

Protest of)
) Date: April 15, 1991
 BELL & HOWELL FEDERAL)
 GOVERNMENT SALES)
) P.S. Protest No. 91-24
 Solicitation No. 169990-91-A-0073)

DECISION

Bell & Howell Federal Government Sales ("Bell & Howell") timely protests award of a contract under Solicitation No. 169990-91-A-0073 for a Computer Assisted Retrieval System to Britt Office Systems, Inc. ("Britt"). A written solicitation was issued pursuant to simplified purchasing procedures^{1/} by the Central Procurement and Materiel Management Service Center, Chicago, IL, on February 5, 1991, with offers due on February 26.

The solicitation set forth the following three brand name products as acceptable: the Bell & Howell Data Search 8000, Model 19050; the Canon CCAR/XENIX 340 system, Model MIC-CARX-340; and the KODAK KAR 6500 Information System, Model 308.

Section 2.20 of the solicitation, entitled Availability of Equipment or Software, required the proposed equipment or software to have been commercially available prior to the closing date of the solicitation and to be capable of a demonstration as specified in section 3.12. That section stated that "[a]t the sole discretion of the Postal Service and before award of the contract, the Postal Service . . . may request a test demonstration to validate the technical acceptability of the offeror's proposal." Section 2.24.1, Operating Performance, stated that the software "must conform to and perform in accordance with the contractor's functional descriptions and data requirements" and must meet all other contract requirements. Section 2.10, Inspection and Acceptance -- Systems, sets forth the performance standards to be met prior to the product being accepted.

Finally, the solicitation required that the "software offered must be capable of producing report layouts as specified in Attachments 1 and 2." Attachment 1 was a proposed automated system-processing scheme and attachment 2 was a proposed automated system-report layout. Award was to be made to the responsible offeror whose proposal was the most advantageous to the Postal Service, "considering cost or price and other

^{1/}The Procurement Manual ("PM") sets forth simplified purchase procedures and requirements at PM 4.2.1.

factors specified elsewhere in this solicitation." No additional evaluation factors were listed.

Pursuant to PM 4.2.1 d.3, the contracting officer solicited three sources. Bell & Howell offered the Bell & Howell Data Search 8000, Model 19050 system. Bell & Howell's offer included software, currently installed and operational in one Postal Service facility, specifically designed to meet the requirements of Attachments I and II of the solicitation. It stated that the customized report generating capabilities were offered at no additional costs to the Postal Service. Its offer also extended an invitation to the contracting officer to attend a demonstration of its product. Britt offered the specified Canon system. Britt was not currently supplying its system to the Postal Service and, consequently, its software was not yet tailored to meet the requirements of attachments 1 and 2. Having determined that Britt was the lowest responsible offeror, the contracting officer awarded the contract to Britt on March 12.

In its protest, Bell & Howell complains that the award to Britt was improperly made on the basis of price alone and that Britt is incapable of meeting the solicitation standards set forth in sections 2.20 and 2.24.1 of the solicitation. Specifically, Bell & Howell contends that the Canon system offered by Britt cannot perform the "unique processing" and report functions required. It alleges that the contracting officer ignored the fact that Bell & Howell's system meets all the solicitation requirements and requests that Britt's contract be terminated and award be made to Bell & Howell.

In his report, the contracting officer states that, pursuant to PM 2.3.3 b.,^{1/} the solicitation was properly limited to the three brand names specified. He states that, contrary to Bell & Howell's allegation, the product offered by Britt, a distributor for Canon products, was commercially available prior to the solicitation's closing date. He notes that the identical product is listed in a Government Services Administration ("GSA") contract that was issued in October, 1990. He suggests that Bell & Howell may be alleging that the software programming listed in the solicitation attachments must have been commercially available prior to award. He asserts that the only software required to be commercially available prior to award is the application software, not the software programming necessary to run the Postal Service application, which would be of little use to anyone outside the Postal Service.

The contracting officer states that although section 3.12 required that the offered product be capable of being demonstrated prior to award, the decision to conduct a test demonstration was entirely within the discretion of the contracting officer. Since all proposals were for one of the acceptable brand name products, the contracting officer did not deem it necessary to require a test demonstration from any of the offerors. The contracting officer contends that Bell & Howell's opinion that Britt's product was incapable of being demonstrated prior to award is an insufficient basis to protest the award. In any event, the solicitation requires that performance standards be met before final acceptance, further diminishing the need for a pre-award test demonstration.

Additionally, the contracting officer states that the Canon product does conform to

^{2/} PM 2.3.3 b. states that "[i]f at least three acceptable brand-name products are specified, the solicitation may provide that only proposals for those products will be considered."

section 2.24.1 of the solicitation. He states that in addition to determining whether Britt's product performs in accordance with the contractor's functional descriptions and data requirements, the post-award testing procedures outlined in section 2.10 will also determine whether the product will comply with the processing scheme and produce the reports required by the solicitation attachments.

Finally, the contracting officer asserts that as any of the three systems were acceptable to the Postal Service and since no evaluation factors other than price were listed in the solicitation, the price-based award to Britt was proper. Indeed, the contracting officer notes that a price-based award is the normal method used in simplified purchases of standard commercial products such as these. PM 4.2.1 e.2.

Britt submitted comments in support of the contracting officer's statement. Specifically, it notes that its systems have been commercially available since 1989 and have been sold to numerous commercial customers. Corroborating the contracting officer's assertion, Britt contends that the identical system offered here has been available on Canon's GSA Schedule since October, 1990.^{1/} Britt contends that, had the contracting officer requested a pre-award demonstration, it was prepared to comply.

Britt asserts that, although it is unsure what Bell & Howell means by "unique processing" requirements, its system meets all the solicitation requirements, including the provision of a report generator capable of meeting the Postal Service's specific needs, as set forth in the attachments to the solicitation. Britt contends that the process of tailoring the report generating process to the specific needs of a customer is a normal part of the installation process.

Finally, Britt submits that since it offered one of the designated brand names, there was no reason for the Postal Service not to award to it on the basis of price.

By suggesting that Britt's proposal does not meet the requirements of the solicitation, Bell & Howell is alleging that Britt's proposed product is technically unacceptable. "Each proposal must be examined to determine whether it meets the requirements of the solicitation." PM 4.1.4 c. "This office will not substitute its judgment for that of the contracting officer or disturb his evaluation of an offer's technical acceptability unless it is shown to be arbitrary or in violation of procurement regulations." TLT Construction Corp., Inc., P.S. Protest No. 89-75, January 18, 1990. Britt offered one of the designated brand name products. The fact that Bell & Howell was currently supplying a system at one postal facility that was already customized to meet the special needs of the Postal Service, as outlined in the solicitation attachments, does not automatically render the other brand name products technically unacceptable. The solicitation did not require that the proffered products be so tailored. Since Britt offered one of the designated brand name products, the contracting officer's determination that its proposal was technically acceptable was neither arbitrary and capricious nor in violation of procurement regulations. Larse Corporation, P.S. Protest No. 90-48, October 18, 1990.

As to Bell & Howell's allegation that a price-based award was improper, there is no

^{3/} Both the contracting officer and Britt attached copies of the GSA contract to their statements.

basis for that conclusion. Proposals must be evaluated according to the evaluation criteria specified in the solicitation. PM 4.1.4 a. The solicitation clearly stated that award would be made to the offeror whose proposal was most advantageous to the Postal Service, price and other factors considered. No other evaluation factors were listed for consideration. The contracting officer properly awarded to Britt as the lowest responsible offeror. PM 4.1.5 b.1.

This protest is denied.

[Signed]

William J. Jones
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Office of Contracts and Property Law

[Compared to original 5/16/95 WJJ]