

Protest of) Date: December 18, 1992
SHAPE CORPORATION)
Solicitation No. 104230-92-A-0112) P.S. Protest No. 92-91

DECISION

Shape Corporation (Shape) protests the contracting officer's determination that its offer on Solicitation 104230-92-A-0112 for over-the-road containers was outside the competitive range.

The solicitation was issued June 2, 1992, seeking offers for the production of 17,456 Bulk Mail Center Containers (PS Item 3910) for delivery in 1993 and 1994, with options for additional quantities of Item 3910 and Item 3910A (AMTRAK Containers) for delivery in 1995, 1996, and 1997. The solicitation required that each offeror submit a technical/management proposal which would, in the words of the solicitation, "disclose the offeror's technical approach in sufficient detail to provide a clear and concise presentation."

According to section J.2 a., the technical/ management proposal was to include entries in seven areas.^{1/} Section M.1 gave further guidance in the context of the evaluation scheme, listing two evaluation factors, Management and Technical, and indicating that the former was to be substantially more significant than the second. Subfactors were listed for each factor, in declining order of significance.^{1/} The first two subfactors of the

^{1/} The areas were:

1. Resumes.
2. Efforts. The percentage of time the personnel identified in the resumes would spend on the project.
3. Subcontracting. A description of what would be subcontracted and the probable subcontractors.
4. Ability to Perform. Previous postal, government, or commercial contracts for similar efforts.
5. Organization. How this project relates to the company organization.
6. Related Experience. The offeror's "experience and familiarity related to the subject of this effort."
7. Related Facilities. The offeror's "special facilities . . . that have specific application to this work."

^{2/} The four Management subfactors covered the following areas:

1. The production plan for the container, including a work flow diagram and discussion of tooling

management factor were said to be of significantly more importance than the last two.

The offeror was also to submit a cost/business proposal which identified the various cost elements of the proposal. The solicitation stated that price would be "considered in the award decision, although award may not necessarily be made to that offeror submitting the lowest price. Management/Technical is slightly more important than cost."

Shape proposed on the solicitation. By letter dated October 5, Shape was advised that its proposal had been determined not to fall within the competitive range. The letter noted the following specific deficiencies in the proposal:

1. A complete plan to produce containers was not provided;
2. Tooling requirements for fabricating and welding for piece parts and sub-assemblies were not included in the proposal. It did not specify the type and quantity for equipment that would be used to fabricate containers. A work flow diagram was not included or addressed. It did not indicate whether present tooling/equipment would be adequate. It did not address all of the items listed under contract experience;
3. Background and experience of the key management and technical personnel were not provided, and
4. It did not address any of the items listed under technical requirements which relate[] to quality assurance.

Shape's timely protest followed. The protester contends that the deficiencies noted in its proposal were minor, do not reflect the actual requirements of the solicitation, and are the result of the Postal Service's failure to conduct meaningful negotiations with Shape. With respect to the various deficiencies recited in the October 5 letter, Shape contends as follows:

1. The production plan which was submitted paralleled the production plan requirements, welding equipment, fabricating equipment, assembly equipment, and packaging and shipping plan. Sources were to be provided for equipment and tooling not already on site.
2. Prior related contracts over the last five years, with appropriate references.
3. Key management and technical personnel.
4. Plans to correct/replace defective parts as required by the warranty clause.

The Technical subfactors were:

1. Inspection and test procedures.
2. Procedures for control and inspection of incoming material.
3. Corrective action methods and procedures to follow up to assure corrections were made.

submitted by a Shape subsidiary which was eventually awarded contract 059990-92-B-0097; if the plan was acceptable there, the plan here could have been made acceptable by further postal research or discussions.

2. The evaluation criteria did not mention tooling requirements for fabricating and welding for piece parts and sub-assemblies. Shape's proposal did include listings of equipment. The evaluation criteria do not require a work flow diagram, and such a diagram was "verbalized" in Shape's offer. Shape would not have proposed had its existing tooling not been adequate. Shape did provide evidence of prior experience, including its prior postal contract. The Postal Service has used evaluation criteria not included in the solicitation, and further discussions with Shape could have resolved any problems.

3. Shape provided a listing of its personnel and positions. Some of the personnel are involved in contract 0097, and further discussion could have resolved these problems.

4. Shape's proposal included a quality assurance document which listed "Electronic Data Acquisition Equipment" and "Electronic Gages." In addition, a brochure described Shape's "Quality Systems," including an "SPC program."

The contracting officer's statement responds to the various points raised by the protest. The statement notes that thirteen proposals received in response to the solicitation were evaluated, and that eight of the thirteen were found to be within the competitive range. Shape's proposal thus was one of five proposals found to be outside the competitive range. The contracting officer makes the following points with respect to Shape's contentions:

1. While Shape submitted a production plan, it did not include a work flow diagram as the evaluation factor requested, and the plan failed to identify equipment and tooling on site or required to be obtained. That the plan was similar to one which had been accepted is not significant; each solicitation is unique and evaluated in accordance with its own requirements. It is the offeror's duty to provide the most complete information possible to respond to the solicitation; it cannot rely on its familiarity with the product or its past performance as a substitute for a complete proposal.

2. Shape's various equipment lists did not identify which equipment would be dedicated to producing the containers, nor how the equipment would be used. To the extent that Shape provided a narrative description of its proposed workflow, its proposal was given appropriate credit. The list of current contracts furnished failed to identify the type of material being produced or to provide the names and phone numbers of contact persons, information concerning delivery, or evidence of performance as the solicitation required. No evaluation criteria outside the solicitation's requirements were used. Discussions were not held with Shape because Shape was outside the competitive range.

3. Shape's list of personnel was deficient in failing to provide information on their background, experience, and special training.

4. Shape's quality submissions failed to address the specific concerns set out in the technical subfactors.

The contracting officer's statement concludes by addressing the more general contentions raised in Shape's protest. It notes that the omissions in the proposal were not minor and that the proposal "did not reasonably address the essential requirements of the solicitation" and that discussions properly were not held with Shape because the proposal was outside the competitive range.

The protester has submitted comments on the contracting officer's statement which take exception to the contracting officer's failure to provide documentation relevant to the statement; objects to the contract award as inconsistent with PM 4.5.5 a.; and rebuts various aspects of the statement.^{3/} The protester objects to the contracting officer's characterization of Shape's failure to submit a "complete production plan," contending that the solicitation did not require more detail than it submitted. Objection is also made to the contracting officer's characterizations of Shape's equipment list, work flow production plan, list of personnel, and quality assurance information, reasserting its previous position that further discussions could have resolved any deficiencies in the material provided.

Several other offerors submitted comments on the protest; the comments recommend that the protest be denied for reasons similar to those offered by the contracting officer.

Discussion

[T]his office will not substitute its judgment for that of the technical evaluators, nor will we disturb the evaluation unless it is shown to be arbitrary or in violation of procurement regulations. LazerData Corporation, P.S. Protest No. 89-60, September 29, 1989; Computer Systems & Resources, Inc., P.S. Protest No. 86-4, March 27, 1986.

The determination of the relative merits of technical proposals is the responsibility of the contracting office, which has considerable discretion in making that determination. It is not the function of our office to evaluate technical proposals or resolve disputes on the scoring of technical proposals. In reviewing a technical evaluation, we will not evaluate the proposal de novo, but instead will only examine the contracting officer's evaluation to ensure that it had a reasonable basis. The protester bears the burden of showing that the technical evaluation was unreasonable. A protester's mere disagreement with the contracting officer's judgment does not meet its burden of proving that the technical evaluation was unreasonable. (Citations omitted.)

^{3/} Shape's request for additional information appears to contemplate our evaluation of its proposal in comparison to those proposals which were found to be within the competitive range. Such a review would be beyond the scope of our review. With respect to the award, inquiry to the contracting officer indicates that the approval of the Vice President, Purchasing, (the successor to the APMG, Procurement and Supply Department), was obtained prior to the award.

Computer Systems & Resources, supra.

Travelco, Inc., P. S. Protest No. 91-10, March 21, 1991.

[A] basic element of negotiations is providing offerors whose proposals are susceptible of being made acceptable an opportunity to correct deficiencies through the submission of revised proposals. H & B Telephone Systems, P.S. Protest No. 83-61, February 6, 1984.

The contracting officer's actions were proper therefore only if his evaluation of [Shape's] proposal as [outside the competitive range] had a rational or reasonable basis and treated all offerors equally and fairly. See Id.; Inforex Corporation, C3 Inc., Datapoint Corporation, P.S. Protest No. 78-12, June 26, 1978. . . . A proposal may be deemed technically unacceptable without seeking additional information from the offeror if the necessary additional information would be substantial, requiring a major revision. Computer Systems & Resources, Inc., P.S. Protest No. 86-4, March 27, 1986.

Factors which we consider in determining whether [a] proposal was properly excluded from the competitive range include: the extent to which the RFP called for detailed information, whether the deficiencies indicate a lack of understanding of the solicitation requirements, whether curing the deficiencies would require an entirely new proposal, the number of offerors remaining in the competitive range, and the cost savings afforded by the rejected proposal. See La Pointe Industries, Inc., Comp. Gen. Dec. B-222023, May 14, 1986, 86-1 CPD & 461.

Dwight Foote, Inc., P. S. Protest No. 87-90, September 28, 1987. Each of these factors weighs against the inclusion of Shape's proposal. That is, the solicitation called for detailed information which Shape did not provide; its failure to provide that information suggests a lack of understanding of the solicitation's requirements in that regard; correcting the omissions in its proposal would require an essentially new proposal; eight firms were included within the competitive range; and our in camera review of the pricing information in the protest file fails to demonstrate that Shape's proposal offered any significant cost savings.

Shape's assertions that its proposal was improperly downgraded for minor omissions or for failing to provide items which the solicitation did not require are without merit. The deficiencies which the contracting officer identified are significant, and Shapes' suggestion that the solicitation did not contemplate that items such as a work flow diagram would be supplied reads the solicitation far more restrictively than is reasonable. As the contracting officer notes, discussions to correct the proposal's omissions would have been inappropriate, since such discussions are possible only if the proposal is determined to be within the competitive range before discussions occur.

Shape's contention that its proposal must be included within the competitive range because a similar proposal was so included with respect to another procurement is not persuasive because "[t]he competitive range may not be established in advance . . . ,

but must reflect the chances of the competing proposals as evaluated" (PM 4.1.5 g. 2.(a)). Shape has not demonstrated that the requirements of the other solicitation were the same as or substantially similar to the requirements of this solicitation, but even if they were, other circumstances in that procurement properly may have occasioned the different result. For example, there may have been fewer satisfactory offers, or Shape's offer may have been viewed as more advantageous than its offer here was. Further, Shape could not rely on the Postal Service's previous experience with it as a substitute for providing the information which the solicitation required. Sheldon Transfer & Storage Co., P.S. Protest No. 91-08, March 13, 1991.

The protest is denied.

For the General Counsel:

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