

November 12, 1997

P.S. Protest No. 97-24

PARAMOUNT MECHANICAL CORPORATION

Solicitation No. 671820-97-A-0026

DIGEST

Protest against award of a contract for the replacement of HVAC systems is denied where protester failed to show that the contracting officer's determination that proposal was not fully responsive to solicitation was arbitrary or an abuse of discretion; proposal clearly failed to meet requirements for documentation of offeror's qualifications.

DECISION

Paramount Mechanical Corporation (Paramount) protests the award of a contract for the replacement of HVAC systems at the William F. Bolger Academy, Potomac, MD.

The Postal Service's Headquarters Facilities Services, Washington, DC, issued Solicitation No. 67182-97-A-0026 on May 27, 1997, with an offer due date of July 7.¹ The solicitation included a mechanical contractor qualification statement package, the stated purpose of which was its use in determining the technical competence and financial stability of the contractor completing the package forms.

¹ The solicitation superseded an earlier one found to be deficient. The earlier solicitation had not required the submission of a mechanical contractor qualification statement.

The Qualification Statement Package provides, in part:

1. INTRODUCTION

a.

* * *

The USPS is seeking to prequalify contractors who demonstrate a successful level of technical ability and past performance for H VAC projects exceeding \$500,000. The project will be competitively bid among the prequalified contractors only. The successful contractor will be awarded a firm fixed price construction contract for the project.

* * *

d. This pre-qualification effort includes a request for proposal.

* * *

3. MINIMUM EXPERIENCE REQUIREMENTS

- a. 5 years experience as a Mechanical Contractor.
- b. 5 comparable projects completed within the past 7 years.
- c. "Comparable projects" are defined for the purpose of this solicitation as

Institutional H VAC system replacement or retrofit completed or ongoing. Minimum 200 ton capacity with a contract cost of \$500,000 or more. One of the five projects must be for the installation of an A/C system (in a physical plant) of at least 400 tons in size.

5. EVALUATION PROCEDURES

A. The fully completed Qualification and Statement Package (Parts B & C) will be considered as the entity's Technical and Management Proposal. Parts B & C will first be evaluated to determine the entity's overall experience, qualifications and capabilities. Only those entities that demonstrate that they not only satisfy the stated minimum experience level, but also possess adequate experience and qualifications to successfully accomplish the proposed project will be prequalified.

Price proposals will be open[ed] for prequalified firms only. The Contracting Officer will award a contract to the firm that provides the best value to the USPS, that is, the firm that provides the best combination of price and price related factors.

Evaluation Criteria of Part B is listed below in descending order of importance. Evaluation values have been assigned to each of the elements in lieu of assigning values to each item within an element.

a. Qualifications (Total Scoring - 100 points)

(1) Experience

List of comparable projects completed or in progress during the past five years.

Other experience that demonstrates the contractor's qualifications and capabilities.

* * *

(Scoring - 45 points maximum)

(2) Past Performance

List references in Section B.3.a

* * *

(Scoring - 30 points maximum)

(3) Organization

Organizational Statement Attachment B.4

* * *

(Scoring - 20 points maximum)

* * *

(6) Backlog

Backlog Table in Section B.5

* * *

(Scoring - 5 points maximum)

Part B: Qualifications:

It is required that qualification data be presented on the forms, or in the format provided. Failure to comply with this requirement is grounds for a determination that the offeror is non-responsive [sic].

Part C of the Qualification Package required submission of a project management plan which could receive a maximum score of 80 points, and a description of the firm's safety program which could receive a maximum of 20 points.

Additionally, Section K.1, Award Without Discussions (Provision A-9), provided: "The Postal Service may award a contract on the basis of initial proposals received, without discussions. Therefore, each initial proposal should contain the offeror's best terms from a cost or price and technical standpoint."

On May 27, copies of the solicitation were sent to the previous requesters (including Paramount) and fifteen additional contractors. A pre-proposal conference was held on June 5. While Paramount did not attend, it received the minutes of the conference which were included in Amendment A01 to the solicitation.

Nineteen firms submitted packages including qualification packages and price offers. Of the nineteen qualification packages submitted, those of seven, including Paramount's, were deemed to be incomplete, and the offerors were removed from the evaluation process. Two firms with complete qualification packages were removed from consideration because they failed to meet the minimum experience requirement. The ten remaining proposals were ranked individually by each of the individual evaluators and those scores were combined and averaged to arrive at a "team score" for each of the offerors. The scores ranged from 100 down to 60.93. The three lowest ranking firms were eliminated from the category of "most highly qualified firms" by the committee. The sealed offers of the remaining seven firms were opened and it was determined that award would be made to American Mechanical Services, Inc., which submitted the lowest price of \$813,222.

A notice of intent to award was sent to American Mechanical Services, Inc. on July 23. Letters dated July 29, stating that the proposal was evaluated in accordance with the evaluation criteria published in the solicitation and that the contract in the amount of \$813,222 "was awarded" to American Mechanical Services, Rockville, MD, based on the best technical proposal and lowest price, were mailed

to the 18 unsuccessful offerors. (The letter was inexact; the contract was not executed, in fact, until August 5.)

Mr. Carl Poore of Paramount called the contracting officer on August 4 to ask if his firm's "bid" had been opened. He was told that Paramount had not been considered for award because its submission lacked required information relating to experience, which was critical to the determination of the prospective contractor's qualifications.²

In its protest filed on August 11, Paramount asserts that the contracting officer said that its proposal was not "selected" because the qualification package submitted was not prepared on USPS forms. The protest contends that neither the qualification statement package nor its two amendments indicated that the information must be submitted on USPS forms, and further contends that Paramount's qualification package provided detailed information addressing all the required conditions, concerns and questions. Additionally, Paramount recites its understanding that the award was to be to the firm offering the lowest price and having acceptable technical qualifications.

In response to the protest, the contracting officer stated that Paramount failed to submit the required qualification information either on the forms provided or in the format of those forms, and, that contrary to Paramount's contentions, it had failed to provide the following information:

both initial and final prices for its referenced contracts;

both initial and final (actual) duration for each of its referenced contracts;

percentage of subcontracts awarded to Women Business Enterprises, Minority Business Enterprises and Small Disadvantaged Businesses;

addresses of references;

identification of its referenced contracts as either a construction or operations/maintenance contract

addresses of referenced projects;

² Paramount's protest letter contained a notation which read "date of receipt of award notification: 8-6-97." However, the postal employee who took the call stated that when Mr. Poore called on August 4 he already knew that an award was being made to American Mechanical Services, Inc.

identification of the type of each referenced contract, *e.g.*, fixed price;
dates on which referenced contracts were awarded; and,
indication as to whether or not referenced contracts were completed
within clients' schedules and budgets.

The contracting officer also denied Paramount's allegation that it was told that it was omitted from prequalification because of its failure to use the Postal Service forms. Instead, it was explained at that time that Paramount's cost proposal was not opened because the firm was not prequalified because it failed to submit the information, described above, required in order to evaluate its qualifications.³

DISCUSSION

To be considered for award, offerors had to furnish sufficient information on the qualification forms or in that format to allow their proposals to be evaluated under the criteria listed in the mechanical contractor qualification package. Paramount's proposal was rejected because it failed to conform to those requirements. Paramount asserts that, although it had not completed the qualification forms set out in the solicitation, (an omission it describes as a minor informality), the qualification package it had submitted clearly indicated that it had both the technical qualifications and financial resources required for the project.

One purpose of the qualification statement package was to provide information from which to determine the "technical competence" of the prospective contractors. That process seems akin to the determination of the "acceptability" of individual proposals in the course of offer evaluation (PM 4.2.4 c); this is sometimes referred to as the determination of "technical acceptability," to which the following standard of review applies:

This office will not substitute its judgment for that of the contracting officer or disturb his evaluation of an offer's technical acceptability unless

³ In a "Note for the Record" dated August 4 the conversation was summarized as follows:

The reason they were not [prequalified] is because they did not complete the forms related to experience, Page 9 of the solicitation. I went on to explain the information required on the forms such as beginning and final contract amount, client references for construction and maintenance etc. were required in order to evaluate their qualifications.

it is shown to be arbitrary or in violation of procurement regulations. The purpose of our review is only to ensure that the determination of technical unacceptability has a reasonable basis. Further, the choice as to what is in the best interest of the Postal Service is a business decision within the discretion of the contracting officer and will not be overturned unless the contracting officer has clearly abused his discretion.

Government Contract Advisory Services, Inc., B&B General Contracting, Inc., P.S. Protest Nos. 93-21; 93-25, December 16, 1993 (citations and internal quotations omitted).

The record in this case does not support findings either of arbitrariness or abuse of discretion. Paramount was rejected because its proposal clearly did not conform to the requirements of the solicitation. Paramount admitted that it did not submit the qualification statement on the forms or in the format required, but asserted that the information it submitted clearly addressed all the concerns and questions of the USPS qualification package. That argument is not persuasive.

If Paramount completed the provided forms, it would have included the following information with respect to every listed project:

Part B.2. ENTITY EXPERIENCE, specified that the following information was to be supplied with respect to five projects either ongoing or completed in the past seven years that meet the criteria given in Part A.3.a and/or listed below.

Project Name and Location: _____ Type of Building: _____ Percent Complete: _____

Contract Type: GMP ___ Fixed Price: ___ Other: _____ Date Awarded: _____

Orig., Contract Price: \$ _____ Final Contract Amount: _____ % Change: _____

Orig. Contract Duration ___ Actual Contract Duration _____ % Change: _____

% of Subcontracts Awarded to: WBE _____ MBE _____ SDB _____

Project contained Mechanized Conveying Systems: ___ Yes _____ No

Project was completed within Client's Schedule and Budget: ___ Yes _____ No

Client Reference for Construction:

(provide name, address and current telephone number)

Client Reference for Operation/Maintenance:

(provide name, address and current telephone number)

Project Description (provide a brief Narrative): _____

Instead, it provided only the following information (in the format shown here) for the projects it identified:

<u>JOB DESCRIPTION</u>	<u>GENERAL CONTRACTOR/OWNER</u>	<u>Date Started</u>	<u>Contact</u>
<u>Contract \$% COMPLETED</u>	<u>OWNER FMC (GEN. CONTRACTOR)</u>	<u>DATE COMPLETE[D]</u>	
IBM TOSHIBA BLDG 130 (DESIGN/BUILD) MANASSAS, VA \$x,xxx,xxx	MARSHALL YMAN	1996	T-- D---(M/A) 5A7 703-xxx-xxxx B--- B----(IBM) 703-xxx-xxxx (ext xxx) page r 703-xxx-xxxx

Contrary to protester's assertion that it had provided all the required information, in comparing this information with that required by the solicitation, we find lacking the award date of contract; type of contract used, e.g., fixed price; whether the original contract price differed from the final amount paid; whether the actual time to perform the contract conformed to the original period for performance; the percentage of sub-contracts awarded to WBE, MBE or SDB companies; whether or not the contract was completed within the *client's* schedule and budget; and the address of the reference.

Furthermore, the five comparable projects were required to be installations each having a minimum capacity of 200 tons and a contract price of \$500,000 or more, with at least one project being an installation of an A/C system having a capacity of at least 400 tons. In examining protester's submission, we could not determine from the information provided that the projects submitted met all these requirements.

Having reviewed Paramount's submission, and the variation of the information which it included from that which was required, we cannot conclude that the evaluators acted arbitrarily in finding that Paramount did not fully address the required details about previous contracts.

Since the solicitation set out the documentation requirements and sufficient warning of the consequences of not meeting them, the protester has no basis to complain about being rejected.

The contracting officer was not obligated to seek out information that should have been in the proposal. The burden to submit an adequately written and complete proposal was the protester's.

CIR Industrial Automation, Inc., Protest No. 95-47, April 29, 1996 (citations and internal quotations omitted).

The protest is denied.

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Contract Protests and Policies