

Protest of)
LARSE CORPORATION) Date: October 18, 1990
Solicitation No. 104230-90-A-0093) P.S. Protest No. 90-48
)

DECISION

Larse Corporation ("Larse") protests the proposed award of a contract to ADC Telecommunications ("ADC") under Solicitation No. 104230-90-A-0093 for intelligent channel service units ("CSUs") for the National Information System Support Center.^{1/} The solicitation was issued on June 6, 1990, by the Information Systems Procurement Division with an original due date of June 27. Larse contends that the solicitation was biased in favor of ADC, that ADC's proposal does not meet the technical requirements, and that certain procurement practices were improper.

The solicitation sought an indefinite quantity of CSUs at a firm fixed unit price for a period of one year with four one year options. Section A, Items and Prices, identified estimated quantities as follows: Item 001, 90 Kentrox T-Smart Intelligent Channel Service Units or Equal; Item 002, 5 Chassis to hold CSUs; Item 003, 50 Chassis - stand alone CSUs^{2/}; Item 004, 91 Manuals. The estimated quantities for the first year and the option years were totaled at the end of Section A.^{1/}

Section B, Specifications/Statement of Work, was approved by the Technical Review Division prior to inclusion in the solicitation. It specified "T-Smart Intelligent Channel Service Units manufactured by ADC Kentrox . . . or equal." It went on to enumerate the salient characteristics required for equal products. Specifically, Section B.1.3.2. set several functional requirements, including the following: "T1 Inputs & Outputs . . . Framing Options - Unframed: D4: ESF: or D4-to-ESF conversion."^{4/} Section B.1.3.3

^{1/}A CSU is the interface device between customer telephone equipment and the equipment of the transmission vendor (a long distance telephone company). It performs several functions in processing digital signals in accordance with telephone company requirements.

^{2/}CSUs can be inserted in either a rack mount, Item 002, or a stand alone chassis, Item 003.

^{3/}Since the quantities in Section A did not necessarily represent the quantities that would actually be ordered, Section M contained the quantities to be used for evaluation of the proposals.

^{4/}"Framing Options" refer to whether the transmission medium is subdivided (multiplexed). An "unframed" format refers to a situation where no subdivision is specified. There are two major frame

stated that to be considered equal, the CSU must include a shelf unit with twelve or more slots. Award was to be based on the lowest priced proposal which met the technical requirements.

On June 21, Larse complained in writing that the solicitation was restrictive of competition and favored another vendor, because it specified the brand manufactured by ADC Kentrox. Larse contended that the salient characteristics for an equal product appeared to be derived directly from that vendor's specifications. Larse also requested clarification of portions of Section A, complaining that the way the estimated quantities of CSUs, chassis, and stand alone chassis were configured could be misinterpreted. Additionally, it complained that the total for the stand alone chassis listed in the last part of Section A did not add up correctly. It also requested a technical change in Section B, and definitions for some of the terms in Section J. Finally, it requested an extension of the due date until July 6. The contracting officer responded orally to some of Larse's questions and issued Amendment A01 which removed the listed totals in Section A and clarified Section B. The amendment extended the due date to June 29.

Offers were received on June 29, with ADC offering the brand name product and Larse an acceptable equal product. Following the receipt of proposals, on July 11, the contracting officer issued Amendment A02, which removed the word "unframed" from the framing options at Section B.1.3.2, because the requirements office had discovered that the brand name product did not have this feature.^{4/} It requested Best and Final Offers ("BAFOs") due July 18. None of the offerors submitted changes to their technical proposals with the BAFOs. After a price evaluation of the acceptable offers, the contracting officer recommended that award be made to Larse on the basis of its lowest price.

On July 25, the contracting officer notified Larse of the award and mailed it the contract, which she had signed. On July 26, ADC telephoned the contracting officer and asked to be informed of the evaluated amount of its proposal. It then suggested that a mathematical error had been made in evaluating its price. The contracting officer agreed that there was evidence of a problem.^{5/} Upon reevaluation of the proposals, it was discovered that a mathematical error had been made in the price evaluation of ADC's proposal, the correction of which made ADC's the lowest technically acceptable offer.^{6/}

standards for the transmission speeds used, the D4 and ESF formats.

^{5/}Further, it appears that since the system was required to accommodate multiplexed voice and data transmission, only a "framed" system would be accepted.

^{6/}On the same day, the contracting officer telephoned Larse, explained the allegation of a mathematical error, the need to reevaluate the offers, and requested the return of the contract. On July 31, she sent a written request for the return of the contract. Larse did not return the contract.

^{7/}ADC had indicated in its proposal that its stand alone chassis was only sold with the accompanying CSUs, and its proposal for the stand alone units included the price of the chassis plus CSUs. Its proposal, however, was evaluated as though its stand alone chassis were provided without CSUs. In calculating ADC's price, the cost of CSUs was added to the inclusive chassis price, resulting in some

On August 1, Larse sent the contracting officer a letter alleging irregularities in the procurement procedures employed by the contracting officer. It contended that its award became effective when the contract was mailed. It stated that there was a protest pending against the award of its contract about which the Postal Service had refused to give Larse any information.^{4/} It complained that, in any event, the Postal Service could not entertain that post-award protest without a compelling reason and requested that all award procedures be suspended pending revelation to all interested parties of the details of the protest. On August 3, Larse requested a debriefing.

On August 6, ADC protested to the contracting officer the award to Larse. On August 9, the contracting officer conducted a debriefing for Larse, explaining the nature of the error in the evaluation of ADC's proposal and the basis of ADC's protest. On August 10, Larse protested to this office. On August 13, the contracting officer terminated Larse's contract for convenience and awarded a contract to ADC.

In its protest, Larse enumerates five contentions, attaching copies of its prior correspondence: 1) the specification of a brand name product in the solicitation is unduly restrictive of competition, reflecting a bias in favor of ADC; 2) by awarding to ADC, the Postal Service is unnecessarily introducing a new vendor into its network which already contains Larse's proven product; 3) ADC's product does not meet the technical requirements of the solicitation;^{4/} 4) the Postal Service refused to provide Larse with information regarding ADC's protest; and 5) the Postal Service refused to provide Larse with documentation of the alleged mathematical error in ADC's price evaluation.

In her report on the protest, the contracting officer responded to each of the five issues raised by Larse. First, she states that the allegations of bias in favor of ADC are unsupported and incorrect. She maintains that the terms of the solicitation are not restrictive, stating that requiring a brand name or equal is a standard means of describing a required product. The Kentrox brand name is a standard product in the industry and the brand name and salient characteristics were approved by the Postal Service's Technical Review Division prior to issuance of the solicitation. Adequate competition was received with some offerors proposing the brand name and some proposing equal products. Second, the contracting officer asserts that the fact that Larse's products are already in use within the Postal Service was not a basis for

double counting of CSU costs.

^{8/}Larse apparently believed that ADC's July 26 telephone call to the contracting officer was a protest. This view was incorrect, since under the Procurement Manual ("PM"), a protest must be in writing. PM 4.5.2 a.

^{9/}Larse also attaches a "technical protest," which states that: 1) Larse's chassis accommodates two additional CSUs to the twelve called for in the solicitation at Section B.1.3.3, and offered by ADC; 2) one of the twelve slots offered by ADC must be occupied by a Shelf Interface Unit, leaving only eleven slots for CSU installation; 3) as a result, five ADC chassis can accommodate only 55 CSUs, instead of 60, creating a deficit of 5 CSUs; and 4) in order to meet the requirement for the additional 5 CSUs, ADC must supply an additional chassis and other components at additional costs.

awarding a noncompetitive contract to Larse when adequate competition was available.

Third, the contracting officer states that since ADC offered the brand name product, it was impossible for it not to meet the technical requirements of the solicitation. Addressing the specific technical issues raised by Larse, she states that the chassis had to have 12 slots or more, a requirement met by both ADC and Larse. There was no requirement that each slot contain a CSU. In any event, she asserts that the estimated quantities in the solicitation did not necessarily represent the quantities that would be ordered and that for the purpose of obtaining a firm fixed unit price, each proposal was evaluated according to the quantities listed in Section M.

Finally, the contracting officer points out that Larse is mistaken about a formal protest having been filed by any party before August 6 and that prior to that date, she had informed Larse about the possibility of an error in the evaluation of another vendor's proposal. She also states that she subsequently explained the issues raised by ADC in its August 6 protest at Larse's debriefing on August 9. At that time, the contracting officer provided Larse with a full explanation of the mathematical error that had been made and supplied the re-evaluated cost of ADC's proposal. The contracting officer states that Larse appeared to be satisfied with the results of the debriefing.

Larse submitted comments on the contracting officer's report. It alleges that Amendment A02, which eliminated the word "unframed" from the salient characteristics, is further evidence that the specifications were written around the Kentrox brand, thus favoring ADC. Larse admits, however, that this change did not prejudice its offer. It also contends that the amendment was issued, allegedly in favor of ADC, when its own request for an amendment clarifying the configuration requirements of the solicitation was flatly denied.

Larse further complains that it received different treatment with respect to the protests filed by it and ADC. It alleges that it did not receive written notice of ADC's protest, but that written notice was immediately sent to ADC regarding Larse's protest. Finally, Larse alleges bias on the part of the contracting officer because ADC received a copy of the contracting officer's report two weeks before it did.^{10/}

With respect to the technical issues, Larse contends that, in the industry, a specification calling for a shelf unit of 12 slots generally means that each slot is available for a plug-in CSU.

Larse also disagrees with the contracting officer's interpretation of the events at Larse's debriefing. Contrary to the contracting officer's contention, it was not satisfied with the results of the debriefing and asserts that it should have received all documentation supporting the alleged mathematical error in ADC's price evaluation. Larse maintains that the error occurred because of the confusion surrounding the configuration require-

^{10/}The contracting officer stated that copies of her report were mailed to all interested parties in a timely manner. Larse states that it never received its copy. Upon being notified that the report had not arrived, the contracting officer sent Larse another copy of her report. Larse was allowed five working days from actual receipt of the contracting officer's report to submit comments.

ments, for which it had requested clarification in the form of an amendment. Larse also alleges that the contracting officer attempted to have its representative sign a release form after the debriefing.

ADC submitted comments on the protest and the contracting officer's report stating that except for the technical protest, the issues raised by Larse are completely unsupported allegations of impropriety. With respect to the technical issues, ADC contends that its product fully meets the technical requirements.

ADC also replied to Larse's comments. It notes that Larse's statement that its request for an amendment was denied by the contracting officer is contradicted in the contracting officer's report. It contends that there is no support for Larse's allegation that the mathematical error in ADC's evaluation was caused by a confusing proposal from ADC, noting that the contracting officer clearly stated that the Postal Service had multiplied a unit price by the wrong quantity. ADC does not agree with Larse's contention that it was treated unfairly regarding notification of ADC's protest and states that, in any event, it is irrelevant to Larse's protest against award to ADC. Finally, it rejects Larse's claim that there is an industry standard indicating that each slot in a shelf unit is generally understood to be available for plug-in CSUs.

Discussion

In complaining that the brand name or equal requirement in the solicitation is inherently biased in favor of ADC, Larse is alleging that the terms of the solicitation are unduly restrictive. "Protests of alleged deficiencies in the solicitation that are apparent before the date for receipt of proposals must be received by the date and time set for the receipt of proposals." PM 4.5.4 b. Larse's protest, dated August 10, postdates the final date for receipt of BAFOs, July 18. Therefore, this issue of its protest is untimely.¹¹ Pitney Bowes, Inc., P.S. Protest No. 89-86, December 20, 1989. Larse's complaint that a competitive solicitation was not necessary, as its own equipment was already in place, is similarly untimely.

To the extent that Larse's technical protest is alleging that the characteristics of the brand name offered by ADC differ from the salient characteristics listed in Section B of the solicitation, it is also untimely as against the terms of the solicitation. On the other hand, if Larse is complaining that ADC's product does not meet the requirements of the solicitation, it is alleging that ADC's proposal is not technically acceptable. "Each proposal must be examined to determine whether it meets the requirements of the solicitation." PM 4.1.4 c. "This office will not substitute its judgment for that of the contracting officer or disturb [her] evaluation of an offer's technical acceptability unless it is shown to be arbitrary or in violation of procurement regulations." TLT Construction Corp., Inc., P.S. Protest No. 89-75, January 18, 1990. Since ADC offered the brand

¹¹Even if, as Larse contends, its letter of August 1 should have been considered a protest, it is also untimely for the reasons outlined above. In any event, specifying a brand name or equal product is an acceptable method for describing the technical requirements of a solicitation. PM 2.3.3. In addition, the contracting officer has shown that adequate competition was received and consisted of proposals for both the brand name product and "equal" products. Larse, whose proposal was technically acceptable, has not shown that the requirements were clearly unreasonable.

name product, the contracting officer's determination that its proposal was technically acceptable was not arbitrary or capricious or in violation of procurement regulations.

Finally, Larse complains that various actions of the contracting officer, with respect to ADC's post-award communications, were improper. First, as noted above, contrary to Larse's impression, ADC's July 26 telephone call to the contracting officer was not a protest. ADC first submitted a written protest to the contracting officer on August 6. With respect to a protest filed with the contracting officer, "[i]f a contracting officer determines that a protest is obviously meritorious, the contracting officer may take such action as is appropriate." PM 4.5.6 b. There is no requirement that the contracting officer inform other offerors of a protest which the contracting officer finds to be meritorious. PM 4.5.7 b. Larse was informed of the basis for the protest during its debriefing three days later. Having decided that ADC's protest was meritorious, the contracting officer terminated Larse's contract for convenience and awarded the contract to ADC. Larse has shown no basis for its allegation of procedural impropriety on the part of the contracting officer.

As for Larse's contention that it was not given documentation proving a mathematical error in ADC's evaluation, the contracting officer offered Larse an explanation of the error during its debriefing on August 9. She also adequately explained the error in her protest report. Larse's additional complaints of unfair treatment are allegations that the contracting officer acted in bad faith. "Allegations of bad faith must be shown by virtually irrefutable proof of malicious and specific intent to harm the protester, not merely by inference or supposition. Otherwise, contracting officers are presumed to act in good faith." (Citations omitted.) Peritek Corporation, P.S. Protest No. 90-27, July 3, 1990; Graphic Technology, Inc., P.S. Protest No. 85-66, December 30, 1985. Larse has presented no evidence, nor is there any in the record, to refute the contracting officer's statement that an honest mathematical error was made in evaluating ADC's offer. Accordingly, Larse has not met the high burden necessary to show that the contracting officer acted in bad faith.

The protest is dismissed in part and denied in part.

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