

Protest of)
H. L. YOH COMPANY) Date: September 7, 1988
Solicitation No. 197101-88-B-0893) P.S. Protest No. 88-46

DECISION

H. L. Yoh Company (Yoh) has filed a timely protest against the award of Contract No. 197101-88-W-2230 to Wyatt & Associates, Inc., under Solicitation No. 197101-88-B-0893. The solicitation, issued by the Western Area Supply Center, Topeka, Kansas, concerned the services of supply catalogers needed to support and maintain a central cataloging system for the Material Distribution Center in Topeka. The initial contract requirement was for one Supply Cataloger, Senior, and two Supply Catalogers for the one year base period.^{1/}

Section A, Items and Prices, provided that the "estimated manhours" listed for each position were the estimated manhours for the maximum number of individuals that could be provided under the contract for the one year basic term and for each of the one year renewal option periods. These estimates were for information only, were to be used solely for developing price proposals, and neither committed the Postal Service to the utilization of the hours listed nor represented a guarantee of any quantity under the contract. The solicitation required the offerors to submit their proposals for a firm fixed fully loaded hourly labor rate for the maximum requirement of three Supply Catalogers, Senior and five Supply Catalogers. Multiple hourly rates would not be considered.

Section B-2 of the solicitation, Method of Award, provided that proposals would be evaluated both technically and for price. The technical evaluation would take place prior to the evaluation for price with technical proposals being more heavily weighted than price proposals. Award would be given to the responsible offeror whose combined technical and price evaluation achieved the highest overall score. The solicitation explicitly stated that the award would be based on the highest evaluated total score for the minimum number of one Supply Cataloger, Senior, and two Supply Catalogers.

^{1/}The solicitation provided that if, during the base period, additional personnel were needed, the contractor would be required to provide such personnel, up to a maximum of three Supply Catalogers, Senior and five Supply Catalogers, on thirty days written notice.

When the offers were opened, the Yoh offer consisted of a cover letter and a solicitation package which was almost completely blank. Only page 1 of PS form 7333 was filled out and signed. No entries were made in Section A, Items and Prices. Yoh's cover letter began by stating "[t]he H. L. Yoh Company wishes to submit an alternate quote, based on supplying personnel on a per individual/costs basis." As a sample, Yoh submitted the name of one individual, a Supply Cataloger, Senior, and hourly rates for both straight time and overtime. Yoh also included a detailed resume for the individual mentioned in the letter. It did not submit a separately labeled technical proposal or pricing proposal. Finding Yoh's offer technically unacceptable, the contracting officer did not submit it to the evaluation committee.^{1/}

A three member committee evaluated the technical proposals of the other offerors and found them to be technically acceptable, but containing minor deficiencies which required discussions. After discussions, these remaining offerors submitted best and final offers which the committee evaluated. The contracting officer received the committee's evaluation report on June 20. Wyatt had received the highest technical score and had the second lowest price. After the offeror with the highest overall score was found to be nonresponsible, the contracting officer determined that Wyatt presented the most advantageous offer within the criteria specified in the solicitation. It received award on July 28. The contracting officer sent Yoh a letter on July 28 informing it that its offer was rejected because it had failed to comply with essential terms of the solicitation and that Wyatt had been awarded the contract. By letter dated August 2, Yoh protested the award.

Yoh's protest raises various issues. It objects to the delay between the contracting officer's determination that its offer was unacceptable and its notification of the fact. It also objects to the fact that the letter setting out the notice of award does not discuss the management portion of the technical evaluation and that the letter does discuss information not related to the award scheme set out in the solicitation. Contending that its offer was more attractive than Wyatt's on the basis of price, it requests the complete evaluation of Wyatt's proposal, and requests a delay to file a more complete protest based on that evaluation.

In his report to our office, the contracting officer addressed these issues. He states that Yoh's offer, consisting of an alternate bid, was not considered because it did not comply with the essential requirements of the solicitation and that the notification was sent in a timely manner pursuant to Postal Contracting Manual (PCM) 2-404.2(a).^{2/} Apparently relying on PCM 3-103(d),^{3/} the contracting officer next asserts that it is not

^{2/}It would have been preferable for the contracting officer to let the technical evaluation committee review Yoh's proposal and make a determination of its acceptability rather than making a preemptive decision. However, since his determination was justified, Yoh has not been prejudiced by the manner in which the matter was handled.

^{3/}PCM 2-404.2(a) provides that, "[a]ny bid which fails to conform to the essential requirements of the invitation for bids shall be rejected."

^{4/}PCM 3-103(d) provides that, after award, "...in no event will an offeror's cost breakdown, profit, overhead rates, trade secrets, or other confidential business information be disclosed to any other concern."

the Postal Service's policy to provide a breakout comparison of the points scored in technical evaluations. Despite this statement, he did provide Yoh with Wyatt's score for the management portion of its technical proposal, simultaneously reminding Yoh that he could not provide a comparison of scores, as Yoh's proposal was not rated. In response to Yoh's complaint that the award was made on a basis inconsistent with the solicitation's award scheme, the contracting officer addressed Yoh's apparent confusion as to the number of people that were included in the award. He explains that, although the solicitation required offerors to submit proposals using estimated figures for a maximum number of eight people, the award was made for the minimum number of three. Finally, he contends that the information in the solicitation and his statement fully describe the award process.

As to Yoh's claim of inadequate notification, PCM 3-103(d) provides, with regard to negotiated procurements, that "[t]he procuring office shall notify the unsuccessful offerors under any procurement in excess of \$25,000, on the same day of award and in accordance with the procedures of 2-408.1, of the fact that their offers were not accepted." PCM 2-408.1 describes the manner in which such notification is to be made. These regulations did not bar the contracting officer from notifying Yoh that its offer had been found technically unacceptable before the date of award, and earlier notification would have been preferable, but the contracting officer's actions did comply with the pertinent provisions, so the delay of which Yoh complains cannot be a successful grounds for protest. See generally Bow Industries, Inc., Comp. Gen. Dec. B-191667, March 25, 1980, 80-1 CPD & 219.

This solicitation did not authorize an alternate offer. It required the submission of a technical proposal and a price proposal. Yoh's failure to submit its offer according to the solicitation requirements precluded its evaluation. Yoh's proposal failed to comply with the essential terms of the solicitation and the contracting officer could reject the offer.

Yoh next argues that the contracting officer made award based on information not related to the solicitation requirements on pages 6 & 7, Items and Prices. As set forth above, those requirements called for each offeror to present a price proposal using the estimated manhour figures for a maximum number of eight people, and specified that the award would be made on the basis the initial contract requirement of one Supply Cataloger, Senior and two Supply Catalogers. The protest file amply indicates that the information in the notification letter was accurate and the award was made pursuant to the solicitation requirements, as a careful reading of the solicitation would have revealed. See Artech Corporation, P.S. Protest No. 84-58, October 5, 1984.

Finally, we address Yoh's requests for a complete evaluation of Wyatt's proposal and for a delay in filing a more specific protest. The contracting officer does not have to disclose the results of a technical evaluation of the successful offeror. However, in this case, he has disclosed Wyatt's score on the management portion of the evaluation. (Of course, Yoh's offer did not receive a score because it was not evaluated.) Yoh had the right to comment on the contracting officer's statement, but such comments must be

made in a timely manner, within five working days of the protester's receipt of the statement. PCM 2-407.8 f. (4). A copy of the statement was sent to the protester on August 17. As we have not received any comments from Yoh on the contracting officer's statement, we must conclude that it no longer wishes to supplement its protest.

The protest is denied.

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

[checked against original JLS 3/3/93]