

Protest of) Date: December 8, 1987
CANTEEN SERVICE OF STEEL VALLEY, INC.)
Solicitation No. 389990-87-B-0329) P.S. Protest No. 87-113

DECISION

Canteen Service of Steel Valley, Inc., (Canteen) has protested award of a contract for cafeteria and vending services at the Youngstown, OH, post office to Automatic Vendors (Automatic) under Solicitation No. 389990-87-B-0329.

The solicitation was issued by the Procurement & Materiel Management Service Office, Columbus, OH, on May 7, 1987, with an offer due date of July 2. The three offers received were assessed by an evaluation committee using six criteria listed in the solicitation. The proposals of two offerors, Automatic and Canteen, were determined to be within a competitive range, and the contract was awarded to Automatic as highest rated on October 2. When Canteen learned of the award it requested details of Automatic's offer under the Freedom of Information Act; it received the information on October 9. Canteen's protest, based on that information, was received by the contracting officer on October 21.

The protester discusses three specific items: Firstit objects to the date coding provision of Automatic's offer, stating that date coding as practiced by Automatic (marking perishable items with a numeric code), assertedly the minimum legal standard,^{1/} fails to comply with Paragraph 10(b) of the contract requirements, which calls for "easy-to-read menus." The protester also contends that Automatic's date coding procedure prevents verification of compliance with Paragraph 7(a) of the general provisions ("All foods served shall be ... safe for human consumption").

Second, Canteen objects , to the amount of commission offered by Automatic, stating that the formula proposed in Automatic's offer would result in a smaller commission than was paid to the Postal Service during the previous year. (Canteen also notes that sample management reports were not submitted by Automatic with its offer.) Third, the protester states that award to Automatic should be precluded by the affirmative response in the contingent fee certification of its offer (Form 7319-B, "Representations and Certifications").

^{1/}Canteen describes its own procedure (marking perishable items with the last date on which they can be sold) as "open date coding".

In his report to this office, the contracting officer states that neither the type of date coding nor the amount of commission to be paid was specified in the solicitation. He states that the absence of management reports did not have any significant impact on the proposals, and that the proposals as submitted were sufficient for evaluation. Additionally, he describes Automatic's response to the contingent fee clause as a clerical error which has been adequately explained, and states that a new copy of Form 7319-B will be completed. The contracting officer asserts that Automatic's offer met all the requirements of the solicitation, and recommends that the protest be denied.

Automatic has commented on the protest, stating that its commission structure was stated clearly and understood by the evaluation committee, that its food coding system insures consistent food quality, and that the affirmative response in the contingent fee clause was a typographical error.

Canteen's objections to Automatic's proposed date coding and commission, although set forth as allegations that Automatic's offer does not meet the strict standards set in its own offer, appear to be objections to the technical evaluation of the proposals.^{1/}

The standard for our review of technical evaluations has been clearly stated. We "will reverse a contracting officer's determination concerning the technical merits of [a] proposal only upon a clear showing of unreasonableness or abuse of discretion." Minnesota Vikings Food Service, P.S. Protest No. 86-86, October 31, 1986. We will not substitute our judgment for that of the technical evaluators or disturb the evaluation, absent a showing that it is arbitrary or in violation of procurement regulations. Management Concepts, Inc., P.S. Protest No. 86-29, July 10, 1986; H & B Telephone Systems, P.S. Protest No. 83-61, February 6, 1984. The protester has made no such allegations, and the record does not show the evaluation to have been arbitrary or unreasonable.

The evaluation criteria were clearly stated in the solicitation.^{1/} Automatic's method of date coding falls within the fourth evaluation criterion ("Menu Prices, Portion Sizes, and Management Controls"), and the proposed commission is within the sixth criterion ("Budget,

^{2/}To the extent that Canteen's objections are a protest against the terms of the solicitation, asserting, for example, that the solicitation should have required open date coding or commission as offered by the protester, the protest is untimely. "Protests based upon alleged deficiencies in a solicitation which are apparent before the date set for the receipt of offers must be received by the date and time set for the receipt of offers." PCM 2-407.8 d.(1).

^{3/}The evaluation criteria were:

- A. Reputation, Experience, and Resources
- B. Sanitation Practices
- C. Personnel Staffing and Management
- D. Menu Prices, Portion Sizes, and Management Controls
- E. Menu Variety
- F. Budget, Accounting System, and Controls

Accounting System, and Controls"). A review of the evaluation committee's report shows that in these two evaluation areas Automatic's proposal was in fact rated lower than Canteen's. Automatic's offer was rated higher in the other four areas, and we fail to see how Canteen was prejudiced by the evaluation. It is the protester's burden to show a technical evaluation unreasonable, Rice Services, Comp. Gen. Dec. B-218001.2, April 8, 1985, 85-1 CPD &400, and Canteen has not done so.

Concerning Canteen's questioning of Automatic's affirmative response in the contingent fee clause, this is a matter within the purview of the contracting officer. The provisions of Form 7319-B address an offeror's responsibility, and responses on the form can be revised after the receipt of offers. Alaska Mechanical, Inc., P.S. Protest No. 85-88, December 4, 1985.^{4/} We find no basis to question the contracting officer's decision allowing Automatic to submit a corrected form.

The protest is denied.

William J. Jones
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Office of Contracts and Property Law

[checked against original JLS 3/15/93]

^{4/}An affirmative response to the contingent fee clause is not itself grounds for elimination from consideration; upon such representation, the offeror must complete an additional form which is the basis for the contracting officer's decision whether the prohibition against contingent fees has been violated. PCM 1-506.1 (b).