

May 21, 1997

P.S. Protest No. 97-13

BURLINGTON ELECTRICAL TESTING CO.

Solicitation No. 412735-97-A-0188

DIGEST

Protest against award for maintenance of electrical switchgear on grounds that awardee is not a member of the International Electrical Testing Association (NETA) and has no certified technicians is denied; protester was not the low offeror, and while NETA certification was a factor to consider in making award it was not a mandatory requirement.

DECISION

Burlington Electric Testing Co. (BET) protests the award of an electrical switchgear maintenance contract under Solicitation No. 412735-97-A-0188.

The Purchasing and Materials Service Center, Philadelphia PA, issued Solicitation 0188 on March 7, 1997, seeking maintenance services for electrical switchgear at the U.S. Postal Service Processing and Distribution Center in Philadelphia.

Section M.1 of the solicitation states that "cost/price will be considered in the award decision, although the award may not necessarily be made to that offeror submitting the lowest price." The section identified no other evaluation criteria.¹

Paragraph 23 of the Scope of Work provided as follows:

¹ Section M.1 also noted that offers would be evaluated by applying "the offerors proposed fixed prices/rates to the estimated quantities included in the solicitation," although that "estimate is not a representation by the Postal Service that the estimated quantities will be required or ordered."

23. NETA/INTERNATIONAL ELECTRICAL TESTING ASSOCIATION - PREFERENCE

The USPS is most interested in having technicians and companies that are highly trained and professional in the performance of this contract. To foster this professionalism, the USPS reserves the right to select companies for award who are a FULL MEMBER COMPANY of NETA and their personnel are certified per NETA Certified Test (minimum of two personnel or 25% of technicians)], even though the offered prices are higher in cost to the U.S. Postal Service ^[2]

Two offers were received in response to the solicitation. Reuter Hanney, Inc. submitted an evaluated price of \$64,420, while BET's price was \$66,200. Award was made to Reuter Hanney on April 22, and BET was simultaneously notified that its offer had not been accepted because it was not the lowest price received.

On April 23, BET wrote to the contracting officer, referring to Paragraph 23 of the Scope of Work and pointing out that it was a full member company of NETA and that over 60% of its full time employees were NETA certified technicians, while Reuter was not a NETA member and had no certified technicians. BET also stated that its offer was only a small amount more than Reuter's and included an estimated amount for emergency calls "which may not occur," and argued that its price was otherwise less than that of Reuter. On April 23, BET also faxed a message to the contracting officer protesting the award.

In his report, the contracting officer stated that the inclusion of Paragraph 23 in the solicitation was not intended to make NETA certification a mandatory requirement and that otherwise qualified companies were not to be precluded from competing for the contract. Reuter Hanney had performed switchgear maintenance at the same location for several years under two previous contracts, and employed a professional engineer and several mechanics who have over 4,000 hours in the testing and maintenance of electrical switchgear. In answer to BET's claim that the average annual price that it offered for maintenance (alone) was less than the price offered by Reuter, that there was only a small price difference between the parties, and that the cost for emergency service might never arise, the contracting officer stated that the hourly rate offered for emergency service could not be ignored and that making the award on the basis of total price was not unreasonable. He reiterated that he considered price, customer needs and Reuter's past performance, and determined that the Postal Service's best interests were met by award to Reuter Hanney.

Reuter Hanney submitted brief comments on the protest which included the fact that its application for NETA certification is pending.

² NETA was elsewhere defined as the National Electrical Testing Association.

DISCUSSION

This office plays a limited role in reviewing the technical evaluation of prequalification or similar information submitted by a potential offeror. The technical determinations of a contracting officer will not be overturned unless they are arbitrary, capricious, or otherwise unsupported by substantial evidence. The protester bears the burden of overcoming the "presumption of correctness" which accompanies the statements of contracting officers. Accordingly, we must determine if [the protesters have] met this burden and shown that the contracting officer's decision was arbitrary or not supported by substantial evidence.

Daniel J. Keating Construction Company, P.S. Protest No. 89-92, March 1, 1990 (citations omitted).

BET contends that the solicitation states a preference for a company that is a full member of NETA, and indeed, the title of Paragraph 23 contains the word "preference." The contracting officer said that the inclusion of this provision was not meant to preclude others from competing in this solicitation.

There is an internal conflict between provision M.1 of the solicitation, which lists no evaluation factors other than price (and thus establishes price as the sole basis for award, see, e.g., *Bell and Howell Federal Government Sales*, P.S. Protest No. 91-24, April 15, 1991), and the Scope of Work's "preference" for NETA-certified individuals and firms. However, if the preference is considered, it remains the case that the weighting of evaluation criteria is a matter falling within the contracting officer's discretion. See *Electro-Test, Inc.*, P.S. Protest No. 94-26, August 5, 1994, and decisions cited therein.³

That the Postal Service reserved the right to prefer a more costly NETA-member's offer over that of a non-member did not require it to select such an offer, and it remained free to evaluate the perceived benefits of the competing offers.

The contracting officer has offered a reasonable explanation for the relative significance accorded the technical and price factors of the evaluation, and we find no evidence that he abused his discretion in the determination that acceptance of Reuter's lower offer was in the best interests of the Postal Service. Cf. *Davco Corporation*, P.S. Protest No. 95-28, August 30, 1995.

³ *Electro-Test*, also concerned a solicitation for maintenance of electrical switchgear which differed from the solicitation here by requiring that the work be performed in accordance with a NETA specification which required the lead, on site technical person to be currently certified by the NETA or another certifying group, and certification could be given only to employees of NETA full members.

Further, given the evaluation scheme set out in Section M., the contracting officer is correct that the cost of the emergency call hours must be included in the price analysis.

The protest is denied.

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