

Protest of)
SERVICE ASSURANCE CORPORATION) Date: May 1, 1992
Solicitation No. 479990-92-A-F001) P.S. Protest No. 92-16

DECISION

Service Assurance Corporation ("SAC") timely protests award of a contract under Solicitation No. 479990-92-A-F001 for computer equipment maintenance and repair services for the United States Postal Service Southern Region Offices, Memphis, TN, to Econocom Services, Inc. ("Econocom"). The solicitation was issued on October 23, 1991, with an offer due date, as amended, of December 16.

The solicitation sought full service on-site maintenance and repair services for thirty-five listed models of computers and printers. In addition, the solicitation sought hourly service rates for non-hardware related service calls and emergency and after hours service. At Section B.1, the solicitation stated that the offered service was to include "all parts, labor and any other expense necessary to maintain the equipment in good working condition." The solicitation did not contain a list of parts or other supplies to be provided by the contractor. The solicitation contained Clause 10-17, PREFERENCE FOR DOMESTIC SUPPLIES, which stated in pertinent part:

a. A six percent proposal evaluation preference will be given to domestic-source end products in accordance with chapter 10, section 3 of the USPS Procurement Manual. For the purposes of this clause --

1. 'End products' means articles, materials, and supplies to be acquired under this contract for Postal Service use . . .

The solicitation contained Provision A-10, DISCOUNTS, which stated that "[e]ven though a space is provided for entering a prompt payment discount, such discounts will not be considered in evaluating proposals before award." The solicitation this further stated in section M that award would be made to "the responsible offeror whose proposal conforming to the solicitation will be most advantageous to the Postal Service, cost or price and other factors specified elsewhere in this solicitation considered." The solicitation listed the following technical evaluation factors and their values:

	Points
1. EXPERIENCE AND MAINTENANCE CAPABILITY	30
2. RESPONSE TIME	25
3. AVAILABILITY OF SPARE PARTS	20
4. REPAIR TURNAROUND	15
5. OFFEROR'S OFFICE LOCATION	<u>10</u>
Total Possible Points	100

Section M also stated that "[c]ost/price will be considered in the award decision, although the award may not necessarily be made to that offeror submitting the lowest price."

Of the fourteen proposals received, only two, those of SAC and Econocom were found to be in the competitive range. Econocom's initial offer was for \$82,908.00. SAC's offer was for \$87,318.00 and contained a 2% discount for payments made within five days of receipt of invoice. On January 31, the contracting officer sent letters, constituting written discussions, to each offeror in the competitive range. The letters gave each offeror the opportunity to respond to deficiencies in their proposals and requested best and final offers ("BAFOs") by February 10. In its BAFO, Econocom reduced its offered price by \$2,121.00. SAC did not revise its price, but offered "quarterly payments which would result in an additional 8% discount."

The contracting officer determined that both firms were technically qualified for award. The following is the summary of Econocom's and SAC's technical scores and prices:

Econocom Services, Inc.	96 Points	\$80,787.00
Service Assurance Corp.	94 Points	87,318.00

The contracting officer performed a price analysis of Econocom's proposal and determined that it was fair and reasonable. The contracting officer also determined that Econocom was a responsible offeror. On February 25, the contracting officer awarded the contract to Econocom, as having proposed the best overall value to the Postal Service. Section C.1 of the solicitation set forth the period of performance as January 1, 1992, through September 30, 1993. Contract Modification M01, issued March 2, changed the performance period to March 1, 1992, through November 30, 1993.

SAC filed this protest with the contracting officer, who received it on March 9 and forwarded it to office pursuant to the Postal Service Procurement Manual ("PM"), ' 4.5. 3.b. The thrust of SAC's complaint is that it should have received award because its proposal exceeds the technical specifications and its price is lower than Econocom's.^{1/}

SAC also asserts that it is "a 100% United States owned and operated corporation," whereas Econocom is wholly owned and controlled by a foreign entity, and concludes

^{1/} As set out above, SAC's price was not lower than Econocom's. SAC's assertion to the contrary is based on an incorrect assumption. SAC assumes contract performance would begin on March 1, as it did, but also assumes that the original end date for the contract term was not changed, turning a 21-month contract into a 19-month contract. SAC then divides its offer price by 21 to establish a monthly rate, and multiplies that rate by 19 to arrive at a price of \$79,002.00 for nineteen months' performance. SAC compares this rate to Econocom's price, which it incorrectly assumes is for a 19-month term.

that its offer should have been given the six percent evaluation preference outlined in Clause 10-17. Finally, SAC subtracts an additional \$6,320.16 from its price by applying the 8% discount "for quarterly payments in arrears." SAC concludes that its price is, consequently, "a full \$13,058.28 less" than Econocom's.

In his report, the contracting officer, applying SAC's reasoning, states that if the performance period had actually been reduced to 19 months, Econocom's price would have to have been reduced accordingly to \$73,093.00 and would remain lower than SAC's. He states that while Econocom's parent company is a foreign entity, the service personnel are local. He concludes that the Buy American policy does not apply in this instance. Finally, he states that he interpreted SAC's BAFO to be offering an additional prompt payment discount which, according to the terms of the solicitation, could not be considered in evaluating SAC's proposal. In addition, the solicitation asked for prices on a monthly basis, not quarterly. He states that if SAC had intended to change its price in its BAFO, it should have submitted a new bottom line number. He states that even if he was mistaken in his interpretation that the 8% discount was a prompt payment discount, SAC's price would have been only \$21.65 per month lower than Econocom's. As price was not the sole basis for award and Econocom's technical evaluation score was slightly higher than SAC's, the contracting officer states that he would have been able to justify award to Econocom under those circumstances as well.

SAC submitted comments to the contracting officer's statement, disputing the conclusion that the Buy American policy does not apply to this contract. It claims that it knows of no foreign- owned corporation, operating in the United States, that does not employ American citizens. SAC contends that the policy also applies to service contracts, such as this one, citing PM 10.3.1, which states that "Postal Service policy is to give preference to domestic-source products and materials in purchasing supplies and services" SAC reiterates that the 6% preference should have been subtracted from its proposal price.

Econocom also submitted comments, stating that SAC's price could not be \$13,000.00 less than its own, as SAC's analysis reduced the performance period for its own proposal, but not for Econocom's. Econocom agrees that application of the 8% discount would have been inappropriate, as the solicitation stated that payments would be monthly, not quarterly. Econocom also contends that, although it is owned by a foreign entity, the company headquarters is in Tennessee and all work to be performed will be by American citizens. It states that, in any event, even if a 6% preference were subtracted from SAC's price, Econocom's proposal would still be almost \$1,300.00 lower than SAC's. Econocom points out that price was not the sole determining factor and it received a higher technical score than SAC. Finally, Econocom alleges that SAC's proposal does not comply with one of the evaluation factors.^{1/}

^{2/} The first evaluation criterion, Experience and Maintenance Capability, had two sub-factors, one of which stated:

To be responsive to the solicitation the offeror must have three (3) years experience in maintaining equipment similar to that in the solicitation. Furnish data to show your company meets this requirement.

Econocom alleges that SAC is a two-year old company and, in support of this contention, attaches an article from "The Memphis Business Journal," which indicates that SAC was founded in 1990. To the

Discussion

SAC contends that its proposal was improperly evaluated. "When a protester claims that improper evaluation procedures were used, this office will not disturb the evaluation of a proposal unless it is shown to be arbitrary or in violation of procurement regulations." Dataview Corporation, P.S. Protest No. 90-31, July 19, 1990, quoting Cutler Manufacturing Corporation, P.S. Protest No. 90-28, July 5, 1990.

SAC's complaint that the contracting officer's evaluation of its price is mathematically incorrect is incorrect for the reasons noted in footnote 1. As for SAC's allegation that the contracting officer should have applied the 2% prompt payment discount and the 8% quarterly discount in evaluating its price, the solicitation specifically stated that prompt payment discounts would not be considered in the evaluation of the proposals. SAC does not contend that the proposed 8% discount was something other than an additional prompt payment discount. Therefore, the contracting officer correctly declined to consider it. Cf. Sentinel Foam Products, P.S. Protest No. 85-94, January 16, 1986.

SAC also contends that it should have received the 6% preference pursuant to the Postal Service's Buy American policy. The policy applies to "all purchases of supplies, or services that involve the furnishing of supplies." PM 10.3.2 a. SAC is not complaining that the parts Econocom will be supplying are foreign end products. Rather, it contends that the fact that Econocom is a foreign-owned entity requires the application of the 6% preference to its entire price proposal.

SAC's analysis is incorrect. The Buy American policy relates to the evaluation of offers proposing the furnishing of supplies of foreign origin; it does not relate to the nationality of the owners of the company proposing to provide the supplies. See International Business Machines Corp., P.S. Protest No. 90-66, January 11, 1991. Even if a 6% differential were applied to Econocom's price, its price would still be lower than SAC's.^{1/} Tulsa Diamond Manufacturing Corp., et. al., P.S. Protest Nos. 85-18, 85-20, and 85-23, June 20, 1985.

The contracting officer awarded the contract to Econocom on the basis of its higher technical score and lower price. SAC has not shown, and the record does not reveal,

extent that Econocom is alleging that SAC's proposal should have been evaluated as being technically unacceptable, its protest is untimely raised and, in view of this decision, irrelevant. We note, however, that experience factors of this sort do not require that the offeror have been in existence for the specified period; the prior experience of the owners and staff may be attributed to a newer company. Abco Peerless Sprinkler Corp., P.S. Protest No. 84-50, August 24, 1984.

^{3/} The 6% preference is calculated not by reducing SAC's price by 6%, but by adding 6% to Econocom's price:

	Offered Price	Including 6% Preference
SAC	\$87,318.00	\$87,318.00
Econocom	<u>80,787.00</u>	<u>85,634.00</u>
Difference	\$6,531.00	\$1,684.00

that this decision was either arbitrary or in violation of any procurement regulations.

The protest is denied.

William J. Jones
Associate General Counsel
Office of Contracts and Property Law