



Comptroller General
of the United States

119195

Washington, D.C. 20548

Decision

Matter of: Sippican, Inc.

File: B-257047

Date: May 23, 1994

DECISION

Sippican, Inc. protests the award of a contract to Sechan Electronics, Inc. under request for proposals (RFP) No. N00024-93-R-6126, issued by the Department of the Navy for MK 39 Expendable Mobile Anti-Submarine Warfare Training Targets. Sippican protests the Navy's evaluation of proposals.

The protest is dismissed.

The RFP, issued on September 21, 1993, contemplates award of a fixed-price contract to the "technically acceptable offeror whose proposal represents the best value to the Government." In selecting Sechan for award, the agency evaluated technical and price volumes and calculated the price-per-technical point score, *i.e.*, the computed value. The Navy awarded to Sechan based on the agency's calculation which showed Sechan as the offeror with the lowest computed value.

Sippican initially protests that since the RFP states that if the computed values of the proposals are found to be "substantially equal," award will be made to the offeror that submitted the proposal evaluated to have the lowest risk, the Navy was required to define the "substantially equal" standard in advance of the evaluation of proposals. Sippican contends that since the term was not defined by the Navy in advance, the Navy was not obliged to follow any set formula to establish substantial equality among proposals and, thus, improperly failed to apply any such standard to determine whether the computed values of the proposals of Sippican and Sechan were substantially equal. Sippican contends that although Sechan's proposal was lower priced

than the protester's, based on Sippican's experience as the incumbent contractor, its proposal should have been selected for award.

Here, the Navy did not consider the two proposals to be substantially equal; rather, Sechan's proposal was evaluated as offering the agency the best value due to Sechan's proposal's substantially lower price and technical volume (i.e., including technical and management factors) score. Sechan was awarded the contract based on its low computed value, that is better value based on its price-per-technical point ratio. Sippican has not provided sufficient basis for protesting this determination. Sippican instead essentially challenges the Navy's failure to define "substantial equality" in advance of the evaluation of proposals. Since the proposals were not found substantially equal, this concern appears immaterial. In any event, the RFP sets forth the factors for and governs the evaluation of proposals and, here, does not provide the objective definition of the term sought by the protester.¹ The protester's challenge to the RFP's failure to provide an objective definition for the referenced standard is therefore untimely and not for our consideration since alleged improprieties in a solicitation which are apparent prior to the closing time for receipt of proposals must be filed before that time. 4 C.F.R. § 21.2(a)(1) (1994); Englehard Corp., B-237824, Mar. 23, 1990, 90-1 CPD ¶ 324.²

¹The protester also challenges that the agency did not define the term in its source selection plan in advance of evaluation of the proposals; however, the source selection plan merely serves as a guide to the evaluation which is otherwise governed by the evaluation scheme set forth in the RFP. See Johnson Controls World Servs., Inc., 72 Comp. Gen. 91 (1993), 93-1 CPD ¶ 72.

²Sippican also protests the agency's failure to consider government costs associated with first article testing in evaluating proposals under the RFP (which permitted offerors to submit proposals on the basis of required first article testing, and, if applicable to a previously approved offeror, for waiver of first article tests). Offerors were advised, however, that first article tests were the responsibility of the contractor. Moreover, the RFP did not provide for the inclusion of any government costs in its stated evaluation scheme. This protest basis, therefore, is also untimely. 4 C. F. R. § 21.2(a)(1).

Sippican next protests the agency's evaluation of the proposals on the basis that the agency considered the proposals' management scores in evaluating proposals where the RFP stated that technical proposal scores would be used in initially calculating computed value. Specifically, the RFP stated that the agency would:

"compute each Offeror's overall score . . . by dividing the evaluated cost by the total technical score. . . . Offers will be evaluated on the basis of lowest overall score whether or not such lowest score involves a waiver of first article requirements"

The Navy reports that this sentence of the RFP inadvertently omitted the phrase technical "volume" score, which was to include consideration of both technical and management scores to be added and then divided into the evaluated cost to determine overall value. ("Technical volume score" was referenced later in the same paragraph of Section M of the RFP.)

The agency points out that even if management scores were not used in calculating overall value, as the protester contends is required by the RFP, Sippican still would not be in line for award since "the cost-per-technical point difference between Sippican and Sechan would have been greater; that is to the detriment of Sippican." (By eliminating the management score, a lower number reflecting only the technical score would be divided into the evaluated cost--where Sippican's costs were substantially higher than Sechan's--increasing the amount of the resulting overall values and the difference between the two proposals' overall values, rendering Sippican's proposal even less advantageous to the government compared to Sechan's.)

The protester has not been prejudiced by the agency's evaluation of proposals to include the proposals' management scores since the protester would not be in line for award even if the alleged error in the evaluation was corrected. Prejudice is an essential element of a viable protest. See Logitek, Inc.--Recon., B-238773.2; B-238773.3, Nov. 19, 1990, 90-2 CPD ¶ 401. This protest, as filed with our Office, does not establish a basis for challenging the

agency's action and, accordingly, must be dismissed. See Robert Wall Edge--Recon., 68 Comp. Gen. 352 (1989), 89-1 CPD ¶ 335.³

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³Sippican also contends that the agency improperly failed to conduct a cost realism analysis of the proposals. The Navy correctly points out that a detailed cost realism analysis is not required by the RFP which contemplates award of a fixed price contract. Crestmont Cleaning & Supply Co., Inc.; Scott & Sons Maintenance, Inc.; Son's Quality Food Co., B-254486 et al., Dec. 22, 1993, 93-2 CPD ¶ 336. The Navy acted properly in comparing proposed prices to other proposals and historical procurement data, and by verifying quantities and rates to determine the reasonableness of the proposed prices and conclude that the awardee's proposal was not "unrealistically low." Id.