

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Murray-Benjamin Electric Company, L.P.

File: B-400255

Date: August 7, 2008

Brad Benjamin for the protester.

Todd Bailey, Esq., Federal Bureau of Prisons, Department of Justice, for the agency.
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participated in the preparation of the decision.

DIGEST

Protest is denied where, even though agency evaluated proposals for requirements contract using higher estimated quantities than stated in solicitation, a recalculation of the prices using the quantities stated in solicitation confirms that awardee's total price remains lower than the protester's price, and where the protester has not shown that the small change in the estimated quantity would have resulted in a change in its proposed prices.

DECISION

Murray-Benjamin Electric Company, L.P. (MBE), a small business, protests the award of a contract to Allied Wire & Cable Inc. by Federal Prison Industries (UNICOR) under request for proposals (RFP) No. EP2466-08 for coaxial cable. MBE argues that the contracting officer (CO) erred in calculating MBE's price by using a different quantity of cable from the amount specified in the RFP.

We deny the protest.

UNICOR issued the RFP¹ on April 14, 2008, seeking proposals to supply cable compliant with military specification M17/84-RG223 to the federal correctional

¹ UNICOR refers to the solicitation as a request for quotations, and refers to the responses as quotes. See, e.g., CO Statement at 2-3. However, the record reflects that the solicitation itself was marked as a request for proposals. RFP at 1. Although we note the discrepancy, it does not affect the outcome of the protest.

institution (FCI) at Loretto, Pennsylvania. The RFP was issued as a small business set-aside, commercial item solicitation, and sought proposals for a requirements contract for a 5-year period.

After receiving initial proposals, UNICOR amended the RFP. The amendments added two additional delivery locations, changed the term of the contract to a 1-year base period followed by four annual options, provided for fixed pricing per foot, and requested revised proposals. The amendments also provided the following “estimated maximum quantit[ies]” in feet of cable:²

	Loretto, PA	Fairton, NJ	Lexington, KY
Base Year	800,000	400,000 ³	500,000
Option Year 1	800,000	400,000	100,000
Option Year 2	800,000	400,000	100,000
Option Year 3	800,000	400,000	100,000
Option Year 4	800,000	400,000	100,000
Total	4,000,000	2,000,000	900,000

The RFP provided that “[a]ward(s) will be based on the best value to the Government with past performance and delivery significantly more important than price.” RFP at 8. The RFP explained that UNICOR desired a delivery time of 75 days or sooner from the time of issuance of each order. Revised proposals were due by June 2, 2008.

UNICOR received timely revised proposals from six offerors, including MBE and Allied. Both MBE and Allied proposed to provide cable 75 days after an order, submitted past performance information, and proposed prices per foot for each location and time period. While evaluating offers, the CO noticed that the RFP option quantities for Lexington were too low by 25,000 feet per year.⁴ In calculating prices for evaluation purposes, the CO used the corrected quantity for the Lexington option years. She then multiplied each quantity by the corresponding per-foot price

² Federal Acquisition Regulation (FAR) § 16.503(a)(1) requires the solicitation for a requirements contract to state “a realistic estimated total quantity.”

³ Amendment 3 actually described the pricing lines for Fairton, New Jersey as “Option Year One (1)” through “Option Year Five (5),” instead of as UNICOR apparently intended: a base year and four option years. RFP amend. 3. Since the offerors apparently understood what UNICOR intended, we note the discrepancy for sake of accuracy, and conclude that it does not affect the resolution of the protest.

⁴ Since the base year quantity for Lexington of 500,000 feet was correct, the change to the option years increased the total estimated maximum quantity from 6.9 million feet to 7 million—a change of less than 2 percent.

for each offeror. Allied's total estimated price was \$7,134,725, while MBE's was \$7,216,775. CO Statement at 5.

The CO also evaluated past performance, and concluded that Allied had excellent past performance, while MBE had good past performance. Accordingly, since Allied had higher-rated past performance than MBE, the same delivery schedule, and a lower price, the CO selected Allied for award on June 4. AR, Tab 9, Award Notice, at 1.

After reviewing the award notice and obtaining a debriefing, MBE filed this protest.

DISCUSSION

MBE argues that UNICOR was required to amend the RFP and request revised proposals, rather than making an award based on prices calculated for the larger quantity of cable. MBE also argues that it was competitively prejudiced by the error because, if the competition had been reopened, MBE would have offered a lower price.

UNICOR responds that the offerors' total prices can be recalculated with certainty, using the quantities in the RFP, and that under this approach also, Allied proposed a lower total evaluated price than MBE. CO Statement at 4. UNICOR also argues that the difference in quantity was not significant enough to affect the offered prices.

MBE does not dispute that Allied's prices were lower under both calculations,⁵ but argues that it was prejudiced by the erroneous estimate because between the deadline for submission of offers (June 2) and award (June 4), the prices of copper and crude oil in commodities markets dropped. MBE argues that since copper is a raw material used in producing the cable, and oil is a component of the cost of delivery, if UNICOR had reopened the competition on June 4 to revise the quantities, MBE could have submitted a lower price than Allied. Protester's Comments at 2.

Generally, where an agency's requirements change after a solicitation has been issued, it must issue an amendment to notify offerors of the changed requirements and afford them an opportunity to respond. FAR § 15.206(a). The object of the requirement is to avoid award decisions not based on the agency's most current view of its minimum needs. One circumstance requiring the issuance of an amendment is a significant change in the government's estimate of the quantity it expects to order. Symetrics Indus., Inc., B-274246.3 et al., Aug. 20, 1997, 97-2 CPD ¶ 59 at 6. In the context of a requirements contract, we have held that a change in the estimated

⁵ MBE is not represented by counsel, and Allied's line-item prices were redacted from the copy of the agency report provided to MBE. Our Office has reviewed the unredacted copy of the agency report to confirm that it supports the agency's argument in this regard.

quantity must be shown to have more than a trivial effect on the prices offered. See Microform, Inc.; Government Printing Office--Recons., B-231411.2; B-231411.3, Dec. 13, 1988, 88-2 CPD ¶ 587 at 2 (amendment decreasing estimated quantity in requirements contract was not material where there was no evidence that the change would have had more than a trivial effect on prices). Consistent with this, our Office will not sustain a protest unless the protester demonstrates a reasonable possibility that it was prejudiced by the agency's actions, that is, unless the protester demonstrates that, but for the agency's actions, it would have had a substantial chance of receiving the award. McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3; see Statistica, Inc. v. Christopher, 102 F.3d 1577, 1581 (Fed. Cir. 1996).

Here, MBE does not attempt to quantify how much the decrease in the cost of copper would influence the cost of producing the cable, nor how much the decrease in the cost of crude oil would affect the cost of delivery. Nor has MBE shown that it was uniquely-positioned among the competitors to benefit from the fortuitous short-term movement of the commodities markets that it has identified. Moreover, MBE has offered no explanation of how these issues are at all related to the small change in the estimated maximum quantity for one of the locations. Taken together, MBE has not shown that it was competitively prejudiced by UNICOR's evaluation of proposals using a slightly greater quantity than the maximum estimate stated in the RFP in the context of a requirements contract.

The protest is denied.⁶

Gary L. Kepplinger
General Counsel

⁶ In its comments, MBE also argues that its past performance should have been evaluated as excellent. Protester's Comments at 4-7. While we do not believe that protester's arguments show that the past performance evaluation was unreasonable, we note that even assuming MBE had received an "excellent" past performance rating, given its proposal of identical delivery terms, and a higher price than Allied, the protester has not shown that any error here affected the likelihood of MBE being awarded the contract.