protest in part and deny it in part.

The RFP was issued on October 24, 1989, with a February 12, 1990, closing date, as amended, for receipt of initial proposals. Award was to be made to the offeror whose proposal was determined to be the most advantageous to the government. The RFP contained three evaluation factors listed in descending order of importance: technical operations, management, and cost. Technical operations was the most important area and had three groups of items to be evaluated under two assessment criteria, understanding of technical functions and identification and use of resources. The management area was divided into three subfactors listed in descending order of importance--soundness of management approach, past performance, and phase-in planning. The solicitation did not provide for the rating of cost, but offerors were advised that cost proposals would be reviewed for reasonableness, realism, completeness, and continuity.

Five proposals were received. The proposals were rated under the technical factors according to a color system. A rating of blue was exceptional, green was acceptable, yellow was marginal, and red was unacceptable. Proposals also received a risk rating for every factor and an overall risk rating. Based on the initial evaluation results, all offerors were determined to be in the competitive range. Written discussions were conducted through the use of deficiency reports (DRs) and clarification requests (CRs). Written responses were received and evaluated. Face-to-face discussions were conducted with all offerors through April 19. On April 27, best and final offers (BAFOs) were requested with a closing date of May 18.

The technical/management BAFOs were then evaluated using the same color coded system. FEI's proposal was ranked first, having received 10 blue ratings, 8 green ratings, and 1 yellow rating; the evaluators also concluded that FEI's proposal represented the lowest risk of all the offerors. DynCorp, the offeror submitting the lowest cost BAFO proposal, was ranked second technically, having received 2 blue ratings and 17 green ratings; the evaluators also concluded that DynCorp's proposal presented a low overall risk. Finally, KMG received 1 blue rating, 11 green ratings and 7 yellow ratings. The evaluators also stated that the protester's proposal presented a moderate risk overall. The level of risk for KMG was considered pervasive requiring time, effort and cost to overcome.

FEI's final proposed cost was \$54,270,500. The evaluators determined that FEI's proposed cost exhibited a high degree of cost realism and was appropriate for a workforce of the size and composition proposed. DynCorp's final proposed cost was \$43,361,135, which was the lowest received, and was determined to be realistic. KMG's final proposed cost was \$46,382,492, and its cost was also considered to be realistic.

The results of the final proposal evaluation were presented to the Source Selection Authority (SSA) at a briefing. On June 8, the SSA issued his source selection decision authorizing an award to FEI. While all proposals were considered acceptable when measured against the RFP evaluation criteria, the SSA found that FEI had distinguished itself with excellent ratings in several critical technical areas, such as procurement, engineering and data management. The SSA further found that FEI demonstrated a superior capability over the other offerors by communicating a clear understanding of all current technical requirements. Noting further that FEI's proposed cost was not the lowest offered, the SSA stated that "the difference is more than offset by their exceptional technical and management capabilities." On this basis, the SSA concluded that FEI's offer presented the government with the best overall value.

FEI was awarded a contract on June 8. This protest was filed June 15. On June 22, the Air Force determined pursuant to 31 U.S.C. § 3553(d)(2)(A)(i) (1988) that continued contract performance notwithstanding the protest was in the best interests of the government.

The protester argues that the agency failed to consider properly the cost differential between FEI and KMG or other offerors in selecting FEI for award. The protester states that the agency did not adequately weigh the alleged technical advantages of award to FEI against the "huge" dollar differential in premium payments associated with award to the higher technically scored offeror. The protester maintains that the entire evaluation should be re-opened and that proposals should be reevaluated.^{2/}

^{2/} In its initial protest, the protester raised a number of other objections to the award decision which fall into three broad categories: (1) improper technical evaluation of proposals; (2) defective cost evaluation; and (3) inadequate discussions. The agency submitted a report which fully documented its rationale for the evaluation of proposals, its determination that FEI's proposed costs were reasonable, and the extent and nature of the discussions with KMG. A conference was also held in which the agency reiterated its

(continued...)

Under the Competition in Contracting Act of 1984 (CICA), 31 U.S.C. §§ 3551 and 3553(a) (1988), and our Bid Protest Regulations, 4 C.F.R. 21.0(a) (1990), a protester must be an "interested party" before we will consider its protest. An interested party for purposes of eligibility to protest must be an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of the contract or by the failure to award the contract. A protester is not an interested party if it would not be in line for award if its protest were sustained. See Hydroscience, Inc., B-227989, B-227989.2, Nov. 23, 1987, 87-2 CPD ¶ 501.

In our view, KMG is not an interested party to protest the reasonableness of the Air Force's cost-technical tradeoff decision. Our review of the record demonstrates that KMG was the lowest technically rated offeror, and proposed the second lowest cost. DynCorp was higher rated technically than KMG and proposed a lower cost. Thus, even assuming the cost/technical tradeoff decision resulting in award to FEI was improper as KMG contends, the record shows that DynCorp is an intervening offeror which would be next in line for award with a higher technical rating and a lower proposed cost. KMG thus lacks the requisite direct and substantial interest with regard to the award to be considered an interested party. See Hawthorne Servs., Inc., B-222436, May 30, 1986, 86-1 CPD ¶ 513.

In the alternative, KMG argues that it should not have been included in the competitive range where, based on the initial evaluation, KMG allegedly had no reasonable chance for award. KMG maintains that the contracting officer's failure to timely advise the protester that it was not in the competitive range caused it to unnecessarily expend considerable time and money and that it should be reimbursed for all costs incurred for preparing and submitting a BAFO.

The purpose of a competitive range determination in a negotiated procurement is to select those offerors with which the contracting agency will hold written or oral discussions.

2/(...continued)

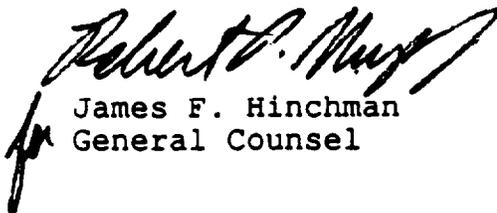
position. KMG, in its comments, merely restated its cost-technical tradeoff argument and raised a new issue concerning the allegedly improper inclusion of its inferior proposal in the competitive range. KMG did not even attempt to rebut the agency's contentions concerning these other initial protest issues, and we therefore will not address them in this decision despite the protester's cursory reaffirmation of its original protest in its comments. See generally The Big Picture Co., Inc., B-220859.2, Mar. 4, 1986, 86-1 CPD ¶ 218.

Federal Acquisition Regulation (FAR) § 15.609(a) (FAC 84-16); S&Q Corp., B-219420, Oct. 28, 1985, 85-2 CPD ¶ 471. The competitive range consists of all proposals that have a reasonable chance of being selected for award, that is, those proposals which are technically acceptable as submitted or which are reasonably susceptible of being made acceptable through discussions. Information Sys. & Networks Corp., B-220661, Jan. 13, 1986, 86-1 CPD ¶ 30; Fairchild Weston Sys., Inc., B-218470, July 11, 1985, 85-2 CPD ¶ 39. FAR § 15.609(a) provides that if doubt exists as to whether a proposal is in the competitive range, the proposal should be included. As a general rule, an agency should endeavor to broaden the competitive range since this will maximize the competition and provide fairness to the various offerors. See Cotton & Co., B-210849, Oct. 12, 1983, 83-2 CPD ¶ 451.

As stated above, five firms submitted proposals. KMG's initial proposal received ten marginal ratings, eight acceptable and one excellent. Two other offerors included in the competitive range received ten marginal and nine acceptable ratings, respectively. The agency performed an evaluation of all proposals and concluded that all offerors were acceptable. Although KMG received the largest number of CRs and DRs, our review of the individual evaluations demonstrates that KMG was at all times considered acceptable by all evaluators and that the contracting officer reasonably concluded that through the discussion process, KMG could have improved its technical ranking.

The major problem the evaluators found with KMG's proposal concerned inadequate manning for certain requirements. This was brought to KMG's attention during discussions. The record reveals that KMG did not take advantage of the discussion process to correct the perceived shortfalls in its proposal. In fact, KMG made very few changes to its proposal in response to the Air Force's concerns. Under these circumstances, we think the contracting officer, in the interest of full and open competition, reasonably included KMG's proposal within the competitive range, given that KMG was determined to be technically acceptable and, in fact, had submitted the second lowest proposed cost. Consequently, KMG is not entitled to be reimbursed its cost for preparing its BAFO.

The protest is dismissed in part and denied in part.


James F. Hinchman
General Counsel