

Protest of) Date: September 3, 1992
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INTERLOG, INC.)
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Solicitation No. 104230-91-A-0176) P.S. Protest No. 92-32

DECISION

Interlog, Inc. protests the award of a contract for warehousing services to New Breed Leasing Corporation ("New Breed"). Inter-log contends, among other things, that the Postal Service failed to evaluate offers in accordance with the stated evaluation criteria. It also asserts that its technical proposal was improperly eliminated from the competitive range.

The solicitation was issued by the Office of Procurement, Headquarters, in Washington, D.C. on November 25, 1991, and had four amendments. The solicitation sought a full service equipment processing center ("EPC") near Greensboro, NC, that would provide mail transport equipment ("MTE") processing, repair, warehousing, and distribution/transportation. The solicitation stated that the contract type was a cost-plus-award-fee.^{1/}

Section A.1 of the solicitation listed the seven items for which offerors were to give their estimated total costs: 1) equipment processing, storage and retrieval (listed as being an estimated 50% of the work); 2) mailbag repair (10%); 3) container repair (15%); 4) warehousing (10%); 5) distribution and transportation services (15%); 6) miscellaneous services not included in items 1-5; and 7) startup. Offerors were required to propose all items for all years.

Section M.1 stated that award would be made to "the responsible offeror whose proposal conforming to the solicitation will be most advantageous was to the Postal

^{1/} Section A.1 of the solicitation describes a cost-plus-award-fee contract as one where the "Postal Service will reimburse cost to the contractor and provide a fee that consists of: (1) a fixed amount agreed to at time of award; and (2) an award amount based on the contractor's performance, as evaluated quarterly by the Postal Service."

Service, cost or price and other factors specified elsewhere in this solicitation considered." Section M.2 more specifically stated that:

[T]he primary area to be used in determining which proposal is most advantageous to the Postal Service is technical acceptability, which may include oral presentations, functional demonstrations, or both Cost proposed by those offerors whose proposals are determined to be technically acceptable will be carefully evaluated, although award may not necessarily be made to the offeror submitting the lowest estimated cost. Award will be made to the responsible offeror that, in the judgment of the Postal Service, presents the best value to the Postal Service, both technical and cost considered." Section M.3 of the solicitation warned offerors that "[t]he Postal Service will evaluate offers for award purposes by including only the price of the basic requirement; i.e., options will not be included in the evaluation for award purposes.

Eleven proposals were received. After making a competitive range determination, the contracting officer held discussions with and requested best and final offers from five offerors. Interlog was one of the offerors that did not make the competitive range and was so notified, by letter, dated March 19, 1992. The letter stated:

Your proposal . . . provided a solution that is excessive in some areas, and either ignores or is in conflict with other areas of the requirement. In addition, lead times and availability of most resources, including staff, were unclear. Experience of the proposed staff was weak in the disciplines proposed; the organizational structure appeared deficient; no examples or descriptions of reporting systems were found; and corporate experience in areas related to the statement of work was not evidenced by the content of the proposal.

The letter also informed Interlog that once award had been made, it would receive an award notification letter that would advise it of its right to a debriefing. Interlog responded to the March 19 letter with a letter dated March 24. In it, Interlog complained that the letter excluding it was devoid of fact, vague, unprofessional and exaggerated. Interlog advised that if it did not receive a "hearing" within two weeks it would seek redress through official, legal, congressional and public media channels. The contracting officer responded on March 30 that the reasons given for Interlog's exclusion were drawn directly from a detailed evaluation of its proposal. Interlog was also again informed that it could request a debriefing following award.

New Breed was awarded the contract on May 14. Interlog was notified of award on May 15; its protest was received on May 29. Interlog did not request and did not receive a debriefing. In its protest, Interlog asserts that the Postal Service failed to evaluate offers in accordance with the stated evaluation criteria, used an evaluation criteria that did not allow full and open competition, failed to permit oral presentations and failed to conduct meaningful discussions with Interlog during the evaluation

process, which resulted in the unfair elimination of Interlog's proposal prior to best and final offers.

The protester stresses that it is in the business of providing non-personal services in the areas of logistics, warehouse operations, mailroom operations, equipment repair, management, technical and administrative services and that its staff has over 20 years of experience in these areas. Interlog argues that it submitted a two volume proposal which addressed all the requirements of the solicitation and which was particularly responsive to the Statement of Work, addressed in Section B of the solicitation.

The protester states that its proposal was descriptive in explaining its understanding of the requirement, in describing the technical and management approach it planned to take, and in identifying proposed key personnel that were more than qualified to perform the solicitation requirements. Interlog disagrees with the contracting officer's letter which described its proposal as "excessive in some areas and either ignores or is in conflict with other areas of the requirement."

Interlog asserts that the Postal Service performed a cost analysis on its proposal and its cost was determined to be fair and reasonable, especially considering the innovations, new ideas, and concepts it proposed. Interlog believes it could have won award, had its proposal not be unfairly eliminated without discussions. Interlog notes that a preaward survey was performed at its facilities, which it believes is usually only performed for offerors in the competitive cost range.

For its relief, Interlog asks that the General Counsel hold a suspension hearing and a hearing on the merits, direct the contracting officer to issue a unilateral stop order, suspend Respondent's procurement authority pending a decision on the merits of its protest and award it protest and proposal costs.^{1/}

As an initial argument, the contracting officer asserts that Interlog's protest against its exclusion from the competitive range is untimely, since it was informed of its exclusion by letter dated March 19 and its protest was not received until May 29, more than 10 working days later. Even though the contracting officer believes that Interlog's protest is untimely, he explains why the firm was excluded.

^{2/} Our regulations do not provide for a "suspension hearing" or a hearing on the merits during a protest. However, Interlog had the right to a protest conference. Procurement Manual ("PM") 4.5.7 j. Interlog requested and received such a conference. Second, it is "[t]he contracting officer, with the advice of assigned counsel, [who] must determine whether it would be in the interest of the Postal Service to allow the [awardee] to proceed" once award has been made and a protest is filed. PM 4.5.5 b. This office does not have the authority to order the contracting officer to issue a stop work order. Third, this office does not have the authority to order suspension of an individual's procurement authority, pending the outcome of a protest. Lastly, we lack either statutory or regulatory authority to make awards of proposal and protest costs. DHL Airways, Inc., P.S. Protest No. 89-36, July 7, 1989.

He states that while Interlog proposed a heavily mechanized operational system for the processing of mailbags, which comprised less than 50% of the total effort, that system did not integrate with various other functions of the requirement. He adds that except for Interlog's mailbag processing concept and its staff resumes (two of which were not relevant to the proposed positions), it did little more than repeat the content of the Statement of Work or other solicitation attachments. Interlog's cost was also considered to be exorbitantly high and unbalanced for the effort. Based upon these items, it was determined that in order to make the competitive range, Interlog's proposal would have had to be rewritten. Since the protester's proposal did not have a reasonable chance for selection, relative to the other proposals, it not included in the competitive range.

To further respond to some of Interlog's concerns, the contracting officer states that due to issues of timing of the award, he decided to perform cost audits of all proposals at the same time that the technical evaluation was underway. Some audits had not yet been performed at the time the competitive range was made. Therefore, the audits for those firms that were excluded from the competitive were cancelled. However, Interlog's proposal was audited and its costs were found to be unsupported. Its proposed cost was well over twice the next highest offeror's estimate.

The contracting officer asserts that Interlog's proposal was evaluated in accordance with the solicitation requirements. In response to Interlog's questions concerning the lack of oral presentations, the contracting officer points out that these presentations were optional^{3/} and if required, would have occurred prior to technical evaluation. Since all proposals were readily understandable, the contracting officer opted to forego oral presentations.

Finally, in response to Interlog's assertion that the evaluations "subverted full and open competition," the contracting officer states that such an assertion is an attack on the solicitation requirements and therefore untimely raised now. The contracting officer rejected the remainder of Interlog's arguments.

In response to the contracting officer's assertion that its protest is untimely, Interlog states that it did not protest immediately after receiving the March 19 letter eliminating it from the competitive range because the contracting officer's letter stated that no further information would be provided until its debriefing, if it requested one.

The protester contends that its proposal offered an innovative concept that would

^{3/} He quotes Section K.15 of the solicitation, which states: "Oral presentations may be required. If requested, these presentations will provide an opportunity for the offerors to clarify significant elements of the proposal to ensure understanding. . . . The offeror will not earn technical points as a result of oral presentation."

increase productivity of mailbag processing with an accompanying cost savings. Inherent in its concept was the ability to respond quickly to future increases in repair or inspection requirements. Interlog disputes the contracting officer's statement that its proposal merely restated the Statement of Work and that holding discussions with it would have resulted in a new technical proposal. The protester believes that had its proposal been evaluated, it would have provided the best value to the Postal Service for this requirement.

Interlog stresses that it addressed the Statement of Work requirement to outline organization and staffing of the project by using a "structure-function" approach, a time-honored approach found in most organizational behavior and management textbooks. The protester asserts that while at first glance this approach may seem to be merely repeating the SOW, a closer look would show that Interlog was merely using the structure-function approach to demonstrate what system it would employ to satisfy the requirements.

Interlog argues, with references to the appropriate section of its proposal, that it adequately responded to the specification requirements. Interlog especially disagrees with the contracting officer's summary dismissal of the well-qualified staff it offered. The protester questioned the scheduling of the audits, adding that its costs were determined to be acceptable to the auditor. The protester asserts that its cost proposal supported its technical proposal. It states that its cost appears high because of its concentration on mechanization and automation. Interlog repeats that it has been wrongfully eliminated from competition.

Discussion

The Procurement Manual states that "[p]rotests received by the . . . General Counsel after the time limits prescribed by this section 4.5 will not be considered." It further states that "protests must be received not later than ten working days after the information on which they are based is known or should have been known, whichever is earlier" PM 4.5.4 d.

Interlog protests its exclusion from the competitive range. It was notified that it was excluded by letter dated March 19. Its protest was received by this office on May 29. Interlog states, in its comments, that one reason it did not protest earlier was because it interpreted the contracting officer's response to state that no further information would be furnished to it concerning its exclusion.

That argument has no merit. Interlog could have protested to this office as soon as it was excluded, as it did on May 26.^{4/} See PM 4.5.3 a.^{4/} Further, Interlog did not request

^{4/} In addition, in response to a question posed by Interlog during its protest conference, the contracting officer did not have a duty to inform Interlog in his response to its March 24 letter, that it could alternatively file a protest with the General Counsel. The solicitation already informed offerors, in

a debriefing before it filed that protest and so could not have been waiting for additional information to file its protest. But even if Interlog had requested a debriefing, such a request would not have tolled the time for it to file its protest, since the letter excluding it from the competitive range was detailed enough to provide a basis for protesting. See Travelco, Inc., P.S. Protest No. 91-10, March 21, 1991 ("where . . . an offeror is provided the detailed basis for proposal rejection [from the competitive range], a protest of the rejection must be filed within 10 days thereof"). Since Interlog's protest letter was received over ten days after Interlog was notified of its exclusion, its protest is untimely.^{1/}

The rule of law is clear. When an offeror is excluded from the competitive range and that offeror is provided the detailed basis for proposal rejection at that time, a protest of the rejection must be filed within 10 days thereof. See Travelco, Inc., supra. Interlog failed to do so. As we are without authority to decide untimely protests, Interlog's protest must be dismissed.^{1/}

Section K.7, that Chapter 4 of the USPS Procurement Manual contained the procedures for filing a protest. That section also informed offerors how to obtain a copy of the protest procedures.

^{5/} PM 4.5.3 a. reads: "A protest must be in writing and filed with the contracting officer or with the General Counsel." (Emphasis added.)

^{6/} Interlog's March 24 letter, although received less than ten days after the March 19 letter excluding it, was not a protest. A protest is a "written objection by any interested party concerning the terms of a solicitation, the award or proposed award of a contract, or any other action relating to the solicitation or award of a contract." PM 4.5.2 a.

Interlog's March 24 letter did not state that it was a protest. While "it is not necessary that a protest employ the word 'protest' in order to be recognized as such, the protester should not put the contracting officer in the position of having to guess whether a letter merely seeks information or is intended to be a formal protest." Protest of C.D.E. Air Conditioning Company, Inc., et al., P.S. Protest Nos. 91-80 and 91-83, January 16, 1992.

More importantly, Interlog's response did not object to or address the specific reasons outlined by the contracting officer for its exclusion from the competitive range. Instead, the protester's letter complained to the contracting officer about the tone and style of his letter and advised the contracting officer of the course of action it planned to take.

^{7/} We note that the record suggests that Interlog was properly excluded from the competitive range. It offered the highest price of all eleven offerors and its price was over four times higher than the next lowest offeror. Regarding the selection of a competitive range, "the extent of both the technical and any potential cost savings generally should be factors in a competitive range determination." Cummins-Allison Corporation, P.S. Protest No. 91-18, June 4, 1991 (quoting Raytheon Co., Comp. Gen. Dec. B-218408, 85-2 CPD & 51, July 15, 1985)). Therefore, "[e]ven if a proposal has a potential for significant improvement, it may be excluded from the competitive range if, relative to other proposals, it has no real chance of selection for award." PM 4.1.5 g.2.(b)

Interlog's protest is dismissed.

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